(3) Royalty oil—your firm, together with all affiliates, must not exceed 500 employees and not have more than a 50,000 barrels-per-day crude oil [8] or bona fide feedstock capacity.[9]

(g) For the sale of any other type of government property, what is a small business? If your firm is primarily engaged in manufacturing and, together with all affiliates, employs 500 or fewer employees, it is eligible to bid on the sale of Government property. Firms (together with all affiliates) primarily engaged in industries other than manufacturing must have 50 or fewer employees.

Dated: April 21, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-11522 Filed 4-30-82; 8:45 am]

BILLING CODE 8025-01-M

[8] "Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

[9] "Bona fide feed stocks" means crude and any other hydrocarbon material actually charged to refinery processing units, as distinguished from materials used as components in products to be delivered after merely filtering, settling, or blending.

federal register

Monday
May 3, 1982

Part III

Department of Energy

Federal Energy Regulatory Commission

Revision of Rules of Practice and Procedure To Expedite Trial-Type Hearings; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 1b, 2, 3, 3a, 3c, 4, 12, 16, 25, 32, 33, 34, 35, 41, 45, 131, 152, 153, 154, 156, 157, 158, 250, 270, 271, 275, 281, 282, 284, 286, 292, 375, 385, and 388

[Docket No. RM78-22-000; Order No. 225]

Revision of Rules of Practice and Procedure To Expedite Trial-Type Hearings

April 28, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a final rule which reorganizes, revises, and updates the Rules of Practice and Procedure for Commission proceedings. This final rule is both a major step in the Commission's efforts to reorganize the Commission's procedural rules and a partial revision of those rules. Specifically, the final rule removes all general rules of practice and procedure from 18 CFR Part 1 and places them in Part 385. With respect to oil pipeline filings and proceedings, the Commission is applying its procedures to such matters, and discontinuing use of the procedural regulations of the Interstate Commerce Commission, 49 CFR Part 1100, except for the *ex parte* rules and modified procedures. The Commission is also redesignating its public information regulations from 18 CFR Part 1 to Part 388. This final rule is in response to the need to expedite proceedings and to make procedural rules more easily understood by those affected by Commission action.

DATE: The final rule is effective August 26, 1982.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting a final rule which reorganizes, revises, and updates the Rules of Practice and Procedure for Commission proceedings, effective 120 days after issuance. This final rule is both a major step in the Commission's efforts to reorganize the Commission's procedural rules and a partial revision of those rules. Specifically, the final rule removes all general rules of practice and procedure from 18 CFR Part 1 and places them in Part 385. With respect to oil pipeline filings and proceedings, the Commission is applying its procedures to such matters, and discontinuing use of the procedural regulations of the Interstate Commerce Commission (ICC), 49 CFR Part 1100, except for the *ex parte* rules and modified procedures. The Commission is also redesignating its public information regulations from 18 CFR Part 1 to Part 388.

The comprehensive reorganization of the Commission's procedural rules will help avert difficulties that arise under the existing rules. The Department of Energy Organization Act (DOE Act) confers upon the Commission most functions of the Federal Power Commission (FPC), in addition to the oil pipeline ratemaking functions of the ICC. Savings provisions in the DOE Act (42 U.S.C. 7295) transfer to the Commission the FPC and ICC regulations governing the proceedings previously conducted by those agencies. Those regulations apply until replaced by the Commission's own procedural rules. Accordingly, the Commission has been operating under two unrelated sets of rules which are, in many respects, confusing and do not accurately reflect current Commission practice.

The Commission issues this final rule in response to the need to expedite proceedings and to make procedural rules more understandable. The rule provides various means of expediting cases set for hearing, including delegating to the Chief Administrative Law Judge the authority to consolidate and sever and permitting a presiding administrative law judge to phase cases and to dispose summarily of issues or an entire proceeding without full hearing. In addition to the final rule, the Commission's Office of the General Counsel has also implemented certain internal procedures specifically designed to achieve prompt resolution of cases set for hearing.

The first aspect of the Rules of Practice and Procedure which the Commission is revising by rulemaking is the procedures for cases set for hearing and the general filing requirements applicable to all Commission functions. A subcommittee of the Advisory Committee on the Rules of Practice and Procedure focused its attention on the procedures which govern hearings held before decisional authorities at the Commission. The deliberations of that subcommittee contributed significantly to formulation of the Notice of Proposed Rulemaking which was issued in this docket on March 9, 1981.[1]

II. The Reorganization Scheme

As indicated in the Notice of Proposed Rulemaking, the Commission envisions a new organizational scheme for its rules of practice and procedure and any rules generally applicable to all Commission activities. Under this rule, Subchapter A [2] contains definitions and rules of construction applicable throughout all Commission regulations, and statements of general policy and interpretations. Subchapter W contains the rules relating to the organization and internal management of the Commission. Subchapter X contains rules of interest to members of the public, including the conduct of Commission business, rules applicable to people practicing before the Commission, including the rules of practice and procedure, rules governing investigations, and rules governing Freedom of Information Act requests.

The following general table of contents indicates the location of Parts 375, 376,[3] 385, and 388 and where other revised provisions which have not yet been promulgated are tentatively assigned. As indicated, some existing Commission Rules, such as Standards of Conduct for Commission Employees, will also be recodified.

TITLE 18—CODE OF FEDERAL REGULATIONS

Chapter 1—Federal Energy Regulatory Commission, Department of Energy

Subchapter A

Part

1—Definitions Used in this Chapter.
2—General Policy and Interpretations.
3—[Reserved]. (Currently contains miscellaneous provisions to be removed or redesignated)

* * * * *

Subchapter W

Part

375—The Commission.
376—Organization, Mission, and Functions; Operations During Emergency Conditions.
377—National Security Information.

[1] 46 FR 17023, March 17, 1981.

[2] All Commission regulations are contained in 18 CFR Chapter I, except for some provisions of 49 CFR Chapter X which, under this final rule, remain applicable to certain aspects of oil pipeline proceedings.

[3] Parts 375 and 376 were transferred from Subchapter A. Redesignation of these parts was the Commission's first step in reorganizing its rules. 45 FR 21216, April 1, 1980.

378—Privacy Act Regulations.
379—Standards of Conduct for Commission Employees.
380—National Environmental Policy Act Rules.
381—384 [Reserved]

Subchapter X

Part

385—Rules of Practice and Procedure.
386—Investigations.
387 [Reserved].
388—Freedom of Information Act Rules.
389-399 [Reserved].

This rulemaking provides only limited reorganization of the Commission's rules. It removes rules in Subchapter A, Part 1, and places them in Subchapter X, Parts 385 and 388. The new Subparts A, B, E, F, G and T of Part 385 are revised but the other rules recodified in Part 385 and all of Part 388 are taken from Part 1 and renumbered, so as to integrate them, without substantive change, into the new organizational structure. A table at the back of this preamble shows the derivation of these revised regulations.

The following table indicates how the new provisions which are *not* substantively revised correspond to the existing regulations. The only changes made to the provisions contained in these subparts are technical, conforming, and clarifying. These renumbered provisions will be the subject of additional rulemakings. At that time, the Commission will request comment on the merits of revisions to these procedures. Even though some of the redesignated provisions are currently effective on an interim basis, this renumbering does not affect the status of any interim rule.

Renumbered provision	Old provision
Part 385:	Part 1:
Subpart H—Shortened procedures	§ 1.32.
Subpart I—Commission review of remedial orders.	§ 1.38.
Subpart J—Commission review of adjustment request denials.	§ 1.40.
Subpart K—Petitions for adjustment under the NGPA.	§ 1.41.
Subpart M—Cooperative procedure with state commissions.	§ 1.37.
Subpart S—Miscellaneous	§ 1.7(d). § 1.19(a). §§ 1.21, 1.23. §§ 1.24, 1.35.
Subpart U—Appearance and practice before the Commission.	§ 1.4 (except (d)).
Subpart V—Ex Parte communications; Separation of functions of staff.	§ 1.4(d), § 1.30(f).
Part 388: Public information and request	§ 1.36.

III. Summary of the Rule and Comments

A. Comments Generally

The Commission received 98 comments on the proposed rules, in addition to the suggestions of the Advisory Committee. The comments generally express strong support for the revisions.[4]

Commenters encourage the Commission to develop procedural rules which employ streamlined, tailor-made decision-making procedures that will help avoid the kinds of delays that would result if decisions were made in the traditional manner of the court system. A variety of persons, including the Commission's administrative law judges (hereinafter judges), recognize that many practices designed to expedite litigation at the Commission have been developed in spite of, rather than because of, the existing rules of practice and procedure. For example, the existing rules do not address summary disposition by the judges, oral issuance of initial decisions, the phasing of proceedings, correction of any initial decision by a judge, or the privileged status of comments on settlement offers and of the offers themselves. The final rule is designed to formalize many of the procedural innovations already recognized *de facto* by the bar and the Commission.

Two commenters deal with issues presented by the rulemaking generally.[5] The first commenter believes that a special set of rules should be adopted to govern proceedings before the Oil Pipeline Board. The Commission recognizes there may be a need for rules for Oil Pipeline Board proceedings. The development of such rules, however, will prove time-consuming and controversial. The Commission will not therefore postpone this final rule pending development of separate rules for oil pipeline filings and proceedings.

The second commenter proposes an extensive reallocation of responsibilities between the Commission and the administrative law judges. In general, the commenter prefers that the Commission remove itself from the day-to-day procedures in a hearing and limit its participation in any case to review of the initial decision. This review would be unlike the review now carried out by the Commission; instead the Commission would review an initial decision where "(1) A finding of material fact is not supported by substantial evidence [;] (2) The decision is contrary to law or to duly promulgated rules or decisions [;] (3) A substantial question of law, policy, or discretion is involved [; or] (4) A prejudicial error of procedure was committed."[6] As part of its overall proposal, this commenter favors additional authority for the Chief Judge, automatic referral of non-controversial proceedings to the consent agenda, and earlier narrowing of issues.

The Commission has determined that these proposals should not be adopted. While many of the suggestions conform with the Commission's efforts to provide greater latitude to the judges in the conduct of hearings, the Commission is not, in this rulemaking, prepared to delegate its decision-making authority to the extent suggested in this comment. Other proposals submitted would also entail changes in Commission practice that are beyond the scope of this rulemaking.

B. Specific Provisions and Comments

The final rule revises the table of contents for Chapter 1, Title 18 of the Code of Federal Regulations, to accommodate the redesignation of the Rules of Practice and Procedure to Part 385. Definitions are added to the Rules of General Applicability in § 1.101. Only the definition of "person" received comment. That definition is moved to § 385.102 so as to limit its application to the procedural rules. The definition of "person" includes municipalities as persons. Any use of the term "person" in the substantive provisions of Chapter I may be limited by the governing enabling legislation. For example, a municipality is not a "person" under section 3(4) of the Federal Power Act.

The major revisions in this docket affect the new Subparts A, B, E, F, G, and T of Part 385.

Subpart A

Subpart A describes the applicability of Part 385 and contains the definitions used throughout the procedural rules.

Rule 103 initiates a new method for citation of the Rules of Practice and

[4] The Commission has placed in the public file of this rulemaking the extensive staff summary and analysis of the comments relied on in formulating the final rule and preamble. The Commission concurs in the staff recommendations and views expressed in the analysis, to the extent that the analysis is not inconsistent with the procedures adopted in this preamble and final rule. The record of this proceeding is available for public inspection at the Commission's Division of Public Information.

[5] Some comments also focus on the Commission's regulatory lag, suspension policy, the need for frequent rate filings, and rejection of attrition allowances. This raises substantive ratemaking issues that cannot be properly addressed in the context of this procedural rulemaking.

[6] The suggestion has been made that the Commission should delegate its decisional authority to judges or employee boards, subject to certiorari-type review by the Commission. For a discussion of this view, see memorandum of George F. Bruder to the Subcommittee in Hearing Procedures of the Advisory Committee on Rules of Practice and Procedure, on "Delegation of Decision Making", July 16, 1979. See also George Ernest Marzloff, *Delay in Review of Initial Decisions: The Case for Giving More Finality to the Findings of Fact of the Administrative Law Judge*, 35 Wash. and Lee L. Rev. 393 (1978).

Procedure. Each section is referred to as a "Rule." The rules are numerical and each rule's designation includes only the numbers to the right of the decimal point in the regulation; for example, § 385.103 is Rule 103. This is also consistent with existing ICC practice.

Rule 101 makes clear these new rules apply to all Commission proceedings, except investigations. It also provides that, if these rules conflict with a specific provision contained in the other rules, the other provision governs, to the extent of any inconsistency. In addition, it retains the ICC modified procedures for oil pipeline cases and makes the ICC *ex parte* rules applicable to oil pipeline proceedings.

New Rule 101(c) provides transitional provisions which explains how a decisional authority may apply these new rules before and after their effective date. The new Part 385 applies to all proceedings, including those that are pending on the date on which the new Part 385 becomes effective. The final rule, however, provides decisional authorities, including presiding judges, some discretion to apply the new or old rules to filings submitted before, or proceedings pending on, the effective date, in light of any inequities that may result from the imposition of either set of requirements on a filing or proceeding.

A paragraph is inserted at Rule 101(d) to indicate that any references to Title 49 of the Code of Federal Regulations, Chapter 10 of which governs oil pipeline filings and proceedings, pertains to the rules of the Interstate Commerce Commission effective as of September 30, 1977, the day before the inception of the Commission. On October 1, 1977, the Commission obtained jurisdiction over oil pipeline rates and, with that, the ICC regulations governing those matters then in effect. Subsequent amendments by the ICC do not affect oil pipeline filings or proceedings.

Rule 101(e) allows the Commission to waive, for good cause, any provision of this part and to provide for procedures different from those contained in these rules. There were numerous comments on this waiver rule. While some commenters opposed it in its entirety, others suggested the waiver was too broad and that standards for waiver more meaningful than "good cause" should be added. Concern was expressed that use of the waiver authority could prejudice persons appearing before the Commission or that the provision might imply waiver of statutory requirements. Many commenters recognized the Commission's need for flexibility and endorsed the rule.

Given the wide variety of circumstances in which the Commission might be called on to exercise its authority under its rules, the need for a general provision outweighs the objections to its adoption. Moreover, this rule is a codification of existing Commission practice. With respect to the contention that the rule implies authority to waive statutory requirements under any circumstances, the phrase "to the extent permitted by law" adequately recognizes the limits of Commission authority.

Rule 101 brings oil pipeline filings and proceedings, still subject to the substantive ICC regulations in 49 CFR Chapter X, under the Commission's Rules of Practice and Procedure. Rule 101 discontinues use of the ICC rules of practice for these matters. However, until the Commission adopts new substantive *ex parte* rules, the ICC *ex parte* rules will apply in oil pipeline matters in lieu of the Commission's *ex parte* provisions, as one commenter proposed.

Rule 102 contains definitions of terms used throughout this part: decisional authority, participant, party, person, presiding officer, and respondent. The definitions of party and participant continue the current practice of treating Commission staff, for some purposes, differently from parties to a proceeding. Several commenters discussed whether Commission staff should be treated as a party to a proceeding. The argument in support of doing so is based on a concern that staff, if not treated as a party, may be given preferential treatment. That, of course, is not the object of the final rule and the Commission believes that the rule will not lead to preferential treatment because of staff's status in a proceeding. However, the Commission does not believe it appropriate for staff to be considered a party because staff might then be vested with certain rights not in keeping with its role in Commission proceedings, such as the right to file protests or seek rehearing of Commission orders.

Subpart B

Subpart B contains the requirements for the various types of pleadings, for tariff or rate examination, notices of tariff or rate examination, orders to show cause, and also the procedures and criteria for intervention and summary disposition.

Rule 201 is the applicability provision. It states that the Rule 201 applies to pleadings and other specified formal filings, interventions, and summary dispositions.

Rule 202 states the types of pleadings recognized at the Commission. These do not vary from pleadings presently in use at the Commission, except for the addition of notices of protest which are used in certain oil pipeline proceedings. Comments on rulemakings are not pleadings; nor are commenters parties or participants.

Rule 203 collects in one place the requirements for pleadings and tariff or rate filings, which are presently scattered throughout the Commission's rules and are frequently duplicative. A new provision, § 385.203(b) or Rule 203(b), recognizes combined pleadings explicitly, but requires separate designation of each item in such pleadings.

Rule 204 specifies the purposes for which an application must be filed, including obtaining any license, certificate, or permit from the Commission. Rule 205 sets forth the requirement that a tariff or rate filing must be filed for any change in rates, tariffs, terms or conditions of service, or similar approvals. The requirement, which has no explicit counterpart in present rule, in no way abridges the right of any regulated entity to change a rate or tariff.

Rule 206 deals with complaints and reflects, in substance, the present requirement. Commenters express concern that the rule may broaden the authority of the Commission to adjudicate a complaint by expanding the category of persons who may complain. They note that the Natural Gas Act and the Federal Power Act specify persons who have an express statutory right to complain. Moreover, the present rule speaks only of complaints against licensees, utilities, and natural gas companies, while the new rules permit complaints against any person violating any statute, rule, order, or other law under which the Commission has or may have jurisdiction.

The Commission's authority is necessarily limited to that provided by statute. It should be noted, in this regard, that the new rule merely takes cognizance of the fact that these rules will also govern proceedings under statutes other than the Natural Gas Act and the Federal Power Act. In addition, existing § 1.6(a) is no more restrictive about who may file a complaint than Rule 206.

Rule 206 also provides a procedure for dismissing a complaint, if satisfied. Some commenters request alternative provisions. One commenter would allow a respondent to obtain a dismissal of a complaint on the basis of unsupported statements. Others believe that

Commission action on the alleged satisfaction is not necessary because the Commission may not be a participant. Representatives of the oil pipelines believe they should not apply to oil pipelines proceedings because such proceedings rarely involve interveners. The Commission, however, retains the provisions because each of the proposals would diminish protection of any potential complaining party's interest.

Petitions under new Rule 207 will continue to be used for the purposes for which they are presently used. The Commission notes two points, however. First, petitions are to be distinguished from motions. A petition may be used in the particular circumstances listed and will also be used in any instance for which there is no other procedure provided. Thus, if the rules permit a person a make a motion, a petition may not be used. Second, a petition is the appropriate pleading to file where a person is requesting that the Commission initiate a proceeding to propose and adopt a rule of general applicability. However, the new rules do not provide specific procedures which would govern rulemakings, once initiated. The Commission will in the future, as in the past, announce special provisions in particular rulemaking proceedings.

Rule 208 provides for notices of protest to tentative oil pipeline valuations. These pleadings are used only in proceedings to protest oil pipeline valuations under the Interstate Commerce Act.

Rule 209, dealing with notices of tariff or rate examination and orders to show cause, does not change existing Commission practice. This rule merely distinguishes between those cases in which the Commission may examine the validity of a rate or tariff and the cases in which the Commission, by means of an order to show cause, is initiating a proceeding against a person authorized by the Commission to act subject to certain limitations or conditions. The Commission communication by which a proceeding against such a person is initiated need not be designated an "Order to Show Cause" if it otherwise indicates that it constitutes the initiation of such a proceeding, *i.e.*, that the Commission is contemplating action against the person, or the authorization held by that person, due to suspected non-compliance with statute or a Commission rule or order. In contrast, a variety of Commission communications may request from appropriate persons information about possible violations of statute, rule, or order, without initiating a show cause proceeding.

In connection with Rule 209, a commenter questioned the use of the word "will" as opposed to "shall" in the proposed rules. The final rule adopts the system of using "will" to describe the Commission's intent or to predict an action or event. "Must" is used to convey a "directive" and is mandatory. Since "shall" has both qualities, it is, therefore, avoided.

The new Rule 210, governing methods of notice and dates in notices, does not differ substantively from the present rule. A Commission notice issued under this rule will generally contain the dates for filing protests or filing for intervention.

Some commenters are concerned about the rule on protests, Rule 211. Although the rule makes clear that protests are not considered in deciding a case, if a proceeding is set for hearing, and that protestors are not automatically parties, the commenters prefer that all protests be served on the parties and an opportunity to answer protests be afforded. The new rule is similar to the present rule on this subject. While the Commission understands the commenters' concern, the policy considerations weigh in favor of the rule as adopted. The Commission's experience suggests that Rule 211 will not prejudice any parties and that the additional procedures suggested by the commenters, such as including protests in the record, are not needed. The matters stated in a protest are not evidence upon which a case can be decided.

Rule 212 is the rule governing motions generally. It differs in a number of ways from the present rule. Under the present rule, a motion may be made only after a hearing has begun and, unless provided otherwise elsewhere in the regulations, may address only procedural matters and interlocutory relief. Rule 212 does not contain these limitations. Under the final rule, a motion may be made by any person who is a participant in the proceeding or who has filed a timely motion to intervene which is pending. While, under the existing rule, a motion cannot be granted which would finally dispose of a proceeding, Rule 217 permits motions for summary disposition.

Like the existing rule, Rule 212 allows motions to be made to the Commission as well as to a subordinate official. If a motion is made to the Commission after a hearing has begun and it is not acted on within 30 days, the motion is deemed denied. This automatic denial provision is in the existing rule and represents a practical response to the burden that would result if the Commission were required to rule on each motion. The automatic denial provision does not apply to motions before a hearing is commenced. The existing rules also allow a presiding officer to refer a motion to the Commission for its action. Under the revised rules, this procedure is available in Rule 714 on certified questions.

Rule 213, pertaining to answers, is quite different in form, but very similar in substance, to the present rule. Many of the commenters would have the Commission permit answers to protests, arguing that a protest which is full of errors, misstatements, or false implications might influence the Commission in deciding whether to set a case for hearing. Such an unfortunate result, it is claimed, could be avoided if parties could answer. The Commission believes that, if issues are genuine and contested, they should be addressed in a hearing. Moreover, the person against whom the protest is directed is not harmed by the protest. If a hearing does not result from the protest, that person's interests are not prejudiced. If a hearing is conducted, that person has the opportunity to rebut any arguments raised. The Commission's decision is also influenced by the abbreviated statutory time limits under which the Commission must decide whether to set some matters for hearing.

Rule 213 also requires that an answer to a motion be filed within 15 days. A number of the commenters advocate thirty days for filing an answer. This is one of several instances in which commenters on the proposed rule felt that the time limits were too short. They argue that, for parties who are far from Washington, the delays in the mail can deny them adequate time to prepare an answer, or any other filing to which a time limit applies. In the Commission's opinion, the need to expedite Commission proceedings merits the imposition of stringent time limits, even though the Commission recognizes that the rule may, in some instances, require an effort for parties to comply. The Commission is therefore retaining, throughout this revision, the time limits in the proposed rule. In exceptional cases, extensions of time are allowed under Rule 208.

Intervention is provided for in Rule 214. Under the existing Commission procedures, a petition must be granted in order for a person to obtain intervention, except that a state commission and the Secretary of Energy may intervene by notice. Since it is rare in Commission practice for a petition to intervene to be denied, the Commission, in Rule 214, is providing for automatic intervention, unless an answer in opposition is filed within 15 days. This change was generally approved by the commenters.

Rule 214 does not modify the provision that state commissions may intervene on notice, if notice is filed within the prescribed time. However, state commissions will now be treated in the same manner as other persons, if they file to intervene after the time prescribed. State commissions strongly disapprove of this modification based on the view that the right of states to intervene at any time by notice is imbedded in the principle of state-Federal comity. In support of their position, they point to the unique perspectives which state commissioners bring to any proceeding. It is argued that a state commission may be the only intervener which directly represents consumer interests. On another level, the state commissioners believe that they have special problems which make it difficult for them to file within the time prescribed. In contrast, certain industry commenters believe that equitable principles dictate subjecting state commissions to the same requirements as other persons.

The Commission recognizes that this is a difficult issue. It is true that state commissions have special problems in responding expeditiously and, further, that they should receive special consideration in the interest of comity. However, Commission proceedings have been seriously disrupted by the late intervention of state commissions. The Commission is adopting the rule as proposed, believing that the rule strikes a balance between the need for timely intervention and the special circumstances of the state commissions. Rule 214 permits intervention by notice so long as the notice is timely and withdraws this privilege if a state commission intervenes late. Of course, the Commission will entertain motions to intervene filed out of time by state commissions. The decision whether to grant or deny such motions will depend on factors specified in Rule 214(d), including any prejudice to the parties and any burdens imposed by late interventions.

Rule 214(d) sets forth, for the first time, general criteria to be applied by the decisional authority in exercising discretion to grant late intervention.

Rule 215 governs amendments of pleadings. It is somewhat more precise than the existing rule. Under Rule 215, answers are permitted to amendments and motions to oppose the acceptance of an amendment are allowed. Any unopposed amendment becomes effective as an amendment 15 days after filing. The judge has 20 days from the date of filing to rule on the acceptance or rejection of any opposed amendment.

Rule 216 governs withdrawal of pleadings and provides that such a withdrawal becomes effective in 15 days, unless, within that period, the decisional authority disallows it. If someone objects to the withdrawal within that time, it becomes effective only when the decisional authority accepts the withdrawal. Provision is made in the rule for leaving material in the record.

Rule 217 sets forth a rule for summary disposition applicable to proceedings set for hearing under Subpart E or where the Commission is itself the decisional authority. Rule 217 does not apply to staff actions delegated under Part 375 of the regulations. Although no comparable provision appears in the present rules, the Commission's judges have developed a practice which parallels this provision closely. It should be noted that when the summary disposition is by a judge or a decisional authority other than the Commission, an initial decision will be prepared so that Commission review will be conducted under the same procedures as if an initial decision had been rendered after a hearing. The summary disposition rule deals with decisions on the merits in pending cases. Thus, it does not, as some comments fear, apply to rejection of filings before a proceeding is properly initiated.

While the rule requires that, normally, opportunity for comment will be afforded on any proposed summary disposition considered by a decisional authority other than the Commission, where no participant has moved for such disposition, it allows the Commission to use greater discretion in ascertaining whether notice and comment are practicable and necessary when it considers summary disposition.

Subpart E

Subpart E contains the rules for proceedings which the Commission sets for hearing under the subpart. Under Part 385, these are proceedings in which a decision is made by a presiding officer after an on-the-record hearing, unless otherwise disposed of. Proceedings to set rates or to grant certificates or licenses under the Federal Power Act, the Natural Gas Act, or the Interstate Commerce Act, will generally be conducted under these rules. Subpart E deals with hearings, consolidation and severance, presiding officers, witnesses, testimony, exhibits, evidence, stipulations, and transcripts. The subpart rearranges and simplifies prior corresponding sections of the Commission's rules (§§ 1.20–1.27).

Generally, hearings under Subpart E will be held before an administrative law judge, although hearings may be held before the Commission or a designated Commissioner. This is provided in Rule 501.

Rule 502 identifies the persons who may initiate a hearing as follows: the Commission, the Secertary upon direction of the Commission, or the Oil Pipeline Board. A hearing is initiated by an order or notice which must contain certain general information about the proceedings. The notice must set forth the "nature of the proceeding", among other things. Some commenters have suggested the notice also contain a non-inclusive list of issues. The Commission recognizes the merit of such a proposal and notes that the rule does not prohibit such a list. Nevertheless, we do not believe that requiring a list of issues would be advisable since, at least in some cases, a list might be premature or incorrect and, thus, misleading.

Rule 503 vests in the Chief Administrative Law Judge the power to consolidate or sever proceedings. Generally, commenters support this provision. A right to interlocutory appeal of a decision to consolidate or sever is available under Rule 503, as one commenter suggested.

Rule 504 catalogs the duties and powers of the judge presiding over a case. Perhaps the most controversial provision is that which allows the judge to prescribe the order of presentation (Rule 504(a)(3)). Some persons argue any prescribed order of presentation should reflect the burden of proof in a proceeding. However, the Commission supports the alternative view point that giving the ALJs flexibility to determine the order of presentation will avoid fruitless conflict which unnecessarily delays proceedings.

Rule 504(b)(5) refers to the judge's power concerning discovery. The Commission's recodified discovery rules are Rules 1905 and 1906, which are unchanged from those previously appearing at §§ 1.23 and 1.24, although their coverage is extended to include oil pipeline matters. The Commission recognizes that the discovery rules should be revised and updated. The comments submitted pursuant to the Commission's inquiry varied on whether the Commission should apply the Federal Rules on Discovery. Some commenters fully endorse use of the Federal Rules, but others endorse them only with qualification. Still others claim the Federal Rules inappropriate for administrative proceedings. The

Commission believes a separate proposed rulemaking will be necessary to develop a set of useful discovery rules for Commission proceedings.

The power of any judge and Rule 504(b)(17) to limit the number of persons representing similar interests who may examine a witness, make motions, or make objections raised considerable comment. These commenters fear that someone may be precluded from participation on the basis of a "similar interest" which is not sufficiently similar for a party to be justifiably foreclosed from examination because another party had exercised that privilege. This may be a valid concern in some cases, but the Commission believes that this provision is important to expediting hearings. In any event, the rule does not limit argument of any person to the judge on such "similar interest" grounds.

Rule 505 sets forth the rights of the participants to present evidence. In accordance with the comments, it has been revised to make clear that participants also have the right to present objection and argument.

Rule 506 sets forth the rules on examination of witnesses during a hearing. Paragraphs (a) and (b) have been reversed from the proposed rule to reflect the custom of submitting prepared written direct and rebuttal testimony. Revised paragraph (b) provides that, during a hearing, oral testimony, including cross-examination of any witness whose direct testimony was written, must be conducted under oath, in the presence of the judge, with an opportunity for all participants to question the witness. The Commission emphasizes that this rule deals with that portion of the hearing over which the judge is presiding. It does not affect the taking of testimony during discovery, when the judge is typically not present.

In the Notice of Proposed Rulemaking, the Commission sought comment on proposed Rule 506 (c) and (d) which covered trial depositions and interrogatories as testimony. The comments were largely negative and presented serious questions about the role of the judge in relation to depositions, the fairness of deposition procedures, and the relationship of both procedures and future rules of discovery. Consequently, these provisions are not adopted, but will be examined in a future rulemaking.

Rule 507 governs prepared written testimony. Although comment is divided on whether to treat such testimony as an exhibit or to have it copied into the transcript, the Commission has decided to treat written testimony as an exhibit in order to help reduce transcript costs.

Rule 508 is a revised and updated rule on exhibits, including public documents, items incorporated by reference and official notice of fact. Public documents includes reports or other documents on file with the Commission. Any public document offered in evidence must be shown to be reasonably available to the public. There is no substantive change from the existing rule, other than to require a participant to provide copies of an exhibit before the exhibit is marked for identification.

Rule 509 recodifies the existing rule on evidence. Some commenters suggest adoption of the Federal Rules of Evidence, while others find those Rules lacking in the kind of flexibility needed for administrative proceedings. The Commission will consider the possible use of the Federal Rules or the adoption of other rules at a later time.

Rule 510 contains various miscellaneous provisions including those dealing with the transcript, copies of exhibits, payment of subpoenaed witnesses and closing of the record. Rule 501 generally reflects current Commission practice.

Subpart F

Subpart F contains provisions on conferences, offers of settlement and settlement judges, and refusal to make admissions.

Rule 601 governs conferences and revises existing rules for purposes of clarification. Rule 601 is intended as a broad rule providing flexibility to the Commission and presiding officers in proceedings. A conference can be convened for any purpose relating to the proceeding. For instance, the rule may be applied whether or not a case has been set for hearing. It may also be applied in a pre-hearing mode, to limit or clarify issues and for settlement. Some commenters advocated mandatory pre-hearing conferences and a specification of issues to be considered. Consistent with the philosophy of this rulemaking, the judges are afforded great latitude in utilizing these procedural devices.

Many commenters are concerned about the requirement in Rule 601 that attorneys, or other representatives, appearing at a conference must be authorized to act on behalf of their principal on matters arising during the conference. Although this rule may present difficulties in cases where a principal in unwilling or unable to delegate such authority, the Commission believes that this authorization requirement is necessary if any conference is to serve a useful purpose with respect to settling questions in a given proceeding. In response to other comments, the rule will excuse a party's absence from a conference only pursuant to a waiver of the rule. In addition, the rule will operate to waive an absent party's objections to matters decided in conference only if those matters were noticed in advance.

Rule 602, governing settlement offers, continues the procedures for submission of settlement agreements previously adopted by the Commission. Commission experience with this rule has been favorable, and settlements are now handled expeditiously.

While the proposed rule delegated the authority to approve oil pipeline settlements to the Oil Pipeline Board, with a right of appeal to the Commission, the Commission has determined upon further consideration that such a delegation is premature. The delegation is, therefore, not provided in the final rule. As a result, oil pipeline settlements are to be treated like all other settlements and decided by the Commission.

Under the existing § 1.18, the judge, before certifying a contested offer to the Commission, must find, among other things, that there is both substantial evidence in the record and no contested issue of material fact, with respect to the proceeding or portion of the proceeding. Since this provision may prove logically inconsistent, the revised rule now allows the judge to certify to the Commission a settlement offer which, although contested, is determined to contain no genuine issue of material fact. In other words, the judge may certify a contested settlement on the same basis as an uncontested settlement. Under both circumstances, the judge is not required to find substantial evidence.

Rule 603 carries forward the existing rule on settlement negotiations before a settlement judge. Technical corrections have been made to allow its use in cases not set for hearing. This change is consistent with the existing rule.

Rule 604 continues, but reorganizes for clarity, the existing rule governing a party's refusal to make admissions or stipulations. Although some parts of the rule might better fit in evidence or discovery provisions, the Commission will adopt the substance of the rule as proposed. When discovery or evidentiary rules are revised, Rule 604 will be considered.

Subpart G

Subpart G governs initial and final decisions and administrative review of these decisions in cases set for hearing under Subpart E and in other proceedings designated by the

Commission, as stated in Rule 701. Rule 703 sets forth the content of any decision generally.

Rule 704 affords participants the right to file briefs or make oral argument before the initial decision. There is considerable controversy over Rule 704(b)(1) which allows the judge to substitute oral argument for either initial or reply briefs. Many commenters urge that oral argument be available only in addition to written briefs, and that two rounds of written briefs be provided to the participants as a matter of right. Commenters do not believe oral argument and written briefs to be interchangeable.

The Commission appreciates these concerns. Certain issues, particularly complex fact situations, lend themselves to written better than oral presentation. However, a judge should have the flexibility to determine whether oral argument or written briefs suit the particular situation. It is unnecessary to ensure the right to file a brief in any and all cases. In that regard, Rule 704 also permits the judge, if appropriate, to dispense with reply briefs and oral replies, and to limit issues dealt with in such reply briefs and oral replies. Informed exercise of this discretion will help expedite proceedings.

Rules 705 and 706 contain additional provisions about briefs and their contents. It should be noted that Rule 705 allows the judge to call for additional briefs, such as pre-trial briefs, in those cases where they would be appropriate. Although commenters were split on the issue, Rule 706 also provides that, unless waived, initial briefs will include proposed findings of fact and conclusions of law as a means of easing the burdens of decision writing.

Rule 707 pertains to oral argument set by the judge before an initial decision and the inclusion of such argument in the record.

Rules 708 through 710 deal with initial decisions with respect to who prepares the decision, other types of decisions which may be substituted for initial decisions, and waiver of initial decisions. Rule 708 allows an oral initial decision by a presiding officer. The officer must promptly reduce the decision to writing for certification. Any initial decision is a final Commission action 10 days after exceptions are due under Rule 711, unless exceptions are filed or the decision is stayed by the Commission. Under Rule 710, participants may request that a final decision be issued without issuance of an initial decision.

Rule 711 applies to exceptions from initial decisions. Commenters focused primarily on one aspect of the rule which, though virtually the same as existing § 1.31(c), apparently would lead to deviations from existing Commission practice in one respect. As under the existing rule, failure to take exception from an initial decision will result in waiver of the right to take exception at a later time. However, as one commenter argues, the existing rule may be "a sleeping giant honored more in the breach than in the observance."

The Commission is aware that this provision in Rule 711(d) may encourage more exceptions than have previously been filed, as participants seek to protect their rights to take exception. Nevertheless, this waiver provision is useful in avoiding delay by preventing parties from holding back positions and arguments until the rehearing stage. The Commission is better served by being apprised early of the positions of all participants. The rule should also alleviate the need for so many extensive orders on rehearing which arise under the current rules. The rule is not "unfair", as some commenters allege. On the contrary, it is unfair to other participants and wasteful of the Commission's time and resources for anyone to keep the Commission uninformed of facts and arguments which should otherwise have been presented to the Commission at the hearing and exceptions stages. It is important to note, in this regard, that Rule 711(a) avoids the imposition of the burden which commenters foresee, the need to prepare extensive exceptions which merely duplicate the exceptions of other participants. The rule allows a so-called "me too" exception which would incorporate by reference any other participant's exceptions.

Rule 711(a) also limits briefs to the Commission on and opposing exceptions to 100 pages. This represents an increase over existing page limits because briefs on and opposing exceptions must now be double-spaced under Rule 2003. In addition, briefs to the Commission may not incorporate by reference arguments made in initial or reply briefs or include any attached portions of initial or reply briefs. These changes are made in the interest of more succinct argumentation.

Rule 712 allows the Commission to review an initial decision even in those cases where no participant takes exception. If the Commission chooses to review such a decision, it must stay the effectiveness of the initial decision. The stay must be issued within 10 days after the due date for briefs on exception. Contrary to some suggestions, the Commission will not limit, by this rule, the length of any stay. The appropriate length of a stay depends on case-specific facts and the costs or benefits of the stay.

Rule 713 contains the rules for rehearing. Rehearing is taken of final decisions which are identified in Rule 713(a). Rehearing may also be taken of any initial decision, if no exceptions are taken and the Commission does not initiate review. No answers to requests for rehearing are permitted, although the Commission may determine to allow parties to brief or argue certain issues raised on rehearing. Normally, all issues are ventilated in briefs on exception. To alleviate a potential administrative burden on the Commission, a request for rehearing is denied by operation of law after 30 days if no Commission action is taken within that time.

Rules 714 and 715 govern certified questions and interlocutory appeals. These procedures allow a question raised in a proceeding pending before a judge, or other presiding officer, to be determined by the Commission at a time prior to presentation of the entire case to the Commission for decision or review. Oral as well as written views of participants may be discussed in the judge's memorandum appended to the question certified. Rule 715 sets forth the relevant standard by which a presiding officer or the motions Commissioner, as appropriate, determines whether to permit appeal to the Commission. The standard is whether there are extraordinary circumstances that make prompt Commission review of a contested ruling necessary to prevent detriment to the public interest or irreparable harm to a person. As under the existing rules, the motions Commissioner is designated by the Chairman to rule on behalf of the Commission in these limited circumstances.

Rule 716 allows the Commission or administrative law judge to reopen an evidentiary record. Some commenters oppose the rule because it does not impose a time limit on reopening. In the interest of administrative finality, the Commission does not contemplate reopening records after decisions are final. Nevertheless, to impose a bar against reopening a proceeding after a final decision may unduly limit the Commission's authority and flexibility to act. In this respect, the rule is adopted as proposed.

Subpart T

Subpart T differs in the scope of its applicability from revised and rewritten Subparts B, E, F, and G. This subpart, as well as the subparts which follow it, applies to all Commission proceedings and establishes formal requirements for all filings of the Commission. It is basically a mechanical provision which sets forth how documents are prepared, filed, docketed, noticed, and served.

One commenter advocated new provisions designed to inform interested persons of hearings and contested issues, such as by publication of hearing calendars. While the Commission favors improved dissemination of information to the public, such administrative matters are not appropriate for these rules. These rules do not therefore contain provisions for hearing calendars, even though such publications may be helpful in other contexts.

Rule 2001 prescribes where and when filings must be made. It also governs rejection of filings and the basis for rejection. The rule is procedural and therefore does not set forth a substantive legal standard for rejection. Those provisions which govern whether a filing is rejected as, say, patently deficient or a substantive nullity, are found elsewhere in the Commission's regulations.

Rule 2002 specifies captions for filings. Rule 2003 sets forth standards for paper size and for the format of documents filed. Rule 2003(b) significantly changes existing practice by requiring all filings to be double-spaced, including briefs to the Commission on and opposing exceptions. However, any tariff or rate filing may be single-spaced. Rule 2004 governs the number of originals and copies filed. Rule 2005 provides subscription and verification requirements. The Commission's docket system is described in Rule 2006.

Computation of all time periods prescribed in the chapter is governed by Rule 2007. In a change from existing practice, any half-day holiday that affects Commission operations will be counted as other holidays for purposes of computing when a time period ends. The rule also specifies when a Commission rule or order is considered issued or effective. Extensions of time are governed by Rule 2008.

Constructive notice is provided for under Rule 2009. Generally, the Commission provides notice only in the form of Federal Register publication. However, actual notice or other forms of constructive notice, such as newspaper notice under Part I of the Federal Power Act, may be provided. Actual notice is given by service, directly or by mail, under Rule 2010. Service lists and certification of service are also governed by Rule 2010.

IV. Miscellaneous Provisions

The final rule makes many technical and conforming changes throughout the Commission's rules to reconcile cross-references to the redesignations to Part 385.

In addition, the rule would delete §§ 2.59 and 2.62 which deal with natural gas pipeline rate and certificate procedures. These now obsolete provisions were adopted in 1962 in an effort to expedite hearings and have fallen into disuse. The revisions made by this rule make them entirely superfluous and they are, therefore, revoked.

V. Table of Derivations

The following table indicates, to the extent practicable, how the revised regulations are derived from the old regulations or whether a provision is entirely new.

Part 385	Old part 1
Rule	
101	New.
102:	
(a)	New.
(b)	§ 1.1(f)(2).
(c)	New.
(d)	§1.1(f)(6).
(e)	§ 1.1(f)(12), (15).
103	New.
201	New.
202	New.
203(a):	
(1)	§ 1.15(a).
(2)	§ 1.5(b)(1); § 1.6(b); § 1.10(a); § 1.15(a).
(3)	§ 1.5(b); § 1.7(a); § 1.10; § 1.12(a).
(4)	New.
(5)	§ 1.6(b); § 1.7 (a), (c); § 1.9(a).
(6)	§ 1.5(b); § 1.6(b); § 1.7 (a), (c); § 1.9 (c), (e); § 1.12(a).
(7)	§ 1.5(c); § 1.7; § 1.8(c); § 1.9; § 1.11; § 1.12.
(8)	§ 1.7(d).
(9)	New.
(10)	§ 1.5(b)(3).
203(b):	
(11)	New.
203(c):	
(1)	§ 1.5(b)(1).
(2)	§ 1.5(b)(1).
(3)	§ 1.5(b)(2); § 1.7(c).
204	§ 1.1(f)(8); § 1.5(a).
205	New.
206:	
(a)	§ 1.6(a).
(b)	New.
(c)	§ 1.9(a).
(d)	§ 1.9(h).
207	§1.7(a).
208	New.
209	§ 1.6(d).
210	§ 1.8(d); § 1.19(b).
211:	
(a)	§ 1.10 (a), (b).
(b)	New.
212:	
(a)	§ 1.12(a).
(b)	§ 1.12(b).
(c)	§ 1.12(a).
(d)	§ 1.12(e).
213:	
(a)	§ 1.9 (a), (c); § 1.12(c).
(b)	New.
(c)	§ 1.9 (a), (c).
(d)	§ 1.9 (a), (c), (f); § 1.8(e); § 1.12(c).
(e)	§ 1.9(a), (c).
214:	
(a)	§ 1.8 (a), (b).
(b)	§ 1.8 (b), (c).
(c)	§ 1.8 (e), (f).
(d)	New.
215:	
(a)	§ 1.11(a).
(b)	New.
(c)	New.
(d)	§ 1.11(a).
(e)	§ 1.11(c).
216	§ 1.11(d).
217	New.
501	New.
502:	
(a)	§ 1.20(a).
(b)	§ 1.20(m)(2).
(c)	New.
503	§ 1.20(b); § 375.302(f).
504(a):	
(1)	§ 1.27(d).
(2)	§ 1.20(e).
(3)	§ 1.20(f).
(4)	§ 1.20(g)(1).
(5)	§ 1.27(b)(9).
504(b):	
(1)	§ 1.27(b)(1).
(2)	§ 1.27(b)(1).
(3)	§ 1.27(b)(2).
(4)	§ 1.27(b)(4).
(5)	§ 1.27(b)(5).
(6)	§ 1.27(b)(3).
(7)	§ 1.27(b)(6).
(8)	§ 1.27(b)(7).
(9)	New.
(10)	§ 1.27(b)(8).
(11)	New.
(12)	§ 1.27(b)(10).
(13)	New.
(14)	§ 1.27(c).
(15)	New.
(16)	§ 1.20(i).
(17)	§ 1.8(g).
(18)	§ 1.20(j).
(19)	§ 1.27(b)(11).
504(c)	§ 120(d).
505	§ 1.20(g).
506:	
(a)	§ 1.22(a).
(b)	New.
507	§ 1.26(c)(2)(iii).
508:	
(a)	§ 1.26(c)(5).
(b)	§ 1.26(c)(1).
(c)	§ 1.26(c)(2)(ii).
(d)	§ 1.26(d).
(e)	§ 1.25.
509:	
(a)	§ 1.26(a).
(b)	§ 1.26(g)(2); § 1.26(b).
510:	
(a)	§ 1.20(k).
(b)	§ 1.20(b).
(c)	§ 1.20(k).
(d)	§ 1.26(c)(5).
(e)	§ 1.22(c).
(f)	§ 1.28(f).
601:	
(a)	§ 1.18(a).
(b)	§ 1.18(b).
(c)	§ 1.18(c).
(d)	§ 1.18(d).
602:	
(a)	§ 1.18(e)(1)(i).
(b)	§ 1.18(e)(1)(ii).
(c)	§ 1.18(e)(1)(iii).
(d)	§ 1.18(e)(1)(iv).
(e)	§ 1.18(e)(1)(v).
(f)	§ 1.18(e)(2)
(g)	§ 1.18(e)(3).
(h)	§ 1.18(e)(4).
(i)	§ 1.18(e)(5).
603	§ 1.18(g).
604	§ 1.18(f).
701	New.
702	New.
703	§ 1.30 (h), (g).
704	§ 1.29(a).
705	New.
706(a)	§ 1.29(a).
706(b):	
(1)	§ 1.29(c).
(2)	New.
706(c)	§ 1.29(d).
706(d)	New.
707:	
(a)	§ 1.29(b).
(b)	New.
(c)	§ 1.29(b).
708(a)	§1.30(a).
708(b):	
(1)	§ 1.30(a).

Part 385	Old part 1
(2)	New.
(3)	New.
(4)	§ 1.30(a).
708(c):	
(1)	New.
(2)	§ 1.30(j).
708(d)	§ 1.30(d) (2), (3); § 1.31(a).
709	§ 1.20(b)(2); § 1.30 (b), (c) (1), (2).
710	§ 1.30(c).
711(a):	
(1)	§ 1.31(a).
(2)	§ 1.31(b)(2).
(3)	§ 1.31(b)(2), (c).
711(b)	§ 1.31(b).
711(c)	§ 1.31(c).
711(d)	§ 1.31(d).
712	§ 1.30(d)(2).
713:	
(a)	New.
(b)	§ 1.34(a).
(c)	§ 1.34(d).
(d)	§ 1.34(a), (b).
(e)	§ 1.34(d).
(f)	New.
(g)	§ 1.34(c).
714	§ 1.27(b)(8).
715:	
(a)	§ 1.28(a).
(b)	§ 1.28(b).
(c)	§ 1.28(c).
(d)	§ 1.28(d).
(e)	§ 1.28(e).
716	§ 1.33.
2001:	
(a)	§ 1.14(a)(1).
(b)	§ 1.14(a)(2).
2002	§ 1.15(a).
2003	§ 1.15(c), (d).
2004	§ 1.15(b).
2005:	
(a)	§ 1.16(a).
(b)	§ 1.16(b).
2006	§ 1.14(b).
2007:	
(a)	§ 1.13(a).
(b)	§ 1.13(b).
(c)	§ 1.13(c).
2008	§ 1.13(d).
2009	§ 1.19(b).
2010:	
(a)	§ 1.17(a).
(b)	§ 1.17(b).
(c)	§ 1.17(c).
(d)	New.
(e)	New.
(f)	§ 1.17(a), (b).
(g)	§ 1.17(d).
(h)	§ 1.17(e).

VI. Effective Date

This rule is effective August 26, 1982. The Commission considers that this delayed effective date provides sufficient time to consider any issues which may be raised on rehearing before the public is obliged to use the new rule.

(Administrative Procedure Act, 5 U.S.C. 551–557; Department of Energy Organization Act, 42 U.S.C. 7101–7352; Exec. Order No. 12009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791–828, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Interstate Commerce Act, 49 U.S.C. 1, *et seq.*)

List of Subjects

18 CFR Part 1

General definitions; Rules of construction.

18 CFR Part 385

Administrative practice and procedures.

18 CFR Part 388

Freedom of Information.

In consideration of the foregoing, the Commission:

(a) Terminates the applicability of the Interstate Commerce Commission's General Rules of Practice (49 Code of Federal Regulations, Part 1100) to oil pipeline filings and proceedings, except for §§ 1100.43 through 1100.52 (modified procedures) and Appendix C to Part 1100 (*ex parte* rules); and

(b) Amends Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The table of contents to Chapter I is amended by revising the entry under Subchapter A for Part 1 and by adding entries for Subchapter X, Parts 385 through 388, to read as follows:

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CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

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SUBCHAPTER A—GENERAL RULES

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SUBCHAPTER X—PROCEDURAL RULES

2. Part 1 is revised to read as follows.

PART 1—RULES OF GENERAL APPLICABILITY

Subpart A—Definitions and Rules of Construction

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. Ch. 5.

Subpart A—Definitions and Rules of Construction

§ 1.101 Definitions.

The definitions set forth in this section apply for purposes of this chapter, except as otherwise provided in this chapter:

(a) "Commission" means the Federal Energy Regulatory Commission.

(b) "Chairman" means the Chairman of the Commission.

(c) "Commissioner" and "Member" means a member of the Commission.

(d) "Secretary" means the Secretary of the Commission.

(e) "Executive Director" means the Executive Director of the Commission.

(f) "General Counsel" means the General Counsel of the Commission.

(g) "DOE Act" means the Department of Energy Organization Act.

(h) "DOE" means the Department of Energy.

(i) "Administrative law judge" means an officer appointed under section 3105 of title 5 of the United States Code.

(j) "Attorney" means an attorney admitted to practice before the Supreme Court of the United States or the highest court of any State, territory of the United States, or the District of Columbia, or any other person with the requisite qualifications to represent others, who acts in a representative capacity for any participant before the Commission.

(k) "State Commission" means the regulatory body of any State or municipality having jurisdiction to regulate rates or charges for the sale of electric energy or natural gas to consumers or for the transportation of oil by pipeline within the State or municipality.

(l) "Oath" includes "affirmation" and "sworn" includes "affirmed".

§ 1.102 Words denoting number, gender and so forth.

In determining the meaning of any provision of this chapter, unless the context indicates otherwise:

(a) The singular includes the plural;

(b) The plural includes the singular;

(c) The present tense includes the future tense; and

(d) Words of one gender include the other gender.

3. Chapter I is further amended by adding a new Subchapter X to read as follows:

SUBCHAPTER X—PROCEDURAL RULES

PART 385—RULES OF PRACTICE AND PROCEDURE

Subpart A—General Provisions

Subpart B—Pleadings, Tariff or Rate Filings, Notices of Tariff or Rate Examination, Orders To Show Cause, Intervention, and Summary Dispositon

Subparts C and D [Reserved]

Subpart E—Hearings

Subpart F—Conferences, Settlements, and Stipulations

Subpart G—Decisions

Subpart H—Shortened Procedures

Subpart I—Commission Review of Remedial Orders

Subpart J—Commission Review of Adjustment Request Denials

Subpart K—Petitions for Adjustments Under the NGPA

Subpart L [Reserved]

Subpart M—Cooperative Procedure With State Commissions

Subparts N through R [Reserved]

Subpart S—Miscellaneous

Subpart T—Formal Requirements for Filings in Proceedings Before the Commission

Subpart U—Appearance and Practice Before the Commission

Subpart V—Ex Parte Communications: Separation of Functions

Subparts W through Z [Reserved]

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. Ch. 5.

Subpart A—Applicability and Definitions

§ 385.101 Applicability (Rule 101).

(a) *General rules.* Except as provided in paragraph (b) of this section, this part applies to:

(1) Any filing or proceeding under this chapter; and

(2) Any oil pipeline filing or proceeding under this chapter or 49 CFR Chapter X and replaces the Interstate Commerce Commission General Rules of Practice (49 CFR Part 1100) with respect to any oil pipeline filing or proceeding.

(b) *Exceptions.* (1) This part does not apply to investigations under Part 1b of this chapter.

(2) If any provision of this part is inconsistent with any provision of another part of this chapter, the provision of this part is inapplicable and the provision of the other part governs to the extent of the inconsistency.

(3) If any provision of this part is inconsistent with any provision of 49 CFR Chapter X that is not otherwise replaced by this part or Commission rule or order, the provision of this part is inapplicable and the provision of 49 CFR Chapter X governs to the extent of the inconsistency.

(4) With respect to any oil pipeline filing or proceeding:

(i) The modified procedure set forth in 49 CFR 1100.42–1100.52 continue to apply; and

(ii) The ex parte rules set forth in Appendix C to 49 CFR Part 1100 apply in lieu of Rule 2201.

(c) *Transitional provisions.* (1) This part applies to any filing submitted on or after and to any proceeding pending on or initiated after, August 26, 1982.

(2) A decisional authority may, in the interest of justice:

(i) Apply the appropriate provisions of the prior Rules of Practice and Procedure (18 CFR Part 1) to any filing submitted after, or to any proceeding or part of a proceeding pending on August 26, 1982;

(ii) Apply the provisions of this part to any filing submitted, or any proceeding or part of a proceeding initiated, after April 28, 1982 but before August 26, 1982.

(d) *Title 49 CFR.* References in this chapter to 49 CFR refer to Interstate Commerce Commission regulations in 49 CFR Chapter X in effect on September 30, 1977.

(e) *Waiver.* To the extent permitted by law, the Commission may, for good cause, waive any provision of this part or prescribe any alternative procedures that it determines to be appropriate.

§ 385.102 Definitions (Rule 102).

For purposes of this part—

(a) "Decisional authority" means the Commission or Commission employee, including the Oil Pipeline Board, that, at the time for decision on a question, has authority or responsibility under this chapter or 49 CFR Chapter X to decide that particular question.

(b) "Participant" means:

(1) Any party; or

(2) Any employee of the Commission assigned to present the position of the Commission staff in a proceeding before the Commission.

(c) "Party" means, with respect to a proceeding:

(1) A person filing any application, petition, tariff or rate filing, complaint, or any protest under section 19a(i) of the Interstate Commerce Act (49 U.S.C. 19a(i));

(2) Any respondent to a proceeding; or

(3) Any person whose intervention in a proceeding is effective under Rule 214.

(d) "Person" means an individual, partnership, corporation, association, joint stock company, public trust, an organized group of persons, whether incorporated or not, a receiver or trustee of the foregoing, a municipality, including a city, county, or any other political subdivision of a State, a State, the District of Columbia, any territory of the United States or any agency of any of the foregoing, any agency, authority, or instrumentality of the United States (other than the Commission), or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty. The term also includes a foreign government or any agency, authority, or instrumentality thereof.

(e) "Presiding officer" means:

(1) With respect to any proceeding set for hearing under Subpart E of this part, one or more Members of the Commission, or any administrative law judge, designated to preside at such hearing, or, if no Commissioner or administrative law judge is designated, the Chief Administrative Law Judge; or

(2) With respect to any proceeding not set for hearing under Subpart E, any employee, including the Oil Pipeline Board, designated by rule or order to conduct the proceeding.

(f) "Respondent" means any person:

(1) To whom an order to show cause or notice of tariff or rate examination is issued by the Commission;

(2) Against whom a complaint is directed; or

(3) Designated as a respondent by the Commission or by the terms of this chapter.

§ 385.103 Reference to rules (Rule 103).

This part cross-references its sections according to rule number, as indicated by the section titles. Any filing with the Commission may refer to any section of this part by rule number; for example, "Rule 103."

Subpart B—Pleadings, Tariff and Rate Filings, Notices of Tariff or Rate Examination, Orders To Show Cause, Intervention, and Summary Disposition

§ 385.201 Applicability (Rule 201).

This subpart applies to any pleading, tariff or rate filing, notice of tariff or rate examination, order to show cause, intervention, or summary disposition.

§ 385.202 Types of pleadings (Rule 202).

Pleadings include any application, complaint, petition, protest, notice of protest, answer, motion, and any amendment or withdrawal of a pleading. Pleadings do not include comments on rulemakings or comments on offers of settlement.

§ 385.203 Content of pleadings and tariff or rate filings (Rule 203).

(a) *Requirements for a pleading or a tariff or rate filing.* Each pleading and each tariff or rate filing must include, as appropriate:

(1) If known, the reference numbers, docket numbers, or other identifying symbols of any relevant tariff, rate, schedule, contract, application, rule, or similar matter or material;

(2) The name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, provided that the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

(3) The specific authorization or relief sought;

(4) The tariff or rate sheets;

(5) The name and address of each person against whom the complaint is directed;

(6) The relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

(7) The position taken by the participant filing any pleading, to the extent known when the pleading is filed, and the basis in fact and law for such position;

(8) Subscription or verification, if required;

(9) A certificate of service under Rule 2010(h), if service is required;

(10) The name, address, and telephone number of an individual who, with respect to any matter contained in the

filing, represents the person for whom filing is made; and

(11) Any additional information required to be included by statute, rule, or order.

(b) *Requirement for any initial pleading or tariff or rate filing.* The initial pleading or tariff or rate filing submitted by a participant or a person seeking to become a party must conform to the requirements of paragraph (a) of this section and must include:

(1) The exact name of the person for whom the filing is made;

(2) The location of that person's principal place of business; and

(3) The name, address, and telephone number of at least one, but not more than two, persons upon whom service is to be made and to whom communications are to be addressed in the proceeding.

(c) *Combined filings.* If two or more pleadings, or one or more pleadings and a tariff or rate filing are included as items in a single filing each such item must be separately designated and must conform to the requirements which would be applicable to it if filed separately.

§ 385.204 Applications (Rule 204).

Any person seeking a license, permit, certification, or similar authorization or permission, must file an application to obtain that authorization or permission.

§ 385.205 Tariff or rate filings (Rule 205).

A person must make a tariff or rate filing in order to establish or change any specific rate, rate schedule, tariff, tariff schedule, fare, charge, or term or condition of service, or any classification, contract, practice, or any related regulation established by and for the applicant.

§ 385.206 Complaints (Rule 206).

(a) *General rule.* Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction.

(b) *Answers.* Unless otherwise ordered by the Commission, any respondent to a complaint must file an answer with the Commission.

(c) *Satisfaction.* (1) If the respondent to a complaint satisfies such complaint, in whole or in part, either before or after an answer is filed, the complainant and the respondent must sign and file:

(i) A statement setting forth when and how the complaint was satisfied; and

(ii) A motion for dismissal of, or an amendment to, the complaint based on the satisfaction.

(2) The decisional authority may order the submission of additional information before acting on a motion for dismissal or an amendment under paragaph (c)(1)(ii) of this section.

§ 385.207 Petitions (Rule 207).

(a) *General rule.* A person must file a petition when seeking:

(1) Relief under Subpart I, J, or K of this part;

(2) A declaratory order or rule to terminate a controversy or remove uncertainty;

(3) Action on appeal from a staff action, other than a decision or ruling of a presiding officer, under Rule 1902;

(4) A rule of general applicability; or

(5) Any other action which is in the discretion of the Commission and for which this chapter prescribes no other form of pleading.

(b) *Declarations of intent under the Federal Power Act.* For purposes of this part, a declaration of intent under section 23(b) of the Federal Power Act is treated as a petition for a declaratory order.

§ 385.208 Notices of protest to tentative oil pipeline valuations (Rule 208).

(a) *General rule.* Any person objecting to a tentative valuation of any oil pipeline under section 19a of the Interstate Commerce Act (49 U.S.C. 19a(i)) must file a notice of protest, as prescribed under that section.

(b) *Effect.* A notice of protest has the effect prescribed in section 19a of the Interstate Commerce Act (49 U.S.C. 19a).

(c) *Service.* A notice of protest must be served by the protestant on the oil pipeline company whose tentative valuation is protested.

§ 385.209 Notices of tariff or rate examination and orders to show cause (Rule 209).

(a) *Issuance.* (1) If the Commission seeks to determine the validity of any rate, rate schedule, tariff, tariff schedule, fare, charge, or term or condition of service, or any classification, contract, practice, or any related regulation established by and for the applicant which is demanded, observed, charged, or collected, the Commission will initiate a proceeding by issuing a notice of tariff or rate examination.

(2) The Commission may initiate a proceeding against a person by issuing an order to show cause.

(b) *Contents.* A notice of examination or an order to show cause will contain a statement of the matters about which the Commission is inquiring, and a statement of the authority under which the Commission is acting. The statement is tentative and sets forth issues to be considered by the Commission.

(c) *Answers.* A person who is ordered to show cause must answer in accordance with Rule 213.

§ 385.210 Method of notice; dates established in notice (Rule 210).

(a) *Method.* When the Secretary gives notice of tariff or rate filings, applications, petitions, notices of tariff or rate examinations, and orders to show cause, the Secretary will give such notice in accordance with Rule 2009.

(b) *Dates for filing interventions and protests.* A notice given under this section will establish the dates for filing interventions and protests. Only those filings made within the time prescribed in the notice will be considered timely.

§ 385.211 Protests other than under Rule 208 (Rule 211).

(a) *General rule.* (1) Any person may file a protest to object to any application, complaint, petition, order to show cause, notice of tariff or rate examination, or tariff or rate filing.

(2) The filing of a protest does not make the protestant a party to the proceeding. The protestant must intervene under Rule 214 to become a party.

(3) Subject to paragraph (a)(4) of this section, the Commission will consider protests in determining further appropriate action. Protests will be placed in the public file associated with the proceeding.

(4) If a proceeding is set for hearing under Subpart E of this part, the protest is not part of the record upon which the decision is made.

(b) *Service.* (1) Any protest directed against a person in a proceeding must be served by the protestant on the person against whom the protest is directed.

(2) The Secretary may waive any procedural requirement of this subpart applicable to protests. If the requirement of service under this paragraph is waived, the Secretary will place the protest in the public file and may send a copy thereof to any person against whom the protest is directed.

§ 385.212 Motions (Rule 212).

(a) *General rule.* A motion may be filed:

(1) At any time, unless otherwise provided;

(2) By a participant or a person who has filed a timely motion to intervene which has not been denied.

(b) *Written and oral motions.* Any motion must be filed in writing, except that the presiding officer may permit an oral motion to be made on the record during a hearing or conference.

(c) *Contents.* A motion must contain a clear and concise statement of:

(1) The facts and law which support the motion; and

(2) The specific relief or ruling requested.

(d) *Motions to the Commission during a hearing.* (1) Except as provided in Rule 214(c)(1) (automatic intervention) and Rule 710(a) (waiver of initial decision), a motion to the Commission which is made after a hearing under Subpart E of this part has commenced and which is not acted on within 30 days after filing, is denied.

(2) A motion made to a subordinate official of the Commission is not considered a motion to the Commission for purposes of this paragraph.

§ 385.213 Answers (Rule 213).

(a) *Required or permitted.* (1) Any respondent to a complaint or order to show cause must make an answer, unless the Commission orders otherwise.

(2) An answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisional authority. A presiding officer may prohibit an answer to a motion for interlocutory appeal.

(3) An answer may be made to any pleading, if not prohibited under paragraph (a)(2) of this section.

(4) An answer to a notice of tariff or rate examination must be made in accordance with the provisions of such notice.

(b) *Written or oral answers.* Any answer must be in writing, except that the presiding officer may permit an oral answer to a motion made on the record during a hearing conducted under Subpart E or during a conference.

(c) *Contents.* (1) An answer must contain a clear and concise statement of:

(i) Any disputed factual allegations; and

(ii) Any law upon which the answer relies.

(2) When an answer is made in response to a complaint, an order to show cause, or an amendment to such pleading, the answerer must, to the extent practicable:

(i) Admit or deny, specifically and in detail, each material allegation of the pleading answered; and

(ii) Set forth every defense relied on.

(3) General denials of facts referred to in any order to show cause, unsupported by the specific facts upon which the respondent relies, do not comply with paragraph (a)(1) of this section and may be a basis for summary disposition under Rule 217, unless otherwise required by statute.

(d) *Time limitations.* (1) Any answer to a motion or to an amendment to a motion must be made within 15 days after the motion or amendment is filed, unless otherwise ordered.

(2) Any answer to a pleading or amendment to a pleading, other than an answer to a motion under paragraph (d)(1) of this section must be made:

(i) If the pleading or amendment is published in the **Federal Register**, not later than 30 days after such publication, unless otherwise ordered; or

(ii) If the pleading or amendment is not published in the **Federal Register**, not later than 30 days after the filing of the pleading or amendment, unless otherwise ordered.

(e) *Failure to answer.* (1) Any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted.

(2) Failure to answer an order to show cause will be treated as a general denial to which paragraph (c)(3) of this section applies.

§ 385.214 Intervention (Rule 214).

(a) *Filing.* (1) The Secretary of Energy is a party to any proceeding upon filing a notice of intervention in that proceeding. If the Secretary's notice is not filed within the period prescribed under Rule 210(b), the notice must state the position of the Secretary on the issues in the proceeding.

(2) Any State Commission is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b). If the period for filing notice has expired, a State Commission must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person, other than the Secretary of Energy or a State Commission, seeking to become a party must file a motion to intervene.

(b) *Contents of motion.* (1) Any motion to intervene must state, to the extent known, the position taken by the movant and the basis in fact and law for that position.

(2) A motion to intervene must also state the movant's interest in sufficient factual detail to demonstrate that:

(i) The movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeeding, including any interest as a:

(A) Consumer,

(B) Customer,

(C) Competitor, or

(D) Security holder of a party; or

(iii) The movant's participation is in the public interest.

(2) If a motion to intervene is filed after the end of any time period established under Rule 210, such a motion must, in addition to complying with paragraph (b)(1) of this section, show good cause why the time limitation should be waived.

(c) *Grant of party status.* (1) If no answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party at the end of the 15 day period.

(2) If an answer in opposition to a timely motion to intervene is filed not later than 15 days after the motion to intervene is filed or, if the motion is not timely, the movant becomes a party only when the motion is expressly granted.

(d) *Grant of late intervention.* (1) In acting on any motion to intervene filed after the period prescribed under Rule 210, the decisional authority may consider whether:

(i) The movant had good cause for failing to file the motion within the time prescribed;

(ii) Any disruption of the proceeding might result from permitting intervention;

(iii) Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and

(iv) The motion conforms to the requirements of paragraph (b) of this section.

(2) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of that motion.

(3) (i) The decisional authority may impose limitations on the participation of a late intervener to avoid delay and prejudice to the other participants.

(ii) Except as otherwise ordered, a late intervener must accept the record of the proceeding as the record was developed prior to the late intervention.

(4) If the presiding officer orally grants a motion for late intervention, the officer will promptly issue a written order confirming the oral order.

§ 385.215 Amendment of pleadings and tariff or rate filings (Rule 215).

(a) *General rules.* (1) Any participant, or any person who has filed a timely motion to intervene which has not been denied, may seek to modify its pleading by filing an amendment which conforms to the requirements applicable to the pleading to be amended.

(2) A tariff or rate filing may not be amended, except as allowed by statute. The procedures provided in this section do not apply to amendment of tariff or rate filings.

(3) (i) If a written amendment is filed in a proceeding, or part of a proceeding, that is not set for hearing under Subpart E, the amendment becomes effective as an amendment on the date filed.

(ii) If a written amendment is filed in a proceeding, or part of a proceeding, which is set for hearing under Subpart E, that amendment is effective on the date filed only if the amendment is filed more than five days before the earlier of either the first prehearing conference or the first day of evidentiary hearings.

(iii) If, in a proceeding, or part of a proceeding, that is set for hearing under Subpart E, a written amendment is filed after the time for filing provided under paragraph (a)(3)(ii) of this section, or if an oral amendment is made to a presiding officer during a hearing or conference, the amendment becomes effective as an amendment only as provided under paragraph (d) of this section.

(b) *Answers.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may answer a written or oral amendment in accordance with Rule 213.

(c) *Motion opposing an amendment.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may file a motion opposing the acceptance of any amendment, other than an amendment under paragraph (a)(3)(i) of this section, not later than 15 days after the filing of the amendment.

(d) *Acceptance of amendments.* (1) An amendment becomes effective as an amendment at the end of 15 days from the date of filing, if no motion in opposition to the acceptance of an amendment under paragraph (a)(3)(iii) of this section is filed within the 15 day period.

(2) If a motion in opposition to the acceptance of an amendment is filed within 15 days after the filing of the amendment, the amendment becomes effective as an amendment on the twentieth day after the filing of the amendment, except to the extent that the decisional authority, before such date, issues an order rejecting the amendment, wholly or in part, for good cause.

(e) *Directed amendments.* A decisional authority, on motion or otherwise, may direct any participant, or any person seeking to be a party, to file a written amendment to amplify, clarify, or technically correct a pleading.

§ 385.216 Withdrawal of pleadings (Rule 216).

(a) *Filing.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may seek to withdraw a pleading by filing a notice of withdrawal.

(b) *Action on withdrawals.* (1) The withdrawal of any pleading is effective at the end of 15 days from the date of filing of a notice of withdrawal, if no motion in opposition to the notice of withdrawal is filed within that period and the decisional authority does not issue an order disallowing the withdrawal within that period. The decisional authority may disallow, for a good cause, all or part of a withdrawal.

(2) If a motion in opposition to a notice of withdrawal is filed within the 15 day period, the withdrawal is not effective until the decisional authority issues an order accepting the withdrawal.

(c) *Conditional withdrawal.* In order to prevent prejudice to other participants, a decisional authority may, on motion or otherwise, condition the withdrawal of any pleading upon a requirement that the withdrawing party leave material in the record or otherwise make material available to other participants.

§ 385.217 Summary disposition (Rule 217).

(a) *Applicability.* This section applies to:

(1) Any proceeding, or any part of a proceeding, while the Commission is the decisional authority; and

(2) Any proceeding, or part of a proceeding, which is set for hearing under Subpart E.

(b) *General rule.* If the decisional authority determines that there is no genuine issue of fact material to the decision of a proceeding or part of a proceeding, the decisional authority may summarily dispose of all or part of the proceeding.

(c) *Procedures.* (1) Any participant may make a motion for summary disposition of all or part of a proceeding.

(2) If a decisional authority, other than the Commission, is considering summary disposition of a proceeding, or part of a proceeding, in the absence of a motion for summary disposition by a participant, the decisional authority will grant the participants an opportunity to comment on the proposed disposition prior to any summary disposition, unless, for good cause shown, the decisional authority provides otherwise.

(3) If, prior to setting a matter for hearing, the Commission is considering summary disposition of a proceeding or part of a proceeding in the absence of a motion for summary disposition by any participant and the Commission determines that notice and comment on summary disposition are practicable and necessary, the Commission may notify the participants and afford them an opportunity to comment on any proposed summary disposition.

(d) *Disposition.* (1)(i) If a decisional authority, other than the Commission, summarily disposes of an entire proceeding, the decisional authority will issue an initial decision for the entire proceeding.

(ii) Except as provided under paragraph (d)(1)(iii) of this section, a decisional authority which summarily disposes of part of a proceeding may:

(A) Issue a partial initial decision; or

(B) Postpone issuing an initial decision on the summarily disposed part and combine it with the initial decision on the entire proceeding or other appropriate part of the proceeding.

(iii) If the decisional authority summarily disposes of part of a proceeding and such disposition requires the filing of new tariff or rate schedule sheets, the decisional authority will issue an initial decision on that part of the proceeding.

(2) Any initial decision issued under paragraph (d)(1) of this section is considered an initial decision issued under Subpart G of this part, except that the following rules do not apply: Rule 704 (rights of participants before initial decision), Rule 705 (discretion of presiding officer before initial decision), Rule 706 (initial and reply briefs before initial decision), Rule 707 (oral argument before initial decision), and Rule 709 (other types of decisions).

Subpart E—Hearings

§ 385.501 Applicability (Rule 501).

This subpart applies to any proceeding, or part of a proceeding, that the Commission sets for a hearing to be conducted in accordance with this subpart.

§ 385.502 Initiation of hearing (Rule 502).

(a) *Notice or order initiating hearing.* A hearing under this subpart will be initiated by:

(1) Order of the Commission;

(2) Notice by the Secretary, at the direction of the Commission; or

(3) Order of the Oil Pipeline Board.

(b) *Contents of notice or order initiating hearing.* Any order or notice under paragraph (a) of this section will set forth:

(1) The authority and jurisdiction under which the hearing is to be held;

(2) The nature of the proceeding;

(3) The final date for the filing of interventions, if the dates were not fixed by an earlier notice;

(4) The presiding officer, if designated at that time; and

(5) The date, time, and location of the hearing or prehearing conference, if known; and

(6) Any other appropriate matter.

(c) *Consolidation, severance, and phasing.* Any notice or order under this section may direct consolidation of proceedings, phasing of a proceeding, or severance of proceedings or issues in a proceeding.

§ 385.503 Consolidation and severance by Chief Administrative Law Judge (Rule 503).

The Chief Administrative Law Judge may, on motion or otherwise, order proceedings pending under this subpart consolidated for hearing on any or all matters in issue in such proceedings or order the severance of proceedings or issues in a proceeding.

§ 385.504 Duties and powers of presiding officers (Rule 504).

(a) *Duties.* (1) It shall be the duty of the presiding officer to conduct a fair and impartial hearing and to determine the matter justly under the law.

(2) The presiding officer will cause all appearances during a hearing to be entered on the record with a notation in whose behalf each appearance is made.

(3) The presiding officer will establish the order of presentation of the cases of all participants in the hearing.

(4) The presiding officer will assure that the taking of evidence and subsequent matters proceed with all reasonable diligence and with the least delay practicable.

(5) The presiding officer will prepare and certify an initial decision to the Commission, as provided in Subpart G of this part.

(b) *Powers.* Except as otherwise ordered by the Commission or provided by law, the presiding officer may:

(1) Schedule and otherwise regulate the course of the hearing;

(2) Recess, reconvene, postpone, or adjourn the hearing;

(3) Administer oaths;

(4) Rule on and receive evidence;

(5) Cause Discovery to be conducted;

(6) Issue subpoenas under Rule 1905;

(7) Hold conferences of the participants, as provided in Subpart F of this part;

(8) Rule on, and dispose of, procedural matters, including oral or written motions;

(9) Summarily dispose of a proceeding or part of a proceeding, as provided in Rule 217;

(10) Certify a question to the Commission, as provided in Rule 714;

(11) Permit or deny appeal of an interlocutory ruling, as provided in Rule 715;

(12) Rule on motions to intervene, as provided in Rule 214;

(13) Separate any issue or group of issues from other issues in a proceeding and treat such issue or group of issues as a separate phase of the proceeding;

(14) Maintain order, as follows:

(i) Ensure that any disregard by any person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;

(ii) In the event any person engages in disrespectful, disorderly, or contumacious language or conduct in connection with the hearing, recess the hearing for such time as necessary to regain order;

(iii) Request that the Commission take approprite action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

(15) Modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any participant;

(16) Limit the number of expert witnessess who may testify on any issue, consistent with the rule against repetitious testimony in Rule 509(a);

(17) Limit the number of persons, other than staff, representing a similar interest who may examine witnesses or make or argue motions or objections;

(18) Require; or authorize the admission of, further evidence upon any issue at any time before the close of the evidentiary record;

(19) Take any other action necessary or appropriate to the discharge of the duties of a presiding officer, consistent with applicable law and policy.

(c) *Disqualification.* (1) A presiding officer may withdraw from a proceeding, if that officer believes himself or herself disqualified.

(2) The Commission may, for good cause, order the removal of any presiding officer from a proceeding, on motion filed with the Commission or otherwise.

§ 385.505 Right of participants to present evidence (Rule 505).

Consistent with the provisions of this part, a participant has the right to present such evidence, including rebuttal evidence, to make such objections and arguments, and to conduct such cross-examination, as may be necessary to assure true and full disclosure of the facts.

§ 385.506 Examination of witnesses during hearing (Rule 506).

(a) *Prepared written direct and rebuttal testimony.* Unless the presiding officer orders such testimony to be presented orally, direct and rebuttal testimony of a witness in a hearing must be prepared and submitted in written form, as required by Rule 507. Any witness submitting written testimony must be available for cross-examination, as provided in this subpart.

(b) *Oral testimony during hearing.* Oral examination of a witness in a hearing must be conducted under oath and in the presence of the presiding officer, with opportunity for all participants to question the witness to the extent consistent with Rules 504(b)(17), 505, and 509(a).

§ 385.507 Prepared written testimony (Rule 507).

(a) *Offered as an exhibit.* The prepared written testimony of any witness must be offered as an exhibit. The presiding officer will allow a reasonable period of time for the preparation of such written testimony.

(b) *Time for filing.* Any prepared written testimony must be filed and served within the time provided by the presiding officer, in no case later than 10 days before the session of the hearing at which such exhibit is offered, unless a shorter period is permitted under paragraph (c) of this section.

(c) *Late-filed testimony.* (1) If all participants in attendance at the hearing agree, the 10-day requirement for filing any written testimony under paragraph (b) of this section is waived.

(2) The presiding officer may permit the introduction of any prepared written testimony without compliance with paragraph (b) of this section, if the presiding officer determines that the introduction of the testimony:

(i) Is necessary for a full disclosure of the facts or is warranted by any other showing of good cause; and

(ii) Would not be unduly prejudicial to any participant.

(3) If any written testimony is served and filed within the 10 day period provided in paragraph (b) of this section, the presiding officer will provide the

participants in attendance with a reasonable opportunity to inspect the testimony.

(d) *Form; authentication.* Prepared written testimony must have line numbers inserted in the left-hand margin of each page and must be authenticated by an affidavit of the witness.

§ 385.508 Exhibits (Rule 508).

(a) *General rules.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Any participant who seeks to have an exhibit admitted into evidence must provide one copy of the exhibit to the presiding officer and two copies to the reporter, not later than the time that the exhibit is marked for identification.

(3) The presiding officer will cause each exhibit offered by a participant to be marked for identification.

(b) *Designation and treatment of matter sought to be admitted.* (1) If a document offered as an exhibit contains material not offered as evidence, the participant offering the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(2) If, in a document offered as an exhibit, material not offered in evidence is so extensive as to unnecessarily encumber the record, the material offered in evidence will be marked for identification. The remainder of the document will be considered not to have been offered in evidence.

(3) Copies of any document offered as an exhibit under paragraph (b)(2) of this section must be delivered to the other participants appearing at the hearing by the participant offering the exhibit in evidence. The participants will be offered an opportunity to inspect the entire document and to offer as an exhibit in evidence, in like manner, any other portions of the document.

(c) *Pubic document items by reference.* If all or part of a public document is offered in evidence and the participant offering the document shows that all or the pertinent part of the document, is reasonably available to the public, the document need not be produced or marked for identification but may be offered in evidence as a public document by identifying all or the relevent part of the document to be offered.

(d) *Official notice of facts.* (1) A presiding officer may take official notice of any matter that may be judicially noticed by the courts of the United States, or of any matter about which the Commission, by reason of its functions, is expert.

(2) The presiding officer must afford any participant, making a timely request, an opportunity to show the contrary of an officially noticed fact.

(3) Any participant requesting official notice of facts after the conclusion of the hearing must set forth reasons to justify the failure to request official notice prior to the close of the hearing.1

(e) *Stipulations.* (1) Participants in a proceeding may stipulate to any relevant matters of fact or the authenticity of any relevant documents.

(2) A stipulation may be received in evidence at the hearing and, if received in evidence, the stipulation is binding on the stipulating participants with respect to any matter stipulated.

(3) A stipulation may be written or made orally at the hearing.

§ 385.509 Admissibility of evidence (Rule 509).

(a) *General standard.* The presiding officer should exclude from evidence any irrelevant, immaterial, or unduly repetitious material. The presiding officer may also exclude from evidence any other material which the presiding officer determines is not of the kind which would affect reasonable and fair-minded persons in the conduct of their daily affairs.

(b) *Ruling on evidence.* (1) The presiding officer will rule on the admissibility of any evidence offered.

(2) If any participant objects to the admission or exclusion of evidence, the participant must state briefly the grounds for the objection.

(3) Formal exceptions to a ruling or evidence will not be permitted; the validity of any ruling on evidence may be argued at a later time in the same proceeding.

(4) The presiding officer will not permit formal exceptions to any ruling on evidence. This prohibition against formal exceptions does not preclude a participant from raising, as an issue, the validity of any ruling on evidence later in the proceeding.

§ 385.510 Miscellaneous provisions (Rule 510).

(a) *Transcript.* (1) Any statement made at a hearing session will be transcribed in a verbatim report, with nothing omitted except as directed by the presiding officer on the record. A statement at a hearing may not occur off-the-record, except as otherwise directed by the presiding officer.

(2) After the closing of a record, changes in the transcript are not permitted, except as provided in paragraph (b) of this section.

(b) *Transcript corrections.* (1) Any correction in the transcript of a hearing may be made only if the correction conforms the transcript to the evidence presented at the hearing and to the truth.

(2) A transcript correction may be incorporated in the record, in accordance with a ruling of the presiding officer, if:

(i) Agreed to by all participants and approved by the presiding officer; or

(ii) The presiding officer requests submittal of transcript corrections and rules on the corrections submitted.

(3) Transcript corrections may be made at any time during the hearing or after the close of evidence, as the presiding officer determines appropriate, but only if the correction is made not less than 10 days before the time for filing final briefs.

(c) *Close of evidentiary record.* The presiding officer will designate the time at which the evidentiary record is closed. Evidence may not be added to the evidentiary record after the record is closed, unless the record is reopened under Rule 716.

(d) *Copies of exhibits and motions to participants.* Except as otherwise provided in this subpart, copies of exhibits and motions will be provided at the hearing to any participants who have not been provided copies.

(e) *Fees of Subpoenaed witnesses.* (1) Any witnesses subpoenaed by the Commission must be paid the same fees and mileage provided for similar services in the district courts of the United States.

(2) Any fees and mileage paid to a subpoenaed witness under paragraph (e)(1) of this section will be paid by the Commission, unless the witness is subpoenaed at the instance of a party.

(3) If the witness is subpoenaed at the instance of a party, any fees and mileage paid to the witness under paragraph (e)(1) of this section must be paid by the party. The Commission, before issuing any subpoena at the instance of the party, may require the party to deposit an amount adequate to cover the witness probable fees and mileage under paragraph (e)(1) of this section. The deposit will be refunded when the party pays the witness in full.

(f) *Offers of proof.* (1) Any offer of proof made in connection with a ruling of the presiding officer rejecting or excluding proffered oral testimony must consist of a statement of the substance of the evidence which the participant claims would be adduced by the testimony.

(2) If any excluded evidence is in the form of an exhibit or is a public document, a copy of such exhibit will constitute the offer of proof or the public document will be specified for identification.

Subpart F—Conferences, Settlements, and Stipulations

§ 385.601 Conferences (Rule 601).

(a) *Convening*. The Commission or the decisional authority, upon motion or otherwise, may convene a conference of the participants in a proceeding at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement.

(b) *General requirements*. (1) The participants in a proceeding must be given due notice of the time and place of a conference under paragraph (a) of this section and of the matters to be addressed at the conference. Participants attending the conference must be prepared to discuss the matters to be addressed at the conference, unless there is good cause for a failure to be prepared.

(2) Any person appearing at the conference in a representative capacity must be authorized to act on behalf of that person's principal with respect to matters to be addressed at the conference.

(3) If any party fails to attend the conference such failure will constitute a waiver of all objections to any order or ruling arising out of, or any agreement reached at, the conference.

(c) *Powers of decisional authority at conference*. (1) The decisional authority, before which the conference is held or to which the conference reports, may dispose, during a conference, of any procedural matter on which the decisional authority is authorized to rule and which may appropriately and usefully be disposed of at that time.

(2) If, in a proceeding set for hearing under Subpart E, the presiding officer determines that the proceeding would be substantially expedited by distribution of proposed exhibits, including written prepared testimony and other documents, reasonably in advance of the hearing session, the presiding officer may, with due regard for the convenience of the participants, direct advance distribution of the exhibits by a prescribed date. The presiding officer may also direct the preparation and distribution of any briefs and other documents which the presiding officer determines will substantially expedite the proceeding.

§ 385.602 Submission of settlement offers (Rule 602).

(a) *Applicability*. This section applies to written offers of settlement filed in any proceeding pending before the Commission or set for hearing under Subpart E. For purposes of this section, the term "offer of settlement" includes any written proposal to modify an offer of settlement.

(b) *Submission of offer*. (1) Any participant in a proceeding may submit an offer of settlement at any time.

(2) An offer of settlement must be filed with the Secretary. The Secretary will transmit the offer to:

(i) The presiding officer, if the offer is filed after a hearing has been ordered under Subpart E of this part and before the presiding officer certifies the record to the Commission; or

(ii) The Commission.

(c) *Contents of offer*. (1) An offer of settlement must include:

(i) The settlement offer;

(ii) A separate explanatory statement;

(iii) Copies of, or references to, any document, testimony, or exhibit, including record citations if there is a record, and any other matters that the offerer considers relevant to the offer of settlement; and

(iv) A separate proposed Commission order approving the settlement, including the following statement: "The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding".

(2) If an offer of settlement pertains to a tariff or rate filing, the offer must include any proposed change in a form suitable for inclusion in the filed rate schedules or tariffs, and a number of copies sufficient to satisfy the filing requirements applicable to tariff or rate filings of the type at issue in the proceeding.

(d) *Service*. (1) A participant offering settlement under this section must serve a copy of the offer of settlement:

(i) On every participant in accordance with Rule 2010;

(ii) On any person required by the Commission's rules to be served with the pleading or tariff or rate schedule filing, with respect to which the proceeding was initiated.

(2) The participant serving the offer of settlement must notify any person or participant served under paragraph (d)(1) of this section of the date on which comments on the settlement are due under paragraph (f) of this section.

(e) *Use of non-approved offers of settlement as evidence*. An offer of settlement that is not approved by the Commission, and any comment on that offer, is not admissible in evidence against any participant who objects to its admission.

(2) Any discussion of the parties with respect to an offer of settlement that is not approved by the Commission is not subject to discovery or admissible in evidence.

(f) *Comments*. (1) A comment on an offer of settlement must be filed with the Secretary who will transmit the comment to the Commission, if the offer of settlement was transmitted to the Commission, or to the presiding officer in any other case.

(2) A comment on an offer of settlement may be filed not later than 20 days after the filing of the offer of settlement and reply comments may be filed not later than 30 days after the filing of the offer, unless otherwise provided by the Commission or the presiding officer.

(3) Any failure to file a comment constitutes a waiver of all objections to the offer of settlement.

(g) *Uncontested offers of settlement*. (1) If comments on an offer are transmitted to the presiding officer and the presiding officer finds that the offer is not contested by any participant, the presiding officer will certify to the Commission the offer of settlement, a statement that the offer of settlement is uncontested, and any hearing record or pleadings which relate to the offer of settlement.

(2) If comments on an offer of settlement are transmitted to the Commission, the Commission will determine whether the offer is uncontested.

(3) An uncontested offer of settlement may be approved by the Commission upon a finding that the settlement appears to be fair and reasonable and in the public interest.

(h) *Contested offers of settlement*. (1) (i) If the Commission determines that any offer of settlement is contested in whole or in part, by any party, the Commission may decide the merits of the contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact.

(ii) If the Commission finds that the record lacks substantial evidence or that the contested issues can not be severed from the offer of settlement, the Commission will:

(A) Establish procedures for the purpose of receiving additional evidence before a presiding officer upon which a decision on the contested issues may reasonably be based; or

(B) Take other action which the Commission determines to be appropriate.

(iii) If contested issues are severable, the uncontested portions may be severed and decided in accordance with paragraph (g) of this section.

(2)(i) If any comment on an offer of settlement is transmitted to the presiding officer and the presiding officer determines that the offer is contested, whole or in part, by any participant, the presiding officer may certify all or part of the offer to the Commission. If any offer or part of an offer is contested by a party, the offer may be certified to the Commission only if paragraph (h)(2)(ii) or (iii) of this section applies.

(ii) Any offer of settlement or part of any offer may be certified to the Commission if the presiding officer determines that there is no genuine issue of material fact. Any certification by the presiding officer must contain the determination that there is no genuine issue of material fact and any hearing record or pleadings which relate to the offer or part of the offer being certified.

(iii) Any offer of settlement or part of any offer may be certified to the Commission, if:

(A) The parties concur on a motion for omission of the initial decision as provided in Rule 710;

(B) The presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and

(C) The parties have an opportunity to avail themselves of their rights with respect to the presentation of evidence and cross-examination of opposing witnesses.

(iv) If any contested issues are severable, the uncontested portions of the settlement may be certified immediately by the presiding officer to the Commission for decision, as provided in paragraph (g) of this section.

(i) *Reservation of rights.* Any procedural right that a participant has in the absence of an offer of settlement is not affected by Commission disapproval, or approval subject to condition, of the uncontested portion of the offer of settlement.

§ 385.603 Settlement negotiations before a settlement judge (Rule 603).

(a) *Applicability.* This section applies to any proceeding set for hearing under Subpart E of this part and to any other proceeding in which the Commission has ordered the appointment of a settlement judge.

(b) *Definition.* For purposes of this section, "settlement judge" means the administrative law judge appointed by the Chief Administrative Law Judge to conduct settlement negotiations under this section.

(c) *Requests for appointment of settlement judges.* (1) Any participant may file a motion requesting the appointment of a settlement judge with the presiding officer, or, if there is no presiding officer for the proceeding, with the Commission.

(2) A presiding officer may request the Chief Administrative Law Judge to appoint a settlement judge.

(3) A motion under paragraph (c)(1) of this section may be acted upon at any time, and the time limitations on answers in Rule 213(d) do not apply.

(4) Any answer or objection filed after a motion has been acted upon will not be considered.

(d) *Commission order directing appointment of settlement judge.* The Commission may, on motion or otherwise, order the Chief Administrative Law Judge to appoint a settlement judge.

(e) *Appointment of settlement judge by Chief Administrative Law Judge.* The Chief Administrative Law Judge may appoint a settlement judge for any proceeding, if requested by the presiding officer under paragraph (c)(2) of this section or if the presiding officer concurs in a motion made under paragraph (c)(1) of this section.

(f) *Order appointing settlement judge.* The Chief Administrative Law Judge will appoint a settlement judge by an order, which specifies whether, and to what extent, the proceeding is suspended pending termination of settlement negotiations conducted in accordance with this section. The order may confine the scope of any settlement negotiations to specified issues.

(g) *Powers and duties of settlement judge.* (1) A settlement judge will convene and preside over conferences and settlement negotiations between the participants and assess the practicalities of a potential settlement.

(2)(i) A settlement judge will report to the Chief Administrative Law Judge or the Commission, as appropriate, describing the status of the settlement negotiations and evaluating settlement prospects.

(ii) In any such report, the settlement judge may recommend the termination or continuation of settlement negotiations conducted under this section.

(iii) The first report by the settlement judge will be made not later than 30 days after the appointment of the settlement judge. The Commission or the Chief Administrative Law Judge may order additional reports at any time.

(h) *Termination of settlement negotiations before a settlement judge.* Unless an order of the Commission directing the appointment of a settlement judge provides otherwise, settlement negotiations conducted under this section will terminate upon the order of the Chief Administrative Law Judge issued after consultation with the settlement judge.

(i) *Non-reviewability.* Any decision concerning the appointment of a settlement judge or the termination of any settlement negotiations is not subject to review by, appeal to, or rehearing by the presiding officer, Chief Administrative Law Judge, or the Commission.

(j) *Multiple settlement negotiations.* If settlement negotiations are terminated under paragraph (h) of this section, the Chief Administrative Law Judge may subsequently appoint a settlement judge in the same proceeding to conduct settlement negotiations in accordance with this section.

§ 385.604 Refusal to make admissions or stipulations (Rule 604).

(a) If any party in a proceeding set for hearing under Subpart E of this part refuses to admit or stipulate to the genuineness of a document or the truth of a matter of fact and, if the party requesting the admission or stipulation proves the genuineness of the document or the truth of the matters of fact to which stipulation is requested, the party who made the proof may apply to the presiding officer for an order requiring the other party to pay any reasonable expenses incurred in making the proof, including reasonable attorney's fees.

(b) Unless the presiding officer finds either good reason for the refusal by a party to admit or stipulate or that the admission or stipulation sought is of no substantial importance, the presiding officer will order payment of expenses under paragraph (a) of this section.

(c) A presiding officer must grant immediately any motion under Rule 715(b) to permit an interlocutory appeal to the Commission from a ruling of the presiding officer under this section.

(d) If any party does not comply with an order under this section after the order is final, the Commission may strike all or any part of that party's pleadings or limit or deny further participation by the party.

(e) Any proposed stipulation not agreed to is not admissible in evidence against any participant objecting to admission of the stipulation.

Subpart G—Decisions

§ 385.701 Applicability (Rule 701).

This subpart applies to decisions in proceedings set for hearing under Subpart E of this part, including any decision on a certified question, interlocutory appeal, or reopening, and to any decision on rehearing, except that:

(a) The provisions of this subpart, other than those relating to rehearing or reopening, do not apply to consideration of an offer of settlement; and

(b) This subpart applies to summary disposition only to the extent provided in Rule 217.

§ 385.702 Definitions (Rule 702).

For purposes of this subpart:

(a) "Initial decision" means any decision rendered by a presiding officer in accordance with Rule 708;

(b) "Final decision" means any decision referred to in Rule 713.

§ 385.703 Contents of decisions (Rule 703).

Any decision in a proceeding is part of the record of that proceeding and will contain:

(a) A ruling on each exception presented and any finding or conclusion, with supporting reasons, on any material issue of fact, law, or discretion presented on the record; and

(b) The appropriate rule, order, sanction, relief, or a denial of any rule, order, motion, or relief.

§ 385.704 Rights of participants before initial decision (Rule 704).

After testimony is taken in a proceeding, or phase of a proceeding, the presiding officer will afford every participant an opportunity to:

(a) Submit written initial briefs in accordance with Rule 706, except that the presiding officer may provide an opportunity for oral argument in lieu of, or in addition to, initial briefs; and

(b) Submit written reply briefs in accordance with Rule 706, except that the presiding officer may:

(1) Provide an opportunity for oral reply argument in lieu of, or in addition to, reply briefs; or

(2) For good cause, deny opportunity for reply or limit the issues which may be addressed in any reply.

§ 385.705 Additional powers of presiding officer with respect to briefs (Rule 705).

(a) *Limitations on briefs.* A presiding officer, with due regard to the nature of the proceeding, may limit the length of any brief to be filed under Rule 706.

(b) *Additional briefs and other filings.* If appropriate, the presiding officer may permit or require briefs or other filings in addition to those provided for in Rule 706.

§ 385.706 Initial and reply briefs before initial decision (Rule 706).

(a) *When filed.* The presiding officer will prescribe a time for filing initial or reply briefs and for service of such briefs, giving due regard to the nature of the proceeding, the extent of the record, and the number and complexity of the issues. Unless the presiding officer otherwise orders, the time prescribed in a proceeding for filing briefs will be the same for all initial briefs and the same for all reply briefs.

(b) *Contents.* (1) An initial brief filed with the presiding officer must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings and conclusions, unless waived by the presiding officer;

(iii) Arguments in support of the participant's position; and

(iv) Any other matter requird by the presiding officer.

(2)(i) A reply brief filed with the presiding officer must be limited to a response to any arguments and issues raised in the initial briefs.

(ii) The presiding officer may impose limits on the reply brief in addition to any prescribed under paragraph (b)(2)(i) of this section.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief, but may be reproduced, within reasonable limits, in an appendix to the brief. Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, the brief must be accompanied by a table of contents and of points made, including page references, and an alphabetical list of citations, with page references.

(d) *Record.* All initial and reply briefs will accompany the record and be available to the Commission and the presiding officer for consideration in deciding the case.

§ 385.707 Oral argument before initial decision (Rule 707).

(a) *Procedure.* The presiding officer will designate the order of any oral argument to be held, set a time limit on each argument, and make any other procedural rulings.

(b) *Scope.* (1) If oral argument is held without an initial brief, each participant must be given the opportunity to present orally the information required or permitted to be included in initial briefs under Rule 706(b).

(2) If oral argument is held in addition to an initial or reply brief, oral argument may be limited to issues considered by the presiding officer to be appropriate issues for oral argument.

(c) *Inclusion of transcript of oral argument.* All oral arguments will be transcribed and included in the record and will be available to the Commission and the presiding officer in deciding the case.

§ 385.708 Initial decisions by presiding officers (Rule 708).

(a) *Applicability.* This section applies to any proceeding in which a presiding officer, other than the Commission, presided over the reception of the evidence.

(b) *General rule.* (1) Except as otherwise ordered by the Commission or provided in paragraph (b)(2) of this section, the presiding officer will prepare a written initial decision.

(2)(i) If time and circumstances require, the presiding officer may issue an order stating that an oral initial decision will be issued.

(ii) An oral decision is considered served upon all participants when the decision is issued orally on the record. Promptly after service of the oral decision, the presiding officer will prepare the oral initial decision contained in the transcript in the format of a written initial decision.

(3) Any initial decision prepared under paragraph (b)(1) or (b)(2) of this section will be certified to the Commission by the presiding officer with a copy of the record in the proceeding.

(4) Not later than 35 days after the certification of an initial decision under paragraph (b)(3) of this section, the presiding officer, after notifying the participants and receiving no objection from them, may make technical corrections to the initial decision.

(c) *Initial decision prepared and certified by presiding officer.* (1) The presiding officer who presides over the reception of evidence will prepare and certify the initial decision, if any, unless the officer is unavailable or the Commission provides otherwise in accordance with 5 U.S.C. 557(b).

(2) If the presiding officer who presided over the reception of evidence becomes unavailable, the Chief Administrative Law Judge may issue an order designating another qualified presiding officer to prepare and certify the initial decision.

(d) *Finality of initial decision.* For purposes of requests for rehearing under Rule 713, an initial decision becomes a final Commission decision 10 days after exceptions are due under Rule 711, unless:

(1) Exceptions are timely filed under Rule 711; or

(2) The Commission issues an order staying the effectiveness of the decision pending review under Rule 712.

§ 385.709 Other types of decisions (Rule 709).

In lieu of an initial decision under Rule 708, the Commission may order any type of decision as provided by 5 U.S.C. 557(b), or permit waiver of the initial decision as provided by Rule 710.

§ 385.710 Waiver of the initial decision (Rule 710).

(a) *General rule.* Any participant may file a motion requesting the Commission to issue a final decision without any initial decision. If all participants join in the motion, the motion is granted, unless the Commission denies the motion within 10 days after the date of filing of the motion or, in the case of an oral motion under paragraph (c)(2) of this section, within 10 days after the motion is transmitted to the Commission.

(b) *Content.* Any motion to waive the initial decision filed with the Commission must specify:

(1) Whether any participant waives any procedural right;

(2) Whether all participants concur in the request to waive the initial decision;

(3) The reasons that waiver of the initial decision is in the interest of parties and the public interest;

(4) Whether any participant desires an opportunity for filing briefs; and

(5) Whether any participant desires an opportunity for oral argument before the presiding officer, the Commission, or an individual Commissioner.

(c) *How and when made.* (1) Any written motion under this section may be filed at any time, but not later than the fifth day following the close of the hearing conducted under Subpart E of this part.

(2) An oral motion under this section may be made during a hearing session, in which case the presiding officer will transmit to the Commission the relevant portions of the transcript of the hearing in which the motion was made.

§ 385.711 Exceptions and briefs on and opposing exceptions after initial decision (Rule 711).

(a) *Exceptions.* (1)(i) Not later than 30 days after service of an initial decision, any participant may file with the Commission exceptions to the initial decision in a brief on exceptions.

(ii) Not later than 20 days after the latest date for filing a brief on exceptions, any participant may file a brief opposing exceptions in response to a brief on exceptions.

(iii) A participant may file, within the time set for filing briefs opposing exceptions, a brief on exceptions solely for the purpose of incorporating by reference one or more numbered exceptions contained in the brief of another participant. A brief filed under this clause need not comply with the requirements set forth in paragraph (b) of this section.

(2) A brief on exceptions or a brief opposing exceptions may not exceed 100 pages, unless the Chief Administrative Law Judge, upon motion, changes the page limitation.

(3) The Secretary may extend, on motion or upon direction of the Commission, the time limits for any brief on or opposing exceptions. No additional briefs are permitted, unless specifically ordered by the Commission.

(4) A participant may not attach to, or incorporate by reference in, any brief on exceptions or brief opposing exceptions any portion of an initial or reply brief filed in the proceeding.

(b) *Nature of briefs on exceptions and of briefs opposing exceptions.* (1) Any brief on exceptions and any brief opposing exceptions must include:

(i) If the brief exceeds 10 pages in length, a separate summary of the brief not longer than five pages; and

(ii) A presentation of the participant's position and arguments in support of that position, including references to the pages of the record or exhibits containing evidence and arguments in support of that position.

(2) Any brief on exceptions must include, in addition to matters required by paragraph (b)(1) of this section:

(i) A short statement of the case;

(ii) A list of numbered exceptions, including a specification of each error of fact or law asserted; and

(iii) A concise discussion of the policy considerations that may warrant full Commission review and opinion.

(3) A brief opposing exceptions must include, in addition to matters required by paragraph (b)(1) of this section:

(i) A list of exceptions opposed, by number; and

(ii) A rebuttal of policy considerations claimed to warrant Commission review.

(c) *Oral argument.* (1) Any participant filing a brief on exceptions or brief opposing exceptions may request, by written motion, oral argument before the Commission or an individual Commissioner.

(2) A motion under paragraph (c)(1) of this section must be filed within the time limit for filing briefs opposing exceptions.

(3) No answer may be made to a motion under paragraph (c)(1) and, to that extent, Rule 213(a)(3) is inapplicable to a motion for oral argument.

(4) A motion under paragraph (c)(1) of this section may be granted at the discretion of the Commission. If the motion is granted, any oral argument will be limited, unless otherwise specified, to matters properly raised by the briefs.

(d) *Failure to take exceptions results in waiver.* (1) *Complete waiver.* If a participant does not file a brief on exceptions within the time permitted under this section, any objection to the initial decision by the participant is waived.

(2) *Partial waiver.* If a participant does not object to a part of an initial decision in a brief on exceptions, any objections by the participant to that part of the initial decision are waived.

(3) *Effect of waiver.* Unless otherwise ordered by the Commission for good cause shown, a participant who has waived objections under paragraphs (d)(1) or (d)(2) of this section to all or part of an initial decision may not raise such objections before the Commission in oral argument or on rehearing.

§ 385.712 Commission review of initial decision in the absence of exceptions (Rule 712).

(a) *General rule.* If no briefs on exceptions to an initial decision are filed within the time established by rule or order under Rule 711, the Commission may, within 10 days after the expiration of such time, issue an order staying the effectiveness of the decision pending Commission review.

(b) *Briefs and argument.* When the Commission reviews a decision under this section, the Commission may require that participants file briefs or present oral arguments on any issue.

(c) *Effect of review.* After completing review under this section, the Commission will issue a decision which is final for purposes of rehearing under Rule 713.

§ 385.713 Request for rehearing (Rule 713).

(a) *Applicability.* (1) This section applies to any request for rehearing of a final Commission decision or other final order, if rehearing is provided for by statute, rule, or order.

(2) For the purposes of rehearing under this section, a final decision in any proceeding set for hearing under Subpart E of this part includes any Commission decision:

(i) On exceptions taken by participants to an initial decision;

(ii) When the Commission presides at the reception of the evidence;

(iii) If the initial decision procedure has been waived by consent of the participants in accordance with Rule 710;

(iv) On review of an initial decision without exceptions under Rule 712; and

(v) On any other action designated as a final decision by the Commission for purposes of rehearing.

(3) For the purposes of rehearing under this section, any initial decision under Rule 708 is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision initiated under Rule 712.

(b) *Time for filing; who may file.* A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.

(c) *Content of request.* Any request for rehearing must:

(1) State concisely the alleged error in the final decision or final order;

(2) Conform to the requirements in Rule 203(a) which are applicable to pleadings; and

(3) Set forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.

(d) *Answers.* (1) The Commission will not permit answers to requests for rehearing.

(2) The Commission may afford parties an opportunity to file briefs or present oral argument on one or more issues presented by a request for rehearing.

(e) *Request is not a stay.* Unless othewise ordered by the Commission, the filing of a request for rehearing does not stay the Commission decision or order.

(f) *Commission action on rehearing.* Unless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied.

§ 385.714 Certified questions (Rule 714).

(a) *General rule.* During any proceeding, a presiding officer may certify or, if the Commission so directs, will certify, to the Commission for consideration and disposition any question arising in the proceeding, including any question of law, policy, or procedure.

(b) *Notice.* A presiding officer will notify the participants of the certification of any question to the Commission and of the date of any certification. Any such notification may be given orally during the hearing session or by order.

(c) *Presiding officer's memorandum; views of the participants.* (1) A presiding officer should solicit, to the extent practicable, the oral or written views of the participants on any question certified under this section.

(2) The presiding officer must prepare a memorandum which sets forth the relevant issues, discusses all the views of participants, and recommends a disposition of the issues.

(3) The presiding officer must append to any question certified under this section the written views submitted by the participants, the transcript pages containing oral views, and the memorandum of the presiding officer.

(d) *Return of certified question to presiding officer.* If the Commission does not act on any certified question within 30 days after receipt of the certification under paragraph (a) of this section, the question is deemed returned to the presiding officer for decision in accordance with the other provisions of this subpart.

(e) *Certification not suspension.* Unless otherwise directed by the Commission or the presiding officer, certification under this section does not suspend the proceeding.

§ 385.715 Interlocutory appeals to the Commission from rulings of presiding officers (Rule 715).

(a) *General rule.* A participant may not appeal to the Commission any ruling of a presiding officer during a proceeding, unless the presiding officer under paragraph (b) of this section, or the motions Commissioner, under paragraph (c) of this section, finds extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or irreparable harm to any person.

(b) *Motion to the presiding officer to permit appeal.* (1) Any participant in a proceeding may, during the proceeding, move that the presiding officer permit appeal to the Commission from a ruling of the presiding officer. The motion must state why prompt Commission review is necessary under the standards of paragraph (a) of this section.

(2) Upon receipt of a motion to permit appeal under subparagraph (a)(1) of this section, the presiding officer will determine, according to the standards of paragraph (a) of this section, whether to permit appeal of the ruling to the Commission. The presiding officer need not consider any answer to this motion.

(3) Any motion to permit appeal to the Commission of an order issued under Rule 604, or appeal of a ruling under paragraph (a) or (b) of Rule 905, must be granted by the presiding officer.

(4) A presiding officer must issue an order, orally or in writing, containing the determination made under paragraph (b)(2) of this section, including the date of the action taken.

(5) If the presiding officer permits appeal, the presiding officer will transmit to the Commission:

(i) A memorandum which sets forth the relevant issues and an explanation of the rulings on the issues; and

(ii) the participant's motion under paragraph (b)(1) of this section and any answer permitted to the motion.

(6) If the presiding officer does not issue an order under paragraph (b)(1) of this section within 15 days after the motion is filed under paragraph (b)(1) of this section, the motion is denied.

(c) *Appeal of a presiding officer's denial of motion to permit appeal.* (1) If a motion to permit appeal is denied by the presiding officer, the participant who made the motion may appeal the denial to the Commissioner who is designated Motions Commissioner, in accordance with this paragraph. For purposes of this section, "Motions Commissioner" means the Chairman or a member of the Commission designated by the Chairman to rule on motions to permit interlocutory appeal.

(2) A participant must submit an appeal under this paragraph not later than 7 days after the motion to permit appeal under paragraph (b) of this section is denied. The appeal must state why prompt Commission review is necessary under the standards set forth in paragraph (c)(5) of this section.

(3) A participant who appeals under this paragraph must file with the appeal a copy of the written order denying the motion or, if the denial was issued orally, the relevant portions of the transcript.

(4) The Motions Commissioner may, in considering an appeal under this paragraph, order the presiding officer or any participant in the proceeding to provide additional information.

(5) The Motions Commissioner will permit an appeal to the Commission under this paragraph only if the Motions Commissioner finds extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or to prevent irreparable harm to a person. If the Motions Commissioner makes no determination within 7 days after filing the appeal under this paragraph or within the time the Motions Commissioner otherwise provides to receive and consider information under

this paragraph, the appeal to the Commission under paragraph (b) of this section will not be permitted.

(6) If appeal under paragraph (b) of this section is not permitted, the contested ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(7) If the Motions Commissioner permits an appeal to the Commission, the Secretary will issue an order containing that decision.

(d) *Commission action.* Unless the Commission acts upon an appeal permitted by a presiding officer under paragraph (b) of this section, or by the Motions Commissioner under paragraph (c) of this section, within 15 days after the date on which the presiding officer or Motions Commissioner permits appeal, the ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(e) *Appeal not to suspend proceeding.* Any decision by a presiding officer to permit appeal under paragraph (b) of this section or by the Motions Commissioner to permit an appeal under paragraph (c) of this section will not suspend the proceeding, unless otherwise ordered by the presiding officer or the Motions Commissioner.

§ 385.716 Reopening (Rule 716).

(a) *General rule.* To the extent permitted by law, the presiding officer or the Commission may, for good cause under paragraph (c) of this section, reopen the evidentiary record in a proceeding for the purpose of taking additional evidence.

(b) *By motion.* (1) Any participant may file a motion to reopen the record.

(2) Any motion to reopen must set forth clearly the facts sought to be proven and the reasons claimed to constitute grounds for reopening.

(3) A participant who does not file an answer to any motion to reopen will be deemed to have waived any objection to the motion provided that no other participant has raised the same objection.

(c) *By action of the presiding officer or the Commission.* If the presiding officer or the Commission, as appropriate, has reason to believe that reopening of a proceeding is warranted by any change in conditions of fact or of law or by the public interest, the record in the proceeding may be reopened by the presiding officer, before the initial decision is served, or by the Commission, after the initial decision is served.

Subpart H—Shortened Procedures

§ 385.801 Waiver of hearing (Rule 801).

In any proceeding in which the Commission is authorized to act after opportunity for hearing, if the parties waive hearing, such opportunity will be deemed to have been afforded by service or publication in the **Federal Register** of notice of the application or other initial pleading, request, or other filing, such notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or petition. Upon the expiration of such period of time, in the absence of a request for hearing, the Commission may forthwith dispose of the matter upon the basis of the pleadings and other submittals and the studies and recommendations of the staff. A party not requesting oral hearing in its pleadings will be deemed to have waived a hearing for the purpose of such disposition, but will not be bound by such a waiver for the purposes of any request for rehearing with respect to an order so entered.

§ 385.802 Noncontested proceedings (Rule 802).

Noncontested proceedings. In any proceeding required by statute to be set for hearing, the Commission, when it appears to be in the public interest and to be in the interest of the parties to grant the relief or authority requested in the initial pleading, and to omit the intermediate decision procedure, may, after a hearing during which no opposition or contest develops, forthwith dispose of the proceedings upon consideration of the pleadings and other evidence filed and incorporated in the record: *Provided,* (a) The applicant or other initial pleader requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission; and (b) no issue of substance is raised by any request to be heard, protest or petition filed subsequent to publication in the **Federal Register** of the notice of the filing of an intial pleading and notice or order fixing of hearing, which notice or order will state that the Commission considers the proceeding a proper one for disposition under the provisions of this subpart. Requests for the procedure provided by this subpart may be contained in the initial pleading or subsequent request in writing to the Commission. The decision of the Commission in such proceeding after noncontested hearing, will be final, subject to reconsideration by the Commission upon request for rehearing as provided by statute.

Subpart I—Commission Review of Remedial Orders

§ 385.901 Scope (Rule 901).

(a) *Proceedings to which applicable.* The provisions of this subpart apply to proceedings of the Commission held in accordance with section 503(c) of the Department of Energy Organization Act (42 U.S.C. 7193(c)) to review orders issued by the Secretary of Energy pursuant to section 503(a) of the Department of Energy Organization Act (42 U.S.C. 7193(c)), and initiated by notices of probable violation, proposed remedial orders, or other formal administrative initiating documents issued on or after October 1, 1977, which are contested by the recipient.

(b) *Relationship to other rules.* (1) Where a provision of this subpart is inconsistent with a provision in any other subpart of this part, the provision in this subpart controls.

(2) Subpart F of this part, except Rule 601, does not apply to proceedings under this subpart.

§ 385.902 Definitions (Rule 902).

For purposes of this subpart:

(a) "Contested order" means the remedial order, interim remedial order for immediate compliance or order of disallowance being contested in proceeding pursuant to this subpart;

(b) "Interim remedial order for immediate compliance" means an interim remedial order for immediate compliance issued pursuant to 10 CFR 205.199D (interim remedial order of immediate compliance);

(c) "Order of disallowance" means an order of disallowance issued pursuant to 10 CFR 205.199E (disallowance);

(d) "Participant"means, as appropriate, the Secretary, the petitioner, and intervenors;

(e) "Petitioner" means a person who has received a remedial order, interim remedial order for immediate compliance, or order of disallowance who notifies the Secretary that he intends to contest the order;

(f) "Remedial order" means a remedial order issued pursuant to 10 CFR 205.199B (remedial orders);

(g) "Secretary" means the Secretary of Energy or his delegate.

§ 385.903 Request for nondisclosure of information (Rule 903).

(a) For purposes of this section, nondisclosure means nondisclosure except as to the participants in the proceeding under conditions provided in paragraphs (d) and (e) of this section.

(b) If any person filing under this subpart claims that some or all of the information contained in a document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of title 18 of the United States Code (18 U.S.C. 1905) (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person:

(1) Must request the presiding officer not to disclose such information, except to the participants in the proceeding under the conditions provided in paragraphs (d) and (e) of this section, which request the person must serve upon the participants in the proceeding;

(2) Must file, together with the document, a second copy of the document from which has been deleted the information for which the person requests nondisclosure and must indicate in the original document that the original document is exempt, or contains information which is exempt, from disclosure;

(3) Must include a statement specifying why the information is privileged or confidential, if the information for which nondisclosure is requested is claimed to come within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information;

(4) Must include a statement specifying the justification for nondisclosure, if the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4).

(c) If the person filing a document does not submit a second copy of the document from which the appropriate information has been deleted, the presiding officer may assume that there is no objection to public disclosure of the document in its entirety.

(d) If information is submitted in accordance with paragraph (b) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with Part 388 of this subchapter and upon request in accordance with paragraph (e) of this section, to participants in the proceeding under the restrictions that the participants may not use or disclose the information except in the context of the proceeding conducted pursuant to this subpart and that the participants must return all copies of the information at the conclusion of the proceeding to the person who submitted the information under paragraph (b) of this section.

(e) At any time, a participant may request the presiding officer to direct a person submitting information under paragraph (b) of this section to provide that information to the participant requesting the information under this paragraph. The presiding officer will so direct if the participant requesting the information agrees:

(1) Not to use or disclose the information except in the context of the proceeding conducted pursuant to this subpart; and

(2) To return all copies of the information, at the conclusion of the proceeding, to the person submitting the information under paragraph (b) of this section.

(f) If the information contained in the record of prior proceedings submitted by the Secretary under Rule 906(a)(1), is determined by the Secretary to be exempt from disclosure, the information shall not be disclosed except:

(1) As provided in the Freedom of Information Act, in accordance with Part 388 of this subchapter, and

(2) Upon request in accordance with paragraph (g) of this section, to participants in the proceeding under the restrictions that the participants may not use or disclose the information except in the context of the proceeding conducted pursuant to this section and that the participants must return all copies of the information at the conclusion of the proceeding to the presiding officer.

(g) At any time, a participant may request the presiding officer to direct that the complete record of prior proceedings, including information determined by the Secretary to be exempt from disclosure, be made available to that participant. The presiding officer will so direct if the participant requesting the complete record agrees:

(1) Not to use or disclose the information determined to be exempt except in the context of the proceeding conducted pursuant to this subpart, and

(2) To return all copies of the information determined to be exempt to the presiding officer at the conclusion of the proceeding.

§ 385.904 Commencement of proceeding (Rule 904).

(a) Except as provided in paragraph (b) of this section, the proceeding pursuant to this subpart will be commenced by filing with the Secretary of the Commission, for the Commission, of a written notice by the Secretary that the Secretary has been notified by a petitioner that the petitioner has filed a notice of intent to contest an order reviewable under this subpart. At the same time, the Secretary will serve a copy of the contested order upon other participants in the prior proceedings and upon persons denied intervention in the prior proceedings, and will certify to the Commission that such service has been made, stating the names and ;addresses of persons served.

(b) The proceeding pursuant to this subpart with respect to an interim remedial order for immediate compliance will be commenced by a petitioner's filing with the Secretary of the Commission, for the Commission, and serving on other participants in the prior proceedings, if any, a notice of petition for review of an interim remedial order for immediate compliance pursuant to 10 CFR 205.199D(i)(1) (interim remedial order of immediate compliance). The Commission will defer consideration of the merits of the order until a final remedial order is issued by the Secretary.

(c) Upon receipt of notice from the Secretary under paragraph (a) of this section, or upon receipt of a notice of a petition for review by the petitioner under paragraph (b) of this section, the Commission or its designee will designate a presiding officer for the proceeding, and the Commission or its designee will notify participants in the prior proceedings and persons denied intervention in the prior proceedings of such designation.

§ 385.905 Stay of contested order (Rule 905).

(a) Upon the filing of the notice with the Commission by the Secretary under paragraph (a) of Rule 904 (commencement of proceedings), or by the petitioner under paragraph (b) of such rule, the contested order will be automatically stayed pending review pursuant to this subpart unless and until, upon request of the Secretary or other participant, the presiding officer finds that the public interest requires immediate compliance with the contested order.

(b) The Secretary or other participants may at any time, prior to the hearing under Rule 909 (hearing), or if there is no hearing, prior to the issuance of a proposed order under Rule 913 (proposed order), file a petition requesting that the contested order not be stayed, or that the stay be lifted, and setting forth the legal and factual basis for the request.

(c) The presiding officer may request a written statement of the views of participants regarding whether the contested order should be stayed or continue to be stayed and may convene an expedited hearing or conference on a petition under paragraph (b) of this section.

(d) The presiding officer may grant the petition requesting immediate compliance where he finds that the public interest so requires and will notify the participants of the determination.

(e) If the presiding officer does not grant the petition under paragraph (b) of this section within 10 days after it is filed, the petition is denied. Prior to the expiration of the 10-day period the presiding officer may extend the period for decision for up to 7 days. At the end of the extension, the petition, if not granted, is denied.

(f) If the petition under paragraph (b) of this section is denied, the presiding officer will notify the participants of such denial.

(g) A grant or denial of petition under paragraphs (b) or (c) of this section may be appealed, within 10 days after the grant or denial, to the Commission in accordance with Rule 715 (relating to interlocutory appeals). The contested order will remain stayed pending the Commission's disposition of the appeal.

§ 385.906 Pleadings (Rule 906).

(a) *By the Secretary.* (1) Within 20 days after the filing of notice by the Secretary under Rule 904(a) (commencement of proceedings), the Secretary:

(i) Will file with the Secretary of the Commission for the presiding officer two certified copies of the entire record developed in prior proceedings on the contested order. One copy will be complete and will be a part of the record upon which the order of the Commission is based, and will be available to the participants subject to the conditions set forth in Rule 903 (f) and (g) (nondisclosure of information); the second copy will have had deletions made of information which the Secretary has determined to be confidential or not subject to disclosure;

(ii) Will file with the Secretary for the presiding officer a copy of the contested order; and

(iii) May, in addition, elect to file a statement setting forth the factual elements of the alleged violation, which statement the Secretary will serve on all participants in the proceeding.

(2) If the petitioner requests permission to raise new facts or issues pursuant to Rule 907(a) (new facts and issues), the Secretary may file, within 10 days after the filing of the petitioner's answer, a reply responding to the petitioner's request to raise new facts or issues. In the reply, the Secretary may also request the permission of the presiding officer to raise new facts or issues under the criteria set forth in Rule 907(b) (new facts and issues) and to conduct discovery relating to the new facts or issues he may raise pursuant to Rule 907(b) (new facts and issues). Failure by the Secretary to request permission to raise new facts or issues or to conduct discovery in this reply constitutes a waiver of the opportunity to do so at a later time in the proceeding.

(3) The Secretary will file with the Secretary of the Commission, for the presiding officer, and serve upon other participants in the proceedings, a brief in support of the affirmative case, which will set forth:—

(i) The elements of the alleged violation, including references to the authorities upon which the Secretary relies, including but not limited to regulations, rulings, interpretations and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission; and

(ii) A complete statement of the factual and legal basis of the contested order.

(4) The Secretary's brief will be filed according to the following time period appropriate to the particular proceeding:

(i) If no participant (including persons requesting intervention) has requested permission to raise new facts or issues or to conduct discovery pursuant to paragraphs (a)(2), (b)(2), (c)(7), and (c)(8) of this section, within 20 days after the filing of the petitioner's answer under paragraph (b)(1) of this section;

(ii) If the presiding officer has determined, under Rule 908(d) (discovery) that no discovery shall be permitted, within 20 days after the presiding officer's determination under such rule;

(iii) If discovery is permitted under Rule 908(d) (discovery) within 20 days after the conclusion of the time period set for discovery under such rule;

(b) *By the petitioner.* (1) Within 15 days after the filing by the Secretary under paragraph (a)(1) of this section, the petitioner must file with the Secretary of the Commission, for the presiding officer, and serve upon the Secretary and other participants in the proceedings, an answer to the contested order admitting or denying each of the Secretary's findings in the contested order and setting forth affirmative defenses, if any.

(2) In the answer, the petitioner may:

(i) Contest any part of the record which the Secretary certified to the presiding officer under paragraph (a)(1)(i) of this section;

(ii) Request permission to raise new facts or issues not raised in the prior proceedings if the new facts or issues meet the criteria set forth in Rule 907(a) (new facts and issues); and

(iii) Request permission to conduct discovery, subject to criteria provided in Rule 908(a) (discovery). Failure by the petitioner to contest the record or to request permission to raise new facts or issues or to conduct discovery in this answer constitutes a waiver of the opportunity to do so at a later time in the proceeding.

(3) Within 15 days after filing of the Secretary's brief under paragraph (a)(3) of this section, the petitioner shall file with the Secretary of the Commission, for the presiding officer, and serve upon other participants in the proceeding, a brief stating fully the objections to the contested order, including references to the authorities upon which the petitioner relies, including but not limited to regulations, rulings, interpretations, and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission.

(c) *By interveners.* (1) A person qualifying under paragraph (c)(2) of this section, may request the presiding officer to permit intervention in the proceeding under this subpart in accordance with the procedures described in this paragraph.

(2) A motion to intervene may be filed by any person claiming:

(i) An interest which may be directly affected and which is not adequately protected by existing parties and as to which the persons requesting intervention may be bound by the Commissions action in the proceeding; or

(ii) Any other interest of such nature that participation by the person requesting intervention may be in the public interest.

(3) A motion to intervene must set forth clearly and concisely the facts from which the nature of the requester's alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the intervener in the proceeding, so as fully and completely to advise the participants and the presiding officer as to the specific issues of fact or law to be raised or controverted, by admitting, denying, or otherwise answering, specifically and in detail, each material allegation of fact or law raised or controverted, including references to the authorities upon which the requester relies, including, but not limited to, regulations, rulings, interpretations, and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission.

(4) Motions to intervene may be filed with the Secretary of the Commission,

for the presiding officer, within 20 days after the Secretary's commencement of the proceeding under Rule 904 (commencement of proceedings) unless, in extraordinary circumstances and for good cause shown, the presiding officer authorizes a late filing. A person requesting intervention must serve the motion to intervene on the participants in the proceeding at the same time the request is filed with the Secretary of the Commission.

(5) A participant in the proceedings may file an answer to a motion to intervene. Failure to object constitutes a waiver of any objection to the granting of such request. If made, answers must be filed within 15 days after the filing of the request to intervene.

(6) After expiration of the time for filing answers to requests to intervene or default thereof, as provided in paragraph (c)(5) of this section, the presiding officer will grant or deny such request, in whole or in part, or may, if found to be appropriate, authorize limited participation. The presiding officer will serve the determination on a motion to intervene upon the participants in the proceeding and upon the person requesting intervention. If the presiding officer denies a motion for intervention, the person requesting intervention may submit comments to the Commission under Rule 913(c) (proposed order) requesting the Commission to permit the intervention under the standards set forth in paragraph (c)(2) of this section.

(7) A person filing a motion to intervene, may request therein the permission of the presiding officer to raise new facts or issues not raised in the prior proceedings on the contested order, if the new facts or issues meet the criteria set forth in Rule 903(c) (request for nondisclosure of information). Failure by the person requesting permission to intervene to request permission to raise new facts or issues in the motion to intervene constitutes a waiver of the opportunity to do so at a later time in the proceeding.

(8) A person filing a motion to intervene may request the permission of the presiding officer to conduct discovery, subject to the conditions set forth in Rule 908(c) (discovery). Failure by the person requesting permission to intervene to request permission to conduct discovery in the motion to intervene constitutes a waiver of the opportunity to do so at a later time in the proceeding.

§ 385.907 New facts and issues (Rule 907).

(a) *Raised by the petitioner.* In the answer, as provided in Rule 906(b)(2)(ii) (new facts and issues) the petitioner may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1)(i) Are facts or issues that were not known and could not, with the exercise of due care, have been known to the petitioner at the time they would otherwise have been raised during the prior proceedings;

(ii) Are facts or issues that the petitioner was unable to raise at the time they could have been raised during the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or

(iii) Are facts or issues that the petitioner was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings; and

(2) Are necessary for a full and true disclosure of the facts.

(b) *Raised by the Secretary.* In the reply under Rule 906(a)(2) (pleadings), the Secretary may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1) Are necessary to support the Secretary's case as a result of new facts or issues raised by the petitioner under Rule 906(b)(2)(ii) (pleadings) and this section; and

(2) Are necessary for a full and true disclosure of the facts.

(c) *Raised by interveners.* In the motion to intervene under Rule 906(c)(3) (pleadings) and this section, an intervener may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1) If the intervener did not participate in the prior proceeding, meet the criteria of paragraphs (a)(1) and (a)(2) of this section; or

(2) If the intervener participated in the prior proceedings, are:

(i)(A) Facts or issues that were not known and could not, with the exercise of due care, have been known to the intervener at the time they would otherwise have been raised during the prior proceedings;

(B) Facts or issues that the intervener was unable to raise at the time they could have been raised during the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or

(C) Facts or issues that the intervener was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings; and

(ii) Are necessary for a full and true disclosure of the facts.

(d) *Determination by the presiding officer.* The presiding officer will determine whether to grant or deny, in whole or in part, the requests of the participants to raise new facts or issues and will serve those determinations on the participants in the proceeding.

§ 385.908 Discovery (Rule 908).

(a) *By petitioner.* In the answer under Rule 906(b)(2) (pleadings), the petitioner may request permission of the presiding officer to conduct discovery, where such discovery:

(1) Relates to new facts or issues raised in accordance with Rule 907(a) (new facts and issues); or

(2)(i) Was not permitted in the prior proceedings on the contested order due to erroneous adverse procedural rulings; and

(ii) Is necessary for a full and true disclosure of the facts.

(b) *By the Secretary.* In the reply under Rule 906(a)(2) (pleadings), the Secretary may request permission of the presiding officer to conduct discovery where such discovery relates to new facts or issues raised in accordance with Rule 907(b) (new facts and issues).

(c) *By interveners.* In a motion to intervene under Rule 906(c)(8) (pleadings) an intervener may request permission of the presiding officer to conduct discovery where such discovery:

(1) Relates to new facts or issues raised in accordance with Rule 907(c) (new facts and issues); or

(2) If the intervener participated in the prior proceedings,

(i) Such discovery was not permitted in prior proceedings on the contested order due to erroneous adverse procedural rulings; and

(ii) Such discovery is necessary for a full and true disclosure of the facts.

(d) *Determinations by the presiding officer.* The presiding officer will determine whether to grant or deny, in whole or in part, the requests of the participants for discovery and will set a time limit within which discovery must be conducted.

(e) *Interrogatories.* In addition to discovery devices applicable to this subpart under other subparts of this part, participants may conduct discovery by means of written interrogatories under conditions determined by the presiding officer.

§ 385.909 Hearing (Rule 909).

(a) Participant may file, within 10 days after filing of the petitioner's brief under Rule 906(b)(3) (pleadings), a request for a hearing or a motion for the opportunity for cross-examination including the reasons why cross-examination is necessary for a full and true disclosure of the facts.

(b) If a participant has filed a request for a hearing, the presiding officer will grant the request for a hearing. The hearing will include an opportunity for the submission of oral or documentary evidence and oral arguments.

(c) The presiding officer may at any time, convene a hearing.

(d) As soon as practicable after receiving a request for hearing under paragraph (a) of this section or after determination that a hearing will be held under paragraph (c) of this section, the presiding officer will give notice to the participants of the time and place of the hearing.

(e) The presiding officer will determine the issues to be resolved in the proceeding, may specify the time available for oral argument, and will give notice thereof to the participants. The presiding officer may require additional information from the participants, and may convene a prehearing conference for the purpose of determining the issues or the nature of the proceeding to be held.

(f) If at any time prior to the issuance of a proposed order pursuant to Rule 913 (proposed order), with or without a motion of a participant, the presiding officer determines that it is necessary for a full and true disclosure of the facts, the presiding officer may order that the participants be afforded the opportunity for cross-examination on any facts or issues raised in the proceeding.

§ 385.910 Conduct of the hearing (Rule 910).

The presiding officer is responsible for conduct of the hearing, including the order of procedure.

§ 385.911 Burden of proof (Rule 911).

(a) The Secretary has the burden of going forward and must sustain the burden of proof with respect to disputed elements of affirmative case of the Secretary.

(b) The proposed order under Rule 913 (proposed order) will be based upon a preponderance of the evidence.

§ 385.912 Proposed findings of fact, conclusions of law, and comments (Rule 912).

(a) Within 10 days after the conclusion of the hearing, or, if no hearing is held, within 20 days after the filing of the petitioner's brief under Rule 906(b)(3) (pleadings), a participant may file with the Secretary of the Commission for the presiding officer, and serve upon the other participants proposed findings of fact and conclusions of law, comments in support thereof and any objections with respect to procedural rulings of the presiding officer.

(b) Within 10 days after the filing of proposed findings of fact and conclusions of law under paragraph (a) of this section, a participant may file, and must serve on other participants, a reply thereto.

§ 385.913 Proposed order (Rule 913).

(a) After the conclusion of the hearing and after the filings under Rule 912(a) and (b), (proposed findings of facts, conclusions of law, and comments) the presiding officer will issue a decision and proposed order based on findings of fact affirming, modifying, or vacating the contested order or directing other appropriate relief. The proposed order will be based on the entire record before the presiding officer, including the record of prior proceedings certified by the Secretary.

(b) The presiding officer will certify and file with the Secretary of the Commission, for the Commission, a copy of the record in the proceedings, including the proposed order.

(c) Participants may file, within 15 days of issuance of the proposed order of the presiding officer, with the Secretary of the Commission, for the Commission, written comments on any rulings of the presiding officer and the decision and proposed order.

§ 385.914 Commission action (Rule 914).

The Commission will upon consideration of the entire record and the proposed order, issue a final order affirming, modifying, or vacating the contested order or directing other appropriate relief. The Commission will serve the final order on the participants.

§ 385.915 Ex parte communications (Rule 915).

The provisions of Rule 2201 (*ex parte* communications) apply to proceedings pursuant to this subpart, commencing at the time the Secretary issues a proposed remedial order under 10 CFR 205.192, an interim remedial order for immediate compliance under 10 CFR 205.199D, or a proposed order of disallowance under 10 CFR 205.199E, as if proceedings were contested on-the-record proceedings pending before the Commission.

§ 385.916 Withdrawal of petition for review (Rule 916).

(a) At any time, including after a hearing has been held or convened, the petitioner may submit to the presiding officer, and serve on other participants in the proceeding, a withdrawal of the petition for review of the contested order. The presiding officer will thereupon issue, and serve the participants, an order terminating the proceeding conducted pursuant to this subpart, which order will be effective 10 days after issuance.

(b) Termination of the proceeding under paragraph (a) of this section, may be appealed to the Commission, within 10 days after issuance of the termination order, except that if the Commission does not act on an appeal within 30 days, it is deemed denied. The termination order is stayed pending the appeal. If the Commission rescinds the termination order, the proceeding will continue in accordance with this subpart.

§ 385.917 Sanctions (Rule 917).

Whenever it appears to the Commission that a person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of rule, regulation, or order, made or imposed by the Commission or the presiding officer under this subpart, it may bring an action in the proper court of the United Statas to enjoin that act or practice and to enforce compliance with the order, and upon a proper showing, a permanent or temporary injunction or decree or restraining order will be granted without bond. The Commission may transmit such evidence as may be available concerning that act or practice to the Attorney General, who may institute the necessary criminal proceedings.

Subpart J—Commission Review of Adjustment Request Denials

§ 385.1001 Scope (Rule 1001).

(a) *Applicability.* This subpart applies to proceedings of the Commission held in accordance with section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 719(b), to review orders issued by the Secretary of Energy pursuant to section 504(a) of the Department of Energy Organization Act denying, in whole or in part, requests for adjustments.

(b) *Relationship to other rules.* When a provision of this subpart is inconsistent with a provision of any other subpart of this part, the former provision controls.

§ 385.1002 Definitions (Rule 1002).

For purposes of this subpart:

(a) "Commission" includes an officer or employee designated as presiding officer in a proceeding under this subpart.

(b) "Petitioner" means a person who is aggrieved or adversely affected by a contested order, as defined in this section, and who requests a review, pursuant to this subpart, by the Commission of the denial by the Secretary.

(c) "Secretary" means the Secretary of Energy or his delegate.

(d) "Contested order" means the decision or order issued by the Secretary denying, in whole or in part, a request for adjustment.

(e) "Participant" means, as appropriate, the petitioner, the Secretary, or an intervener.

§ 385.1003 Request for nondisclosure of information (Rule 1003).

(a) For purposes of this section, nondisclosure means nondisclosure except to the participants in the proceedings and under the conditions as provided in paragraph (e) of this section.

(b) If an person filing under this subpart claims that some or all of the information contained in a document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, the person:

(1) Will request the presiding officer not to disclose such information, except to the participants in the proceedings and under the conditions as provided in paragraph (e) of this section, which request the person must serve upon the participants in the proceedings;

(2) Will file, together with the document, a second copy of the document from which has been deleted the information for which the person requests nondisclosure and must indicate in the original document that the original document is confidential or contains confidential information;

(3) If the information is claimed to come within the exception in 5 U.S.C. 552(b)(4), for trade secrets and commercial or financial information, it must include a statement specifying why the information is privileged or confidential;

(4) If the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4), it must include a statement specifying the justification for nondisclosure.

(c) If the person filing a document does not submit a second copy of the document from which the appropriate information has been deleted, the presiding officer may assume that there is no objection to public disclosure of the document in its entirety.

(d) A participant in the proceedings who opposes a request for nondisclosure under paragraph (b) of this section must file, within 10 days of the receipt of a copy of the request for nondisclosure, with the presiding officer, and serve on the other participants, a statement specifying the reasons that the material is not exempt from disclosure.

(e) The presiding officer will make an independent determination as to a request filed under this section and will serve that determination upon the participants in the proceedings. If a request for nondisclosure is denied, in whole or in part, the requesting person will be given notice thereof and will be afforded an opportunity to respond, no less than 5 days prior to public disclosure. If the request for nondisclosure is granted, in whole or in part, the presiding officer will issue an order stating that the information will not be disclosed except, upon request, to the participants in the proceedings, that the participants may not use or disclose the information, except in the context of the proceedings conducted pursuant to this subpart, and that upon conclusion of the proceedings, the participants return the information to the presiding officer.

§ 385.1004 Commencement of proceedings (Rule 1004).

(a) A petitioner commences proceedings, pursuant to this subpart, by filing with the Commission and serving upon the Secretary and any other participants in prior proceedings on the contested order a petition for review, which must contain:

(1) A copy of the decision or order denying, in whole or in part, request for adjustment (the contested order); and

(2) A complete statement of the petitioner's objections factual or legal to the contested order, including references to all authorities upon which the petitioner relies including but not limited to regulations, rulings, interpretations, and decisions on exceptions and appeals issued by the Department or its predecessor agencies and precedents established by the Commission.

(b) A petition for review must be filed within 30 days of issuance by the Secretary of the order to be contested pursuant to this subpart.

(c) Upon receiving a petition for review, the Commission or its designee will designate a presiding officer for the proceedings.

§ 385.1005 Replies (Rule 1005).

(a) *By the Secretary.* Within 15 days of service of the petition for review, the Secretary:

(1) Will file with the Commission a certified copy of the complete record developed in prior proceedings on the contested order, which will be available at the Commission for inspection by the participants; and

(2) Will file with the Commission and serve on the petitioners and the other participants in prior proceedings on the contested order, a reply to the petition for review stating fully his or her position supported by arguments to the petition for review.

(b) *By other participants.* A person who participated in prior proceedings on the contested order may be a participant in the proceedings pursuant to this subpart and may make filings and submittals as determined by the presiding officer.

(c) *By interveners.* A person who was denied the opportunity to participate in prior proceedings on the contested order or who is aggrieved or adversely affected by the contested order may move to intervene in accordance with Rule 214 (intervention). In order that the motion be granted, the movant must show, as appropriate, that denial of participation in prior proceedings was wrongful or why he or she is aggrieved or adversely affected by the contested order. If the presiding officer grants the motion, the person submitting the motion to intervene may make filings and submittals as determined by the presiding officer.

(d) A participant may request interim relief in a proceeding pursuant to this subpart.

(e) The presiding officer may require such other filings by the participants as he or she deems necessary in the conduct of the proceedings.

§ 385.1006 Request for hearing (Rule 1006).

A participant may file with the Commission and serve on the other participants a request for hearing, which will be deemed granted.

§ 385.1007 Presiding officer (Rule 1007).

(a) The presiding officer will determine the issues to be resolved in the proceeding and will give notice thereof to the participants. The presiding officer may require additional information from the participants and convene a prehearing conference for the purpose of determining the issues to be considered at a hearing, if one is to be held. The presiding officer may also specify the time available for oral argument and determine the nature of the hearing to be held.

(b) The presiding officer may determine, upon request by a participant, whether to permit the participant to raise new facts or issues not raised in prior proceedings on the contested order. Such a request may be granted if the facts or issues are facts or issues that:

(1)(i) Were not known and could not, with the exercise of due care, have been known to the participant at the time they could have been raised in prior proceedings; or

(ii) Are facts or issues that the participant was not permitted to raise in prior proceedings on the contested order due to an adverse procedural ruling alleged to be erroneous; and

(2) Are necessary for a full and true disclosure of the facts.

§ 385.1008 Hearings (Rule 1008).

As soon as practicable, after receiving any request for hearing and all the pleadings under Rules 1004 (commencement of proceedings) and 1005 (replies), the presiding officer will give notice to the participants as to the time and place of the hearing.

§ 385.1009 Proof (Rule 1009).

(a) A participant seeking relief from the Secretary's denial of a request for adjustment has the burden of demonstrating the participant's entitlement to the relief sought.

(b) Relief will be granted under this subpart if a participant demonstrates, by a preponderance of the evidence, that such relief is warranted.

§ 385.1010 Proposed order (Rule 1010).

(a) As soon as practicable, after receipt of all the pleadings or after the hearing, if one is held, the presiding officer will issue, and serve upon the participants in the proceedings, a proposed order based upon findings of fact, affirming, modifying or vacating, the contested order or directing other appropriate relief.

(b) The presiding officer will certify and file with the Office of the Secretary of the Commission, for the Commission, a copy of the record in the proceeding, including the proposed order.

(c) Participants may file, within 15 days of service of the proposed order, with the Secretary of the Commission, for the Commission, written comments on the proposed order.

§ 385.1011 Final order (Rule 1011).

The Commission will issue a final order, affirming, modifying or vacating the contested order or directing other appropriate relief.

§ 385.1012 Ex parte communications (Rule 1012).

The provisions of Rule 2201 (*ex parte* communications) apply to proceedings pursuant to this subpart, commencing at the time a petitioner files a petition for review under Rule 1004 (commencement of proceedings), as if such proceedings were contested on-the-record proceedings pending before the Commission.

Subpart K—Petitions for Adjustments Under the NGPA

§ 385.1101 Applicability (Rule 1101).

(a) *Proceedings to which applicable.* Except as provided in paragraph (b) of this section, this subpart applies to proceedings of the Commission held in accordance with:

(1) Section 502(c) of the NGPA to provide for adjustments of:

(i) Commission rules, and

(ii) Commission orders having the applicability and effect of a rule as defined in section 551(4) of title 5 of the United States Code (5 U.S.C. 551(4)) and issued under the NGPA, except orders issued under sections 301, 302, and 303 of the NGPA; and

(2) Section 206(d) of the NGPA to provide for exemptions for industrial boiler fuel facilities from incremental pricing provisions of the NGPA under § 282.206 of this chapter.

(b) This subpart does not apply to:

(1) Proceedings wherein the Commission by order grants an adjustment on its own motion or;

(2) Proceedings for which the Commission by order waives the provision of this subpart.

(c) *Relationship to other rules.* (1) Where a provision of this subpart is inconsistent with a provision in another subpart of this part, the former provision controls.

(2) When provisions of other subparts of this part require Commission action, such provisions as applied under this subpart shall be deemed to require staff action. This subpart does not require a hearing to which subpart E applies.

§ 385.1102 Definitions (Rule 1102).

For purposes of this subpart:

(a) "Adjustment" means an order issued by Staff under Rule 1109 (orders):

(1) Granting relief from an order or rule issued by the Commission under the NGPA,

(i) Including exceptions, exemptions, modification, and recisions of rules and orders have the effect of rule as defined in section 551 of title 5 of the United States Code (5 U.S.C. 551(4)) and issued under the NGPA; but

(ii) Excluding requests for just and reasonable rates under sections 104, 106, and 109 of the NGPA; and

(2) Granting an exemption, in whole or in part, for incrementally priced industrial boiler fuel facilities from section 201 of the NGPA, under the authority of section 206(d) of the NGPA and § 282.206 (industrial boiler fuel facilities exemption);

(b) "Petitioner" means a person who files a petition for adjustment under paragraph (c) of this section;

(c) "Petition" means a petition for adjustment filed under Rule 1103 (commencement of adjustment proceedings);

(d) "NGPA" means the Natural Gas Policy Act of 1978;

(e) "Party" means, with respect to a particular petition for adjustment, the person making the petition, and intervener, or a person who has moved to intervene but whose motion has not been granted or denied under Rule 1105(b) (intervention in adjustment proceedings).

(f) "Staff" means the Director of the Office of Producer and Pipeline Regulation, or a person who is designated by the Director and who is an employee of the Commission.

§ 385.1103 Commencement of proceeding (Rule 1103).

A person commences a proceeding for an adjustment by filing a petition for adjustment with the Commission.

§ 385.1104 Initial petition (Rule 1104).

(a) *Content.* (1) The petition must contain:

(i) A full and complete statement of the relevant facts, including the documentary support pertaining to the circumstances, act or transaction that is the subject of the petition;

(ii) A complete statement of the business reasons why the relief should be granted and the business consequences that will result if the relief is denied; and

(iii) A statement specifying how the denial of relief will cause the applicant to suffer special hardship, inequity, or unfair distribution of burdens.

(2) The petition must contain a complete statement of the legal basis of the relief requested including citations to authorities relied upon to support the petition.

(3) The petition must specify the exact nature of the relief sought.

(4) The certificate of service required under Rule 2010(h) (certificate of service) must indicate the names and addresses of all persons served.

(5) The petition must include a proposed notice of the adjustment proceeding which must state the petitioner's name, the rule or order under the NGPA of which an adjustment is sought, the date of the petition, and a brief summary of the relief requested. The proposed notice must be in the following form:

United States of America

Federal Energy Regulatory Commission

(Name of Petitioner) ————————

Docket No. ————————

Notice of Petition for Adjustment

On (date petition was filed), (name of petitioner) filed with the Federal Energy Regulatory Commission a petition for an adjustment under the rule or order under the NGPA of which an adjustment is sought, wherein (name of petitioner) sought (relief requested).

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

(b) *Service.* (1) The petitioner must serve a copy of the petition, or a copy from which confidential information has been deleted in accordance with Rule 1112 (requests for confidential treatment) on each person who is reasonably ascertainable by the petitioner as a person who may suffer direct and measurable economic impact if the relief is granted.

(2) Notwithstanding paragraph (b)(1) of this section, if a petitioner determines that compliance with such paragraph of this section would be impracticable, the petitioner must:

(i) Comply with the requirements of such paragraph with regard to those persons whom it is reasonable and practicable to serve; and

(ii) Include with the petition a description of the persons or class or classes of persons to whom notice was not sent.

(3) Staff may require the petitioner to provide alternate or additional service and will cause notice of the application to be published in the **Federal Register**.

§ 385.1105 Intervention (Rule 1105).

(a) A motion to intervene in an adjustment proceeding, in conformity with Rule 214 (intervention) must be filed within 15 days after publication in the **Federal Register** of notice of the petition for adjustment.

(b) A motion to intervene is granted unless it is denied by staff within 75 days after the day on which it was filed.

§ 385.1106 Other filings (Rule 1106).

(a) *Interveners.* Responses to the petition must be filed at the time the motion to intervene is filed.

(b) *Petitioner.* The petitioner may respond to filings of another party within 15 days after service of such filings. Amended pleadings may be filed under Rule 215 (amendments) if the petitioner discovers facts unavailable at the time the initial petition was filed, or if such pleadings are requested or permitted by Staff under Rule 1107 (evaluations).

§ 385.1107 Evaluations (Rule 1107).

(a) Staff will consider the filings made in connection with the petition for adjustment. Staff may also consider information received under paragraph (b) of this section. If Staff obtains information under paragraphs (b)(1) or (b)(3) of this section and relies upon such information, the petitioner will be advised of such information and will be given 15 days to respond to such information.

(b)(1) Staff may initiate an investigation of any statement in a petition and use in its evaluation of any relevant fact obtained in such an investigation.

(2) Staff may request additional information from the petitioner.

(3) Staff may solicit and accept submissions from interveners or third persons relevant to the petition.

(4) Staff may consider information obtained in informal conferences held under Rule 1111 (adjustment conferences).

§ 385.1108 Criteria (Rule 1108).

(a) Staff will grant a petition where there are sufficient facts to make a determination on the merits and where Staff determines that an adjustment is necessary to prevent or alleviate:

(1) Special hardship;

(2) Inequity; or

(3) An unfair distribution of burdens.

(b) When there are not sufficient facts to make a determination on the merits, the Staff may dismiss the petition without prejudice; except, that when Staff has requested additional material information under Rule 1107 (adjustment evaluations) of this section and the petitioner has failed to provide the requested information, Staff may deny the petition.

§ 385.1109 Orders (Rule 1109).

(a) Staff will issue a decision and an order granting or denying the petition in whole or in part. The order will articulate the basis for the decision, noting any dispute with the factual assertions of the petitioner.

(b) In addition to service otherwise required under this subpart, Staff will serve the decision and order on the persons who sought and were denied an opportunity to participate in the proceeding under this subpart.

(c) If Staff fails to issue an order granting or denying the petition for adjustment within the determination period, the petitioner may treat the application as having been denied and may, within 30 days after the close of the determination period, request review thereof as prescribed in Rule 1110(a) (review of denials). For purposes of this paragraph, "determination period" means the 150 days commencing with the filing of the petition, unless Staff for good cause extends such period.

(d) An order of Staff issued under paragraph (a) of this section granting an adjustment, in whole or in part, is final 30 days after it is issued, unless, during such 30-day period:

(1) A petition for review is filed under Subpart J of this subchapter in accordance with Rule 1110(a) (review of denials) in which case the order is final when the review process under Subpart J has been completed; or

(2) The Commission directs that the order be reviewed under Subpart J in accordance with Rule 1110(b), in which case the order is final when the review process under Subpart J has been completed unless the Commission expressly states that the order shall be effective pending review proceeding.

§ 385.1110 Review of initial decision and order for adjustment (Rule 1110).

(a) *General rule.* (1) Within 30 days after the issuance by Staff of an order granting or denying, in whole or in part, a petition for adjustment relief under this subpart, a person may file a petition for Commission review of that order in accordance with Subpart J of this subchapter, if the person:

(i) Is aggrieved or adversely affected by that order; and

(ii) Participated, or sought and was denied an opportunity to participate, in the proceeding under this subpart.

(2) Except as otherwise provided in this paragraph, the provisions of Subpart J shall apply to Commission review of both grants and denials of adjustment petitions under this subpart.

(i) "Contested order" in Subpart J means the order issued by Staff granting or denying, in whole or in part, a petition for adjustment under this subpart.

(ii) "Staff" is substituted for "Secretary" in Subpart J. With respect to review of an order denying a petition for adjustment under this subpart, Staff may participate in the proceeding in the same manner prescribed for the Secretary in Rule 1005 (replies in reviews of adjustment denials). With respect to review of an order granting a petition for adjustment under this subpart, Staff may not participate in the proceeding except to the extent necessary to file the record as prescribed in Rule 1005(a)(1) (replies in reviews of adjustment denials). With respect to review of an order granting in part and denying in part a petition for adjustment under this subpart, Staff may participate as prescribed in Rule 1005(a)(1) (replies), only if a petition for review has been filed which specifically seeks review of the portion of the order denying the petition for adjustment.

(3) A motion to intervene under Rule 1005(b) (interventions in adjustment proceedings) may be filed only by a person who sought and was denied an opportunity to participate, in the proceeding under this section.

(4) There is no exhaustion of administrative remedies until a request for review is filed under Subpart J in accordance with this section and the review process under Subpart J is completed by the issuance of an order granting or denying, in whole or in part, the relief requested.

(b) *Review initiated by the Commission.* Within 30 days after the issuance by Staff of an order granting, in whole or in part, a petition for adjustment relief under this subpart, the Commission may direct that the order be reviewed in a proceeding which, insofor as practicable, will conform to proceedings under Subpart J. The order directing such review will specify the manner in which such proceeding will be conducted and the extent to which Subpart J apply.

(c) *Separation of functions.* Any person who participated in the proceeding to review the grant or denial of that adjustment under this Rule as a witness or counsel may not advise the Commission concerning the review of the grant on denial of that adjustment.

§ 385.1111 Conferences (Rule 1111).

Staff may direct that a conference be convened. The conference will be conducted by Staff in accordance with procedures Staff determines will most expeditiously further the purpose of the conference. A conference will be convened only after actual notice of the time, place and nature of the conference is provided to the parties. All parties may attend the conference. However, if a party wishes to present confidential information at the conference, Staff may exclude the other parties from that part of the conference when the confidential information is presented.

§ 385.1112 Requests for confidential treatment (Rule 1112).

(a) If a person filing a document under this subpart claims that some or all of the information contained in a document is exempt from the mandatory disclosure requirements of the Freedom of Information Act, or is otherwise exempt by law from public disclosure, that person may request confidential treatment of such information. At the time request is made for confidential treatment, the person must submit a copy of the document which contains the confidential information and two copies of the document which exclude the information for which confidential treatment is requested. The request for confidential treatment must describe the information deleted and specify the grounds for the claim for confidential treatment. The service requirements of Rule 2010 (service) are deemed satisfied if a copy of the document with the confidential information deleted is served.

(b) If a determination to disclose the information is made under Part 388 (public information and requests), the person who has requested confidential treatment will be given notice thereof and will be afforded no less than 10 days to respond to such determination before the information is disclosed.

§ 385.1113 Interim relief (Rule 1113).

(a) The petitioner may at any time file a request for interim relief in a proceeding under this subpart, setting forth the legal and factual basis for the request. Service of such request must comply with the service requirements set forth in Rule 1104(b) (initial petition of adjustment request) and must be made on each person described in such rule as well as on any other party to the proceeding.

(b) The grounds for granting interim relief are:

(1) A showing that irreparable injury will result in the event the interim relief is denied; and

(ii) A showing that denial of the interim relief requested will result in a more immediate special hardship or inequity to the person requesting the interim relief than the consequences that would result to other persons if the interim relief were granted; or

(2) A showing that it will be in the public interest to grant the interim relief.

(c) A party may within 10 days after the filing of the request for interim relief file a reply to the request for interim relief.

(d) Staff may request a written statement of the views of a party regarding whether the interim relief should be granted and may convene an expedited conference on the request for interim relief.

(e) If Staff has not granted the request for interim relief within 30 days after it is filed, the request is denied.

(f)(1) Subject to paragraph (f)(2) of this section, Staff will issue an order granting or denying the request for interim relief and will notify the parties. Any grant of interim relief is subject to further modification in the order issued under paragraph (f)(1) of this section.

(2) The Commission may, on its own motion, at any time revoke, modify, rescind, stay or take any other appropriate action concerning the order granting interim relief.

§ 385.1114 Motions (Rule 1114).

A party may file a motion at any time. Motions must set forth the ruling or relief requested and must state the grounds therefor and the statutory or other authority relied upon. Staff will rule on all motions.

§ 385.1115 Procedural rulings (Rule 1115).

Staff may make any procedural rule or provide any procedural relief.

§ 385.1116 Appeals (Rule 1116).

All actions under this subpart are taken by Staff, except with respect to requests for public information under Part 388. Except as provided in Rule 1110 (review of initial adjustment decision) of this section, there are no appeals to the Commission from Staff action taken under this section.

§ 385.1117 Petition for adjustment treated as request for interpretations (Rule 1117).

(a) Staff may, if appropriate, treat a petition filed under Rule 1103 (petition for adjustment) as a request for an interpretation under section 502(c) of the NGPA, or rule or order issued under that Act.

(b) If the Staff exercises its discretion under paragraph (a) of this section to treat a petition for adjustment as a request for an interpretation, then:

(1) Staff will notify the parties to the proceeding that the petition is being treated as a request for an interpretation under Rule 1901; and

(2) The time limits in this section are stayed pending issuance of the interpretation.

(c) After the interpretation is issued, if the petitioner wishes to reinstate the adjustment proceeding, the petitioner may do so by notifying the Commission in writing that the petition should be reinstated.

Subpart L—[Reserved]

Subpart M—Cooperative Procedure With State Commissions

§ 385.1301 Policy (Rule 1301).

(a) The Federal Power and Natural Gas Acts, sections 209 and 17, respectively, authorize cooperation between the Federal Energy Regulatory Commission and the State commissions of the several States in the administration of said Acts, which include authorization for:

(1) Reference of any matter arising in the administration of these Acts to a board to be composed of a member or members from a State or States affected, or to be affected, by the particular matters pending before the Commission;

(2) Conferences with State commissions regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities or natural gas companies subject to the jurisdiction of such State commissions and of the Commission; and

(3) Joint hearings with State commissions in connection with any matter with respect to which the Commission is authorized to act.

(b) The matters that should be the subject of a conference referred to a board, or heard at a joint hearing of State commissions and the Commission, obviously, cannot be determined in advance. It is understood, therefore, that the Commission or any State commission will freely suggest cooperation with respect to any proceeding or matter affecting any public utility or natural gas company subject to the jurisdiction of the Commission and of a State commission, and concerning which it is believed that cooperation will be in the public interest.

§ 385.1302 Notice (Rule 1302).

(a) *By Commission.* (1) Whenever there is instituted before the Commission any proceeding under either the Federal Power Act or the Natural Gas Act, the State commission or commissions of the State or States affected thereby will be given notice thereof immediately by the Commission. As deemed necessary for an understanding of the subject matter, each such notice will be supplemented by copies of applications, complaints, petitions, or orders instituting proceedings. Each such notice given to a State commission will request that the Commission be notified within a reasonable time whether the proceeding is deemed one that should be considered under the cooperative provisions of this subpart, and, if so, to advise the Commission as to the nature of its interest in the matter, and further, to specify whether it desires a conference, the creation of a board, or a joint or concurrent hearing, as defined in this subpart and the reasons for such request.

(2) Any commission suggesting some form of such cooperative procedure should also state whether there is pending, or will be pending before it, a proceeding in which a concurrent hearing might appropriately be held and whether its proposal is for such hearing covering such proceeding and the proceeding pending before the Commission.

(3) A State commission recommending to the Commission reference of a proceeding to a board, under either the Federal Power Act or the Natural Gas Act, should state with fullness the reasons which led it to believe that such reference is desirable and in the public interest.

(4) Upon the receipt from a State commission of a communication suggesting cooperation, the Commission will consider the same, and may confer with the commission making the request and with other interested commissions, if any, in such manner as may be most suitable, and, if cooperation in the manner proposed, or in any other manner, appears to be practicable and desirable, will so advise each interested State commission, and will invite it to participate therein.

(b) *By State commission.* (1) Each State commission should, in like manner, notify the Commission of any proceeding instituted before it the subject matter of which is also subject to the jurisdiction of the Commission, or in which it believes the Commission is interested. Such notice should be supplemented by copies of applications, petitions, complaints, or orders instituting proceedings which may be necessary to an understanding of the subject matter. Such notice should include the suggestions which the State commission may wish to make concerning cooperative procedure.

(2) Upon receipt of such notice, the Commission will consider the same and will promptly notify the State commission whether or not in its opinion cooperation in the manner proposed, or in any other manner, appears to be practicable and desirable. The Commission is free to propose cooperative procedures whether or not such proposal of cooperation has been made by the State commission first giving notice of the proceeding.

(c) *Commission or State commissions to invite participation in cooperative procedure.* In the event that cooperation in a particular proceeding has been determined upon, the Commission or a State commission before which the proceeding is pending will so advise each interested State commission and will invite it to take part therein.

§ 385.1303 Conferences (Rule 1303).

Inasmuch as experience has proved that informal conferences are the means most often used to enable commissions to work together to promote good regulation, affording means whereby common understandings may be reached, and the imposition of inconsistent or conflicting regulations upon companies subject to both Federal and State control may be avoided and means whereby State commissions may secure the assistance in State regulatory work which sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts authorize the Commission to extend, any commission, Federal or State, should always feel free to suggest a conference to another commisison, concerning any matter of regulation subject to the jurisdiction of either, with respect to which it is believed that a cooperative conference may be in the public interest. The commission desiring a conference upon any such matter should notify other interested commissions without delay, and thereupon the Commission or a State commission, as may be agreed, will promptly arrange for a conference in which all interested commissions will be invited to be represented.

§ 385.1304 Procedure governing matters referred to a board (Rule 1304).

(a) It is believed that the statutory provisions of sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts, for the reference of a proceeding to a board constituted as therein provided, were designed for use in unusual cases, and as a means of relief to the Commission when it might find itself unable to hear and determine cases before it, in the usual course, without undue delay.

(b) Whenever the Commission, either upon its own motion or upon the suggestion of a State commission or at the request of any interested party, determines that it is desirable to refer a matter arising in the administration either of the Natural Gas Act or Part II of the Federal Power Act, to a board to be composed of a member or members from the State or States affected or to be affected by such matter, the procedure will be as follows: The Commission will send a request to each interested State commission to nominate a specified number of members to serve on such board. Whenever more than one State is involved, the representation of each State concerned shall be equal, unless one or more of the States affected chooses to waive such right of equal representation. The Commission will specify the functions to be performed by such board in each instance. When the member or members of any board have been nominated and appointed in accordance with the provisions of either section 209 of the Federal Power Act or section 17 of the Natural Gas Act, the Commission will issue an order referring the particular matter to such board, and such order will fix the time and place of hearing, define the "force and effect" which an action of the board will have, the manner in which the proceedings will be conducted, and specify the allowances to be made for the expense of the members of the board. As far as applicable, the rules of practice and procedure as from time to time adopted or prescribed by the Commission will govern such board. The board will have authority to adjourn the hearing from day to day, subpoena witnesses, rule on the relevancy, competency, and materiality of evidence, and will, after hearing all interested parties, submit its report to the Commission.

§ 385.1305 Joint and concurrent hearings (Rule 1305).

(a) The term "joint hearing" used in sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts is understood to cover any hearing in which members of the Commission and members of one or more State commissions may sit together in a proceeding pending before one such commission, whether or not a proceeding or proceedings involving similar or corresponding issues be pending before any other commission.

(b) Two different types of proceedings have been called "joint hearings". One is that type of proceeding where members of one or more State commissions sit with members of the Commission for information or in an advisory capacity. The State commissioners in such case do not develop a record for their respective commissions and may not, at their own discretion, make a recommendation to the Commission. The other type of joint hearing is often referred to as a "concurrent hearing". Under this procedure the Commission and one or more State commissions sit together to hear and jointly make a record upon a matter over which all of the participating commissions have jurisdiction and responsibility for action.

(c) The Commission or any State commission or commissions should feel free to suggest or request a joint or concurrent hearing at any time. It is believed that the concurrent hearing is the type of cooperative hearing which is likely to be most useful and effective.

(d) Whenever a concurrent hearing has been agreed upon by the Commission and one or more State commissions, the procedure will be:

(1) Each commission will designate the representative or representatives of such commission to sit at such concurrent hearing, and will designate the representative who will be the presiding officer for such commission.

(2) It will be understood that participation in such concurrent hearing will in no way affect the complete control by each commission of the proceeding before it. It will be understood, also, that participation in either a joint or concurrent hearing will in no way preclude any commission from causing to be presented in any such case pertinent evidence with respect to matters in issue.

(3) The representative designated by the Commission will be the presiding officer to announce rulings with respect to which there is no disagreement; and such rulings will be considered concurrent rulings. However, the presiding officer for any commission which does not concur in any ruling may announce a divergent ruling and such divergent ruling, whether with respect to the admissibility of evidence or any other matter, will be considered the ruling for his or her commission.

(4) The record of the concurrent hearing will be the record of each commission participating, except that, if divergent rulings are made, the rulings will be reported so as to separate and distinguish clearly the record of the respective participating commissions and the evidence admitted in each record, in accordance with the rulings of the respective commissions. If, in any proceeding, the ruling of one presiding officer has the effect of admitting any voluminous exhibit or testimony which is excluded by the ruling of another presiding officer, the taking of such evidence, whenever possible, will be deferred until after the completion of the proceedings which can be conducted under concurrent rulings. When such testimony is taken, the transcript of such evidence will be made available to the participating commissions, if desired.

(5) In all respects concerning which there is no divergence of ruling, the hearing will be conducted in accordance with the rules of practice and procedure prescribed by the Commission, subject to the express understanding that each participating State commission will control its own record and make its own rulings as to the admissibility of evidence and as to other matters affecting its proceedings, and will make its own separate final decision or order therein.

(e) Before either the Commission or a participating State commission will enter any order or orders in a concurrent proceeding, opportunity will be afforded for conference between the Commission and the State commissions participating.

(f) Whenever a joint hearing other than a concurrent hearing is agreed upon, the commissioners which take part therein will agree upon the procedure to be followed in such hearing in advance of the opening of the same. With respect to any concurrent hearing, a special agreement may be made by the commissions taking part therein for a procedure or action differing from that outlined in this plan.

(g) Cooperation between two or more commissions in a concurrent hearing will preclude either from taking the position of an advocate or a litigant. If a commission wishes to take such a position, it will not be a cooperating participant in that proceeding. In such situation the appropriate method of procedure will be intervention under Rule 214.

§ 385.1306 Intervention by State commissions (Rule 1306).

Any interested State commission may intervene in any proceeding before the Federal Energy Regulatory Commission, as provided in Rule 214.

Subpart N—[Reserved]

Subpart O—[Reserved]

Subpart P—[Reserved]

Subpart Q—[Reserved]

Subpart R—[Reserved]

Subpart S—Miscellaneous

§ 385.1901 Interpretations and interpretative rules under the NGPA (Rule 1901).

(a) *Purpose and applicability.*—(1) *Purpose.* The purpose of this section is to provide procedures by which:

(i) A person may seek a written interpretation from the General Counsel construing a provision of the NGPA, or clarifying a rule issued by the Commission under the NGPA; and

(ii) The Commission may publish an interpretative rule that will have general applicability and effect.

(2) *Applicability.* (i) This section applies to requests under section 502(c) of the NGPA for interpretations of the NGPA or of rules or of orders, having the applicability and effect of a rule as defined in 5 U.S.C. 551(4), issued under the NGPA. It does not apply to orders issued under sections 301, 302, and 303 of the NGPA.

(ii) This section applies to requests for interpretations to prospective, existing or completed facts, acts, or transactions. Interpretations based on hypothetical facts, acts, or transactions will not be considered.

(b) *Definitions.* For the purpose of this section, the following definitions apply.

(1) "Direct participant" means any person or legal entity who is, or plans to be an actual party in the act, transaction, or circumstance presented, and who has an immediate or direct financial interest in the act, transaction, or circumstance.

(2) "Interpretation" means a written statement of the General Counsel which applies a particular rule to a particular set of facts, acts, circumstances or transactions. In the discretion of General Counsel, the interpretation may contain a detailed factual and legal analysis, a summary of the facts or the law, or both, or it may be a conclusory statement.

(3) "Interpretative rule" means an offical interpretative statement of general applicability issued by the Commission and published in the **Federal Register** that applies the NGPA or rules issued thereunder to a specific set of facts, acts, circumstances and transactions.

(4) "NGPA" means the Natural Gas Policy Act of 1978.

(5) "Request" means a request for an interpretation.

(6) "Rule" means a rule or an order having the effect of a rule as defined in 5 U.S.C. 551(4).

(c) *Persons who may request an interpretation.*—(1) Any person who is or will be a direct participant in an act, transaction, or circumstance affected by the NGPA or a rule issued by the Commission under the NGPA may file with the Office of the General Counsel a request for an interpretation.

(2) Requests for interpretations must be addressed to the Office of the General Counsel as follows:

Federal Energy Regulatory Commission, Interpretations Section, Office of the General Counsel, Suite 8000, 825 North Capitol Street, NE., Washington, D.C. 20426.

(3) Requests for interpretation under this paragraph need not be filed with the Secretary.

(d) *Content of request.*—(1) *Facts.* A request for interpretation must contain a full and complete statement of the relevant and material facts pertaining to the act, transaction, or circumstance that is the subject of the request for interpretation. When the request pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction must be included in the request.

(2) *Statement of the question.* The request must clearly designate the section of the statute, regulation, rule, or part thereof which the person making the request seeks to have interpreted and must set forth clearly and concisely the question for which an interpretation is sought. The request may also set forth a proposed answer to the question.

(3) *Analysis.* If the request proposes a particular answer:

(i) The request must set forth a legal analysis in support of the proposed answer and cite relevant authorities in support thereof.

(ii) The request must set forth the legal and business consequences which will flow from the proposed answer.

(4) *Factual statements.* (i) The request must be accompanied by a statement that to the best of the applicant's personal information, knowledge, and belief there is no untrue statement of a material or relevant fact and there is no omission of a material or relevant fact made in the request.

(ii) Any untrue statement or omission of a material or relevant fact upon which the Office of the General Counsel relied in a request for an interpretation is deemed to be a statement or entry under secton 1001 of Title 18, United States Code.

(5) *Notification of other parties.* (i) A person submitting a request must specify each person who is a direct participant in the circumstance, act or transaction; must notify them in writing of the request for an interpretation; and must send them a copy of such request. Such notification and the addresses of the persons notified must be included in a request to the General Counsel.

(ii) Each person notified pursuant to paragraph (d)(5)(i) of this section may submit information regarding any fact provided in the request of which it has personal knowledge, if such fact is different from the facts presented by the applicant. Such fact must be presented to the Office of the General Counsel as set forth in paragraph (d)(4) of this section.

(e) *Additional information.* The General Counsel may request additional information, documentation or legal analysis in connection with any request for any interpretation.

(f) *Referral of information.* Information submitted in a request for interpretation may be used by the Commission or its Staff in their official capacity. Any information received will be placed in a public file in the Commission's Office of Public Information.

(g) *The interpretation.*—(1) Except as provided in paragraph (g)(2) of this section, the General Counsel will provide a copy of his or her written interpretation of the NGPA or rule as applied to the act, transaction, or circumstance presented upon the person who made the request for the interpretation and upon persons named in the request as direct participants in the act, transaction, or circumstance.

(2) The General Counsel may determine not to issue an interpretation, in which case the person who made the request and direct participants as specified in the request will be notified in writing of the decision not to issue an interpretation, and the reason for the decision.

(3) Only those persons to whom an interpretation is specifically addressed and other persons who are named in the request, who have been informed by the applicant for an interpretation of the pendency of the request and who are direct participants in the act, transaction or circumstance presented, may rely upon it. The effectiveness of an interpretation depends entirely on the accuracy of the facts presented to the General Counsel. If a material or relevant fact has been misrepresented or omitted or if any material or relevant fact changes after an interpretation is issued or if the action taken differs from the facts presented in the request, the interpretation may not be relied upon by any person.

(4) An interpretation may be rescinded or modified prospectively at any time. A rescission or modification is effected by notifying persons entitled to rely on the interpretation at the address contained in the original request.

(5) Any interpretation based on the NGPA or a rule issued thereunder in effect at the time of issuance may be relied upon only to the extent such law or rule remains in effect.

(6) Except as provided in paragraphs (g)(3), (g)(4) and (g)(5) of this section, the Staff will not recommend any action to the Commission which is inconsistent with the position espoused in the interpretation. The interpretation of the General Counsel is not the interpretation of the Commission. An interpretation provided by the General Counsel is given without prejudice to the Commission's authority to consider the same or like question and to issue a declaratory order to take other action which has the effect of rescinding, revoking, or modifying the interpretation of the General Counsel.

(h) *Appeal.* There is no appeal to the Commission of an interpretation.

(i) *Interpretative rules.* Upon the petition of any person or upon its own motion, the Commission may publish in the **Federal Register** an interpretative rule regarding any question arising under the NGPA or a rule promulgated thereunder. Any person is entitled to rely upon an interpretative rule.

(j) *Applications for adjustments treated as requests for interpretations.* Except for the notification provisions of paragraph (d)(5) of this section, the provisions of this section apply to any petition for an adjustment which is deemed a request for an interpretation under Rule 1117. Notice to all parties to an adjustment proceeding under Subpart K of this part that is deemed to be a request for an interpretation will be given under Rule 1117(d)(1).

§ 385.1902 Appeals from action of staff (Rule 1902).

Any staff action, other than a decision or ruling of a presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under Subpart E of this part, taken pursuant to authority delegated to the staff by the Commission that would be final, but for the provisions of this section, may be appealed to the Commission by a party. The challenged staff action may be appealed by filing a petition within 30 days of the action. Answers to such petitions may be filed by any party within 10 days of service of the petition. An appeal from any ruling of a presiding officer referred to in Rule 102(e)(1) made in a proceeding set for hearing under Subpart E of this part will conform to the requirements of Rule 715 (interlocutory appeals to the Commission from rulings of presiding officers). The Commission considers that a petition for appeal from action taken by the staff is deemed denied if not acted upon by the Commission within 30 days after the filing of such petition. The Commission further considers its action on appeals made pursuant to this section to be final agency action that is subject to a request for rehearing under Rule 713 (request for rehearing).

§ 385.1903 Notice in rulemaking proceedings (Rule 1903).

Before the adoption of rule of general applicability or the commencement of hearing on such a proposed rulemaking, the Commission will cause general notice to be given by publication in the Federal Register, such notice to be published therein not less than 15 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rulemaking, except where a shorter period is reasonable and good cause exists therefor; *Provided however,* That:

(a) When the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor;

(b) Except when notice or hearing is required by statute, the Commission may issue at any time rules of organization, procedure or practice, or interpretative rules, or statements of policy, without notice or public proceedings; and

(c) This section is not to be construed as applicable to the extent that there may be involved any military, naval, or foreign affairs function of the United States, or any matter relating to the Commission's management or personnel, or to United States property, loans, grants, benefits, or contracts.

§ 385.1904 Copies of transcripts (Rule 1904).

The Commission will cause to be made a stenographic record of public hearings and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcript may obtain the same from the official reporter upon payment of the fees fixed therefor.

§ 385.1905 Subpoenas (Rule 1905).

(a) *Issuance.* Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the Commission, will issue only upon petition in writing to the Commission or the presiding officer, except that during sessions of a hearing in a proceeding, such petition may be made orally on the record before the Commission or presiding officer, who is hereby given authority to determine the relevancy and materiality of the evidence sought and to issue such subpoenas in accordance with such determination. Such written petitions must be verified and must specify as nearly as may be, the general relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence specification as nearly as may be, of the documents desired and the facts to be proved by them in sufficient detail to indicate the materiality and relevance of such documents.

(b) *Service and return.* If service of subpoena is made by a United States marshal or deputy thereof, such service will be evidenced by the return of service. If made by another person, such person must make affidavit, describing the manner in which service was made, and must return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure must be stated on the original subpoena. In making service, a copy of the subpoena must be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit, or statement must be returned forthwith to the Secretary or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(c) *Fees of witnesses.* Witnesses who are subpoenaed will be paid fees as provided in Rule 510(e) (relating to fees).

§ 385.1906 Depositions (Rule 1906).

(a) *When permissible.* The testimony of witness may be taken by deposition, upon application by a participant in a proceeding pending before the Commission, at any time before the hearing is closed, upon approval by the Commission or the presiding officer.

(b) *Notice and application.* Unless notice is waived, no deposition will be taken except after at least 10 days' notice to the parties within the United States, and 15 days' notice when a deposition is to be taken elsewhere. Such notice must be given in writing by the participant proposing to take such deposition or by his or her attorney to the other participants or their attorneys of record and to the Commission. In such notice and application to take evidence by deposition, the participant desiring to take the deposition must state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and post office address of the officer before whom it is desired that the deposition be taken, and the reason why such deposition should be taken. The other participants may, within the time stated in this section, make any appropriate response to such notice and application.

(c) *Authorization for taking.* Thereupon, if the application so warrants, the Commission or presiding officer, will issue and serve, within a reasonable time in advance of the time fixed for taking testimony, upon the participants or their attorneys an authorization naming the witness whose deposition is to be taken and the time, place and officer before whom the witness is to testify, but such time, place and officer so specified may or may not be the same as those named in the said notice and application.

(d) *Officer before whom taken*—(1) *Within the United States.* Such depositions may be taken before a member, a presiding officer or other authorized representative of the Commission, any judge, commissioner, or clerk of any court of the United States, any chancellor, judge, or justice of a State court, any mayor or chief magistrate, or a city, or any notary public, not being counsel or attorney for any of the participants, or interested in the proceeding or investigation, according to such designation as may be made in the authorization.

(2) *In foreign countries.* Where such deposition is taken in a foreign country, it may be taken before a secretary of an embassy or legation, counsel general, counsel, vice consul, or consular agent of the United States, or before such person or officer as may be designated in the authorization or agreed upon by the parties by stipulation in writing filed with and approved by the Commission or the presiding officer. The magistrate, person, or officer so designated in this section will be referred to as the Officer.

(e) *Oath and reduction to writing.* Every person whose testimony is taken by deposition will be sworn, or will affirm concerning the matter about which he or she shall testify, before any questions are put or testimony given. The testimony will be reduced to writing by, or at the direction of, the officer, after which the deposition will be subscribed by the witness and certified in the usual form by the Officer. Unless otherwise directed in the authorization, after the deposition has been subscribed and certified, it will be forwarded, together with the number of copies specified in the authorization, the copies being made by, or at the direction of, such Officer in a sealed envelope addressed to the Commission at its office in Washington, D.C., with sufficient postage affixed. Upon receipt thereof, the Secretary will file the original in the proceeding and will forward a copy to each party or his or her attorney of record and to staff counsel.

(f) *Copies.* Rule 2004 (copies of filings) is not applicable with respect to the number of copies to be provided.

(g) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the deponent may be examined regarding any matter which is relevant to the issues involved in the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. Parties or their attorneys and staff counsel will have the right of cross-examination, objection and exception. In making objections to questions or evidence, the grounds relied upon will be stated briefly, but no transcript filed by the Officer shall include argument or debate. Objections to questions on evidence will be noted by the Officer upon the deposition, but the Officer does not have power to decide on the competency or materiality or relevancy of evidence. Objections to questions or evidence not taken before the Officer are deemed to be waived.

(h) *Not part of record unless received in evidence.* No part of a deposition will constitute a part of the record in the proceeding, unless received in evidence by the Commission or presiding officer. Objection may be made at the hearing in the proceeding to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

(i) *Fees of officers and deponents.* Deponents whose depositions are taken and the officers taking the same are entitled to the same fees as are paid for like services in the District Courts of the United States, which fees must be paid by the party or participant at whose instance the depositions are taken.

§ 385.1907 Reports of compliance (Rule 1907).

When any licensee, permittee, or any other person subject to the jurisdiction of the Commission is required to do or perform any act by Commission order, permit, or license provision, there must be filed with the Commission within 30 days following the date when such requirement became effective, a notice, under oath, stating that such requirement has been met or complied with; *Provided, however,* That the Commission, by rule or order, or by making specific provision therefor in a license or permit, may provide otherwise for the giving of such notice of compliance. Five conformed copies of such notice must be filed in lieu of the fourteen conformed copies required by Rule 2004 (copies of filings).

Subpart T—Formal Requirements for Filings in Proceedings Before the Commission

§ 385.2001 Filings (Rule 2001).

(a) *Filings with the Commission.* (1) Except as otherwise provided in this chapter, any document required to be filed with the Commission must comply with Rules 2001 to 2005 and must be submitted to the Secretary by:

(i) Mailing the document to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426; or

(ii) Hand delivering the document to Room 3110, 825 North Capitol Street, NE., Washington, D.C.

(2) Any document is considered filed on the date stamped by the Secretary, unless the document is subsequently rejected. Any document received after regular business hours is considered filed on the next regular business day.

(b) *Rejection.* (1) If any filing does not comply with any applicable statute, rule, or order, the filing may be rejected, unless the filing is accompanied by a motion requesting a waiver of the applicable requirement of a rule or order and the motion is granted.

(2) If any filing is rejected, the document is deemed not to have been filed with the Commission.

(3) The Secretary, or the office director to whom the filing has been referred, will return a copy of any document rejected under paragraph (b)(1) of this section, with an indication of the deficiencies in the filing and the reasons for rejection.

(4) If a filing does not comply with any applicable requirement, all or part of the filing may be stricken. Any failure to reject a filing which is not in compliance with an applicable statute, rule, or order does not waive any obligation to comply with the requirements of this chapter.

§ 385.2002 Caption of filings (Rule 2002).

A filing must begin with a caption that sets forth:

(a) The docket designation, if any;

(b) The title of the proceeding if a proceeding has been initiated;

(c) A heading which describes the filing; and

(d) The name of the participant for whom the filing is made, or a shortened designation for the participant.

§ 385.2003 Specifications (Rule 2003).

(a) *Paper.* (1) Any filing with the Commission must be:

(i) Typewritten, printed, or reproduced, with each copy clearly legible; and

(ii) On letter-size unglazed paper which is 8 to 8½ inches wide and 10½ to 11 inches long.

(2) Any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in paragraph (a)(1) of this section, if it cannot be provided legibly on letter-size paper.

(b) *Format.* Any filing with the Commission must:

(1) Have double-spaced print with left margins not less than 1½ inch wide,

except that any tariff or rate filing may be single-spaced;

(2) Indent and single-space any quotation which exceeds 50 words;

(3) Be bound or stapled at the left side only, if the filing exceeds one page; and

(4) Be printed in not less than 10 point type with double-leaded text and single-leaded quotations, if the filing is printed.

§ 385.2004 Original and copies of filings (Rule 2004).

Any person filing under this chapter must provide an original of the filing and fourteen exact copies, unless otherwise required by statute, rule, or order.

§ 385.2005 Subscription and verification (Rule 2005).

(a) *Subscription.* (1) Any filing with the Commission must be signed.

(2) The signature on a filing constitutes a certificate that:

(i) The signer has read the filing signed and knows its contents;

(ii) The contents are true as stated, to the best knowledge and belief of the signer; and

(iii) The signer possesses full power and authority to sign the filing.

(3) A filing must be signed by:

(i) The person on behalf of whom the filing is made;

(ii) Any officer of the corporation, trust, association, or other organized group, on behalf of which the filing is made;

(iii) Any officer, agent, or employee of the governmental authority, agency, or instrumentality on behalf of which the filing is made; or

(iv) A representative qualified to practice before the Commission under Rule 2101 who possesses authority to sign.

(4) The signer of any filing may be required to submit evidence of authority to sign the filing.

(b) *Verification.* (1) The facts alleged in any filing need not be verified, unless verification is required by statute, rule, or order.

(2) If verification of any filing is required, the verification must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by a person other than the signer, a statement must be attached to the verification explaining why a person other than the signer provides verification.

§ 385.2006 Docket system (Rule 2006).

(1) The Secretary will maintain a system for docketing proceedings.

(2) Any public information in any docket is available for inspection and copying by the public during the office hours of the Commission, to the extent that such availability is consistent with the proper discharge of the Commission's duties and in conformity with Part 388 of this chapter.

§ 385.2007 Time (Rule 2007).

(a) *Computation.* (1) Except as otherwise required by law, any period of time prescribed or allowed by statute or Commission rule or order is computed to exclude the day of the act or event from which the time period begins to run.

(2) The last day of any time period is included in the time period, unless it is a Saturday, Sunday, part-day holiday that affects the Commission, or legal public holiday as designated in section 6103 of title 5, United States Code (5 U.S.C. 6103), in which case the period does not end until midnight of the next day which is not a Saturday, Sunday, part-day holiday that affects the Commission, or legal public holiday.

(b) *Date of issuance of Commission rules or orders.* (1) Any Commission rule or order is deemed issued when the Secretary does the earliest of the following:

(i) Posts a full-text copy in the Division of Public Information;

(ii) Mails or delivers copies of the order to the parties; or

(iii) Makes such copies public.

(2) Any date of issuance specified in a rule or order need not be the date on which the rule or order is adopted by the Commission.

(c) *Effective date of Commission rules or orders.* (1) Unless otherwise ordered by the Commission, rules or orders are effective on the date of issuance.

(2) Any initial decision issued by a presiding officer is effective when the initial decision is final under Rule 708(d).

§ 385.2008 Extensions of time (Rule 2008).

(a) Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the decisional authority for good cause, upon a motion made before the expiration of the period prescribed or previously extended.

(b) If any motion for extension of time is made after the expiration of a specified time period, the decisional authority may permit performance of the act required or allowed, if the movant shows extraordinary circumstances sufficient to justify the failure to act in a timely manner.

§ 385.2009 Notice. (Rule 2009).

Unless actual notice is given or unless newspaper notice is given as required by law, notice by the Commission is provided by the Secretary only by publication in the **Federal Register.** Actual notice is usually given by service under Rule 2010.

§ 385.2010 Service (Rule 2010).

(a) *By participants.* (1) Any participant filing a document in a proceeding must serve a copy of the document on:

(i) Each person whose name is on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding; and

(ii) Any other person required to be served under Commission rule or order or under law.

(2) If any person receives a rejection letter or deficiency letter from the Commission, the person must serve a copy of the letter on any person previously served copies of the rejected or deficient filing.

(b) *By the Secretary.* The Secretary will serve, as appropriate:

(1) A copy of any complaint on any person against whom the complaint is directed;

(2) A copy of any notice of tariff or rate examination or order to show cause, on any person to whom the notice or order is issued;

(3) A copy of any rule or any order by a decisional authority in a proceeding on any person included on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding.

(c) *Official service list.* (1) The official service list for any proceeding will contain:

(i) The names and addresses of any person designated for service in the initial pleading, other than a protest, or in the tariff or rate filing which is filed by any participant; and

(ii) The name of counsel for the staff of the Commission.

(2) Any designation of a person for service may be changed by filing a written notice with the Commission and serving the notice on each person whose name is included on the official service list.

(d) *Restricted service list.* (1) For purposes of eliminating unnecessary expense or improving administrative efficiency, the Secretary, an office director, or the presiding officer may establish, by order, a restricted service list for an entire proceeding, a phase of a proceeding, one or more issues in a proceeding, or one or more cases in a consolidated proceeding.

(2) Any restricted service list will contain the names of each person on the official service list, or the person's representative, who, in the judgment of the decisional authority establishing the

list, is an active participant with respect to the proceeding or consolidated proceeding, any phase of the proceeding, or any issue in the proceeding, for which the list is established.

(3) Any restricted service list is maintained in the same manner as, and in addition to, the official service list under paragraph (c) of this section.

(4) Before any restricted service list is established, each person included on the official service list will be given notice of any proposal to establish a restricted service list and an opportunity to show why that person should also be included on the restricted service list or why a restricted service list should not be established.

(5) Any designation of a person for service on a restricted service list may be changed by filing written notice with the Commission and serving that notice on each person whose name is on the applicable restricted service list.

(e) *Interveners.* (1) If any motion to intervene or any notice of intervention is filed within time period prescribed for that motion or notice, the name and address of any person designated for service in the motion or notice are placed on the official service list or any applicable restricted service list. Any person placed on the official service list under this paragraph is entitled to service in accordance with this section. If a motion to intervene is denied, the name and address of each person designated for service pursuant to that motion will be removed from the official service list.

(2) If a motion to intervene is not filed within the period prescribed for that motion, the name and address of any person designated for service in the motion are placed on the official service list, or any applicable restricted service list, only after the motion is granted. Any person who files a late motion to intervene will be served only the documents that are filed after the motion is granted.

(f) *Methods of service.* Service of any document must be made:

(1) By United States mail, first-class or better; or

(2) By delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.

(g) *Timing of service.* (1) Service is made under this section when the document served is deposited in the mail or is delivered in another manner.

(2) Service of any document must be made not later than the date of the filing of the document.

(h) *Certification.* (1) At the time any document required to be served is filed with the Commission, the original of a certificate of service must be attached to the document and a copy of the certificate must be attached to each copy of the document filed with the Commission.

(2) The certificate of service must conform to the following format:

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list [or the restricted service list, if applicable] compiled by the Secretary in this proceeding.

Dated at ______ this ______ day of ______, 19__.

Name ______

(if applicable)
Address ______

Telephone No. ______

Subpart U—Appearance and Practice Before the Commission

§ 385.2101 Appearances (Rule 2101).

(a) A participant may appear in a proceeding in person or by an attorney or other qualified representative. An individual may appear in his or her own behalf, a member of a partnership may represent the partnership, a bona-fide officer of a corporation, trust, association or organized group may represent the corporation, trust, association or group, and an officer or employee of a State commisssion, of a department or political subdivision of a State or other governmental authority, may represent the State commission or the department or political subdivision of the State or other governmental authority, in any proceeding.

(b) A person compelled to appear or voluntarily testifying or making a statement before the Commission or the presiding officer, may be accompanied, represented, and advised by an attorney or other qualified representative.

(c) A person appearing before the Commission or the presiding officer must conform to the standards of ethical conduct required of practitioners before the Courts of the United States, and where applicable, to the requirements of Section 12(i) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 791(i)).

§ 385.2102 Suspension (Rule 2102).

(a) After a hearing the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to a person who is found:

(1) Not to possess the requisite qualifications to represent others, or

(2) To have engaged in unethical or improper professional conduct, or

(3) Otherwise to be not qualified.

(b) Contumacious conduct in a hearing before the Commission or a presiding officer will be grounds for exclusion of any person from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

§ 385.2103 Appearance of former employees (Rule 2103).

(a) No person having served as a member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Commission may practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which such person has handled, investigated, advised, or participated in the consideration of while in the service of the Commission.

(b) No person having been so employed may within 1 year after his or her employment has ceased, practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which was under the official responsibility of such person, as defined in 18 U.S.C. 202, while in the service of the Commission.

(c) Nothing in paragraphs (a) and (b) of this section prevents a former member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Commission with outstanding scientific or technological qualifications from practicing before or acting as an attorney or representative in connection with a particular matter in a scientific or technological field if the Chairman of the Commission makes a certification in writing, published in the **Federal Register**, that the national interest would be served by such action or representation.

Subpart V—Ex Parte Communications; Separation of Functions

§ 385.2201 Ex parte communications (Rule 2201).

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and persons involved in proceedings pending before the Commission:

(a) Except as permitted in paragraph (b) of this section, no person who is a party to, or his or her counsel, agent, or other person acting on his or her behalf, and no interceder in, any on-the-record proceedings, shall submit ex parte, off-the-record communications to any member of the Commission or of his or her personal staff, to the administrative law judge, or to any other employee of the Commission, regarding any matter pending before the Commission in any contested on-the-record proceeding, and no Commissioner, member of his or her personal staff, Administrative Law Judge, or any other employee of the Commission, shall request or entertain any such ex parte, off-the-record communications. For the purposes of this section, the term "ex parte communication" means an oral or written communication relative to the merits of an on-the-record proceeding pending before the Commission which is not on the public record and with respect to which reasonable prior notice to the parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this section; the term "decisional employee" means a commissioner or member of his or her personal staff, an administrative law judge, or any other employee of the Commission who is or may be reasonably expected to be involved in the decisional process of the proceeding; the term "contested on-the-record proceedings" means a proceeding required by statute, constitution, published Commission rule or regulation or order in a particular case, to be decided on the basis of the record of a Commission hearing, and in which a protest or a petition or notice to intervene in opposition to requested Commission action has been filed; the term "interceder" shall include any individual outside the Commission, whether in private or public life, partnership, corporation, association, or other agency, other than a party or an agent of a party, who volunteers a communication.

(b) The prohibitions contained in paragraph (a) of this section do not apply to a communication:

(1) From an interceder who is a local, State, or Federal agency which has no official interest in and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;

(2) From an interceder relating to matters of procedure only;

(3) From a party to, or his or her counsel, agent, or other person acting on his or her behalf, in an on-the-record proceeding, if the communication relates to matters of procedure only and is directed to the Secretary of the Commission, staff counsel, or any other employee in the presence of or with the prior approval of staff counsel;

(4) From any person when otherwise authorized by law;

(5) When the communication is between the staff counsel assigned to the proceeding or, in the presence of or after coordination with such staff counsel, any other employee of the Commission (except a decisional employee) and any party or counsel to any party or parties to the proceeding or, in the presence of or after coordination with such counsel or party, and agent of any such party: *Provided*, That any employee of the Commission who may reasonably be expected to participate in the decisional process may waive such participation by entering a staff appearance in the proceeding: *Provided further*, That non-unanimous settlement offers shall thereafter be served on the participants in the proceeding prior to the submission of such offers to the Commission;

(6) Which the participants agree may be made on an ex parte basis;

(7) Related to routine safety, construction, and operational inspections of project works by the Commission staff not undertaken to investigate or study a matter pending in issue before the Commission in any on-the-record proceeding;

(8) Related to routine field audits of the accounts or any books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in any on-the-record proceeding;

(9) Which relates solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents filed with the Commission in a proceeding covered by this section and which is made in the presence of or after coordination with counsel, except a communication with a decisional employee, in the absence of waiver of participation;

(10) The Commission may, by rule or order, modify any provision of this subpart, or 49 CFR Part 1100, Appendix C, as it applies to all or part of a proceeding, to the extent permitted by law. The prohibitions of paragraph (a) of this section do not apply to oil pipeline proceedings which are governed by 49 CFR Part 1100, Appendix C.

(c) All written communications prohibited by paragraph (a) of this section, sworn statements reciting the substance of all such oral communications, and all written responses and sworn statements reciting the substance of all oral responses to such prohibited communications must be delivered to the Secretary of the Commission who will place the communication in public files associated with the case, but separate from the material upon which the Commission can rely in reaching its decision. The Secretary will serve such communications upon parties to the proceeding. The Secretary will also serve a copy of the sworn statement to the communicator and allow him or her a reasonable opportunity to file a response.

(d) A Commissioner, member of his or her immediate staff, administrative law judge, or any other employee of the Commission who receives an oral offer of any communication prohibited by paragraph (a) of this section shall decline to listen to such communication and shall explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he or she will not consider the communication. The recipient shall prepare a sworn statement setting forth the substance of the communication and the circumstances thereof within 48 hours and deliver the statement to the Secretary of the Commission for compliance with the procedures established in paragraph (c) of this section.

(e) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which the Secretary has associated with the record may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. Where the communication contains assertions of fact not a part of the record and of which the Commission cannot take official notice, the Commission in lieu of receiving rebuttal material normally will direct that the alleged factual assertion on any proposed rebuttal be disregarded in arriving at a decision. Nor will the Commission normally permit any rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

(f) Upon receipt of a communication knowingly made in violation of paragraph (a) of this section, the Commission, administrative law judge, or other employee presiding at the hearing may require, to the extent consistent with the interests of justice and the policy of underlying statutes, the communicator to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(g) The prohibitions contained in this section shall apply from the time at which a proceeding is noticed for hearing or the person responsible for such communication has knowledge that it will be noticed for hearing or at the time at which a protest or a motion or notice to intervene in opposition to requested Commission action has been filed, whichever occurs first.

§ 385.2202 Separation of functions of staff (Rule 2202).

In any proceeding in which a Commission adjudication is made after hearing, no officer, employee, or agent assigned to work upon the investigation or trial of the proceeding or to assist in the trial thereof, in that or any factually related proceeding, shall participate or advise as to the findings, conclusion or decision, except as a witness or counsel in public proceedings.

Subpart W—[Reserved]

Subpart X—[Reserved]

Subpart Y—[Reserved]

Subpart Z—[Reserved]

PART 388—PUBLIC INFORMATION AND REQUESTS

Authority: 5 U.S.C. 552 and 553.

§ 388.101 Definitions.

For purposes of this part,

(a) "Filings and submittals" include;

(1) Applications, declarations, complaints, petitions, and other papers seeking Commission action;

(2) Financial and statistical and other reports to the Commission, power system statements of claimed cost of licensed projects, original cost and reclassification studies, proposed accounting entries, certificates of notification (under section 204(e) of the Federal Power Act), rates or rate schedules and related data and concurrences, and other filings and submittals to the Commission in compliance with the requirement of any statute, executive order, or Commission rule, regulation, order, license, or permit;

(3) Answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts of oral arguments, and briefs in any matter or proceeding; and

(4) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of, any of the foregoing.

(b) "Matter or proceeding" means the Commission elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the Commission's jurisdiction, initiated by a filing or submittal or a Commission notice or order.

(c) "Formal record", includes in addition to the filings and submittals in a matter or proceeding, any notice or Commission order initiating the matter or proceeding and, if a hearing is held, the following: The designation of the presiding officer, transcript of hearing, exhibits received in evidence, exhibits offered but not received in evidence, offers of proof, motions, stipulation, subpoenas, proofs of service, references to the Commission, and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based; it does not include proposed testimony or exhibits not offered or received in evidence.

(d) "Staff papers" include the Commission staff's working notes, papers, records, memoranda, and correspondence, except:

(1) A paper not relating to a proposed settlement or to an application, permission, filing, or submittal under § 35.13, or § 154.66, of this chapter, which are intended for the Commission's consideration and are within the terms of § 388.105(d) of this part (public records) and paragraph 9(e) of this section, because received by the Commission in a matter or proceeding after hearing has commenced and before final Commission action; and

(2) Paper made a part of the public rules and records by inclusion in a formal record or in Commission memorandum or correspondence which is part of the public files and record.

(e) "Commission memoranda" include written communications from the staff or a presiding officer which are intended for the Commission's consideration and those to the staff or a presiding officer which are signed or transmitted by or on behalf of the Chairman, a Commissioner, the Secretary, or the Executive Director.

(b) "Commission correspondence" includes written communications and enclosures received from others than the staff and intended for the Commission or sent to others than the staff and signed by the Chairman, a Commissioner, the Secretary, the Executive Director, or other authorized official, except those which are purely personal.

§ 388.102 Scope.

This part prescribes the rules governing public notice of proceedings, publication of decisions, and public records of the Commission.

§ 388.103 Notice of proceedings.

(a) Public sessions of the Commission for taking evidence or hearing argument and public conferences and hearings before a presiding officer, including substantive rulemaking proceedings, will not be held except upon due notice.

(b) Notice of applications, complaints, and petitions, is governed by Rule 2009 (notice). Notice of applications for certificates of public convenience and necessity under section 7 of the Natural Gas Act is governed by § 157.9 of this chapter (notice of application). Notice of public sessions and proceedings and of meetings of the Commission is governed by Rule 2009 (notice). Notice of hearings and of initiation or pendency of rulemaking proceedings is governed by Rule 1903 (notice in rulemaking proceedings). Notice of applications under Part I of the act for preliminary permits and licenses is governed by §§ 4.31 and 4.81 of this chapter (acceptance or rejection and contents). Notice of proposed alterations or surrenders of license under section 6 of the Federal Power Act may be given by filing and publication in the Federal Register as stated in Rule 1903 (notice in rulemaking proceedings), and, where deemed desirable by the Commission, by local newspaper advertisement. Notice of rates charged and changes therein is governed by the filing requirements of Subchapters B and E of this chapter (regulations under the Federal Power Act and Regulations under the Natural Gas Act). Other notice required by statute, rule, regulation, or order, or deemed desirable, may be given by filing and publication in the Federal Register as governed by Rule 1903 (notice in rulemaking proceedings) or by service as governed by Rule 2010 (service).

§ 388.104 Notice and publication of decisions, rules, statements of policy, organization, and operations.

Service of intermediate and final decisions upon parties to the proceedings is governed by Rule 2010 (service). Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the **Federal Register.** Commission opinions together with accompanying orders, Commission orders, and intermediate decisions will be released to the press and made available to the public promptly. Copies of Commissions opinions, orders in the nature of opinions, rulemaking and selected procedural orders, and intermediate decisions which have become final are published in the *Federal Energy Regulatory Commission Reports* and, upon payment of applicable charges, may be obtained from: Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646. Attention Order Department.

§ 388.105 Public records.

(a) The public records of the Commission, available for inspection and copying upon request reasonably describing the documents during regular business hours in the public reference room maintained by the Division of Public Information, include:

(1) Submittals and filings as follows:

(i) Applications, declarations, complaints petitions, and other papers seeking Commission action;

(ii) Financial, statistical, and other reports to the Commission, power system statements of claimed cost of licensed projects, original cost and reclassification studies, proposed accounting entries, certificates of notification (under section 204(e) of the Federal Power Act), rates or rate schedules and related data and concurrences, and other filings and submittals to the Commission in compliance with the requirement of any statute, executive order, or Commission rule, regulation, order, license, or permit;

(iii) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proof of service, transcripts or oral arguments, and briefs in any matter or proceeding;

(iv) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of, any of the foregoing; and

(v) Commission correspondence relating to the foregoing;

(2) All other parts of the formal record in any matter or proceeding set for formal or statutory hearing and any Commission correspondence related thereto;

(3) Proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence.

(4) Presiding officer actions, correspondence, and memoranda to or from others, with the exception of internal communications within the Office of Administrative Law Judges;

(5) Commission orders, notices, findings, opinions, determinations, and other actions in matter or proceeding and Commission minutes which have been approved;

(6) Commission correspondence relating to any furnishing of data or information, except to or by another branch, department, or agency of the Government;

(7) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency;

(8) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress, but only after made public or released for publication by that Office or the Committee or Member of Congress involved;

(9) Staff reports on statements of claimed cost by licensees when such reports have been served on the licensee;

(10) Commission correspondence on interpretation of the Uniform System of Accounts and letters on such interpretation signed by the Chief Accountant and sent to others than the Commission, a Commissioner, or the staff;

(11) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, order, license, or permit issued or administered by the Commission and letters of opinion on that subject signed by the General Counsel and sent to others than the Commission, a Commissioner, or the staff;

(12) Copies of the filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Commission is a party and the correspondence with the courts or clerks of court;

(13) The Commission's Administrative and Operating Manual;

(14) Transcripts, electronic recordings, or minutes of Commission meetings closed to public observation containing material nonexempt pursuant to Subpart B of Part 375 of this chapter (Government in the Sunshine Act rules);

(15) Other records of the Commission except those which are:

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b), provided that such statute;

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, constitute an unwarranted invasion of personal privacy, disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel; or

(viii) Geological and geophysical information and data, including maps, concerning wells;

(16) Any reasonably segregable portion of a record after deletion of the portions which are exempt under this section.

(b) The following are examples of information which are not part of the public records of the Commission:

(1) Files and records containing facts or information not permitted to be divulged by section 301 of the Federal Power Act or section 8 of the Natural Gas Act because knowledge thereof was gained during the course of examination of books, records, data, or accounts

pursuant to those sections and divulgence thereof has not been ordered by the Commission;

(2) Files and records classified under Executive Order No. 10501, 3 CFR 1949–53 Comp., p. 979, for national security purposes;

(3) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated members of the staff while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any order and findings, with or without opinion in any matter or proceeding; and

(4) Unaccepted offers of settlements in any matter or proceeding unless or until made public by act of the offeror.

§ 388.106 Index of Commission actions.

The Division of Public Information maintains and makes available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this part to be made available or published. The index will be published quarterly and copies or supplements thereto will be distributed by sale or otherwise.

§ 388.107 Timetables and procedure in event of withholding of public records.

(a)(1) The Director of Public Information will determine within 10 days after receipt of a request for public records whether to comply with such request and will immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal any adverse determination in writing to the Chairman.

(2) Requests filed pursuant to this part must be in writing, addressed to the Director of Public Information, and clearly marked "Freedom of Information Request." Request for information received by the Commission not addressed and marked as indicated in paragraph (a)(2) of this section will be so addressed and marked by Commission personnel as soon as it is properly identified and forwarded immediately to the Director of Public Information. Requests made pursuant to this paragraph will be considered to be received upon actual receipt by the Director of Public Information.

(b)(1) The Chairman, in his or her capacity as administrative head of the agency pursuant to section 401(c) of the DOE Act, will make a determination with respect to any appeal within 20 days after the receipt of such appeal. If on appeal, the denial of the request for records is in whole or in part upheld, the Chairman will notify the person making such request of the provisions for judicial review of that determination.

(2) Appeals filed pursuant to this section must be in writing, addressed to the Chairman of the Commission, and clearly marked "Freedom of Information Appeals." Such an appeal received by the Commission not addressed and marked as indicated in this paragraph will be so addressed and marked by Commission personnel as soon as it is properly identified and forwarded immediately to the Chairman. Appeals taken pursuant to this paragraph will be considered to be received, upon acutal receipt by the Chairman.

(c) In unusual circumstances, the time limits prescribed in this section may be extended by the Secretary by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice will specify a date that would result in an extension for more than 10 working days in the aggregate. One 10-day extension may be invoked at the initial stage or at the appellate stage, or divided between the two, so long as the total extended time does not exceed 10 working days with respect to a particular request. The Secretary will be responsible for allocating distribution of the 10 days on a case-by-case basis. "Unusual circumstances" as used in this paragraph means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or;

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) If the Commission fails to comply with the applicable time limit provisions of this section, the Commission can request the court for additional time to complete its review of the records by showing that exceptional circumstances exist and that it is exercising due diligence in responding to the request.

(e) Any notification of denial of any request for records under this section will set forth the names and titles or positions of each person responsible for the denial of such request.

(f) Upon any determination to comply with a request for records, the records will be made promptly available to such person making such request.

§ 388.108 Procedure in event of subpoena.

If an officer or employee of the Commission is served with a subpoena duces tecum, for material which is not part of the public file and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

Subparts W Through Z [Reserved]

PART 1b—RULES RELATING TO INVESTIGATIONS

4. Part 1b is amended as follows:

§ 1b.12 [Amended]

a. In the last sentence of § 1b.12, by removing "1.21(b) of the rules of practice." and adding in lieu thereof "§ 385.1904(b) of this chapter.";

§ 1b.16 [Amended]

b. In the first sentence of § 1b.16(b), by removing "§ 1.4 of the rules of practice" and adding in lieu thereof "§ 385.2101 of this chapter";

c. In the last sentence of § 1b.16(c)(4), by removing "§ 1.4 of the Commission's rules of practice, and § 1100.1 of the rules of practice of the Interstate Commerce Commission," and adding in lieu thereof "§ 385.2101 of this chapter.";

§ 1b.17 [Amended]

d. In § 1b.17, by removing "§ 1.4 of the Commission's rules of practice" and adding in lieu thereof "Subpart U of part 385 of this chapter".

PART 2—GENERAL POLICY AND INTERPRETATIONS

5. Part 2 is amended as follows:

§ 2.1a [Amended]

a. In the first sentence of § 2.1a(b), by removing "and § 1.7(e) of this Title";

b. In § 2.1a, by removing the text of paragraph (c) and adding in lieu thereof "[Reserved]";

§ 2.17 [Amended]

c. In § 2.17(f), by removing "18 CFR 1.17(c)." and adding in lieu thereof "§ 385.2010(c) of this chapter.";

§ 2.56 [Amended]

d. In the first sentence of § 2.56a(g), by removing "§ 1.7(b) of the Commission's rules of practice and procedure (18 CFR 1.7(b))" and adding in lieu thereof "§ 385.207 of this chapter";

e. In § 2.56b(h), by removing "§ 1.7(b) of the Commission's rules of practice and procedure [18 CFR 1.7(b)]" and adding in lieu thereof "§ 385.207 of this chapter";

§ 2.59 [Removed]

f. By removing § 2.59;

§ 2.62 [Removed]

g. By removing § 2.62;

§ 2.68 [Amended]

h. In the first sentence of § 2.68(b), by removing "§ 1.7 of the Commission's rules of practice and procedure in" and adding in lieu thereof "§ 385.207 of";

§ 2.78 [Amended]

i. In § 2.78(a)(2), by removing "§ 1.7(b) of the Commission's rules of practice and procedure," and adding in lieu thereof "§ 385.207 of this chapter,";

j. In the first sentence of § 2.78(b), by removing "§ 1.7(b) of this chapter and shall conform to the requirements of §§ 1.15 and 1.16" and adding in lieu thereof "§ 385.1501";

§ 2.100 [Amended]

k. In the second sentence of § 2.100(c), by removing "Section 1.31(b)(2) of the Commission's General Rules" and adding in lieu thereof "Section 385.106 of this chapter";

l. In the second sentence of § 2.100(d), by removing "18 CFR 1.4(d)" and adding in lieu thereof "§ 385.2201";

m. In § 2.100(e), by removing "18 CFR § 1.4(c)," and adding in lieu thereof "§ 385.2201,";

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS

6. Part 3 is amended as follows:

§ 3.8 [Amended]

a. In the last sentence of § 3.8(e), by removing "§ 1.36(e)" and adding in lieu thereof "§ 388.106 of this chapter";

b. In the last sentence of § 3.8(h), by removing "described in § 3.4(d)".

§ 3.310 (Subpart B)—[Removed]

c. In subpart B by removing the entire subpart, consisting of § 3.103.

PART 3a—NATIONAL SECURITY INFORMATION

7. Part 3a is amended as follows:

§ 3a.11 [Amended]

In § 3a.11(d)(1), by removing "§ 1.36(c)(14) of the rules of practice and procedures of the Federal Power Commission (18 CFR 1.36(c)(14))." and adding in lieu thereof "§ 388.105(n) of this chapter.";

PART 3c—STANDARDS OF CONDUCT

8. Part 3c is amended as follows:

§ 3c.5 [Amended]

a. In § 3c.5(d)(3), by removing "Section 1.4(c) of the Federal Power Commission's rule of practice and procedure [18 CFR 1.4(c)]" and adding in lieu thereof "Section 385.2103 of this chapter";

§ 3c.6 [Amended]

b. In the first sentence of § 3c.6(c), by removing "Section 1.36 of the Commission's rules of practice and procedure (18 CFR 1.36)" and adding in lieu thereof "Part 388 of this chapter", and, in the second sentence thereof, by removing "Section 1.36(f)" and adding in lieu thereof "Section 388.107 of this chapter";

c. In § 3c.6(f), by removing "Section 1.4(d) of the Commission's rules of practice and procedure [18 CFR 1.4(d)]" and adding in lieu thereof "Section 385.2201";

§ 3c.11 [Amended]

d. In § 3c.11(f)(2), by removing "Section 1.36 of the Federal Power Commission's Rules of Practice and Procedure (18 CFR 1.36)" and adding in lieu thereof "Part 388 of this chapter";

e. In § 3c.11(f)(3), by removing "Section 1.4(d) of the Federal Power Commission's Rules of Practice and Procedure [18 CFR 1.4(d)]" and adding in lieu thereof "Section 385.2201 of this chapter";

f. In § 3c.11(g)(2), by removing "Section 1.4(c) of the Federal Power Commission's rules of practice and procedure [18 CFR 1.4(c)]" and adding in lieu thereof "Section 385.2103 of this chapter";

§ 3c.106 [Amended]

g. In the first sentence of § 3c.106(f)(2)(iii), by removing "Section 1.4(c) of the Federal Power Commission's Rules of Practice and Procedure [18 CFR 1.4(c)]" and adding in lieu thereof "Section 385.2103 of this chapter";

§ 3c.107 [Amended]

h. In the first sentence of § 3c.107(b)(2), by removing "Section 1.36 of the Commission's Rules of Practice and Procedure (18 CFR 1.36)" and adding in lieu thereof "Section 388.107 of this chapter";

i. In the second sentence of § 3c.107(b)(2), by removing "Section 1.36(f)" and adding in lieu thereof "Section 388.107 of this chapter";

j. In § 3c.107(b)(5), by removing "Section 1.4(d) of the Commission's Rules of Practice and Procedure [18 CFR 1.4(d)]" and adding in lieu thereof "Section 385.2201 of this chapter";

§ 3c.112 [Amended]

k. In the first sentence of § 3c.112(h)(2), by removing "Section 1.4(c) of the Federal Power Commission's Rule of Practice and Procedure (18 CFR 1.4(c))" and adding in lieu thereof "Section 385.2103 of this chapter";

§ 3c.204 [Amended]

l. In § 3c.204(d)(2)(iii), by removing "Section 1.4(c) of the Federal Power Commission's Rules of Practice and Procedure [18 CFR 1.4(c)]" and adding in lieu thereof "Section 385.2103 of this chapter";

§ 3c.205 [Amended]

m. In the first sentence of § 3c.205(b)(2), by removing "Section 1.36 of the Commission's Rules of Practice and Procedure (18 CFR 1.36)" and adding in lieu thereof "Part 388 of this chapter", and, in the second sentence thereof, by removing "§ 1.36(f)" and adding in lieu thereof "Section 388.107 of this chapter";

n. In § 3c.205(b)(5), by removing "Section 1.4(d) of the Commission's Rules of Practice and Procedure (18 CFR 1.4(d))" and adding in lieu thereof "Section 385.2201 of this chapter";

§ 3c.206 [Amended]

o. In § 3c.206(f)(2), by removing "Section 1.36 of the Federal Power Commission's rules of practice and procedure (18 CFR 1.36)" and adding in lieu thereof "Part 388 of this chapter";

p. In § 3c.206(f)(3), by removing "Section 1.4(d) of the Federal Power Commission's rules of practice and procedure (18 CFR 1.4(d))" and adding in lieu thereof "Section 385.2201";

q. In § 3c.206(h)(3), by removing "Section 1.4(c) of the Federal Power Commission's Rules of Practice and Procedure (18 CFR 1.4(c))" and adding in lieu thereof "§ 385.2103 of this chapter".

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

9. Part 4 is amended as follows:

§ 4.5 [Amended]

a. In § 4.5, by removing "§ 1.20" and adding in lieu thereof "Subpart E of Part 385";

§ 4.14 [Amended]

b. In § 4.14(a), by removing "§ 1.20" and adding in lieu thereof "Subpart E of Part 385";

§ 4.23 [Amended]

c. In the third sentence of § 4.23, by removing "§ 1.20" and adding in lieu thereof "Subpart E of Part 385";

§ 4.31 [Amended]

d. In § 4.31(a)(1) by removing "Conform to the requirements of §§ 1.5, 1.14, 1.15, 1.16, and 1.17 of this chapter, except as otherwise described in this part; and" and adding in lieu thereof "[Reserved]";

e. In the fourth sentence of § 4.31(g), by removing "§ 1.4(d)" and adding in lieu thereof "§ 385.2201";

f. In § 4.31(h), by removing "petition" each time it appears and adding in lieu thereof "motion", by removing "§ 1.8" and adding in lieu thereof "§ 385.214", by deleting "§ 1.8(e)" and adding in lieu thereof "§ 385.204(c)(2)", and by removing "petitions" and adding in lieu thereof "motions";

§ 4.33 [Amended]

g. In § 4.33(b), by removing "must conform to the requirements of §§ 1.14, 1.15, 1.16, and 1.17 of this chapter, and";

§ 4.81 [Amended]

h. In § 4.81(c)(3), by removing "§ 1.14(a)(2)" and adding in lieu thereof "§ 385.207";

§ 4.92 [Amended]

i. In § 4.92(b) by removing the text of paragraph (b)(1) and adding in lieu thereof "[Reserved]";

j. In § 4.92(c)(1)(i), by removing "§ 1.7(b)" and adding in lieu thereof "§ 385.207";

k. In the last sentence of § 4.92(c)(2), by removing "18 CFR § 1.7(b)" and adding in lieu thereof "18 CFR § 385.207";

§ 4.103 [Amended]

l. In § 4.103(d), by removing "§ 1.7" and adding in lieu thereof "§ 385.297";

§ 4.107 [Amended]

m. In § 4.107(a)(1), by removing the last sentence;

§ 4.112 [Amended]

n. In § 4.112(c)(6), by adding "§ 1.15" and adding in lieu thereof "§ 385.2005(a)," and by removing "§ 1.16" and adding in lieu thereof "§ 385.2005(b)";

§ 4.113 [Amended]

o. In § 4.113(c)(6) by removing "§ 1.15" and inserting in lieu thereof "§ 385.2005(a)", and by removing "§ 1.16" and inserting in lieu thereof "§ 2005(b)".

§ 4.201 [Amended]

p. In § 4.201(c), by removing "§ 1.7" and adding in lieu thereof "§ 385.207(c)(4)".

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

10. Part 12 is amended as follows:

§ 12.2 [Amended]

a. In § 12.2(b), by removing "§ 1.7" and adding in lieu thereof "§ 385.207";

§ 12.4 [Amended]

b. In § 12.4(c)(1) by removing "§ 1.7" and adding in lieu thereof "§ 385.207";

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

11. Part 16 is amended as follows:

§ 16.4 [Amended]

a. In § 16.4, by removing "§§ 1.37 and 2.1" and adding in lieu thereof "§ 2.1 and Subpart M of Part 385";

§ 16.9 [Amended]

b. In § 16.9, by removing "§ 1.34" and adding in lieu thereof "§ 385.713";

PART 25—APPLICATION FOR VACATION OF WITHDRAWAL AND FOR DETERMINATION PERMITTING RESTORATION TO ENTRY

12. Part 25 of Chapter I is amended as follows:

§ 25.2 [Amended]

a. In § 25.2, by removing "§ 1.20" and adding in lieu thereof "Subpart E of Part 385".

PART 32—INTERCONNECTION OF FACILITIES; EMERGENCIES, TRANSMISSION TO FOREIGN COUNTRY

13. Part 32 is amended as follows:

§ 32.4 [Amended]

a. In § 32.4, by removing "and must conform, in all other respects, to the requirements of §§ 1.15 through 1.17 of this chapter";

§ 32.37 [Amended]

b. In § 32.37, by removing "and must conform, in all other respects, to the requirements of §§ 1.15 through 1.17 of this chapter";

§ 32.61 [Amended]

c. In the first sentence of § 32.61(i), by removing "and shall conform, in all other respects, to the requirements of §§ 1.15 through 1.17 of this chapter".

PART 33—APPLICATION FOR SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY.

14. Part 33 is amended as follows:

§ 33.5 [Amended]

In § 33.5, by removing the text of the entire section and adding in lieu thereof "[Reserved].".

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

15. Part 34 is amended as follows:

§ 34.6 [Amended]

In § 34.6, by removing "§ 1.15" and adding in lieu thereof "Subpart T of Part 385".

PART 35—FILING OF RATE SCHEDULES

16. Part 35 is amended as follows:

§ 35.8 [Amended]

a. In the first sentence of the fourth paragraph of the notice form in § 35.8(a), by removing "§§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.107" and adding in lieu thereof "§§ 385.212 and 385.207 of this chapter.";

b. In the second sentence of § 35.13(a), by removing "§ 1.7" and adding in lieu thereof "§ 385.207";

c. In § 35.14(a)(10), by removing "§ 1.7(b) of the rules of practice and procedure" and adding in lieu thereof "§ 385.207 of this chapter".

PART 41—ACCOUNTS, RECORDS, AND MEMORANDA

17. Part 41 is amended as follows:

§ 41.3 [Amended]

a. In § 41.3, by removing "§ 1.17" and adding in lieu thereof "§ 385.2010";

§ 41.4 [Amended]

b. In § 41.4, by removing the first sentence and adding in lieu thereof "Each copy of such memorandum must be complete in itself.";

c. In the second sentence of § 41.4, by removing "§ 1.29" and adding in lieu thereof "§ 385.706";

§ 41.7 [Amended]

d. In the first sentence of § 41.7, by removing "§ 1.20" and adding in lieu thereof "Subpart E of Part 385".

PART 45—APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

18. Part 45 is amended as follows:

a. In § 45.7, by removing "§ 1.15" and adding in lieu thereof "Subpart T of Part 385".

PART 131—FORMS

19. Part 131 is amended as follows:

§ 131.1 [Removed and Reserved]

a. In § 131.1, by removing the text of the entire section and adding in lieu thereof "[Reserved].".

PART 152—APPLICATION FOR EXEMPTION FROM THE PROVISIONS OF THE NATURAL GAS ACT PURSUANT TO SECTION 1(c) THEREOF

20. Part 152 is amended as follows:

a. In the first sentence of § 152.2, by removing "and shall conform in all other respects with §§ 1.15 and 1.16 of this chapter";

PART 153—APPLICATION FOR AUTHORIZATION TO EXPORT OR IMPORT NATURAL GAS

21. Part 153 is amended as follows:

§ 153.2 [Amended]

a. In the first sentence of § 153.2, by removing "and shall conform in all other respects with §§ 1.15 and 1.16 of this chapter";

§ 153.11 [Amended]

b. In the first sentence of § 153.11, by removing "and shall conform in all other respects with §§ 1.15 and 1.16 of this chapter".

PART 154—RATE SCHEDULES AND TARIFFS

22. Part 154 is amended as follows:

§ 154.28 [Amended]

a. In the first sentence of the final paragraph of § 154.28, by removing "Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10)" and adding in lieu thereof "Sections 385.214 and 385.211 of this chapter.".

§ 154.94 [Amended]

b. In the second sentence of § 154.94(j)(5)(ii), by removing "Section 1.28" and adding in lieu thereof "Section 385.715";

PART 156—APPLICATIONS FOR ORDERS UNDER SECTION 7(a) OF THE NATURAL GAS ACT

23. Part 156 is amended as follows:

§ 156.3 [Amended]

a. In the second sentence of § 156.3(a), by removing ", and applicable requirements of the Commission's rules of practice and procedure, particularly §§ 1.5, 1.15, 1.16, and 1.17 of this chapter";

b. In the second sentence of § 156.3(a), by removing "§ 1.11" and adding in lieu thereof "§§ 385.213 and 385.214";

§ 156.5 [Amended]

c. In § 156.5(c), by removing the last sentence;

§ 156.7 [Amended]

d. In § 156.7, by removing the next to the last sentence.

§ 156.10 [Amended]

e. In § 156.10, by removing "§ 1.19(b)" and adding in lieu thereof "§ 385.2009".

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

24. Part 157 is amended as follows:

§ 157.6 [Amended]

a. In the second sentence of § 157.6(a), by removing ", and other applicable requirements of the Commission's rules of practice and procedure, particularly §§ 1.5, 1.15, 1.16, and 1.17 of this chapter";

b. In the third sentence of § 157.6(a), by removing "§ 1.11" and adding in lieu thereof "§§ 385.213 and 385.214";

c. In § 157.6(c), by removing "§ 1.32(b)" and adding in lieu thereof "§ 385.802";

§ 157.8 [Amended]

d. In the third sentence of § 157.8, by removing "§ 1.14" and adding in lieu thereof "§ 385.2001(b)";

§ 157.10 [Amended]

e. In the first sentence of § 157.10, by removing "§ 1.8" and adding in lieu thereof "§ 385.214";

f. In § 157.10, by removing the fourth sentence;

g. In the last sentence of § 157.10, by removing "§ 1.10" and adding in lieu thereof "§ 385.209";

§ 157.11 [Amended]

h. In § 157.11(b), by removing "§ 1.32(b)" and adding in lieu thereof "§ 385.802";

§ 157.14 [Amended]

i. In the last sentence of § 157.14(a)(10)(vi), by removing "paragraph (f) of § 1.36" and adding in lieu thereof "§ 388.197";

j. In the second sentence of § 157.14(c), by removing "and shall conform in all other respects with §§ 1.15, 1.16, and 1.17 of this chapter unless otherwise directed by the Secretary";

§ 157.26 [Amended]

k. In § 157.26, by removing the text of the section and adding in lieu thereof "An application under § 157.23 (which shall include the originals of all exhibits accompanying the applications) shall be verified.";

§ 157.101 [Amended]

l. § In §157.101(c), by removing "§ 1.34" and adding in lieu thereof "§ 385.713".

PART 158—ACCOUNTS, RECORDS, AND MEMORANDA

25. Part 158 is amended as follows:

§ 158.3 [Amended]

a. In the first sentence of § 158.3, by removing "§ 1.17" and adding in lieu thereof "§ 385.2010";

§ 158.4 [Amended]

b. In § 158.4, by removing the first sentence and adding in lieu thereof "Each memorandum must be complete in itself."; and in the second sentence, by removing "§ 1.29" and adding in lieu thereof "§ 385.706";

§ 158.7 [Amended]

c. In § 158.7, by removing "§ 1.20" and adding in lieu thereof "Subpart E of Part 385".

PART 250—FORMS

26. Part 250 is amended as follows:

§ 250.1 [Amended]

In § 250.1, by removing the text of the section and adding in lieu thereof "[Reserved].".

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

27. Part 270 is amended as follows:

§ 270.202 [Amended]

In § 270.202(d), by removing "§ 1.41" and adding in lieu thereof "Subpart K of Part 385".

PART 271—CEILING PRICES

28. Part 271 is amended as follows:

§ 271.402 [Amended]

In the first sentence of § 271.402(c)(5), by removing "§ 1.7(b)" and adding in lieu thereof "§ 385.1901";

PART 275—COMMISSION DETERMINATIONS AND REVIEW OF JURISDICTIONAL AGENCY DETERMINATIONS

29. Part 275 is amended as follows:

§ 275.204 [Amended]

In § 275.204(f), by removing "§§ 1.17 and 1.51" and adding in lieu thereof "§ 385.2010".

PART 281—NATURAL GAS CURTAILMENT UNDER THE NATURAL GAS POLICY ACT OF 1978

30. Part 281 is amended as follows:

§ 281.110 [Amended]

a. In § 281.110(b), by removing "§ 1.6" and adding in lieu thereof "§ 385.206";

§ 281.111 [Amended]

b. In the first sentence of § 281.111, by removing "§ 1.7 of the Commission Regulations" and adding in lieu thereof "§ 385.207 of this chapter";

§ 281.214 [Amended]

c. In § 281.214(a), by removing "§ 1.6" and adding in lieu thereof "§ 385.206";

§ 281.215 [Amended]

d. In the first sentence of § 281.215, by removing "§ 1.7 of the Commission Regulations" and adding in lieu thereof "§ 385.207"; of this chapter".

PART 282—INCREMENTAL PRICING

31. Part 282 is amended as follows:

§ 282.201 [Amended]

a. In the last sentence of § 282.201, by removing "§ 1.41" and adding in lieu thereof "Subpart K of Part 385 of this chapter";

§ 282.204 [Amended]

b. In § 282.204(f)(2), by removing "§ 1.10" and adding in lieu thereof "§ 385.209 of this chapter";

§ 282.206 [Amended]

c. In § 282.206(a)(2)(i), by removing "§ 1.7" and adding in lieu thereof "§ 385.207 of this chapter";

§ 282.206 [Amended]

d. In § 282.206(b)(1), by removing "§ 1.41" and adding in lieu thereof "§ 385.1108".

e. In § 282.206(b)(2), by removing "§ 1.41(h)" and adding in lieu thereof "§ 385.1108(h) of this chapter";

§ 282.405 [Amended]

f. In § 282.405(c)(1), by removing "§ 1.7 of the Commission's Rules of Practice and Procedure" and adding in lieu thereof "§ 385.207".

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

32. Part 284 is amended as follows:

§ 284.6 [Amended]

a. In § 284.6(a) by removing "§ 1.42" and adding in lieu thereof "Subpart L of Part 385";

§ 284.208 [Amended]

b. In § 284.208(d)(1), by removing "§ 1.32" and adding in lieu thereof "Subpart H of Part 385";

§ 284.222 [Amended]

c. In the first sentence of § 284.222(b), by removing "§§ 1.32 and 157.11" and adding in lieu thereof "§ 157.11 and Subpart H of Part 385".

PART 286—ADMINISTRATIVE PROCEDURES

33. Part 286 is amended as follows:

§ 286.102 [Amended]

In § 286.102(c) by removing "Part I, Subchapter A, Chapter I" and adding in lieu thereof "§ 385.713 of this chapter".

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

34. Part 292 is amended as follows:

§ 292.207 [Amended]

In the first sentence of the third paragraph of the notice form in § 292.207(b)(6)(ii), by removing "§§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure" and adding in lieu thereof "§§ 385.209 and 385.214 of this chapter".

PART 375—THE COMMISSION

35. Part 375 is amended as follows:

§ 375.202 [Amended]

a. In § 375.202(b)(1), by removing "§ 1.1(f)(19)" and adding in lieu thereof "§ 388.101(c)";

b. In § 375.202(b)(2), by removing "§ 1.36(c)(2)" and adding in lieu thereof "§ 388.105(b)";

§ 375.301 [Amended]

c. In the last sentence of § 375.301(a), by removing "§ 1.7(d)" and adding in lieu thereof "§ 385.1902";

d. By adding to § 375.301 a new paragraph (c) to read as follows:

§ 375.301 Purpose.

* * * * *

(c) For purposes of Subpart C, "uncontested" and "in contested cases" mean that no motion to intervene, or notice of intervention, in opposition to the pending matter made under § 385.214 (intervention) has been received by the Commission.

§ 375.302 [Amended]

e. In the first sentence of § 375.302(b), by removing "§ 1.8" and adding in lieu thereof "§ 385.212";

f. In § 375.302, by removing paragraph (f);

g. In § 375.302(g), by adding after "time" and before "which" the following: "(other than motions made while a proceeding is pending before a presiding officer as defined in § 385.102(d))", and by removing "Part 1" and adding in lieu thereof "Part 385";

§ 375.304 [Amended]

h. In § 375.304, by removing "the Commission's rules of practice and procedure, particularly "§ 1.27" and adding in lieu thereof "Part 385, particularly "§ 385.504";

§ 375.307 [Amended]

i. In § 375.307(g), by removing "1.11(d)(1) of this Chapter" and adding in lieu thereof "§ 385.214 of this chapter";

j. In § 375.307(j), by removing "§ 1.14(s)(2) of this Chapter" and adding in lieu thereof "§ 385.2001 of this chapter";

§ 375.308 [Amended]

k. In § 375.308(h), by removing "§ 1.11(d)(3)" and adding in lieu thereof "§ 385.214";

§ 375.309 [Amended]

l. In § 375.309(o), by removing "§ 1.14(a)(2)" and adding in lieu thereof "§ 385.2001";

§ 375.308 [Amended]

m. In § 375.308(gg), by removing "§ 1.14(a)(2) of this Chapter" and adding in lieu thereof "§ 385.2001 of this chapter";

§ 375.309 [Amended]

n. In § 375.309(b), by removing "§ 1.12 of this Chapter" and adding in lieu thereof "§ 1b.12 of this chapter"; and

§ 375.310 [Amended]

o. In § 375.310(a), by removing "§ 1.38 and § 1.40" and adding in lieu thereof "Subpart I and Subpart J of Part 385 of this chapter".

[FR Doc. 82-11975 Filed 4-30-82; 8:45 am]

BILLING CODE 6717-01-M

federal register

Monday
May 3, 1982

Part IV

Department of the Interior

Bureau of Land Management

Public Administrative Procedures; Recordable Disclaimers of Interest in Land; Correction of Conveyancing Documents

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1820 and 1860

Public Administrative Procedures; Recordable Disclaimers of Interest in Land; Correction of Conveyancing Documents

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Secretary of the Interior is authorized by section 315 of the Federal Land Policy and Management Act of 1976 to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation where the disclaimer will help remove a cloud on the title of such lands. He also is authorized by section 316 of that Act to correct patents or documents of conveyance where necessary in order to eliminate errors. This proposed rulemaking sets forth the procedures for carrying out this authority.

DATE: Comments by July 2, 1982.

ADDRESS: Send comments to: Director (140), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address from 7:45 a.m. to 4:15 p.m. on regular work days.

FOR FURTHER INFORMATION CONTACT: Henry B. Beauchamp (202) 343–8693
or
Robert C. Bruce (202) 343–8735.

SUPPLEMENTARY INFORMATION: Under Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), the Secretary of the Interior may issue a document of disclaimer of interest or interests in any lands in a form suitable for recordation where the disclaimer will help remove a cloud on the title of such lands. The Secretary is authorized to issue such document, after consulting with any affected Federal agency, where it is determined that a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or that the lands lying between the meander line shown on an official plat of survey and the actual shoreline of a body of water are not lands of the United States; or that accredted, relicted or avulsed lands are not lands of the United States. Issuance of a document or disclaimer by the Secretary shall have the same effect as a quitclaim deed from the United States.

Section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746) provides that the Secretary of the Interior may correct patents or other documents of conveyance issued under any of the public land laws regardless of whether such patents or other documents of conveyance were issued prior to or after October 21, 1976.

These proposed regulations provide the procedures for applicants to make application to the Secretary of the Interior for the issuance of disclaimers and for correction of patents and other documents of conveyance.

The proposed regulations apply regardless of whether lands are within the boundaries of Indian reservations, the National Forest System, the National Park System, the National Wildlife Refuge System or any other Federal system, area, component or unit.

This rulemaking is not to be construed as requiring persons to apply for a disclaimer in order to exhaust administrative remedies prior to a quiet title suit against the United States where there is a definite claim by the United States to or against title.

The principal author of this proposed rulemaking is Henry B. Beauchamp, Division of Land Resources and Realty, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in 43 CFR Subparts 1864 and 1865 do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

Subject Listings for 43 CFR Part 1860

Administrative practice and procedure, Public lands.

PART 1860—CONVEYANCING DOCUMENTS

Under the authority of sections 315 and 316 of the Federal Land Policy and Management Act (43 U.S.C. 1745, 1746), it is proposed to amend Part 1860, Group 1800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations as set forth below:

1. Part 1860 is revised by adding a new subpart 1864 as follows:

Subpart 1864—Recordable Disclaimers of Interest in Land

Sec.

Subpart 1864—Recordable Disclaimers of Interest in Land

§ 1864.0–1 Purpose.

The purpose of these regulations is to establish procedures under section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), by anyone who wishes to use them for the issuance of documents of disclaimer of interest or interests in any lands in any form suitable for recordation where the disclaimer will help remove a cloud on the title of such lands.

§ 1864.0–2 Objectives.

The objective of the disclaimer is to help remove clouds on titles of lands where the Secretary of the Interior determines that:

(a) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or

(b) the lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or

(c) accreted, relicted, or avulsed lands are not lands of the United States.

It is not the intent of the disclaimer to purport to convey any real property interest of the United States and such disclaimer is not considered to be a document of conveyance, although its effect is the same as a quitclaim deed.

§ 1864.0–3 Authority.

Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), authorizes the Secretary of the Interior to issues a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands, if certain determinations are made and conditions are met.

§ 1864.0-5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Accreted lands" are lands that have been gradually and imperceptibly formed along the banks of a body of water by deposition of water-borne soil.

(c) "Avulsed lands" are lands that have been uncovered by a relatively sudden change in alignment of the channel of a river, or by a comparable change in some other body of water, or that remain as uplands following such a change, or that are located in the bed of the new channel.

(d) "Actual shoreline" means the line which is washed by the water wherever it covers the bed of a body of water at its mean high water level.

(e) "Lands" means lands and interests in lands.

(f) "Meander line" means a survey line established for the purpose of representing the location of the actual shoreline of a permanent natural body of water, without showing all the details of its windings and irregularities. A meander line rarely runs straight for any substantial distance. It is established not as a boundary line but in order to permit calculation of the quantity of lands in the fractional sections remaining after segregation of the water area.

(g) "Prospective owner" means one who has a contract or option to purchase the lands included in the application.

(h) "Relicted lands" are lands gradually uncovered when water recedes permanently.

§ 1864.1 Application for issuance of a document of disclaimer.

§ 1864.1-1 Filing of application.

Any present or prospective owner of lands may file an application to have a disclaimer of interest issued if there is reason to believe that the United States claims or might claim an interest in the lands and such claim would cloud the title of such lands.

§ 1864.1-2 Form of application.

(a) An application shall be filed in writing with the proper Bureau of Land Management Office as listed in § 1821.2-1(d) of this title.

(b) No specific form of application is required.

(c) A non-refundable fee of $50 shall accompany the application.

(d) Each application shall include:

(1) A description of the lands by legal subdivision according to the official survey plat, or by metes and bounds in relation to the official survey plat if the lands are not shown on the survey plat;

(2) The applicant's name, mailing address, and telephone number and the names, addresses and telephone numbers of others known or believed to have or claim an interest in the lands;

(3) All documents which show the applicant's title to the lands, or, in the case of a prospective owner, a copy of the contract or option by which the prospective record owner would acquire title;

(4) As complete a statement as possible concerning:

(i) The nature and extent of the cloud on the title, and

(ii) The reasons the applicant believes:

(A) The record title interest of the United States in the lands included in the application has terminated by operation of law or is otherwise invalid, including a copy or legal citation of relevant provisions of law; or

(B) The lands between the meander line shown on the plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States, including as documentation an official plat of survey or a reference to a date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue; or

(C) The lands are subject to accretion, reliction or avulsion and are no longer lands of the United States, including submission for the uplands portion of the body of water affected a copy an official plat of survey or a reference to it by date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue;

(5) Any available documents or title evidence, such as historical and current maps, photographs, and water movement data, that support the application;

(6) The name, mailing address, and telephone number of any known adverse claimant or occupant of the lands included in the application; and

(7) Any request the applicant may have that the disclaimer be issued in a particular form suitable for use in the jurisdiction in which it will be recorded.

§ 1864.1-3 Action on application.

(a) The authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit needed to cover the administrative costs of processing the application and issuing a disclaimer and inform the applicant within 90 days of receipt of the application.

(b) The applicant shall submit a deposit in an amount determined by authorized officer.

§ 1864.1-4 Consultation with other Federal agencies.

If the lands included in the application are under the administrative jurisdiction of a Federal agency other than the Department of the Interior or if the issuance of a disclaimer for the lands would affect another Federal agency, the authorized officer shall refer the application to that Federal agency for comment.

§ 1864.2 Notice of intent to issue disclaimer.

(a) The authorized officer shall notify the applicant, in writing, of a determination to issue a disclaimer. Such notification shall include a full and complete statement of the cost incurred in reaching such determination, including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs of issuing the disclaimer exceed the amount of the deposit required of the applicant under this subpart, the applicant shall be informed that a payment is required for the difference between the actual costs and the deposit. The notification shall also require that payment be made within 120 days from the date of mailing of the notice. If the deposit exceeds the administrative costs of issuing the disclaimer, the applicant shall be informed that a credit for or a refund of the excess will be made. The notification shall also state that the authorized officer will publish notice of the determination, including the grounds supporting it, in the **Federal Register.** Publication in the **Federal Register** shall be made at least 90 days preceding the issuance of the disclaimer, but not until the applicant has paid the administrative costs. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application.

§ 1864.3 Issuance of document of disclaimer.

Upon receipt of the payment and following, by not less than 90 days, the publication required by § 1864.2 of this title, the authorized officer shall issue to the applicant a document in a form suitable for recordation disclaiming interest in the lands covered by the application.

§ 1864.4 Effect of disclaimer.

A document of disclaimer by the authorized officer under the provisions of these regulations shall have the same effect as a quitclaim deed from the United States.

§ 1864.5 Appeals.

An applicant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR Part 4.

2. Part 1860 is revised by adding a new subpart 1865 as follows:

Subpart 1865—Correction of Conveyancing Documents

Subpart 1865—Correction of Conveyancing Documents

§ 1865.0-1 Purpose.

The purpose of these regulations is to establish procedures under section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746), for the correction and elimination of errors in patents and other documents for the conveyancing of public lands. The regulations apply to any situation involving an error in patents and other documents of conveyance, the most typical of which is an erroneous legal description of the lands conveyed.

§ 1865.0-2 Objectives.

The objective is to provide a procedure for the correction and elimination of errors in patents and documents of conveyance.

§ 1865.0-3 Authority.

Section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746), authorizes the Secretary of the Interior to correct patents or documents of conveyance issued pursuant to laws applicable to the disposal of lands, where necessary to eliminate errors.

§ 1865.0-5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(b) "Error" means the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions and names either in their entirety or in part, in a patent or document of conveyance as a result of factual error or unitentional or inadvertent deviation from statutory or regulatory requirements.

(c) "Prospective owner" means one who has a contract or other agreement to acquire lands included in a patent or other document of conveyance containing an error or that would have been included but for an error.

(d) "Lands" mean lands or interest in lands.

1865.1 Application for correction of conveyancing documents.

§ 1865.1-1 Filing of application.

Any existing or prospective record owner of lands or interests in lands that are in non-Federal ownership may file an application to have an error corrected or eliminated from a patent or document of conveyance that has been issued by the Federal Government.

§ 1865.1-2 Form of aplication.

(a) An application shall be fired in writing with the proper Bureau of Land Management Office as listed in section 1821.2-1(d) of this title.

(b) No specific form of application is required.

(c) A non-refundable fee of $50 shall accompany the application.

(d) Each application shall include:

(1) The name, mailing address, and telephone number of the applicant and any others known or believed to have or claim an interest in the lands.

(2) All documents which show the applicant's title to the lands included in the application, or, in the case of a prospective owner, a copy of the contract or agreement by which the applicant would acquire title;

(3) A certified copy of any patent or other document of conveyance conveying the lands included in the application to the applicant or predecessor(s) in interest; and

(4) As complete a statement as possible concerning:

(i) The nature and extent of the error;

(ii) The manner in which the error can be corrected or eliminated; and

(iii) The form in which it is recommended the corrected patent or document of conveyance be issued.

§ 1865.1-3 Action on application.

(a) The authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit needed to cover the administrative costs of processing the application and issuing the corrected patent or other document of conveyance and inform the applicant within 90 days of receipt of the application.

(b) The applicant shall submit a deposit in the amount determined by the authorized officer.

(c) The authorized officer shall, upon review of the factual data and information submitted with the application, and upon a finding that an error was made in the patent or document of conveyance, notify the applicant, in writing, that a corrected patent or document of conveyance shall be issued. The notification shall include a description of how the error is to be corrected or eliminated in the patent or document of conveyance. The notice shall require the applicant to surrender the original patent or other document of conveyance to be corrected. Where such original document is unavailable, a statement setting forth the reasons for its unavailability shall be submitted in lieu of the original document. The notice may include a requirement for quitclaiming to the United States the lands erroneously included, and shall specify any terms or conditions required for the quitclaim. such notification shall include a full and complete statement of the administrative costs involved in issuing the corrected patent or document of conveyance, and shall include any sum due to the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs of issuing the corrected patent or document of conveyance exceed the amount of the deposit required of the applicant under this subpart, the applicant shall be informed that a payment is required for the difference between the actual costs and the deposit. The notification shall also require that payment be made within 60 days from the date of mailing of the notice. If the deposit exceeds the administrative costs of issuing the corrected patent or document of conveyance, the applicant shall be informed that a credit for or a refund of the excess will be made. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application.

§ 1865.2 Issuance of corrected patent or document of conveyance.

Upon the authorized officer's determination that all of the requirements of the Act for issuance of a corrected patent or document of conveyance have been met, and upon receipt of the payment required by § 1865.1-3 of this title, the authorized officer shall issue a corrected patent or document of conveyance.

§ 1865.3 Issuance of patent or document of conveyance on motion of authorized officer.

The authorized officer may initiate and make corrections in patents or other documents of conveyance on his/her own motion, if all existing or prospective owners agree.

§ 1865.4 Appeals.

An applicant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR Part 4.

PART 1820—APPLICATION PROCEDURES

§§ 1821.6—1821.6-6 [Removed]

§§ 1821.7—1821.7-2 [Redesignated as §§ 1821.6 through 1821.6-2]

3. Part 1820 is revised by removing §§ 1821.6 through 1821.6-6 in their entirety and by redesignating §§ 1821.7 through 1821.7-2 as §§ 1821.6 through 1821.6-2.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

April 12, 1982.

[FR Doc. 82-12027 Filed 4-30-82; 8:45 am]

BILLING CODE 4310-84-M

federal register

Monday
May 3, 1982

Part V

Department of the Interior

Bureau of Land Management

Office of the Secretary

Mineral Materials Disposal and Surface Exploration; Mining and Reclamation of Land

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3600, 3610, and 3620

Office of the Secretary

43 CFR Part 23

Mineral Materials Disposal and Surface Exploration; Mining and Reclamation of Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking revises and consolidates the present regulations for the disposal of mineral materials on the public lands and Federal mineral interests administered by the Bureau of Land Management. In accordance with Executive Order 12291, the proposed rulemaking totally revises the current regulations to consolidate and clarify the current mineral material disposal procedures and to eliminate unnecessary language.

In addition, this proposed rulemaking removes provisions in 43 CFR Part 23 that relate to mineral materials and incorporates them into Part 3600 of Title 43 of the Code of Federal Regulations. This consolidates all regulations relating to mineral materials into a single Part.

DATE: Comments by July 2, 1982

ADDRESS: Send comments to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Brenda Horton; (202) 343–8537

SUPPLEMENTARY INFORMATION: The proposed rulemaking revises the regulations in 43 CFR Part 3600 to eliminate unnecessary language and obsolete sections, clarify procedures and limitations and maintain consistency wih other published rules. This is in accordance with the directive in Executive Order 12291 to identify and reduce needless, burdensome and counterproductive regulations. Overall, the proposed rulemaking simplifies procedures for disposal of mineral materials (i.e., common varieties of sand, store, gravel, pumice, etc.).

In addition, the provisions for exploration, mining and reclamation under 43 CFR Part 23 relative to mineral materials are deleted from Part 23 of this title and are incorporated into subpart 3601 of the proposed rulemaking. As a result, the proposed rulemaking contains, in a single Part, all regulatory requirements for disposal of mineral materials.

The authority section, 3600.0–3 of this title, has been amended to include provisions for multiple use and sustained yield under section 302 of the Fedeal Land Policy and Management Act of 1976 (43 U.S.C. 1732). As a result, a new subpart is added to provide for the collection of hobby mineral specimens and clarify existing collection procedures.

Reference to pumicite disposals within Katmai National Monument, Alaska, has been deleted, since no applications are pending and the authorizing statute (68 Stat. 53) has expired.

The principal author of these proposed revisions is: Brenda Horton, Division of Mineral and Geothermal Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of the proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. (Pub. L. 96–354)

The information collection requirements contained in 43 CFR Part 3600 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Under the authority of the Materials Act of July 31, 1947, as amended, (30 U.S.C. 601, 602), it is proposed to revise Part 23, Subtitle A, Chapter I and Part 3600, and to add Parts 3610 and 3620 Group 3600, Subchapter B Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Part 3600 is revised as follows:

Group 3600—Mineral Materials Disposal

PART 3600—MINERAL MATERIALS DISPOSAL: GENERAL

Subpart 3600—General

Subpart 3600—General

§ 3600.0–1 Purpose.

The regulations in this part establish procedures for the exploration, development and disposal of mineral material resources as well as the protection of the environment of the public lands under permit or contract for sale or free use.

§ 3600.0–3 Authority.

(a) The Act of July 31, 1947, as amended, (30 U.S.C. 601 et seq.) provides:

(1) Authority for the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public lands of the United States, and from lands on which the mineral rights have been reserved to the United States, if the disposal of these materials (i) is not authorized by law, including, but not limited to the Act of June 28, 1934, as amended (43 U.S.C. 315 et seq.) and the United States mining laws, (ii) is not prohibited by the laws of the United States, and (iii) would not be detrimental to the public interest.

(2) That where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this Part only with the consent of such Federal department or agency or of such State or local governmental unit;

(3) That the Secretary of Agriculture shall dispose of materials from lands administered by him/her for national forest purposes or for purposes of Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.) or where withdrawn for any other function of the Department of Agriculture. (See 36 CFR, Part 251 for Forest Service regulations relative to the disposal of materials in the national forests.)

(4) That disposal of mineral materials under the Materials Act may not be made from any lands in any national park or national monument or from any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive Order for the use of Indians.

(5) Authority for the Secretary of the Interior to permit free use of mineral materials by any Federal or State government agency, unit or subdivision, including municipalities, or any non-profit association or corporation. The Materials Act *does not* permit these materials to be used for commercial or industrial purposes, resale or barter.

(b) Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) directs the Secretary:

(1) To manage public lands under the principles of multiple use and sustained yield in accordance with the land use plans developed under the Act (see Part 1601 of this title).

(2) To regulate, through easements, permits, leases, licenses, published rules or other instruments deemed appropriate, the use, occupancy and development of public lands.

(3) To prevent unnecessary and undue degradation of the public lands.

(c) Section 2 of the Act of September 28, 1962 (76 Stat. 652) requires the Secretary of the Interior to provide by regulation that limited quantities of petrified wood may be removed without charges from public lands which he shall specify. Section 2 of the above Act applies to the same public lands as the Act of July 31, 1947, as amended (30 U.S.C. 601, 602). Specifically excluded are lands in any national park, or national monument, or any Indian lands.

§ 3600.0-4 Policy.

It is the policy of the Bureau of Land Management to permit the disposal of mineral material resources under the Bureau's jurisdiction at fair market value while insuring that adequate measures are taken to protect the environment and minimize damage to public health and safety during the authorized exploration for and the removeal of such minerals. No mineral material shall be disposed of if the Secretary determines that the aggregate damage to public lands and resources would exceed the benefits to be derived from the proposed sale.

§ 3600.0-5 Definitions.

As used in this group, the term:

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Permittee" means any person, corporation, partnership and association, Federal, or State agency, unit, or subdivision, including municipalities, and non-profit organization or corporation or other entity that has been issued a contract or a free-use permit for the removal of mineral materials from the public lands.

(d) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this Part.

(e) "Mineral material" means, but is not limited to "common varieties" of sand, stone, gravel, pumice, pumicite, cinders, clay and other mineral materials and petrified wood.

(f) "Public lands" means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(g) "Community pit" means sites which are noted on the appropriate Bureau of Land Management State Office records and posted on the ground from which nonexclusive disposals of common variety mineral materials can be made.

(h) "Common use areas" mean generally broad geographic areas, not noted on appropriate Bureau of Land Management State Office records or posted on the ground, from which nonexclusive disposals of common variety minerals can be made.

(i) "Performance bond" means a bond to ensure compliance with the terms of the contract and reclamation of the site as required by the authorized officer.

(j) "Hobby specimens" include, but are not limited to, rocks, mineral specimens and gem stones.

(k) "Act" means the Materials Act of July 31, 1947, as amended, (30 U.S.C. 601, et seq.).

(l) "Unnecessary or undue degradation" means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Unnecessary and undue degradation may involve failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed area; creation of a nuisance; or failure to comply with applicable environmental protection statutes and regulations.

Subpart 3601—Limitations

§ 3601.1 Limitations; disposal of mineral materials.

§ 3601.1-1 Valid existing rights and unpatented mining claims.

(a) Mineral material disposals may not be made by the authorized officer from public lands where:

(1) There are any unpatented mining claims which have not been cancelled by appropriate legal proceeding;

(2) Expressly prohibited by law.

§ 3601.1-2 Authorization to use lands subject to material sales contracts and free use permits.

(a) The permittee under contract of sale or permit for free use shall, unless otherwise provided, have the right to:

(1) Extract, remove, process and stockpile the materials until the termination of the contract regardless of any subsequent appropriation under the provisions of the general land laws; or

(2) Use and occupy the described lands if it is determined by the authorized officer to be necessary for fulfillment of the contract until termination of that contract.

(b) The permittee shall be subject to the continuing rights of the United States to issue leases, permits and licenses for the use and occupancy of the lands, provided that this authorized use does not endanger or materially interfere with the production or removal of materials under contract.

(c) Any person that has a subsequent settlement, location, lease, sale or other appropriation under the general land laws, including the mineral leasing and mining laws on lands covered by a material sale contract or free use permit shall be subject to the existing use authorization.

§ 3601.1-3 Removal of materials.

The authorized officer shall not dispose of mineral material under this Part where he/she determines that the damage to public lands and resources exceeds the benefits derived from the disposal of the mineral material. The permittee shall comply with all appropriate Federal, State and local laws and regulations.

§ 3601.2 Planning and environmental protection.

Land use decisions involving mineral material disposals shall be consistent with the resource planning process (see 43 CFR Part 1600 of this title). Upon receipt of an application for sale or free use of mineral materials, the authorized officer shall complete an environmental assessment to assure that, where possible, mitigation of undue or unnecessary degradation is accomplished.

Subpart 3602—Disposal of Mineral Materials; General

§ 3602.1 Mining and reclamation plans.

The authorized officer may require the permittee to prepare mining and reclamation plans prior to issuance of a contract or permit.

§ 3602.1-1 Mining plans.

The permittee, when required by the authorized officer, shall prepare a mining plan that includes, but is not limited to:

(a) A description of the location and area to be affected by the operations;

(b) A map, sketch or aerial photograph showing the area covered by the permit or contract, the name and location of major topographic and cultural features, and the drainage pattern of the area to be mined;

(c) A statement of proposed methods of operating, including: (i) A description of roads or vehicular trails proposed to be constructed, or, if in existence, to be used, and (ii) the size, location and description of structures and facilities to be built;

(d) An estimate of the quantity and source of water to be used and pollutants that are expected to enter any receiving waters;

(e) A design for the proposed impoundment, treatment or control of all runoff water and drainage from workings that will reduce soil erosion and sedimentation and to prevent the pollution of receiving waters; and

(f) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife, and hazards to public health and safety.

§ 3602.1-2 Reclamation plans.

The permittee, when required by the authorized officer, shall prepare a reclamation plan that includes, but is not limited to:

(a) A statement of the proposed manner and time for completion of the reclamation of the areas disturbed by the permittee's operations;

(b) A map or sketch which delineates location and area to be reclaimed;

(c) Proposed methods of preparing and fertilizing the soil prior to replanting;

(d) Types of vegetation to be planted; and

(e) Types and methods of planting, including the weight and mixture of seed per acre.

§ 3602.1-3 Approval and modification of mining and reclamation plans.

(a) Upon review of the mining and reclamation plans, the authorized officer shall promptly notify the applicant of any deficiencies in the plan and of changes needed to prevent undue and unnecessary degradation of the lands. Necessary changes shall be made as agreed by the authorized officer and the applicant.

(b) The permittee shall not deviate from the plan approved by the authorized officer.

(c) An approved mining or reclamation plan may be modified by mutual agreement of the authorized officer and permittee at any time to adjust to changed conditions, or correct any oversight potentially resulting in undue or unnecessary degradation. Any change shall be consistent with the requirements under § 3601.2 of this title.

§ 3602.2 Sampling and testing.

(a) The authorized officer may issue permits under Part 2920 of this title for temporary use and occupancy of lands to allow sampling and testing of mineral materials prior to issuance of a sales contract or free use permit. The permittee shall submit his findings to the authorized officer. Information and data submitted and specifically identified by the permittee as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination in accordance with the provisions of the Freedom of Information Act. A determination concerning information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR Part 2.

(b) A permit for temporary use and occupancy under Part 2920 of this title does not give the permittee a preference right to a sales contract or free use permit. The permittee shall conform to all applicable Federal, State and local laws, rules and regulations.

(c) The authorized officer may impose bonding and reclamation requirements on permits for temporary use and occupany.

Subpart 3603—Unauthorized Use

§ 3603.1. Unauthorized Use.

Except when authorized by sale or permit under law and the regulations of the Department of the Interior, the extraction, severance or removal of mineral materials from public lands under the jurisdiction of the Department of the Interior is unauthorized use. Unauthorized users shall be liable in damages to the United States, and shall be subject to prosecution for such unlawful acts (see subpart 9239 of this title).

Subpart 3604—Community Pits and Common Use Areas

§ 3604.1 Nonexclusive disposal.

(a) Non-exclusive mineral material sales and free use under permit may be made from the same deposit within areas designated by the authorized officer, and consistent with other provisions under this part. These designated community pit sites or common use areas are not limited in size.

(b) A person having a contract or permit for the sale or removal of material from established community pit sites has a superior right to remove the material as against any subsequent claim or entry of the lands.

(c) A person authorized by permit or sale to remove mineral material from a common use area does not have the superior right to remove the material as against any subsequent claim or entry of the land.

(d) Sales from community pit sites or common use areas shall be made at fair market value, plus a prorata share of the estimated cost of reclaiming the area, if applicable. Permittees qualifying for free use shall reimburse the government of the cost of reclamation. No mining plan shall be required, but the permittee shall comply with the terms of the contract or permit to protect health and safety and prevent undue of unnecessary degradation of the public lands.

§ 3604.2 Reclamation.

(a) Permits or contracts for the extraction of mineral materials from community pits or common use areas shall not require reclamation but shall require payment of costs of reclamation, as provided in paragraph (c) of this section. However, the authorized officer may allow permittees to reclaim in lieu of paying reclamation charges.

(b) Reclamation shall be performed by the United States when more than 1 permit or contract is expected to be issued for materials in a particular deposit or tract of land, such as community pits or common use areas.

(c) The permittee or contractor shall, in addition to paying the sales price required under his/her permit or contract, reimburse the United States for the cost of reclamation. The amount of reimbursement shall be a proportionate share of the estimated cost of reclamation after the mineral materials are extracted, shall be determined by using a ratio of the material extracted under the permit or contract to the total estimated volume of the material is be extracted.

2. Part 3610 is added to read as follows:

PART 3610—SALES

Subpart 3610—Mineral Material Sales

Subpart 3610—Mineral Material Sales

§ 3610.1 Procedures; general.

§ 3610.1–1 Qualifications of applicants.

No person may purchase mineral materials unless he/she is:

(a) A citizen of the United States; or

(b) A partnership of United States citizens; or

(c) An unincorporated association composed wholly of such citizens, or

(d) A domestic corporation authorized to transact business in the State in which the mineral material is located.

§ 3610.1–2 Request for sale.

Under the provisions of this part, the authorized officer may sell mineral materials upon:

(a) Receipt of a written or verbal request by any person who expresses an interest in mineral materials; or

(b) His/her own initiative.

§ 3610.1–3 Appraisal, reappraisal and measurements.

(a) No mineral materials shall be sold at less than fair market value as determined by a mineral appraisal.

(b) The authorized officer shall reappraise mineral material disposed under §§ 3610.2 and 3610.3 of this title at intervals of 2 years and shall adjust the contract unit price accordingly.

(b) Mineral materials may be measured by volume or weight.

§ 3610.1–4 Payments and termination by agreement.

(a) Under a contract of sale for mineral materials, the permittee:

(1) Shall not remove mineral materials until advance payment is made as provided in the contract;

(2) Shall, for contract sales of $2,000 or less, pay the full amount at execution of the contract;

(3) May, when the sale exceeds $2,000, make installment payments of not less than $500 or 10 percent of the total purchase price, whichever is greater and shall: (i) For non-competitive sales, pay the first installment prior to or at the time the contract is awarded; (ii) for competitive sales, pay the first installment as a deposit at the time the bid is submitted, and (iii) pay each subsequent installment for non-competitive and competitive sales in an amount equal to the value of the mineral material removed prior to removal of the material;

(4) Shall pay the total amount of the purchase price no later than 60 days before the expiration date of the contract;

(5) Shall annually produce an amount sufficient to pay to the United States a sum of money equal to the first installment, or in lieu of such production, shall make an annual payment in the amount of the first installment which shall not be credited to future production. Annual payments shall be due on or before the anniversary date of the execution of the contract;

(6) Shall forfeit all monies paid when the required payments under the terms and conditions of the contract are not met. Failure to comply with the terms and conditions for payment shall constitute a breach of contract and the authorized officer may terminate the contract;

(7) Shall be required to make an annual report of production under the contract and to provide written verification of the amount of mineral materials removed upon request by the authorized officer to allow verification of payments.

(b) Ther permittee and the authorized officer may, by agreement, terminate the contract of sale at any time.

§ 3610.1–5 Refunds

Refunds may be made to the contractor or permittee:

(a) If total payments made exceed the total value of mineral materials covered by the contract;

(b) If insufficient mineral materials existed in the sales area to fulfill the terms of the contract; or

(c) If the contract is terminated by agreement of the authorized officer and the permittee.

§ 3610.1–6 Performance and reclamation bonds.

(a) The authorized officer shall require a performance and reclamation bond of not less than $500 or 20 percent of the total contract value, whichever is greater, for contracts of $500 or more, except for contract sales or permits made from community pits when a reclamation fee is paid by the permittee.

(b) The authorized officer may require a reclamation or performance bond for contract sales of less than $500.

(c) A performance and reclamation bond may be a:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department and executed on an approved standard form; or

(2) Personal surety bond executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contracts; or

(3) Cash bond; or

(4) Negotiable securities of the United States of a par value equal to the amount of the required surety bond, together with a power of attorney executed as required by the authorized officer.

§ 3610.1–7 Assignments.

(a) The permittee may not assign the contract, permit or any interest therein without the written approval of the authorized officer. The authorized officer shall ensure that all terms and conditions agreed upon are contained in the assignment and are assumed by the assignee.

(b) The authorized officer shall not approve any proposed assignments involving contract performances unless the assignee:

(1) Is qualified pursuant to § 3610.1–1 of this title; and

(2) Furnishes a performance bond as required by § 3610.1–6 of this title, or obtains a written commitment from the previous surety to be bound by the assignment when approved.

(c) Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and be subject to all the obligations under the contract, and the permittee shall be released from any further liability under the contract.

§ 3610.1–8 Extension of time.

The authorized officer may grant an extension of time, not to exceed 1 year, if the permittee:

(a) Submits a written request that is received by the authorized officer no later than 30 days or earlier than 90 days prior to the expiration date of the contract; and

(b) Shows, in writing, that the delay in removal of the mineral materials was due to causes beyond the control of and without fault or negligence of the permittee.

§ 3610.1–9 Removal of improvements.

After the permit period expires, the authorized officer may grant the permittee no more than 90 days, not including periods of inclement weather to remove equipment, personal property and any other improvements placed on the public lands by the permittee. Improvements such as roads, culverts and bridges may remain in place with the consent of the authorized officer. If the permittee fails to remove such equipment, personal property or any other improvements they shall become the property of the United States but the permittee shall remain liable for the cost of removal of such equipment, personal property and any other improvement and for restoration of the site.

§ 3610.2 Noncompetitive sales.

§ 3610.2–1 Limitations in volumn.

(a) When it is determined to be in the public interest, and where it is impracticable to obtain competition, the authorized officer may sell at not less than fair market value, without advertising or calling for bids, mineral materials not to exceed 100,000 cubic yards (or weight equivalent) in any individual sale.

(b) The authorized officer shall not approve noncompetitive sales that exceed the total aggregate of 200,000 cubic yards (or weight equivalent) made in any one State for the benefit of any one individual, partnership, corporation or entity in any one calendar year.

(c) The volume limitations in paragraphs (a) and (b) of this section shall not apply to sales in the State of Alaska of mineral materials which the authorized officer determines are needed for construction, operation, maintenance or termination of the Trans-Alaska Pipelines System or the Alaska Natural Gas Transportation System.

§ 3610.2–2 Government programs.

The authorized officer may sell mineral materials not exceeding 200,000 cubic yards (or weight equivalent) at not less than fair market value without advertising or calling for bids when:

(a) The authorized officer determines the sale to be in the public interest; and

(b) The materials are to be used in connection with a public works improvement program that requires urgent attention on behalf of a Federal, State or local governmental agency and that does not permit time required for advertising.

§ 3610.2–3 Federal mineral leases.

Where the materials are to be used in connection with the development of public lands under a mineral lease issued by the United States, the authorized officer may without calling for competitive bids, sell a volume of mineral materials not to exceed 200,000 cubic yards (or weight equivalent) to any one permittee in one State in any calendar year. No charge shall be made for mineral materials necessarily moved in the process of extracting minerals under Federal lease, as long as the materials remain within the boundaries of the lease and are used for lease development.

§ 3610.2–4 Term of contract.

The term for noncompetitive contracts for the sale of mineral materials is limited to no more than 5 years.

§ 3610.3 Competitive sales.

§ 3610.3–1 General.

(a) The authorized officer shall make sales, except those specified in Subpart 3604 and § 3610.2 of this title, only after inviting competitive bids through publication and posting in conformance with § 3610.3 of this title.

(b) The authorized officer shall not hold sales sooner than 1 week after the last advertisement.

§ 3610.3–2 Advertising.

(a) When offering mineral materials for sale by competitive bidding, the authorized officer:

(1) Shall advertise the sale through publication in a newspaper of general circulation in the area where the material is located, on the same day once a week for two consecutive weeks;

(2) May extend the period of time for advertising; and

(3) Shall post a notice of sale in a conspicuous place in the office where bids are to be submitted.

(b) In the advertisement of sale, the authorized officer shall state:

(1) The location by legal description of the tract or tracts on which the material is being offered;

(2) The kind of materials being offered;

(3) The estimated quantities of materials being offered;

(4) The unit of measurement;

(5) The appraised prices;

(6) The time and place for receiving and opening of bids;

(7) The minimum deposit required;

(8) The access requirement;

(9) The method of bidding;

(10) The qualification of bidders;

(11) The requirement that mining and reclamation plans shall be filed and that reclamation will be required;

(12) The bonding requirement;

(13) The location for inspection of contract terms and proposed stipulations;

(14) The office where additional information may be obtained; and

(15) Any additional information deemed necessary.

3610.3–3 Conduct of sales.

(a) Bidding at competitive sales shall be by the submission of written sealed bids, oral bids or a combination of both, as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bid shall be determined by oral auction among the persons making high bids. If no oral bid is made which is higher than the sealed bids, the highest bid shall then be determined by lot. In oral auctions, immediately after the high bid is announced the person offering the high bid shall confirm that bid in writing.

(b) At the request of the authorized officer, or the officer conducting the sale, all persons making bids shall furnish evidence of qualification or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c) When it is in the interest of the Goverment to do so, the authorized officer may reject any of all bids and may waive minor deficiencies in the bids.

§ 3610.3–4 Bid deposits.

A person making a bid to purchase mineral materials shall submit a deposit in advance of the sale.

(a) Sealed bids shall be accompanied by a deposit. At oral auctions, persons making bids shall make the deposit prior to opening of the bidding. The amount of the deposit shall be:

(1) For cash sales, not less than $2,000 or 10 percent whichever is greater, of the appraised value as specified in the advertisement of the sale. The authorized officer may, at his discretion, require larger bid deposits;

(2) For installment sales, not less than the amount of the first installment required under § 3610.1-4 of this title based upon the appraised value as specified in the advertisement of the sale.

(b) Deposits may be in the form of cash, money orders, bank drafts, cashier's or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the U.S. Treasury Department.

(c) The bid deposits of all persons making bids, except the high bid, shall be returned upon conclusion of the bidding.

(d) The deposit of the person making the successful bid shall be applied to the purchase price at the time the contract is signed by the authorized officer.

§ 3610.3-5 Contracts.

(a) The authorized officer may require the person making the high bid to furnish information that is necessary to determine his/her ability to perform the obligations of the contract. The contract shall be awarded by the authorized officer to the person making the high bid, unless he/she is not qualified or is unwilling to accept the terms of the contract or unless all bids are rejected. If the person making the high bid is not qualified or fails to sign and return the contract together with the required performance bond, and mining and reclamation plans when applicable, the authorized officer may offer and award the contract for the amount of the high bid to the person making the next highest bid who is qualified and willing to accept the contract.

(b) Within 30 days after receipt of the contract, the person making the successful bid shall sign and return the contract, together with any required performance bond and mining and reclamation plan when applicable. The authorized officer may extend this period an additional 30 days upon written request of the applicant, within the first 30-day period. If the person making the successful bid fails to comply within the first 30-day period, or an approved 30-day extension, the successful bidder shall forfeit the bid deposit as liquidated damages.

(c) The authorized officer shall make all sales on contract forms approved by the Director, Bureau of Land Management. The authorized officer may include in the contract such additional provisions as are deemed necessary to protect other resource values or prevent unnecessary and undue degradation of the public lands, and shall make these provisions available for inspection by persons who may bid during the advertising period.

§ 3610.3-6 Term of Contract.

The term for competitive contracts of sale for mineral materials is limited to no more than 10 years.

3. Part 3620 is added to read as set forth below:

PART 3620—FREE USE

Subpart 3621—Free Use; General

Subpart 3622—Free Use of Petrified Wood

Subpart 3623—Free Use; Collecting-Hobby Mineral Specimens

Subpart 3621—Free use, general

§ 3621.1 Permits; general.

§ 3621.1-1 Applications.

Application for a free use permit shall be filed in duplicate with the authorized officer on forms approved by the Director.

§ 3621.1-2 Terms.

The authorized officer may grant free use permits to any Federal, or State agency, unit or subdivision, including municipalities, for periods deemed appropriate, not to exceed 10 years. The authorized officer may issue free use permits not to exceed 1 year in duration to non-profit organizations, and may extend the free use permit for a single additional period not to exceed 1 year.

§ 3621.1-3 Assignment.

A free use permit may be assigned or transferred to persons or other entities qualified to hold a free use permit with written approval of the authorized officer.

§ 3621.1-4 Conditions.

(a) The authorized officer shall incorporate the provisions governing the selection, removal and use of the mineral materials in the free use permit.

(b) The authorized officer shall not issue a free use permit upon determination that the applicant owns or controls an adequate supply of the mineral materials that are readily available and are economically and environmentally feasible to meet the applicant's needs.

(c) Mineral materials obtained under a free use permit shall not be bartered or resold.

(d) The permittee shall not remove the mineral materials before a permit is issued or after a permit has expired.

§ 3621.1-5 Removal of materials and improvements.

(a) *Conservation practices.* The permittee shall extract all mineral materials as specified under the free use permit and shall protect and preserve all scenic, recreational, watershed and other values of the lands and resources to the maximum extent feasible.

(b) *Removal by agent.* A free use permittee may allow an agent to extract the mineral materials. This agent shall not:

(1) Be paid more than fair compensation for time, labor and money expended in extracting, processing and removing mineral materials;

(2) Charge the permittee for materials extracted, processed or removed; and

(3) Receive mineral materials from the permit area as payment for services rendered, or as a donation or gift.

(c) *Removal of improvements.* Upon expiration of the permit period, the authorized officer may approve a period of time not to exceed 90 days, not counting periods of inclement weather, to remove equipment, personal property and any improvements placed on the lands by the permittee. The authorized officer may allow improvements such as roads, culverts and bridges placed on the lands to remain. If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

§ 3621.1-6 Bond.

The authorized officer may require a bond as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

§ 3621.1-7 Cancellation.

The authorized officer may cancel a permit if the permittee fails, after adequate notice, to observe the terms and conditions of the permit.

§ 3621.2 Permits to governmental units and non-profit organizations.

(a) The authorized officer may issue a free use permit to any Federal or State agency, unit or subdivision without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided the applicant makes a satisfactory showing to the authorized officer that these materials will be used for a public project.

(b) The authorized officer may issue a free use permit to a non-profit organization or corporation for not more than 5,000 cubic yards (or weight equivalent) in any one calendar year.

(c) Permits issued under this section shall constitute a superior right to remove the materials and shall continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

Subpart 3622—Free Use of Petrified Wood

§ 3622.1 Program; general.

(a) Persons may collect limited quantities of petrified wood for noncommercial purposes under terms and conditions consistent with the preservation of significant deposits as a public recreational resource.

(b) Purchase of petrified wood for commerical purposes is provided by § 3610.1 of this title.

§ 3622.2 Procedures; permits.

No application or permit for free use is required except for specimens over 250 pounds in weight. The authorized officer may issue permits, under subpart 3621 of this title, for the removal of such specimens as the permittee certifies shall be displayed to the public in a museum or similar institution.

§ 3622.3 Designation of areas.

(a) All public lands administered by the Bureau of Land Management and the Bureau of Reclamation are open to or available for free use removal of petrified wood unless otherwise posted. Specific areas may be closed to free use removal of petrified wood by public notice or may be otherwise closed to public entry. Free use areas under the jurisdiction of said Bureaus may be modified or canceled by notices published in the **Federal Register**.

(b) The heads of other Bureaus in the Department of the Interior may publish in the **Federal Register** designations, modifications or cancellations of free use areas for petrified wood on lands under their jurisdiction.

(c) The Secretary of the Interior may designate, modify or cancel free use areas for petrified wood on public lands which are under the jurisdiction of other Federal departments or agencies, other than the Department of Agriculture, with the consent of the head of other Federal departments or agencies concerned, upon publication of notice in the **Federal Register**.

§ 3622.4 Collection rules.

(a) *General.* The authorized officer shall control the removal without charge of petrified wood from public lands under the following criteria:

(1) The maximum quantity of petrified wood that any one person is allowed to remove without charge per day is 25 pounds in weight plus one piece, provided that the maximum total amount that one person may remove in one calendar year shall not exceed 250 pounds. Pooling of quotas to obtain pieces larger than 250 pounds is not allowed.

(2) Except for permits issued under Subpart 3621 of this title to remove museum pieces, no person shall use explosives and power equipment, including but not limited to tractors, bulldozers, plows, power-shovels, trucks or semi-trailers or other heavy equipment for the excavation or removal of petrified wood.

(3) Petrified wood obtained under this section shall be for personal use and shall not be bartered or sold to commercial dealers.

(4) The collection of petrified wood shall be accomplished in a manner that prevents soil erosion and unnecessary and undue degradation of lands or other resources and the environment.

(b) *Additional rules.* The head of the agency having jurisdiction over a free use area may establish and publish additional rules for collecting petrified wood for noncommercial purposes to supplement those included in § 3622.4(a) of this title.

Subpart 3623—Free Use; Collecting—Hobby Mineral Specimens

§ 3623.1 Limitations; procedures and permits.

(a) Collection by amateur collector of limited quantities of hobby mineral specimens for noncommercial purposes may be authorized under terms and conditions which shall be consistent with preservation of significant deposits as a public recreational resource.

(b) Commercial disposals may be made under Part 3610 of this title.

(c) The procedures and limitations set forth for collection of petrified wood under Subparts 3622 and 8363 of this title apply to mineral specimens removed under this subpart.

PART 23—SURFACE EXPLORATION, MINING AND RECLAMATION OF LANDS

2. Part 23 is amended as follows:

Authority [Amended]

a. The authority section is amended by removing the citation "61 Stat. 681, as amended; 30 U.S.C. 601" after the citation "30 U.S.C. 359".

§ 23.2 [Amended]

b. Section 23.2(a) is amended by the removal of the citation "the Materials Act of July 31, 1947, as amended, (30 U.S.C. 601–604)."

c. Section 23.2(c) is removed in its entirety and paragraph (d) is redesignated as (c).

§ 23.3 [Amended]

d. Section 23.3(b) is removed in its entirety and the succeeding paragraphs are appropriately renumbered.

§ 23.4 [Amended]

e. Section 23.4 is amended by the removal of the words "or the Materials Act" after the words "subject to disposition under the mineral leasing Acts".

§ 23.5 [Amended]

f. Section 23.5(a)(1) is amended by removing the words "or an application for a permit or an offer to make a contract under the Materials Act".

g. Section 23.5(b) is amended by inserting the word "or" between the words "permit" and "lease", by removing the words "or contract" "and upon acceptance and by removing from the fourth sentence the words "or the Materials Act".

§ 23.7 [Amended]

h. Section 23.7(b) is removed in its entirety and the succeeding paragraphs are appropriately renumbered.

§ 23.8 [Amended]

i. Section 23.8(a) is amended by removing subparagraph (2) in its entirety and renumbering paragraph (a)(1) as (a).

§ 23.10 [Amended]

j. Section 23.10(a)(1) is amended by removing the sentence, "The holder of a permit or a party to a contract under the Materials Act shall file such reports with the district manager."

k. Section 23.10(a)(2) is amended by removing the words "and upon district managers with respect to permits issued or contracts made under the Materials Act".

l. Section 23.10(b)(1) is revised to read: "(1) An identification of the permit or lease and the location of the operation."

m. Section 23.10(e)(2)(ii) is amended by removing the phrase "a permit, lease or contract issued under the mineral leasing acts or the materials Act" and replacing it with the phrase "a permit or lease issued under the mineral leasing acts".

n. Section 23.10(e)(2)(iii) is amended by removing the phrase "a permit, lease or contract issued under the Mineral Leasing Act of 1920 or the Materials Act" and replacing it with the phrase "a permit or lease issued under the Mineral Leasing Act of 1920".

§ 23.11 [Amended]

o. Section 23.11(a) is amended by removing the words "and upon district managers with respect to permits issued or contracts made under the Materials Act".

p. Section 23.11(b) is amended by removing the words "or contract" in the two places it appears and inserting the word "or" between the words "permit" and "lease" in the two places they appear.

q. Section 23.11(c) is amended by removing the words "or contract" and inserting the word "or" between the words "permit" and "lease".

r. Section 23.11(d) is amended by removing the words "or contract" after the words "terms and conditions of a permit, lease" and by inserting the word "or" between the words "permit" and "lease".

s. Section 23.11(e) is amended by removing the words "or contract" and by inserting the word "or" between the words "permit, lease".

§§ 23.12, 23.13 [Amended]

t. Sections 23.12(c) and 23.13 are amended by removing the words "or contract" after the words "In any case involving", and by adding the word "or" and deleting "," between the words "permit" and "lease".

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 9, 1982.

[FR Doc. 82-12026 Filed 4-30-82; 8:45 am]

BILLING CODE 4310-84-M