

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 376**

[Docket No. RM06–19–000, Order No. 680]

Commission Procedures During Periods of Emergency Requiring Activation of Continuity of Operations Plan

Issued July 20, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.**ACTION:** Final rule.

SUMMARY: In this rule the Commission establishes procedures with regard to filing and other requirements if the Commission is required to implement its Continuity of Operations Plan in response to an emergency situation that disrupts communications to or from the Commission's headquarters or which otherwise impairs headquarters operations. The rule temporarily suspends filing requirements and ensures that deadlines for Commission actions that fall during the period the plan is in operation are met, thereby providing continuity in the conduct of the Commission's business and certainty to parties with business before the Commission.

EFFECTIVE DATE: The rule will become effective July 20, 2006.

FOR FURTHER INFORMATION CONTACT: John Clements, Office of the General Counsel, Federal Energy Regulatory Commission, Room 101–57, 888 First St., NE., Washington, DC 20426, 202–502–8070.

SUPPLEMENTARY INFORMATION: Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations to modify certain filing requirements and establish procedures to be effective during emergencies affecting the Commission that require it to implement its Continuity of Operations Plan (COOP Plan). The COOP Plan was developed to address emergency conditions lasting up to 30 days during which Commission headquarters operations may be temporarily disrupted or communications may be temporarily unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory

requirements.¹ The COOP Plan is designed to ensure that the Commission is able to quickly restore its ability to perform essential functions should such conditions occur.² The rule temporarily suspends filing requirements and ensures that deadlines for Commission actions that fall during the period the plan is in operation are met, thereby providing continuity in the conduct of the Commission's business and certainty to parties with business before the Commission.³

II. Discussion**A. Acceptance and Suspension of Pending Filings Requiring Commission Action by a Date Certain**

2. The rule provides for the acceptance and suspension, during emergencies that disrupt normal operations and communications and require activation of the COOP Plan,⁴ of pending filings upon which the Commission would be required to act by a date certain during the period of emergency. The effective date(s) of such filings shall be the date(s) requested, to be effective subject to refund and further order of the Commission. These include filings made pursuant to:

- Section 4 of the Natural Gas Act;
- Section 205 of the Federal Power Act; and
- Section 6(3) of the Interstate Commerce Act.

B. Electric Reliability Organization Penalties

3. If the date on which a penalty imposed by an Electric Reliability Organization pursuant to FPA § 215 would take effect falls during a period when the COOP Plan is activated, review of such penalty by the Commission will be deemed to be initiated and the penalty shall be stayed pending further action by the Commission.

¹ The emergency conditions which might trigger activation of the COOP Plan are not identical to "emergency conditions" as heretofore defined in 18 CFR 376.201. One of the revisions discussed below modifies that section to cover the emergency conditions that would trigger activation of the COOP Plan.

² More information concerning the COOP Plan can be found on the Commission's Web site at www.ferc.gov/coop.asp.

³ Activation of the COOP Plan affects communications with headquarters only, and does not affect communications required to be made directly to the Commission's Regional Offices.

⁴ Not all disruptions of communications with the Commission's headquarters will require activation of the COOP Plan and the triggering of these regulations. For instance, a brief outage of eLibrary that prevents entities from making electronic filings would not trigger activation of the COOP Plan.

C. Consistency of State Action With Reliability Standard

4. If the date by which a Commission determination under FPA § 215 as to whether a State action is inconsistent with a reliability standard is required to be made falls during a period when the COOP Plan is activated, the effectiveness of the State action will be deemed to be stayed pending further action by the Commission.

D. Tolling of Time Periods for Commission Action

5. The rule also tolls for purposes of further consideration the time periods for certain Commission actions that will be required during the emergency. These include the:

- 60-day period for acting on requests for Exempt Wholesale Generator or Foreign Utility Company status;
- 60-day period for acting on interlocking directorate applications;
- 90-day period for acting on requests for certification of qualifying facility status;
- 60-day period for acting on holding company and transaction exemptions and waivers;
- 180-day period for acting on public utility and holding company applications for dispositions, considerations, or acquisitions;
- 150-day period for acting on intrastate pipeline applications for approval of proposed rates;
- Period ending 60 days prior to the Electric Reliability Organization's (ERO) fiscal year for acting on the ERO's budget;
- 60-day period for acting on notifications that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule or agreement;
- 60-day period for acting on applications for review of a penalty imposed by the ERO for violation of a reliability standard;
- 45-day Protest period for protesting Prior Notice Filings, and the 30-day period for resolving and filing to withdraw such Protests;⁵
- 30-day period for acting on requests for rehearing;
- Time periods prescribed in 18 CFR 385.714–715 for acting on interlocutory appeals and certified questions.

E. Suspension of Certain Requirements

6. Disruptions to normal operations and communications during an

⁵ The result of these suspensions is that no facilities subject to the prior notice provisions of the Commission's blanket certificate regulations not finally authorized prior to the activation of the COOP Plan shall be constructed during its activation in the absence of specific authorization by the Commission.

emergency that require activation of the COOP Plan could make compliance with some Commission statutes, regulations, or orders difficult or impossible. This rule suspends those requirements during the emergency. The affected regulatory requirements include mandatory filings, submissions, and notifications, as well as voluntary notices, contacts, or reports to the Commission. They include:

- Filings to comply with Commission orders, including orders issued by administrative law judges;
- Filings required to be made by a date certain under the Commission's regulations or orders;
- Motions to intervene and protests, and notices of intervention;
- Comments responding to proposed rulemakings or technical conferences;
- Responses to data requests;
- Self-reports of violations;
- Responses to staff audit reports;
- Contacts with the Commission's Enforcement Hotline;
- Accounting filings required by the Commission's Uniform Systems of Accounts; and
- Forms, reports, and submissions required to be filed by a date certain.

7. The rule also grants certain relief with respect to the Commission's Standards of Conduct for Transmission Providers that are also affected by the emergency affecting the Commission. Specifically, such Transmission Providers may, for 30 days, delay compliance with the requirement of § 358.4(a)(2) of the regulations⁶ to report to the Commission each emergency that resulted in any deviation from the Standards of Conduct within 24 hours of such deviation. Unless the emergency prevents the Transmission Provider from posting information on the OASIS or Internet Web site, the Transmission Provider must comply with those posting requirements. The 30-day period may be extended as necessary.

F. Intention Not To Act

8. The rule provides that, during the emergency conditions that require activation of the COOP Plan, the Commission will not initiate an enforcement action under § 210(h)(2) of the Public Utility Regulatory Policies Act of 1978.⁷ Applicants may, as a consequence, bring their own enforcement actions in the appropriate courts.

G. Suspension of Proceedings Before Administrative Law Judges

9. The rule also suspends all hearings, prehearing conferences, settlement conferences, and meetings before administrative law judges while the COOP Plan is activated.

H. Delegations of Authority

10. This rulemaking also revises the Commission's rules regarding emergency operations to ensure that delegations of authority will remain effective in the event the COOP Plan is activated. The revisions clarify § 376.206 of the Commission's regulations to specify with more particularity what persons will be authorized to exercise delegated authority in the event the officials to whom delegations are made under Part 375 are unavailable. Section 376.204(b)(2) also is being revised to update the list of officials designated to act on behalf of the Commission in the event of an emergency. Finally, the definition of "emergency condition" contained in § 376.201 is being revised to include specifically any condition that necessitates activation of the COOP Plan.

I. Related Matters

11. The COOP Plan includes procedures to inform the public when the COOP Plan is activated, when alternate channels of communication are established, when normal operations and communications are resumed, and the length of any grace period to comply with requirements that were suspended during the emergency. A press release will be sent to major wire services, industry press, and appropriate metropolitan area radio stations announcing that the Commission has activated the COOP Plan. The Commission's alternative Web site (<http://www.fercalt.gov>) will be activated and a notice that the COOP Plan has been activated will be prominently displayed thereon. The alternative Web site will act as a resource for the press, industry, and general public. An additional press release will be sent to appropriate media outlets when the COOP Plan is deactivated and the Commission's headquarters constituted, and appropriate modifications made to the alternative Web site.

12. Finally, during periods when the COOP is activated, the Commission will continue to act on requests to ensure continued construction of essential natural gas facilities with sensitive construction timelines, on Commencement of Service requests, and

on completion of dam safety work, in a manner consistent with the maintenance of environmental protections. The Commission will further ensure that its personnel are available to respond to and address: Plant accidents or reportable incidents at LNG facilities; dam safety, public safety, and security incidents at jurisdictional hydropower projects; and regional and interregional bulk power systems incidents and emergencies, including blackouts. Alternate channels of communication will include measures to ensure that these activities can go forward unhindered.

Regulatory Flexibility Act Certification

13. The Regulatory Flexibility Act of 1980 (RFA)⁸ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.⁹ The Commission is not required to make such an analysis if a rule would not have such an effect. This Final Rule merely temporarily suspends or waives certain filings and other requirements. Therefore, this Final Rule will not have a significant economic impact on a substantial number of small entities and no regulatory flexibility analysis is required.

Information Collection Statement

14. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹⁰ This Final Rule contains no new information collections. Therefore, OMB review of this Final Rule is not required.

Environmental Analysis

15. 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. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the

⁸ 5 U.S.C. 601-12.

⁹ The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201.

¹⁰ 5 CFR 1320.12.

⁶ 18 CFR 358.4(a)(2).

⁷ 16 U.S.C. 824a-3(h)(2).

regulations being amended.¹¹ This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Document Availability

16. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

17. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact Online Support at 1-866-208-3676 (e-mail at FERCOnlineSupport@FERC.gov), or the Public Reference Room at (202) 502-8371, TTY 202-502-8659 (e-mail at public.referenceroom@ferc.gov).

Effective Date and Congressional Notification

19. These regulations are effective on July 20, 2006. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties. The Commission finds that notice and public procedure are unnecessary because no new burden or regulatory requirement is imposed on regulated entities or the general public. For the same reason, the Commission finds good cause to waive the customary 30-day notice period before the effective date of this Final Rule.

List of Subjects in 18 CFR Part 376

Civil defense, Organization and functions (Government agencies).

By the Commission.

Magalie R. Salas,
Secretary.

■ In consideration of the foregoing, the Commission amends part 376, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 376—ORGANIZATION, MISSION, AND FUNCTIONS; OPERATIONS DURING EMERGENCY CONDITIONS

■ 1. The authority citation for part 376 continues to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 2. In § 376.201, paragraph (a)(3) is revised and paragraph (a)(4) is added to read as follows:

§ 376.201 Emergency condition defined.

* * * * *

(a) * * *

(3) At a time specified by the authority of the President; or

(4) At such time that the Commission's Continuity of Operations Plan is activated; and

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■ 3. In § 376.204, paragraphs (b)(2)(ii), (b)(2)(v), (b)(2)(vi), (b)(2)(viii), (b)(2)(ix) and (b)(2)(x) are revised to read as follows:

§ 376.204 Delegation of Commission's authority during emergency conditions.

* * * * *

(b) * * *

(2) * * *

(ii) Director of the Office of Energy Markets and Reliability;

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(v) Director of the Office of Enforcement;

(vi) Deputy Directors, Office of Energy Markets and Reliability, in order of seniority;

* * * * *

(viii) Deputy General Counsels, in order of seniority;

(ix) Associate General Counsels and Solicitor, in order of seniority;

(x) Assistant Directors and Division heads, Office of Energy Markets and Reliability; Assistant Directors and Division heads, Office of Energy Projects; Assistant General Counsels; and Assistant Directors and Division heads, Office of Enforcement; in order of seniority.

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■ 4. Section 376.206 is revised to read as follows:

§ 376.206 Delegation of functions of certain Commission staff members.

When, by reason of emergency conditions, the Secretary, Director of

any Office or Division, or officer in charge of a regional office, is not available and capable of carrying out his or her functions, such functions are delegated to staff members designated by the Chairman to perform such functions. If no staff member so designated is available and capable of carrying out their functions, such functions are delegated to the next subordinate employee in the Office or Division of the highest grade and longest period of service in that grade. If no subordinate employee of the Office or Division is available and capable of carrying out their functions, such functions are delegated to the Commission employee of the highest grade and longest period of service in that grade who is available and capable of carrying out their functions.

■ 5. Section 376.209 is added to read as follows:

§ 376.209 Procedures during periods of emergency requiring activation of the Continuity of Operations Plan.

(a)(1) The Commission's Continuity of Operations Plan is activated during emergency conditions lasting up to 30 days during which Commission headquarters operations may be temporarily disrupted or communications with the Commission's headquarters may be temporarily unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements. The provisions of this paragraph are effective upon activation of the Plan. The Commission will notify the public that the Plan has been activated by sending a press release announcing that fact to major wire services, industry press, and appropriate metropolitan area radio stations announcing that the Commission has activated the Plan. The Commission's alternative Web site (<http://www.fercalt.gov>) will be activated and a notice that the Plan has been activated will be prominently displayed thereon. The alternative Web site will act as a resource for the press, industry, and general public. An additional press release will be sent to appropriate media outlets when the Plan is deactivated and the Commission's headquarters constituted, and appropriate modifications made to the alternative Web site.

(2) During periods when the Continuity of Operations Plan is activated, the Commission will continue to act on requests to ensure continued construction of essential natural gas facilities with sensitive construction timelines, on Commencement of Service requests, and on completion of dam

¹¹ Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,783 (1987).

safety work, in a manner consistent with the maintenance of environmental protections. The Commission will further ensure that its personnel are available to respond to plant accidents or reportable incidents at LNG facilities, and address dam safety, public safety, and security incidents at jurisdictional hydropower projects. Alternate channels of communication will include measures to ensure that these activities can go forward unhindered.

(b) *Standards of conduct for transmission service providers.* During periods when the Commission's Continuity of Operations Plan is activated, a Transmission Provider affected by the same emergency affecting the Commission may, for 30 days, delay compliance with the requirement to report to the Commission each emergency that resulted in any deviation from the standards of conduct within 24 hours of such deviation. If the emergency prevents a Transmission Provider from posting information on the OASIS or Internet Web site, the Transmission Provider may, for 30 days, also delay compliance with the requirements of § 358.4(a)(2) of this chapter to post this information on the OASIS or Internet Web site, as applicable. Upon application by any such Transmission Provider, the Commission may extend these periods.

(c) *Tolling of time periods for Commission action.* The Commission tolls, for purposes of further consideration, the time period in which the Commission must act on the following matters if the time period during which the Commission would ordinarily be required to act closes during the period when the Continuity of Operations Plan is activated:

- (1) 60-day period to act on requests for Exempt Wholesale Generator or Foreign Utility Company status;
- (2) 90-day period for acting on requests for certification of qualifying facility status;
- (3) 60-day period for acting on interlocking directorate applications;
- (4) 60-day period for acting on Public Utility Holding Company Act exemptions and waivers;
- (5) 180-period for acting on applications under § 203 of the FPA;
- (6) 150-day period for acting on intrastate pipeline applications for approval of proposed rates;
- (7) Period ending 60 days prior to the Electric Reliability Organization's (ERO) fiscal year for acting on the ERO's budget;
- (8) 60-day period for acting on notifications that a Reliability Standard

may conflict with a function, rule, order, tariff, rate schedule or agreement;

(9) 60-day period for acting on applications for review of a penalty imposed by the ERO for violation of a reliability standard;

(10) 45-day Protest period for protesting Prior Notice Filings, and the 30-day period for resolving and filing to withdraw such Protests;

(11) 30-day period for acting on requests for rehearing; and

(12) Time periods for acting on interlocutory appeals and certified questions.

(d) *Suspension of certain requirements.* During periods when the Commission's Continuity of Operations Plan is activated, requirements for the following filings, submissions, and notifications are suspended.

(1) Filings to comply with Commission orders, including orders issued by administrative law judges;

(2) Filings required to be made by a date certain under the Commission's regulations or orders;

(3) Motions to intervene and protests, and notices of intervention;

(4) Comments responding to proposed rulemakings or technical conferences;

(5) Responses to data requests;

(6) Self-reports of violations;

(7) Responses to staff audit reports;

(8) Contacts with the Commission's Enforcement Hotline;

(9) Accounting filings required by the Commission's Uniform Systems of Accounts; and

(10) Forms required to be filed by a date certain.

(e) *Acceptance and Suspension of Rate Filings.* When the date by which the Commission is required to act on filings made pursuant to section 4 of the Natural Gas Act, sections 205 of the Federal Power Act, and section 6(e) of the Interstate Commerce Act falls during periods when the Continuity of Operations Plan is activated, such filings shall be deemed to be accepted and suspended and made effective on the requested effective date, subject to refund and further order of the Commission.

(f) *Electric Reliability Organization Penalties.* If the date on which an Electric Reliability Organization imposes a penalty under Federal Power Act § 215 would take effect falls during a period when the COOP Plan is activated, review of such penalty by the Commission shall be deemed to be initiated and the penalty shall be stayed pending further action of the Commission.

(g) *Consistency of State action with reliability standard.* If the date by which a Commission determination under FPA

§ 215 as to whether a State action is inconsistent with a reliability standard is required to be made falls during a period when the COOP Plan is activated, the effectiveness of the State action will be deemed to be stayed pending further action by the Commission.

(h) *Suspension of Evidentiary Hearings.* During periods when the Continuity of Operations Plan is activated, all hearings, prehearing conferences, settlement conferences, and meetings before administrative law judges are suspended.

(i) *Enforcement Actions.* During periods when the Continuity of Operations Plan is activated, the Commission will not initiate an enforcement action under section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978.

[FR Doc. E6-11990 Filed 7-26-06; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2006N-0276]

Medical Devices; Immunology and Microbiology Devices; Classification of Fecal Calprotectin Immunological Test Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying fecal calprotectin immunological test systems into class II (special controls). The special control that will apply to these devices is the guidance document entitled, "Class II Special Controls Guidance Document: Fecal Calprotectin Immunological Test Systems." The agency is classifying these devices into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of these devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for these devices.

DATES: This rule is effective August 28, 2006. The classification was effective April 26, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Moore, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither