

(a) For airplanes listed in McDonnell Douglas Service Bulletin MD11-32-074, dated December 15, 1997: Except as provided by paragraph (c) of this AD, within 24 months after the effective date of this AD, perform a one-time visual inspection of the lubrication holes on the forward trunnion spacer assembly on the MLG for blockage by opposing bushings, and perform a one-time visual inspection of the forward trunnion bolt on the left and right MLG for chrome flaking, galling, and corrosion in the grooves; in accordance with the service bulletin.

\* \* \* \* \*

On page 12252, in the first column, paragraph (b) of AD 99-06-08 is corrected to read as follows:

\* \* \* \* \*

(b) For airplanes listed in McDonnell Douglas Service Bulletin DC10-32-248, dated December 17, 1997: Except as provided by paragraphs (d) and (e) of this AD, within 24 months after the effective date of this AD, perform a one-time visual inspection of the lubrication holes on the forward trunnion spacer assembly on the MLG for blockage by opposing bushings, and perform a one-time visual inspection of the forward trunnion bolt on the left and right MLG for chrome flaking, galling, and corrosion in the grooves; in accordance with the service bulletin.

\* \* \* \* \*

On page 12252, in the second column, paragraph (d) of AD 99-06-08 is corrected to read as follows:

\* \* \* \* \*

(d) For Model DC-10-30, DC-10-40, and KC-10A (military) series airplanes on which the requirements specified in either paragraph (c)(1)(i) or (c)(2)(ii) of AD 96-03-05, amendment 39-9502, have been accomplished: Within 48 months after the effective date of this AD, accomplish the requirements specified in paragraph (b) of this AD.

\* \* \* \* \*

On page 12252, in the second column, paragraph (e) of AD 99-06-08 is corrected to read as follows:

\* \* \* \* \*

(e) For Model DC-10-10 and DC-10-15 series airplanes, on which the requirements specified in paragraph (a)(1)(i), (a)(2)(ii), (b)(2)(i), or (b)(2)(ii) of AD 96-16-01, amendment 39-9701, have been accomplished: Within 48 months after the effective date of this AD, accomplish the requirements specified in paragraph (b) of this AD.

\* \* \* \* \*

Issued in Renton, Washington, on April 1, 1999.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99-8688 Filed 4-7-99; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 1b, 343, and 385

[Docket No. RM98-13-000; Order No. 602]

#### Complaint Procedures

Issued March 31, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is revising its regulations governing complaints filed with the Commission under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act. The Final Rule is designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner.

In order to organize the complaint procedures so that all complaints are handled in a timely and fair manner, the Commission is revising Rule 206 of its Rules of Practice and Procedure. Among other things, the Commission is requiring that complaints meet certain informational requirements, requiring answers to be filed in a shorter, 20-day time frame, and providing various paths for resolution of complaints, including Fast Track processing for complaints that are highly time sensitive. The Commission is also adding a new Rule 218 providing for simplified procedures for complaints where the amount in controversy is less than \$100,000 and the impact on other entities is *de minimis*.

The Commission is codifying its current Enforcement Hotline procedures in Part 1b, Rules Relating to Investigations and revising its alternative dispute resolution regulations (Rules 604, 605 and 606) to conform to the changes made by the Administrative Dispute Resolution Act of 1996. Finally, the Commission is revising certain sections of Part 343,

Procedural Rules Applicable to Oil Pipeline Proceedings, to conform to the changes in the Commission's complaint procedures in Part 385 of the regulations.

**DATES:** The regulations are effective May 10, 1999.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** David Faerber, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208-1275.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (<http://www.ferc.fed.us>) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202-208-1397, if dialing locally, or 1-800-856-3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202-208-2474 or by E-mail to [cipsmaster@ferc.fed.us](mailto:cipsmaster@ferc.fed.us).

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208-2222, or by E-mail to [rismaster@ferc.fed.us](mailto:rismaster@ferc.fed.us).

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ

International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations governing complaints filed with the Commission under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act.<sup>1</sup> The Final Rule is designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner.

In order to organize the complaint procedures so that all complaints are handled in a timely and fair manner, the Commission is revising Rule 206 of its Rules of Practice and Procedure.<sup>2</sup> Among other things, the Commission is requiring that complaints meet certain informational requirements, requiring answers to be filed in a shorter, 20-day time frame, and providing various paths for resolution of complaints, including Fast Track processing for complaints that are highly time sensitive. These changes should ensure that the Commission and all parties to a dispute have as much information as early in the complaint process as possible to evaluate their respective positions. The changes should also ensure that the process used to resolve a complaint is suited for the facts and circumstances surrounding the complaint, the harm alleged, the potential impact on competition, and the amount of expedition needed.

The Commission is adding a new Rule 218 providing for simplified procedures for complaints where the amount in controversy is less than \$100,000 and

the impact on other entities is de minimis.

The Commission is also taking a number of steps to support its policy of promoting consensual resolution of disputes among parties in the first instance. The recently created Dispute Resolution Service will work with all those interested in Commission activities to increase awareness and use of alternative dispute resolution (ADR) in all areas the Commission regulates. This new service will also help identify cases appropriate for ADR processes and conduct ADR processes, including convening sessions. In this Final Rule, the Commission is codifying its current Enforcement Hotline procedures in Part 1b, Rules Relating to Investigations.<sup>3</sup> This change will further publicize and establish the Hotline as a viable alternative to the filing of a formal complaint.

The Commission is also revising its alternative dispute resolution regulations (Rules 604, 605 and 606)<sup>4</sup> to conform to the changes made by the Administrative Dispute Resolution Act of 1996.<sup>5</sup> The ADRA of 1996 provides that the confidentiality provisions of the Act pre-empt the disclosure requirements of the Freedom of Information Act (FOIA). The ADRA of 1996 also eliminated provisions which allowed an agency to terminate the arbitration proceeding at any point prior to the issuance of an award, and to vacate or opt-out of an arbitration award within 30 days after the service of the award. By bringing existing Rules 604, 605, and 606 into compliance with the confidentiality, termination and opt-out provisions of the 1996 ADRA, the Commission will further foster an environment that promotes consensual resolution of disputes by eliminating provisions in its regulations which were seen as having a chilling effect on the use of ADR.<sup>6</sup>

The Commission is also revising certain sections of Part 343, Procedural Rules Applicable to Oil Pipeline Proceedings,<sup>7</sup> to conform to the changes in the Commission's complaint procedures in Part 385 of the regulations.

## II. Background

The Commission first received requests to change its complaint procedures in filings arising out of a

proceeding concerning interstate natural gas pipelines. The Pipeline Customer Coalition<sup>8</sup> filed a proposal for expedited procedures for the consideration and resolution of complaints filed with respect to natural gas pipeline rates, services, or practices.<sup>9</sup> The Interstate Natural Gas Association Of America (INGAA) filed its own proposal and comments in opposition to the Coalition's proposal.<sup>10</sup>

On March 30, 1998, in Docket No. PL98-4-000, the Commission held a symposium on the Commission's complaint procedures to determine (1) how well the Commission's current complaint procedures are working, (2) whether changes to the current complaint procedures are appropriate, and (3) what type of changes should be made.<sup>11</sup> Whereas the Coalition's and INGAA's proposals were restricted to complaints against pipelines, the purpose of the symposium was to discuss the Commission's complaint procedures on a generic basis. The Commission obtained a cross section of views from all segments of the gas, electric, and oil pipeline industries, as well as state regulatory agencies and members of the energy bar. The Commission received a number of comments following the symposium representing a broad range of interests from the natural gas pipeline, electric, and oil pipeline industries. As a result of a commitment made by representatives of various segments of the electric industry at the March 30, 1998 symposium, the Electric Industry Dispute Resolution Working Group (Electric Working Group)<sup>12</sup> filed

<sup>8</sup>The Pipeline Customer Coalition consists of the American Iron and Steel Institute, the LDC Caucus of the American Gas Association, American Public Gas Association, Associated Gas Distributors, Georgia Industrial Group, Independent Petroleum Association of America, Natural Gas Supply Association, Process Gas Consumers, and United Distribution Companies.

<sup>9</sup>Comments and Petition of the Pipeline Customer Coalition, and Amended Petition of the Pipeline Customer Coalition for Proposed Rulemaking filed on May 31, 1996, and April 3, 1997, respectively, in Regulation of Negotiated Transportation Services of Natural Gas Pipelines, *et al.*, Docket Nos. RM96-7-000 and RM96-12-000.

<sup>10</sup>Comments and Petition of the Interstate Natural Gas Association of America filed on April 10, 1997, in Regulation of Negotiated Transportation Services of Natural Gas Pipelines, *et al.*, Docket Nos. RM96-7-000, RM96-12-000, and RM97-4-000.

<sup>11</sup>Symposium on Process and Reform: Commission Complaint Procedures, Docket No. PL98-4-000.

<sup>12</sup>The Electric Working Group includes representatives from American Public Power Association, Coalition for a Competitive Electric Market, Edison Electric Institute, Electric Power Supply Association, Illinois Municipal Electric Agency, National Rural Electric Cooperative Association and Transmission Access Policy Study Group, working with the assistance and support of the American Arbitration Association.

<sup>1</sup>In the Notice of Proposed Rulemaking (NOPR), the Commission inadvertently omitted a reference to the Outer Continental Shelf Lands Act (OCSLA) as one of the statutes under which complaints may be filed, and, therefore, affected by the proposed regulations.

<sup>2</sup>18 CFR 385.206 (1998).

<sup>3</sup>18 CFR Part 1b (1998).

<sup>4</sup>18 CFR 385.604-606 (1998).

<sup>5</sup>Pub. L. 104-320, 110 Stat. 3870 (October 19, 1996).

<sup>6</sup>June 23, 1998 Comments of the American Arbitration Association in Docket No. PL98-4-000 at 5.

<sup>7</sup>18 CFR Part 343 (1998).

recommendations and proposed procedures for dispute resolution.<sup>13</sup>

On July 29, 1998, the Commission issued a notice of proposed rulemaking (NOPR) in Docket No. RM98-13-000.<sup>14</sup> The Commission received 57 comments on the NOPR representing all segments of the gas, electric, and oil pipeline industries.

### III. Discussion

The natural gas and electric industries have undergone and will continue to undergo significant transformations as a result of changes to the Commission's regulatory policies. These industries are now operating in an environment which is increasingly driven by competitive market forces. Because of the short-term transactional nature of the electric and gas markets, and the fact that competitive changes happen quickly, timely and effective resolution of complaints has become more crucial. If the Commission is to use lighter-handed forms of regulation, it must have a complaint process that ensures that complainants will receive adequate protection and redress under the statutes administered and enforced by the Commission. Complaints enable the Commission to monitor activities in the marketplace and provide an early warning system for identifying potential problems. This Final Rule is necessary to provide assurance to the public that complaints will receive appropriate consideration and that complaints that require expedited consideration will receive it.

The revised regulations will encourage and support the resolution of disputes by the parties themselves prior to the filing of a formal complaint. If potential complaints can be resolved or the number of issues in a potential complaint can be reduced informally, the Commission then can focus its attention on the significant remaining issues raised in the formal complaints ultimately filed with the Commission.

The revised regulations organize the complaint procedures so that all complaints are handled in a timely, fair manner based upon an appropriate record. The regulations will assure that those complaints deserving of expedition receive it by recognizing that the appropriate process to be used for a particular complaint depends on many factors including the harm alleged and the facts and circumstances surrounding the complaint.

The proceedings conducted over the past 12 months and the comments received in response to the Commission's NOPR have all served to emphasize the need to have in place procedures that will enable resolution without delay of disputes that will arise in the context of the rapidly moving competitive circumstances of today's federally regulated energy industries. This Final Rule must be viewed against a background of a more complex energy market where regulated companies are driven increasingly by competitive market forces. The dynamics of competitive markets and lighter-handed Commission regulation can be expected to change the nature of the complaints received. The Commission will be faced both with novel commercial problems and with requests for "real time" relief. These rules will allow the Commission to respond to the greater demands that will be placed upon it to expeditiously resolve disputes.

#### A. Informational Requirements for Complaints

The final rule revises Rule 206, set forth in section 385.206 of the Commission's regulations, to require that a complaint must satisfy certain informational requirements. A complaint must: (1) Clearly identify the action or inaction which is alleged to violate applicable statutory standards; (2) explain how the action or inaction violates applicable statutory standards; (3) set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant; (4) make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction; (5) indicate the practical, operational, or nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction; (6) state whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum; (7) state the specific relief or remedy requested, including any request for stay, extension of time, or other preliminary relief, and in cases seeking other preliminary relief, a detailed explanation of why such relief is required addressing: (i) the likelihood of success on the merits; (ii) the nature and extent of the harm if preliminary relief is denied; (iii) the balance of the relevant interests, *i.e.*, the hardship to nonmovant if preliminary

relief is granted contrasted with the hardship to the movant if preliminary relief is denied; and (iv) the effect, if any, of the decision on preliminary relief on the public interest; (8) include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts, affidavits, and testimony; (9) state (i) whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal procedures were used; (ii) whether the complainant believes that alternative dispute resolution under the Commission's supervision could successfully resolve the complaint; (iii) what types of ADR procedures could be used; and (iv) any process that has been agreed on for resolving the complaint; (10) include a form of notice suitable for publication in the **Federal Register** and submit a copy of the notice on a separate 3½ inch diskette in ASCII format; and (11) explain with respect to requests for Fast Track processing pursuant to section 385.206(h), why the standard processes will not be adequate for expeditiously resolving the complaint.<sup>15</sup>

The Commission is adopting, as the final rule, the proposal in the NOPR with certain modifications. The NOPR had proposed to require complaints to include all documents that support the facts in the complaint. A number of commenters (Dynergy, American Public Power Association, Transmission Dependent Utility Systems) were concerned that they would not be able to meet the requirement to include all documents that support the facts in the complaint because, they asserted, in many instances relevant documents will be in the hands of the respondent. Section 385.206(b)(8) adopted in the final rule is modified from that proposed to request "all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts, affidavits, and testimony." This should alleviate commenters' concerns.

The NOPR proposed to require complainants to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction of the respondent. A number of commenters (Enron Capital and Trade, American Public Power Association, Missouri Public Service Commission) were concerned that they would not be able to meet the requirement to quantify

<sup>13</sup> Electric Industry Dispute Resolution Working Group Recommendations and Proposed Procedures for Dispute Resolution filed on June 23, 1998, in Symposium on Process and Reform: Commission Complaint Procedures, Docket No. PL98-4-000.

<sup>14</sup> 63 FR 41982 (Aug. 6, 1998).

<sup>15</sup> The Fast Track process is describe in section H below.

the financial impact or burden (if any) created for the complainant as a result of the action or inaction. Section 385.206(b)(4) adopted in the final rule is modified from that proposed to require a complainant to "make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction."

The Pipeline Customer Coalition was concerned about having to reveal commercially sensitive information for the purposes of supporting a complaint. To protect such information, the Pipeline Customer Coalition proposed that (a) the complaint specifically indicate the absence of certain information that the complainant regards as commercially sensitive and (b) the complaint include a proposed protective order that could be adopted by the Commission to facilitate the disclosure of confidential factual data to the respondent and other parties to the complaint proceeding.

The Commission adopts here a procedure akin to that for oil pipelines filing applications for market power determinations where interested persons must execute an applicant-proposed protective agreement to receive the complete application. A complainant would file its complete complaint with a request for privileged treatment. The respondent and other parties would receive a redacted version of the complaint along with a complainant-proposed protective agreement. The respondent and parties would receive the privileged version of the complaint by executing the protective agreement and returning it to the complainant. Such a procedure has the advantage of enabling parties to resolve disclosure disputes through consensual agreement among themselves without the need for Commission involvement in every instance involving privileged information. The Commission could still step in if parties were unable to agree on protective conditions or expressed a need for the added assurance against disclosure that would be offered by a Commission-issued protective order. If necessary, the Commission could develop a model protective agreement akin to the model protective order developed recently by the Office of Administrative Law Judges.

Therefore, in section 385.206 adopted in the final rule, a new section (e) is added describing the privileged treatment procedures. A complainant may request privileged treatment of documents and information contained in the complaint pursuant to section 388.112 of the Commission's

regulations.<sup>16</sup> In the event privileged treatment is requested, the complainant must file the original and three copies of its complaint with the information for which privileged treatment is sought and 11 copies of the pleading without the information for which privileged treatment is sought. The original and three copies must be clearly identified as containing information for which privileged treatment is sought. A complainant must provide a copy of its complaint without the privileged information and its proposed form of protective agreement to each entity that is to be served pursuant to section 385.206(c). An interested person must make a written request to the complainant for a copy of the complete complaint within 5 days after the filing of the complaint. The request must include an executed copy of the protective agreement. A complainant must provide a copy of the complete complaint to the requesting person within 5 days after receipt of the written request and an executed copy of the protective agreement. Any party can object to the proposed form of protective agreement.

Because of the 10 days that are provided to exchange information when the privileged treatment provisions are invoked, the Commission is providing in section 385.206(f) of the final rule that answers, interventions and comments are due 30 days after the complaint is filed when the privileged provisions are used. This will ensure that respondents will have the normal 20 days to file an answer once they have received the complete complaint.<sup>17</sup> In addition, section 385.206(f) provides that in the event there is an objection to the protective agreement, the Commission will establish the time when answers, interventions, and comments will be due.

Language used in the NOPR in proposed sections 385.206(b)(1) and (2) would have required a complainant to identify and explain "why the action or inaction is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, or is contrary to a condition in a certificate or license, a tariff provision, or the terms of an exemption." This language, however, may not describe all the statutory standards that could apply in a complaint situation. The Outer Continental Shelf Lands Act provides, for example, that pipelines must transport "without discrimination" and must provide "open and

nondiscriminatory access." Accordingly, the informational requirements adopted in section 385.206(b)(1) and (2) of the final rule are modified from those proposed to require that complainants "identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements," and explain "why the action or inaction violates applicable statutory standards or regulatory requirements." This will avoid any confusion that might have resulted from the language in the NOPR being construed in a way as to limit when complaints could be filed.

A number of commenters (Piedmont Natural Gas, Florida Cities, Joint Consumer Advocates) requested that a final rule provide complainants with discovery rights. The Commission will not include discovery rights as part of the final rule. However, the Commission recognizes that there will be instances in which information necessary to support a complainant's allegation is not readily available because it is in the hands of the respondent. In these cases, a complainant should file all the information that it has. It should also identify as support for a request for discovery the further information that it needs that is in the hands of the respondent. The Commission will address these situations on a case by case basis.

Should there be factual issues that require record development through hearing before an ALJ, discovery would be available as an element of the usual hearing process. A complainant that suggests a hearing as its procedural path could also include discovery requests with its complaint. If a hearing is established, the ALJ would control discovery.

#### *B. Informal Resolution*

The Commission strongly encourages parties to attempt informal resolution of their disputes prior to the filing of a formal complaint. The Commission therefore proposed in the NOPR that parties be required to explain whether alternative dispute resolution was tried and, if not, why. After considering the comments the Commission adopts the proposal in the NOPR.

In addition to such existing informal dispute resolution mechanisms as those in tariff provisions and the Commission's Enforcement Hotline, the Commission currently is developing an expanded alternative dispute resolution capability as part of its internal restructuring. Having these capabilities available should facilitate the informal resolution of many disputes and save parties the time and expense associated

<sup>16</sup> 18 CFR 388.112 (1998).

<sup>17</sup> See Section E below for a discussion of the time period for answers.

with the filing and resolution of a formal complaint. Parties to a dispute therefore should have sufficient means and incentive to resolve their disputes informally. A potential complainant, however, should be given the broadest possible options in how it wishes to proceed with a complaint. The Commission, therefore, will not mandate the use of informal procedures prior to filing a formal complaint as requested by certain parties (Williams, Koch, INGAA, Mobil Pipe Line, El Paso Energy, the Utility Coalition, Energy, and NYSE).

The Commission also requested comments on what type of professional assistance the Commission might provide to facilitate informal dispute resolution. Wisconsin Distributor Group stated that the Commission should publish on a regular basis industry specific status reports on complaints. Enron Capital and Trade stated that the Commission should have a publication or web site, to provide information about a party's options in filing a complaint and how the process could work, or a procedural hotline. Indicated Shippers stated that complaints should be posted on a web site because the Commission's Records and Information Management System (RIMS) is difficult to access and can be blurred. American Public Power Association stated that the Commission should establish a division of dispute resolution. Transmission Dependent Utility Systems stated that the Commission should have pre-filing conferences for complaints in which Staff meets informally with parties and renders non-binding advice. EPSA stated informal procedures will be most effective if staff plays an active role. USDA-Rural Utilities Service stated that the Commission should post on its website the names of a case officer for each docket who is available to answer questions. In their reply comments, Pipeline Customer Coalition and Indicated Shippers supported the idea of the publication of a complaint status report.

Many of these ideas will prove valuable as the Commission moves towards greater reliance on the electronic exchange of information. The Commission is currently engaging in an internal review of its information technology capabilities and is examining the issue of public access to information and electronic filing in Docket No. PL98-1-000.<sup>18</sup> Although the Commission will put certain basic information about a party's options in filing a complaint on the FERC

Homepage, the idea of a complaint status report, as well as other electronic access issues relating to complaints, will be considered as part of the broader review of information technology capabilities. In addition, the Commission's new Dispute Resolution Service will be a resource that can be used to aid in the informal resolution of disputes before, or after, a complaint is filed. Further, the Enforcement Hotline will continue to be available to resolve informal complaints prior to a formal filing.

#### C. Simultaneous Service

Section 385.206(c) adopted in the final rule is modified from that proposed to read:

Any person filing a complaint must serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint. Service must be simultaneous with filing at the Commission for respondents and affected entities in the same metropolitan area as the complainant. Simultaneous or overnight service is acceptable for respondents and affected entities outside the complainant's metropolitan area. Simultaneous service can be accomplished through electronic mail, fax, express delivery, or messenger.

The NOPR proposed to require a complainant to serve a copy of the complaint on the respondent and all others who the complainant knows will be affected simultaneously with filing at the Commission. Certain commenters (Pipeline Customer Coalition, Williams Companies, Enron Capital, Dynege, NRECA, ProLiance, Chevron Products Co.) were concerned that service on all parties who the complainant knows will be affected is speculative. Certain commenters (CPUC, USDA-Rural Utilities Service) also requested that simultaneous service include affected regulatory agencies. Finally, INGAA requested that service should be overnight for out of town residents and the same day for in town residents. These concerns and requests are reasonable and their substance is incorporated in the final rule in section 385.206(c).

INGAA requested that the Commission should explore the possibility of electronic service. Transmission Dependent Utility Systems asserted that serving all affected customers may be burdensome and that complainants should instead provide a detailed electronic notice. Missouri PSC asserted that the respondent should post the complaint on an EBB or the internet.

As discussed above, electronic filing issues, including electronic service, are

being examined in Docket No. PL98-1-000 and thus should be addressed in that proceeding. In addition, issues concerning electronic access to information are being explored as part of the Commission's internal review of its information technology capabilities.

#### D. Notice of the Complaint

The NOPR proposed that the Commission issue a notice of complaint within two days. Certain commenters (Pipeline Customer Coalition, AOPL, Cenex Pipeline) requested that this be codified in the regulations. The Commission will not include such a requirement in the regulations.

The date of issuance of the notice of a complaint is not crucial to a speedy resolution of a complaint proceeding because the time for filing answers, comments, and interventions is calculated based on the date the complaint is filed rather than the date of the notice. Nevertheless, the Commission intends to issue all notices promptly and expects to be able to issue most notices within two days.

A number of commenters (Enron Pipeline, Koch Gateway, El Paso Energy, Equilon Pipeline, Williams, INGAA, Duke Energy, Consumers Energy, Oil Pipeline Shipper Group, and Express Pipeline Partnership) suggested that complaints be screened for deficiencies and, if necessary, dismissed prior to a notice being issued. Pipeline Customer Coalition opposes screening, stating that respondents should be required to identify any complaint deficiencies in their answers.

The Commission agrees with the Pipeline Customer Coalition that any deficiencies in a complaint should be pointed out in the answer and the Commission can make a decision based on all the pleadings. Further, in the Commission's experience it is unlikely that a complaint would be so patently deficient as to require a summary dismissal on procedural grounds. The Commission therefore will not adopt screening for deficiencies as part of the final rule.

#### E. Time Period for Answers, Comments, Interventions

Section 385.206(f) adopted in the final rule is modified from that proposed to require that answers, interventions, and comments to a complaint must be filed within 20 days after the complaint is filed, or, in cases where the complainant requests privileged treatment for information in its complaint, 30 days after the complaint is filed. The NOPR proposed to require answers, interventions and comments to complaints to be filed within 10 days

<sup>18</sup> Public Access to Information and Electronic Filing.

after the complaint is filed. Almost all the comments maintained that the proposed 10 day period for answers, comments, and interventions is too short. Parties suggested various alternatives which ranged from 10 business days to the current 30 day answer period. In the Commission's view a shorter response period, such as 20 days, is preferable to the current 30 day answer period. Twenty days should provide respondents with a sufficient amount of time to answer a complaint while being consistent with the goal of speeding up the complaint resolution process.

Certain commenters requested that the final rule provide for replies as requested. The Commission's regulations do not provide for replies to answers, and allowing replies in all instances would unnecessarily lengthen the complaint process.

#### *F. Revisions to Oil Pipeline Regulations*

The final rule revises certain sections of Part 343, Procedural Rules Applicable to Oil Pipeline proceedings, to conform with the changes to the Commission's complaint procedures.

A number of oil pipelines maintained that no change is needed for oil pipelines and the Commission should retain the current oil pipeline regulations concerning complaints. Section 343.2(c) of the oil pipeline regulations, which was adopted in response to the Energy Policy Act of 1992, provides specific substantive standards for filing complaints concerning both rate and non-rate matters. For rates established under section 342.3 (indexing), a complaint must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable, or that the rate decrease is so substantially less than the actual cost decrease incurred by the carrier that the rate is unjust and unreasonable.

For rates established under section 342.4(c) (other rate changing methodologies), a complaint "must allege reasonable grounds for asserting that the rate is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable." For non-rate matters, a complaint "must allege reasonable grounds for asserting that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations." Section 343.4 requires a response to a complaint within 30 days after the complaint is filed. Finally, section 343.5 provides that the Commission "may require

parties to enter into good faith negotiations to settle oil pipeline rate matters.

The Association of Oil Pipelines (AOPL) stated that the Commission adopted oil pipeline specific complaint regulations only four years ago. AOPL submitted that these regulations work for the oil pipeline industry. AOPL stated that oil pipelines are not going through the transitions facing the electric and natural gas industries and there is no reason to disrupt a procedure that works merely for the convenience of having one procedure that applies to all industries.

The final rule requires complaints concerning oil pipeline non-rate matters to comply with the changes to the Commission complaint procedures. Complaints concerning rates, however, are not subject to all the changes. While non-rate complaints are subject to the new substantive informational requirements adopted in section 385.206(b), rate complaints would be subject to the existing section 343.2(c) substantive rate requirements. While non-rate complaints would have to "identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements" and "explain how the action or inaction violates applicable statutory standards or regulatory requirements," rate complaints instead would have to meet the section 343.2(c) requirements. Therefore, a sentence will be added to sections 343.2(c)(1) and (2) indicating that, in addition to meeting the requirements of the section, a complaint must also comply with the requirements of section 385.206, except sections 385.206(b)(1) and (2). In all other respects both rate and non-rate complaints would be treated the same. The remainder of the informational requirements adopted here in section 385.206(b) and the other procedural changes discussed throughout this Final Rule thus would be applied to all oil pipeline rate complaints. This will ensure the consistency of the complaint procedures for all industries regulated by the Commission, while preserving the rate complaint standards adopted as an integral part of the package of ratemaking changes enacted in response to the Energy Policy Act of 1992.

#### *G. Content of Answers*

Section 385.213 adopted in the final rule is modified from that proposed to require that answers include "all documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts, affidavits, and testimony." This is parallel to the

change made to the informational requirements for complaints. The NOPR proposed to revise Rule 213 to require that answers to complaints must include all documents that support the facts in the answer, including, but not limited to contracts, affidavits, and testimony.

The Commission rejects commenters' requests that the answer only admit or deny wrongdoing and not include documents. One of the purposes of revising the complaint procedures is to ensure that as much information as possible is available to the Commission and the parties to the proceeding as early as possible. An answer which simply admits or denies facts without any more would prolong the proceeding by requiring the Commission or other parties to request further information by other means.

In addition, the final rule is adopting for answers the same confidentiality provisions as those adopted for complaints as discussed in section A above. Thus, a respondent would file its complete answer with a request for privileged treatment pursuant to section 388.112 of the Commission's regulations. The complainant and other parties would receive a redacted version of the complaint along with a respondent-proposed protective agreement. The complainant and parties would receive the privileged version of the answer by executing the protective agreement and returning it to the respondent.

Section 385.213 adopted in the Final Rule is modified from that proposed to require the respondent to describe the formal or consensual process it proposes for resolving the complaint. This requirement was discussed in the NOPR but was not included in the proposed regulations.

In the NOPR, the Commission stated that, to the extent that a respondent does not comply with Rule 213, the Commission will consider granting the relief requested by the complainant based upon the pleadings alone. The Commission further stated that respondents filing what is in essence a general denial would do so at their own peril. Williams Companies contended that relief should not be granted by default. The Commission's discussion in the NOPR with respect to answers was not a new proposal. Rather, the Commission was only reiterating the procedure in section 385.213(c)(3) of its existing regulations, which provides for summary dispositions, pursuant to section 385.217, of answers that do not satisfy certain requirements.

### H. Complaint Resolution Paths

Section 385.206(g) adopted in the final rule describes a number of procedural options that the Commission may use to resolve issues raised in complaints. These complaint resolution paths are (1) alternative dispute resolution, (2) decision on the pleadings by the Commission, and (3) hearing before an ALJ. Where a highly credible claim for relief is presented, and a persuasive showing is made that standard complaint resolution processing may not provide timely relief as quickly as circumstances may demand, the Commission will put the complaint on a Fast Track, to provide for expedited action by the Commission or an ALJ in a matter of weeks. The Fast Track process is described in section 385.206(h) of the regulations adopted by the final rule. Preliminary relief pending a resolution of the complaint by either the Commission or an ALJ may be requested. A ruling on preliminary relief by an ALJ would be appealable to the Commission. Such an appeal is provided for in section 385.206(g)(2) adopted in the final rule. It is not the same as an interlocutory appeal that would be filed pursuant to section 385.715 of the Commission's regulations.

The Commission in the NOPR did not propose to establish overall time limits within which complaints must be resolved. It did, however, describe target time frames that would allow a resolution of a complaint as expeditiously as possible given the issues, parties, circumstances, and the type of procedure used. A number of commenters (Pipeline Customer Coalition, Fertilizer Institute, NGS, American Public Power Association, Electric Power Supply Association, USDA-Rural Utilities Service) requested that the Commission codify deadlines for actions in the proposed regulations. Other commenters (INGAA, El Paso Energy, Duke Energy) asserted that target dates, not strict deadlines, are appropriate.

The Commission intends to resolve complaints as quickly as possible but does not consider it necessary to codify deadlines in its regulations. Specific targets for action, however, will provide guidelines that may help meet an accelerated procedural agenda. The Commission, therefore, will adopt the target time frames discussed in the NOPR and below. At the same time, having target, rather than required, time frames will allow the Commission the flexibility to adjust when necessary to particular complicated issues and unforeseen circumstances.

#### (i) Alternative Dispute Resolution

Section 385.206(b)(9) of the final rule requires that a complainant state what types of ADR procedures could be used to resolve the complaint or describe any process that has been agreed on for resolving the complaint. Section 385.213(c)(4) of the final rule requires that the respondent in its answer describe the formal or consensual process it proposes for resolving the complaint. If there is agreement among the parties that a specific ADR procedure should be used, the Commission would simply assign the case to ADR. If there are competing proposals for the use of ADR, the Commission could attempt to obtain agreement from the affected parties for the use of one of the ADR proposals. If no agreement concerning the use of ADR can be reached, the complaint will be assigned to a settlement judge pursuant to section 385.603 of the Commission's regulations or resolved using one of the other complaint resolution paths.

Since ADR is a voluntary process, the time period in which a decision can be rendered is largely in the control of the affected parties. The Commission, however, would treat ADR resolution like uncontested settlements, and would therefore expect to issue any subsequent orders no later than 45 days after the ADR resolution is rendered.

#### (ii) Commission Decision on the Pleadings

Many complaints can be decided by the Commission based on the pleadings alone. These types of cases usually involve discrete issues that do not require development of a record before an ALJ.

The complaint would be assigned for consideration as soon as an answer is filed and a decision by the Commission would expect to issue within 60–90 days later. In some instances there might be a need to clarify the parties' understanding of facts at issue, but this could be accomplished through Staff data requests without affecting the overall time for resolving the complaint. The total time within which a Commission decision could be expected thus would be 110 days after a complaint is filed.

#### (iii) Hearing Before an ALJ

Complaints not set for ADR consideration and not appropriate for consideration on the pleadings alone would be set for hearing before an ALJ for development of a factual record. When a complaint is set for hearing before an ALJ, the objective will be for

the ALJ to render an initial decision no later than 60 days after the case is set for hearing. Briefs on exceptions to an initial decision then would be due, under the Commission's rules, 30 days after the initial decision, and briefs opposing exceptions, 20 days thereafter. The Commission would expect to issue an order on the exceptions no later than 90 days after their filing. Thus, the total time for resolving these cases would be no more than 220 days from the filing of the complaint. In most instances it should be possible for an initial decision to be issued within 60 days because the issues raised in complaints are often narrow or discrete questions, and not the kind of wide range issues presented in general rate cases. However, because these are target timeframes, the ALJ will retain discretion to issue an initial decision in less or more time, taking into account the complexity of the case, the number of issues, or other factors.

A number of commenters (Enron, Enron Capital and Trade, Williams, Koch, INGAA, Entergy, Southern Companies, and Duke Energy) requested that complaints about changes to rates or tariffs be excluded from the proposed procedures. No category of complaint should be excluded from the proposed procedures. The Commission recognizes, however, that there will be complaint cases that might not lend themselves to an initial decision within 60 days. In such cases, involving large numbers of parties, more complex issues, or difficult circumstances, the Presiding ALJ could adjust the time frames as necessary to ensure development of a complete record. This should alleviate the commenters' concerns.

#### (iv) Fast Track Processing

In instances involving disputes that require relief more quickly than the usual target timeframes, the Commission will employ Fast Track processing as a complement to its standard complaint resolution paths. The Fast Track process is described in section 385.206(h) of the regulations adopted by the final rule. The Fast Track will be available when a complainant requests it and presents a highly credible claim and persuasive showing that the standard processes will not be capable of resolving the complaint promptly enough to provide meaningful relief. An example might be where a shipper seeks access to a pipeline under the Natural Gas Act, Natural Gas Policy Act or Outer Continental Shelf Lands Act, alleging that the pipeline has unjustifiably withheld service causing irreparable

harm. Another example might be where a transmission service provider allegedly is blocking a customer's access to disputed transmission capacity, essentially preventing a power purchase from an alternate supplier and causing irreparable harm. A complainant requesting Fast Track processing will be required to provide a satisfactory explanation concerning whether ADR has been pursued prior to filing the complaint.

Under Fast Track processing, there would be an immediate (same or next day) screening of a complaint alleging a need for accelerated action to ensure that the complaint warrants accelerated processing. If warranted, the answer period could be shortened to only several days. After the respondent filed its answer, a further screening would decide whether to assign the complaint for Fast Track processing. If the complaint failed to meet the criteria for Fast Track processing, the complaint would be processed under one of the standard complaint resolution paths.

Complaints found to require the Fast Track processing would be assigned for consideration expeditiously. The Commission expects to issue a procedural decision to institute a hearing, establish ADR or settlement procedures, if necessary and appropriate, within two or three days after receiving answers to the complaint. The Fast Track process, which is not appropriate for all complaints, seeks to provide all interested parties with prompt resolution of time sensitive complaints. Since this process is innovative and largely untested, the Commission may examine its results in a year and may consider appropriate changes or improvements to the process. Those that require record development would be assigned to an ALJ for a prompt hearing to receive oral testimony. Upon completing the hearing, the ALJ would issue an initial decision either in writing or by reading it into the record. An initial decision on a complaint assigned to Fast Track processing could be expected in significantly less time than the 60 days generally contemplated for complaints not directed to the Fast Track process. Hearing procedures may be compressed into only a few days if the circumstances warrant. Cases not presenting questions for which record development would be necessary would be assigned directly to the Commission for resolution based on the pleadings. It is expected that the Commission could issue an order on the merits within 20 days after the answer is filed.

Rulings on requests for preliminary relief also can be considered under the

Fast Track process. Relief could be granted either by an ALJ, where the case has been set for hearing, or by the Commission, where the case has not been set for hearing.

Fast Track processing will be employed in only limited circumstances because of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding. The Commission strongly encourages potential complainants to seek Fast Track processing sparingly and only in the most unusual cases that demand such accelerated treatment. A misuse of Fast Track processing could ultimately tax the Commission's limited resources and jeopardize the availability of the Fast Track procedures. Any continuing pattern of misuse by a particular party would also ultimately undermine that party's credibility when future requests for Fast Track processing are requested.

#### (v) Preliminary Relief

Any complaint can include a request for preliminary relief pending a final merits decision on the complaint itself. If the complaint is assigned for hearing, the ALJ will rule on the preliminary relief; the Commission will rule on preliminary relief requested as part of a complaint being considered based on the pleadings. Requests for preliminary relief would be acted on while the Commission or an ALJ is also considering the merits of the complaint. If the complaint has been designated for Fast Track processing, a ruling on preliminary relief would be almost immediate.

Where an ALJ acts on a request for preliminary relief, an appeal to the Commission will lie and may be filed within 7 days of the ALJ's decision. The Commission will issue a decision on the appeal promptly. Section 385.206(g) of the final rule has been revised from that proposed to provide for appeals of an ALJ's decision on preliminary relief. Decisions by the Commission on requests for preliminary relief would be subject to the Commission's rules on rehearing.

Complainants could request preliminary relief in the form of a stay or extension of time, or affirmative action. The standard for granting extensions of time would be the good cause showing, found in section 385.2008 of the Commission's regulations.<sup>19</sup> The standard applicable to requests for stay would be that set forth in section 705 of the Administrative Procedure Act, 5 U.S.C. 705 (1988), *i.e.*, the stay will be granted

if "justice so requires." The standard for granting affirmative preliminary relief would be that employed by the courts for such relief, namely, the four part test described in the NOPR—(1) likelihood of success on the merits; (2) whether irreparable injury to the complainant will occur if the relief is not granted; (3) whether the injury outweighs harm to the respondent or other parties if the relief is granted; and (4) other public interest considerations.<sup>20</sup>

#### *I. Simplified Procedures for Small Controversies*

The Commission currently has in place, and is codifying in this Final Rule, Enforcement Hotline procedures. The Enforcement Hotline is a resource particularly well suited for resolving disputes over small amounts of money or seeking limited forms of relief. It provides a forum for the Hotline staff through discussion and negotiation to resolve disagreements brought informally to its attention. Many small controversies have been concluded successfully through the Hotline without the necessity of formal proceedings before the Commission, thus saving the disputing parties much time, effort, and money. The Commission, therefore, encourages parties with limited complaints to seek relief in the first instance through the Enforcement Hotline. The Commission also recognizes, however, that there will be instances where the Hotline staff has not been able to bring about a resolution of a dispute brought to it. For these cases the final rule is adopting a procedure for complaints involving small controversies that will allow them to be resolved more simply and expeditiously than more complicated matters. This procedure will be codified in new section 385.218. Although this procedure will be available to all complainants regardless of size, it will primarily benefit small customers who would typically have small amounts in dispute and who may not have the financial resources available to pursue a formal complaint under the regulations adopted here. A lack of financial resources should not be an impediment to injured parties seeking relief before this Commission.

The adopted procedure is based, in part, on the recommendations of the American Public Gas Association (APGA). The procedure will be available if the amount in controversy is less than \$100,000 and the impact on other entities is de minimis. The procedure will be available to all customers, not

<sup>19</sup> 18 CFR 385.2008 (1998).

<sup>20</sup> See *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

just small customers. This answers the concerns of Enron Capital and Trade, Indicated Shippers, NCSA, EEI, and CSW Operating Companies who asserted that a small claims procedure should apply to small amounts as well as small customers. In the Commission's view, the \$100,000 ceiling and the requirement of a de minimis impact on other customers should alleviate parties' concerns that a complex complaint could be filed under this procedure.

Complainants under the simplified procedure will be required to submit a short form complaint which states (1) the name of the complainant, (2) the name of the respondent, (3) a description of the relationship to the respondent, for example, firm shipper, competitor, etc., (4) the amount in controversy, (5) why the complaint will have a de minimis impact on other entities, (6) the facts and circumstances surrounding the complaint, including the legal or regulatory obligation breached by the respondent, and (7) the requested relief. The complainant is encouraged, but not required, to attach any relevant documents to its complaint.

The complainant will be required to simultaneously serve the complaint on the respondent and any other entity referenced in the complaint. A notice of the complaint will be issued promptly, usually within 2 days. The Commission is not codifying the notice period in the final rule because, as with regular complaints, the date of issuance of the notice of a complaint is not crucial to a speedy resolution of a complaint proceeding because the time for filing answers, comments, and interventions is calculated based on the date the complaint is filed rather than the date of the notice.

Answers, interventions and comments will be required within 10 days of the filing of the complaint. In cases where privileged treatment of documents is requested by the complainant, answers, interventions, and comments will be due within 20 days after the complaint is filed. This will account for the time needed for parties to execute protective agreements and receive the privileged information. It is the same approach that is being used for regular complaints. Given the more limited nature of complaints filed under the simplified procedure, the 10 day answer period should be sufficient. An answer to a complaint will have to follow the current practice under Rule 213. A respondent is encouraged, but not required, to provide any relevant documents.

APGA recommended that the Commission or a delegated official issue

an order within 30 days after the answer and an aggrieved party be able to seek rehearing within 15 days after the decision. Because of the less complex nature of complaints filed under the simplified procedure it is likely that the Commission could issue an order more expeditiously than in other types of complaint cases, perhaps within as little as 30 days after an answer is filed. Requests for rehearing will have to be filed in accordance with the relevant statute, to the extent the statute provides for rehearing, and the Commission's regulations.

APGA suggested that the order issued not be published in the official reporter and not have precedential value. The Commission will not adopt such a proposal. It is important for the Commission to have a body of precedent on which both the Commission and potential complainants under the simplified procedure could rely.

#### *J. Revisions to ADR Regulations*

The final rule revises Rules 604, 605 and 606 to conform to the 1996 ADRA by eliminating the termination and opt-out provisions, and providing that the confidentiality provisions of the 1996 ADRA pre-empt the disclosure requirements of the FOIA.

A number of commenters (Wisconsin Distributor Group, INGAA, Equilon, AOPL) assert that ADR settlements should not be subject to notice and comments. A number of other commenters (Transmission Dependent Utility Systems, Missouri PSC, Joint Consumer Advocates) support notice and comment on ADR settlements. The final rule does not revise the regulations to indicate that settlement agreements reached through ADR are not subject to the notice and comment requirements of Rule 602 unless the Commission takes affirmative action within 30 days.

The changes concerning the termination, opt-out, and confidentiality provisions are to reflect the changes contained in the 1996 Administrative Dispute Resolution Act. The Commission will require ADR settlements to be subject to notice and comment because, in many instances, settlements entered into by regulated companies can affect parties who were not part of the ADR process.

#### *K. Codification of Hotline Procedures*

To make the Enforcement Hotline easier to use, the final rule codifies the current Hotline procedures in a new Section 1b.21.

A number of parties were concerned about parties' ability to make anonymous complaints. The Commission emphasizes that the final

rule is not adopting any new procedures with respect to the Enforcement Hotline, but has simply codified its longstanding practice.

The Commission declines to adopt the proposal offered by several commenters that the Commission should separate Hotline functions from prosecutorial functions of the Enforcement Section. Parties respond to Hotline calls promptly because they know that Enforcement Staff may institute investigations if valid complaints cannot be resolved informally.

With respect to the issue of the availability of the Hotline to West Coast parties, calls after business hours can be handled by voice mail and the Hotline Staff will return the call the next business day. The Commission has also established an Enforcement Hotline e-mail address. It is hotline@ferc.fed.us.

#### *L. Miscellaneous*

EEI and the Utility Coalition stated that complaints should be able to be filed by both public utilities and their customers. NRECA stated that the Commission should not allow jurisdictional entities to file complaints against nonjurisdictional entities. Transmission Dependent Utility Systems stated that transmission customers should not be the subject of complaints.

In their reply comments, APPA and Transmission Access Policy Study Group asserted that the regulations proposed in the NOPR should not be expanded to provide for FERC jurisdiction over complaints seeking enforcement of filed rates against nonjurisdictional customers.

The Commission is not persuaded of the necessity of revising its regulations in this regard at this time. The circumstances under which the Commission has in the past and would in the future be requested to address nonjurisdictional customer conduct would involve situations such as a customer's failure to comply with the terms of public utility's tariff, rate schedules, or contracts. The Commission believes that the current approach taken by the regulations, which allows the Commission to address such matters on a case by case basis, does not need revision.

#### **IV. Information Collection Statement**

The following collection of information contained in this final rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the

Paperwork Reduction Act of 1995.<sup>21</sup> FERC identifies the information provided under 18 CFR Part 385 as FERC-600. FERC-600 consolidates certain existing information collection requirements from the various FERC program offices into one information collection number and accounts for the

incremental burden placed on persons filing under the proposed regulations. The Commission in the NOPR solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and

any suggested methods for minimizing the burden on persons filing under the revised complaint procedures, including the use of automated information techniques. No comments were received.

*Estimated Annual Burden:* The burden estimates for complying with this final rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC-600 .....	75	75	14	1,050

Total Annual Hours for Collection (Reporting + record keeping, if appropriate) = 1,050.

Based on the Commission's experience with complaints, it is estimated that about 75 filings per year will be made over the next three years at a burden of 14 hours per filing, for a total annual burden of 1,050 hours under the proposed regulations. The Commission's expectation is that receiving more information in the complaint will lessen the subsequent burden on parties and will shorten the time for resolving a complaint. There is no annual reporting burden under the current regulations.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>22</sup> Accordingly, pursuant to OMB regulations, the Commission provided notice of its information collection to OMB. OMB did not comment or take any action on the NOPR. Therefore, an OMB control number was not given for this collection of information. Title: FERC-600, Rules of Practice and Procedure

Action: Proposed Data Collection. OMB Control No. 1902-\_\_\_\_\_

The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: Infrequent.

Necessity of Information: The final rule requires persons filing complaints and answers to complaints with the Commission to satisfy certain informational requirements, and to provide supporting documentation for the allegations in a complaint and answer to a complaint. The information

will allow the Commission to properly evaluate a complaint and resolve it in a timely manner.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements. The Commission's Offices of General Counsel, Pipeline Regulation, Electric Power Regulation, and Hydropower Licensing, will use the data to make decisions with respect to the merits of a complaint. This internal review determination involves among, other things, an examination of adequacy of design, cost, reliability, redundancy of the information to be required. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the interstate natural gas pipeline, oil pipeline, electric and hydroelectric industries.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208-1415, fax: (202) 208-2425, e-mail: mike.miller@ferc.fed.us].

Questions concerning the collection of information and the associated burden estimate should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC, 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-3087, fax: (202) 395-7285.

**V. Environmental Analysis**

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>23</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>24</sup> The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.<sup>25</sup> Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

**VI. Regulatory Flexibility Act Certification**

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.<sup>26</sup> The Commission is not required to make such analyses if a rule would not have such an effect.<sup>27</sup>

The Commission does not believe that this rule would have such an impact on small entities. The majority of complaints filed with the Commission have been by companies who do not meet the RFA's definition of a small entity whether or not they are under the Commission's jurisdiction.<sup>28</sup> Further, the final rule will speed up the complaint process in general and in particular for those cases where small business entities have been the subject

<sup>21</sup> 44 U.S.C. 3507(d) (Supp. I 1995).

<sup>22</sup> 5 CFR 1320.11

<sup>23</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897

(Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

<sup>24</sup> 18 CFR 380.4.

<sup>25</sup> See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

<sup>26</sup> 5 U.S.C. 601-612 (1994).

<sup>27</sup> 5 U.S.C. 605(b)(1994).

<sup>28</sup> 5 U.S.C. 601(3)(1994).

of an alleged detriment. This proposed rule will be beneficial to small entities. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

## VII. Effective Date And Congressional Notification

The regulations are effective May 10, 1999. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.<sup>29</sup> That reporting requirement applies to this Final Rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

### List of Subjects

#### 18 CFR Part 1b

Investigations.

#### 18 CFR Part 343

Pipelines, Reporting and recordkeeping requirements.

#### 18 CFR Part 385

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

By the Commission.

**David P. Boergers,**  
Secretary.

In consideration of the foregoing, the Commission amends Parts 1b, 343, and 385, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

## PART 1b—RULES RELATING TO INVESTIGATIONS

1. The authority citation for Part 1b is amended to read as follows:

**Authority:** 15 U.S.C. 717 *et seq.*; 16 U.S.C. 792 *et seq.*; 49 U.S.C. 60502; 49 A.P. U.S.C. 1-85; 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46267.

2. In section 1b.1, new paragraph (d) is added to read as follows:

### § 1b.1 Definition.

\* \* \* \* \*

(d) *Enforcement Hotline* is a forum in which to address quickly and informally any matter within the Commission's jurisdiction concerning natural gas pipelines, oil pipelines, electric utilities and hydroelectric projects.

3. In Part 1b, new section 1b.21 is added to read as follows:

### § 1b.21 Enforcement hotline.

(a) The Hotline Staff may provide information to the public and give informal staff opinions. The opinions given are not binding on the General Counsel or the Commission.

(b) Any person may seek information or the informal resolution of a dispute by calling or writing to the Hotline at the telephone number and address in paragraph (f) of this section. The Hotline Staff will informally seek information from the caller and any respondent, as appropriate. The Hotline Staff will attempt to resolve disputes without litigation or other formal proceedings. The Hotline Staff may not resolve matters that are before the Commission in docketed proceedings.

(c) All information and documents obtained through the Hotline Staff shall be treated as non-public by the Commission and its staff, consistent with the provisions of section 1b.9 of this part.

(d) Calls to the Hotline may be made anonymously.

(e) Any person who contacts the Hotline is not precluded from filing a formal action with the Commission if discussions assisted by Hotline Staff are unsuccessful at resolving the matter. A caller may terminate use of the Hotline procedure at any time.

(f) The Hotline may be reached by calling (202) 208-1390 or toll free (877) 303-4340, by e-mail at hotline@ferc.fed.us, or writing to: Enforcement Hotline, Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426.

## PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS

1. The authority citation for Part 343 continues to read as follows:

**Authority:** 5 U.S.C. 571-583; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

2. In section 343.2 paragraph (c) is revised to read as follows:

### § 343.2 Requirements for filing interventions, protests and complaints.

\* \* \* \* \*

(c) *Other requirements for filing protests or complaints*—(1) *Rates established under § 342.3 of this chapter.* A protest or complaint filed against a rate proposed or established pursuant to § 342.3 of this chapter must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is

so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable, or that the rate decrease is so substantially less than the actual cost decrease incurred by the carrier that the rate is unjust and unreasonable. In addition to meeting the requirements of the section, a complaint must also comply with all the requirements of § 385.206, except § 385.206(b)(1) and (2).

(2) *Rates established under § 342.4(c) of this chapter.* A protest or complaint filed against a rate proposed or established under § 342.4(c) of this chapter must allege reasonable grounds for asserting that the rate is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable. In addition to meeting the requirements of the section, a complaint must also comply with all the requirements of § 385.206, except § 385.206(b)(1) and (2).

(3) *Non-rate matters.* A protest or complaint filed against a carrier's operations or practices, other than rates, must allege reasonable grounds for asserting that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations. In addition to meeting the requirements of this section, a complaint must also comply with the requirements of § 385.206.

3. In section 343.4 paragraph (a) is revised to read as follows:

### § 343.4 Procedures on complaints.

(a) *Responses.* The carrier must file an answer to a complaint filed pursuant to section 13(1) of the Interstate Commerce Act within 20 days after the filing of the complaint in accordance with Rule 206.

\* \* \* \* \*

## PART 385—RULES OF PRACTICE AND PROCEDURE

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

**Authority:** 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

2. In section 385.206, existing paragraph (b) is redesignated paragraph (f) and is revised, existing paragraph (c) is redesignated as paragraph (j), and new paragraphs (b), (c), (d), (e), (g), (h) and (i) are added to read as follows:

### § 385.206 Complaints (Rule 206).

\* \* \* \* \*

(b) *Contents.* A complaint must:  
(1) Clearly identify the action or inaction which is alleged to violate

<sup>29</sup> 5 U.S.C. 801 (Supp. III 1997).

applicable statutory standards or regulatory requirements;

(2) Explain how the action or inaction violates applicable statutory standards or regulatory requirements;

(3) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant;

(4) Make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction;

(5) Indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction;

(6) State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(7) State the specific relief or remedy requested, including any request for stay, extension of time, or other preliminary relief, and in cases seeking other preliminary relief, a detailed explanation of why such relief is required addressing:

(i) The likelihood of success on the merits;

(ii) The nature and extent of the harm if preliminary relief is denied;

(iii) The balance of the relevant interests, *i.e.*, the hardship to nonmovant if preliminary relief is granted contrasted with the hardship to the movant if preliminary relief is denied; and

(iv) The effect, if any, of the decision on preliminary relief on the public interest;

(8) Include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts, affidavits, and testimony;

(9) State

(i) Whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal procedures were used;

(ii) Whether the complainant believes that alternative dispute resolution (ADR) under the Commission's supervision could successfully resolve the complaint;

(iii) What types of ADR procedures could be used; and

(iv) Any process that has been agreed on for resolving the complaint.

(10) Include a form of notice suitable for publication in the **Federal Register** and submit a copy of the notice on a separate 3½ inch diskette in ASCII format;

(11) Explain with respect to requests for Fast Track processing pursuant to section 385.206(h), why the standard processes will not be adequate for expeditiously resolving the complaint.

(c) *Service.* Any person filing a complaint must serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint. Service must be simultaneous with filing at the Commission for respondents and affected entities in the same metropolitan area as the complainant. Simultaneous or overnight service is permissible for respondents and affected entities outside the complainant's metropolitan area. Simultaneous service can be accomplished by electronic mail, facsimile, express delivery, or messenger.

(d) *Notice.* Public notice of the complaint will be issued by the Commission.

(e) *Privileged Treatment.* (1) If a complainant seeks privileged treatment for any documents submitted with the complaint, the complainant must submit, with its complaint, a request for privileged treatment of documents and information under section 388.112 of this chapter and a proposed form of protective agreement. In the event the complainant requests privileged treatment under section 388.112 of this chapter, it must file the original and three copies of its complaint with the information for which privileged treatment is sought and 11 copies of the pleading without the information for which privileged treatment is sought. The original and three copies must be clearly identified as containing information for which privileged treatment is sought.

(2) A complainant must provide a copy of its complaint without the privileged information and its proposed form of protective agreement to each entity that is to be served pursuant to section 385.206(c).

(3) An interested person must make a written request to the complainant for a copy of the complete complaint within 5 days after the filing of the complaint. The request must include an executed copy of the protective agreement. Any person may file an objection to the proposed form of protective agreement.

(4) A complainant must provide a copy of the complete complaint to the requesting person within 5 days after receipt of the written request that is accompanied by an executed copy of the protective agreement.

(f) *Answers, interventions and comments.* Unless otherwise ordered by

the Commission, answers, interventions, and comments to a complaint must be filed within 20 days after the complaint is filed. In cases where the complainant requests privileged treatment for information in its complaint, answers, interventions, and comments are due within 30 days after the complaint is filed. In the event there is an objection to the protective agreement, the Commission will establish when answers will be due.

(g) *Complaint Resolution Paths.* (1) One of the following procedures may be used to resolve complaints:

(i) The Commission may assign a case to be resolved through alternative dispute resolution procedures in accordance with sections 385.604–385.606, in cases where the affected parties consent, or the Commission may assign the case to a settlement judge in accordance with section 385.603;

(ii) The Commission may issue an order on the merits based upon the pleadings;

(iii) The Commission may establish a hearing before an ALJ;

(2) The Commission, or an ALJ, may act on requests for preliminary relief. In cases where the ALJ rules on a request for preliminary relief, an appeal to the Commission may be filed within 7 days of the ruling.

(h) *Fast Track Processing.* (1) The Commission may resolve complaints using Fast Track procedures if the complaint requires expeditious resolution. Fast Track procedures may include expedited action on the pleadings by the Commission, expedited hearing before an ALJ, or expedited action on requests for stay, extension of time, or other preliminary relief by the Commission or an ALJ.

(2) A complainant may request Fast Track processing of a complaint by including such a request in its complaint, captioning the complaint in bold type face "COMPLAINT REQUESTING FAST TRACK PROCESSING," and explaining why expedition is necessary as required by section 385.206(b)(11).

(3) Based on an assessment of the need for expedition, the period for filing answers, interventions and comments to a complaint requesting Fast Track processing may be shortened by the Commission from the time provided in section 385.206(f).

(4) After the answer is filed, the Commission will issue promptly an order specifying the procedure and any schedule to be followed.

(i) *Simplified Procedure for Small Controversies.* A simplified procedure for complaints involving small

controversies is found in section 385.218 of this subpart.

3. In section 385.213 paragraphs (c)(4) and (5) are added to read as follows:

**§ 385.213 Answer (Rule 213).**

\* \* \* \* \*

(c) \* \* \*

(4) An answer to a complaint must include all documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts, affidavits, and testimony. An answer is also required to describe the formal or consensual process it proposes for resolving the complaint.

(5)(i) A respondent must submit with its answer any request for privileged treatment of documents and information under § 388.112 of this chapter and a proposed form of protective agreement. In the event the respondent requests privileged treatment under § 388.112 of this chapter, it must file the original and three copies of its answer with the information for which privileged treatment is sought and 11 copies of the pleading without the information for which privileged treatment is sought. The original and three copies must be clearly identified as containing information for which privileged treatment is sought.

(ii) A respondent must provide a copy of its answer without the privileged information and its proposed form of protective agreement to each entity that has been served pursuant to § 385.206 (c).

(iii) An interested person must make a written request to the respondent for a copy of the complete answer within 5 days after the filing of the answer. The request must include an executed copy of the protective agreement. Any person may file an objection to the proposed form of protective agreement.

(iv) A respondent must provide a copy of the complete answer to the requesting person within 5 days after receipt of the written request and an executed copy of the protective agreement.

\* \* \* \* \*

4. New section 385.218 is added to read as follows:

**§ 385.218 Simplified procedure for complaints involving small controversies (Rule 218).**

(a) *Eligibility.* The procedures under this section are available to complainants if the amount in controversy is less than \$100,000 and the impact on other entities is *de minimis*.

(b) *Contents.* A complaint filed under this section must contain:

- (1) The name of the complainant;
- (2) The name of the respondent;
- (3) A description of the relationship to the respondent;

- (4) The amount in controversy;
- (5) A statement why the complaint will have a *de minimis* impact on other entities;

(6) The facts and circumstances surrounding the complaint, including the legal or regulatory obligation breached by the respondent; and

(7) The requested relief.

(c) *Service.* The complainant is required to simultaneously serve the complaint on the respondent and any other entity referenced in the complaint.

(d) *Notice.* Public notice of the complaint will be issued by the Commission.

(e) *Answers, Interventions and Comments.* (1) An answer to a complaint is required to conform to the requirements of § 385.213(c)(1), (2), and (3).

(2) Answers, interventions and comments must be filed within 10 days after the complaint is filed. In cases where the complainant requests privileged treatment for information in its complaint, answers, interventions, and comments must be filed within 20 days after the complaint is filed. In the event there is an objection to the protective agreement, the Commission will establish when answers, interventions, and comments are due.

(f) *Privileged Treatment.* If a complainant seeks privileged treatment for any documents submitted with the complaint, a complainant must use the procedures described in section 385.206(e). If a respondent seeks privileged treatment for any documents submitted with the answer, a respondent must use the procedures described in section 385.213(c)(5).

5. In section 385.604, paragraph (d)(3) is removed, paragraphs (d)(4), (d)(5), and (d)(6) are redesignated paragraphs (d)(3), (d)(4), and (d)(5), paragraph (g) is removed, and paragraph (d)(2) is revised to read as follows:

**§ 385.604 Alternative means of dispute resolution (Rule 604).**

\* \* \* \* \*

(d) \* \* \*

(2) For matters set for hearing under subpart E of this part, a proposal to use alternative means of dispute resolution must be filed with the presiding administrative law judge.

\* \* \* \* \*

6. In section 385.605 paragraph (f) is removed, and paragraphs (a)(4) and (e)(2) are revised to read as follows:

**§ 385.605 Arbitration (Rule 605).**

(a) \* \* \*

(4) An arbitration proceeding under this rule may be monitored as provided in Rule 604(f).

\* \* \* \* \*

(e) \* \* \*

(2) The award in an arbitration proceeding will become final 30 days after it is served on all parties.

\* \* \* \* \*

6. In section 385.606 paragraph (d) is redesignated paragraph (d)(1) and paragraphs (d)(2) and (l) are added:

**§ 385.606 Confidentiality in dispute resolution proceedings (Rule 606).**

\* \* \* \* \*

(d) \* \* \*

(2) To qualify for the exemption established under paragraph (l) of this section, an alternative confidential procedure under this paragraph may not provide for less disclosure than confidential procedures otherwise provided under this rule.

\* \* \* \* \*

(l) A dispute resolution communication that may not be disclosed under this rule shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

**Note**—The following appendix will not appear in the Code of Federal Regulations.

**Appendix—List of Commenters**

- Adirondack Mountain Club
- American Electric Power System
- American Public Gas Association
- American Public Power Association and Transmission Access Policy Study Group
- American Arbitration Association
- ANR Pipeline Company and Colorado Interstate Gas Company
- Association of Oil Pipe Lines
- Canadian Association of Petroleum Producers and Alberta Dept. of Energy
- Cenex Pipeline, LLC
- Chevron Products Company
- Chevron Pipe Line Company
- Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
- Consumers Energy Company and Michigan Gas Storage Company
- CSW Operating Companies
- Duke Energy Companies
- Dynegy Inc.
- Edison Electric Institute
- El Paso Energy Corporation Interstate Pipelines
- Electric Power Supply Association
- Enron Capital & Trade Resources Corp.
- Enron Interstate Pipelines
- Entergy Service, Inc.
- Equilon Pipeline Company LLC
- Express Pipeline Partnership
- Fertilizer Institute
- Florida Cities
- Independent Petroleum Association of America
- Indicated Shippers
- Interstate Natural Gas Association of America
- Joint Consumer Advocates
- Keyspan Energy

Koch Gateway Pipeline Company  
 Lakehead Pipe Line Company, L.P.  
 Missouri Public Service Commission  
 Mobil Pipe Line Company  
 National Rural Electric Cooperative  
 Association  
 Natural Gas Supply Association  
 New York State Electric & Gas Corporation  
 Oil Pipeline Shipper Group  
 Piedmont Natural Gas Company, Inc.  
 Pipeline Customer Coalition  
 ProLiance Energy, LLC  
 Public Utilities Commission of the State of  
 California  
 Railroad Commission of Texas  
 Refinery Holding Company, L.P.  
 Southern Companies  
 TAPS Carriers  
 Transmission Dependent Utility Systems  
 United States Department of Agriculture—  
 Rural Utilities Service  
 Utility Coalition  
 Williams Companies, Inc.  
 Wisconsin Distributor Group and Northern  
 Distributor Group

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

[Regulations No. 4]

RIN 0960-AE03

#### Maximum Family Benefits in Guarantee Cases

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends our regulations to reflect section 310 of the Social Security Independence and Program Improvements Act of 1994. Section 310 provides that the guaranteed primary insurance amount is to be used in establishing the maximum family benefit.

**EFFECTIVE DATE:** This final rule is effective April 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Bill Hilton, Social Insurance Specialist, Office of Program Benefits, Social Security Administration, 3-D-25-Operations Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-2468 or TTY 410-966-5609. For information on eligibility, claiming benefits or coverage of earnings, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778.

**SUPPLEMENTARY INFORMATION:** The 1977 Amendments to the Social Security Act provided a guarantee for those receiving benefits on the Social Security record of an insured individual who received disability benefits at some earlier time, then stopped receiving disability benefits, and subsequently has become

entitled to retirement or disability benefits or has died. This subsequent entitlement guarantee provides that the basic benefit amount, called the primary insurance amount, of the insured individual cannot be less than the primary insurance amount in effect in the last month of the insured individual's prior entitlement to disability benefits, increased under certain circumstances by any cost-of-living or general benefit increase since that time. This primary insurance amount guarantee is described in §§ 404.250 through 404.252 of our regulations.

The primary insurance amount guarantee of the 1977 Amendments, however, did not extend to the maximum family benefit payable on the insured individual's record, which is based on the primary insurance amount. (The maximum family benefit is a limit on the total amount of monthly benefits which may be paid for any month to an insured individual and his or her dependents or survivors.) Thus, we were computing the family maximum for subsequent entitlement using either the insured individual's eligibility year of the prior entitlement to disability or the current eligibility year. As a result, the maximum family benefit which is payable when the insured individual becomes reentitled to benefits or dies may be less than the maximum family benefit payable in the last month of the insured individual's prior entitlement to disability benefits.

Section 310 of Pub. L. 103-296, the Social Security Independence and Program Improvements Act of 1994, amended the Social Security Act so that the guaranteed primary insurance amount would be the basis for calculating the guaranteed maximum family benefit under a subsequent entitlement. The amendments made by section 310 also provide that, where the subsequent entitlement is to retirement or survivor benefits, we will determine the applicable maximum family benefit without applying the disability maximum family benefit cap described in § 404.403(d-1) of our regulations. The amendments made by section 310 apply when determining the total monthly benefits to which beneficiaries may be entitled based on the wages and self-employment income of an insured individual who, after having been previously entitled to disability insurance benefits, becomes entitled to retirement benefits, becomes reentitled to disability insurance benefits, or dies, after December 1995. Section 310 was effective for the maximum family benefit of workers who become reentitled to benefits or die (after

previously having been entitled) after December 1995. We have followed this statutory amendment since it became effective. We are now amending § 404.403 of our regulations by adding paragraph (g) to reflect the changes made by section 310.

### Regulatory Procedures

#### Justification For Final Rules

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the prior notice and public comment procedures in this case. This regulation simply reflects statutory changes and does not involve the making of any discretionary policy. Therefore, opportunity for prior comment is unnecessary and we are issuing this change to our regulations as a final rule.

We also find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided for by 5 U.S.C. 553(d). As explained above, this regulation merely reflects a self-executing statutory change that has its own effective date. We believe it would be misleading and contrary to the public interest for the regulation to show a later effective date, because we must compute benefits as directed by the statute in all cases.

#### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

#### Paperwork Reduction Act

This final regulation imposes no new reporting/recordkeeping requirements subject to OMB clearance.

#### Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic