

# Proposed Rules

Federal Register

Vol. 62, No. 191

Thursday, October 2, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 388

[Docket No. RM97-8-000]

#### Information and Requests

September 25, 1997.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing information and requests to reflect the requirements and specifications of the Electronic Freedom of Information Act Amendments of 1996. The Commission also proposes to correct minor editorial inconsistencies in its regulations.

**DATES:** Written comments must be received by the Commission by November 3, 1997.

**ADDRESSES:** Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Beamon, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-0780.

**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., Washington, D.C. 20426.

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## I. Introduction

This proposed rule amends 18 CFR part 388 to implement the provisions of the Electronic Freedom of Information Act Amendments of 1996 (the Act).<sup>1</sup> The Act amended the Freedom of Information Act (FOIA)<sup>2</sup> by imposing a number of new requirements governing the public availability of information, including electronic information. The proposed rule also clarifies minor discrepancies in part 388.

## II. Background

The underlying goal of the Act is to encourage the electronic distribution of information.<sup>3</sup> The Act expands FOIA's definition of a record to include information maintained in electronic format; requires agencies to

accommodate requesters' reasonable format preferences; and to conduct reasonable agency searches for electronic records. It also provides for the electronic availability of all "public reading room" materials created as of November 1, 1996.<sup>4</sup>

In addition, the Act requires an agency to place in its public reading room certain documents that are subject to repeated requests. Agencies must maintain a public index of such documents.<sup>5</sup> The Act grants agencies 20 working days to process FOIA requests instead of the current 10 days, allows extensions beyond the former 10-day deadline in limited circumstances, and expressly gives requesters the opportunity to avoid extensions by limiting the scope of their requests.<sup>6</sup>

Moreover, the Act allows multitrack processing of FOIA requests. Multitrack processing creates a fast track for requests capable of resolution with a limited amount of time and effort, and slower tracks for requests that demand a more intensive effort.<sup>7</sup> In addition to optional multitrack processing, the Act mandates expedited treatment for requesters who (1) demonstrate an imminent threat to life or safety, or (2) are engaged in disseminating information, and demonstrate an urgency to inform the public concerning Federal Government activity.<sup>8</sup>

The Act requires agencies to promulgate regulations to implement expedited processing. This proposed rule responds to the Act's mandate regarding expedited processing, and other changes wrought by the Act. It also makes several minor grammatical and technical changes for the sake of clarity.

<sup>4</sup> Pub. L. No. 104-231, Secs. 3, 4 and 5, 110 Stat. 3048, 3049-50, 5 U.S.C. 552 (a)(2), (a)(3)(B), (a)(3)(C) and (f)(2), as amended.

<sup>5</sup> Pub. L. No. 104-231, Sec. 4, 110 Stat. 3048, 3049, 5 U.S.C. 552(a)(2)(D) and (E), as amended.

<sup>6</sup> Pub. L. No. 104-231, Secs. 7 and 8, 110 Stat. 3048, 3050-52, 5 U.S.C. 552(a)(6)(A)(1) and (B), as amended, effective October 2, 1997.

<sup>7</sup> Pub. L. No. 104-231, Sec. 7, 110 Stat. 3048, 3050-51, 5 U.S.C. 552(a)(6)(D), as amended, effective October 2, 1997.

<sup>8</sup> See Pub. L. No. 104-231, Sec. 8, 110 Stat. 3048, 3051-52, 5 U.S.C. 552(a)(6)(E), as amended, effective October 2, 1997; and H.R. Rep., *supra* note 3, at 26.

<sup>1</sup> Pub. L. No. 104-231, 110 Stat. 3048 (1996).

<sup>2</sup> 5 U.S.C. 552.

<sup>3</sup> H.R. Rep. No. 104-795, at 11 (1996).

### III. Discussion

#### Part 388—Information and Requests

##### Authority

The proposed rule revises the Authority for Part 388 to reflect that the FOIA, 5 U.S.C. 552, should be cited “as amended.”

##### Sections 388.101–388.105

No changes.

##### Section 388.106

This section is revised to expand the categories of information that are available in the Commission’s Public Reference Room, and to inform the public of the electronic availability of information created after November 1, 1996 (proposed para. (a)(2), and (b)). In addition to making electronic records available, information will, of course, continue to remain available through “in person” visits or written requests.

The new categories of information to be available are copies of records released under FOIA that are likely to be requested again, an index of such records, and reference materials and guides to further enhance the public’s access to Commission information. The proposed definition of the term “Commission correspondence” is amended to include information in electronic format, consistent with Commission practice (proposed para. (c)(1)).

The section is also revised to explicitly include statements of policy and interpretations which have been adopted by the Commission and are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public (proposed paras. (b)(19) and (b)(20)). These information categories were required to be made available under FOIA even before the 1996 amendments.

##### Section 388.107

The proposed language corrects a typographical error. The term “natural defense” in paragraph (a)(1) is changed to “national defense.”

##### Section 388.108

The proposed revisions to this section implement multitrack processing, as allowed by the Act, and expedited processing, as required by the Act. Multitrack processing establishes a fast track for requests requiring a limited amount of time and effort, and slower tracks for requests requiring a more intensive effort. The Commission proposes to adopt a three part multitasking system that should increase efficiency (proposed para.

(b)(1)). Under the proposed approach, the Director, Office of External Affairs, will place a newly received request into one of three tracks for processing: track one—records that are readily identifiable and were previously cleared for release (including those capable of multiple requests and placed in the Public Reference Room); track two—records that are readily identifiable, or are not voluminous, and require limited review; and track three—complex and/or voluminous records requiring a significant search and/or review.

Although the Commission has sometimes employed multitasking in the past, its regular use should be advantageous to the public and the Commission as simple requests are sometimes backlogged because of earlier-filed complex requests. The proposed rule specifies that each track will be processed on a first in, first out basis. Requesters are permitted to modify their requests to obtain processing on a faster track.

Pursuant to the Act, the proposed rule changes the time for processing requests from 10 to 20 working days (proposed para. (c)(1));<sup>9</sup> and clarifies the Commission’s obligation to specify the information that is denied under a request, including the volume of withheld materials and the extent and location of redactions in partially released materials (proposed para. (c)(3)).

The proposed rule makes expedited processing available where the requester demonstrates a compelling need: (1) Due to an imminent threat to an individual’s life or physical safety, or (2) in the case of requesters who are primarily engaged in disseminating information, where the requester demonstrates an urgency to inform the public concerning Federal Government activity (proposed para. (d)(1)). The proposed rule emphasizes that a request for expedited processing must be supported with credible documentation and a statement certified to be true and correct (proposed para. (d)(2)). The proposed rule states that only the compelling circumstances indicated will qualify a requester for expedited processing. A denial of expedited processing will be subject to appeal. Accordingly, the appeal procedure for denial of records is amended to include denial of expedited treatment (proposed para. (e)).

For purposes of this proposed rule, a “requester primarily engaged in the dissemination of information” does not include an individual or organization

engaged only incidentally in the dissemination of information.<sup>10</sup> The requester’s main business must be the dissemination of information.<sup>11</sup> Thus, a bona fide member of the news media would likely qualify. An organization that periodically distributes information to its members would not likely qualify.

In addition to meeting the dissemination requirement, the requester must credibly demonstrate that expedited processing is needed to avoid a likely, significant adverse consequence to a recognized interest.<sup>12</sup> The public’s right to know, standing alone, is not sufficient to satisfy this standard.<sup>13</sup>

Under the proposed rule, the Director, Office of External Affairs, will rule on a request for expedited processing within 10 calendar days from the date the request is received (proposed para. (d)(3)). A denial of expedited processing will be explained, and the requester will be provided notice of administrative appeal rights.

Other proposed revisions to the section include a formal codification of the Commission’s practice of not processing a request until after fee issues have been resolved, unless the requester has provided a written statement agreeing to pay some or all applicable fees pending the resolution of fee issues (proposed para. (a)(5)). The purpose of this rule is to avoid an expenditure of Commission resources to process a request before the requester has agreed to pay all applicable processing fees. The proposed rule also makes minor revisions in terminology in the interest of clarity.

##### Section 388.109

Paragraph (b)(2)(iii), as currently drafted, charges some non-commercial requesters for review time. The proposed revision to this section deletes charges for review time from non-commercial requesters, consistent with 5 U.S.C. § 552(a)(4), the applicable Office of Management and Budget’s (OMB) Guidelines and Fee Schedule for FOIA, and actual Commission practice. Similarly, proposed revisions to paragraph (b)(2)(iv) remove ordinary postage fees, consistent with OMB guidelines and Commission practice. Requesters remain responsible for special delivery fees such as express mail provided in accordance with their specifications.

Paragraph (b)(2)(vii), as currently drafted, authorizes the Commission to

<sup>10</sup> H.R. Rep., *supra* note 3, at 26.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>9</sup> This time limit does not apply to requests for expedited processing, which are explained below.

aggregate multiple requests on related topics that are subdivided to avoid an assessment of fees. As allowed by the Act, proposed paragraph (b)(2)(vii) expands the instances where the Commission may aggregate one or more requests for joint processing. The proposed language allows aggregation anytime the Commission reasonably believes that such multiple requests constitute a single request, and notes that aggregated requests may qualify for an extension of time under § 388.110(b). The proposed revisions further clarify that the Commission has no obligation to process a request under § 388.108 where there is no assurance or agreement of payment.

#### Section 388.110

Pursuant to the Act, the proposed rule makes the administrative appeal rights in paragraph (a)(1) applicable to a denial of expedited processing. Proposed paragraph (a)(2) provides that such appeals will be considered as expeditiously as possible within the 20 working day period specified for appeals, and that a requester denied expedited processing in an appeal will be notified of judicial review provisions.

Proposed paragraph (b)(2) allows an extension of time not to exceed 10 working days beyond the standard deadlines for processing initial requests and appeals, as permitted by the Act. As also provided by the Act, the proposed rule specifies that an extension in excess of 10 working days may be available but only where the requester is given the opportunity to limit the scope of the request to allow processing within 20 working days, or to arrange an alternative time frame.

Proposed paragraph (b)(3) specifies that requests aggregated under § 388.109(b)(2)(vii) qualify for an extension of time when they satisfy the unusual circumstances specified in this section.

#### Section 388.111

No changes.

#### Section 388.112

The proposed language merely reflects a correction of typographical errors. Paragraph (c)(1)'s references to paragraphs (b)(2) and (b)(3) are corrected to (b)(1)(ii) and (b)(1)(iii), respectively.

### IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) <sup>14</sup> generally requires a description and analysis of rules that will have

significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The proposed changes improve the public's access to information, and impose additional obligations on the Commission to ensure the availability of such information. By comparison, the public's obligations would not significantly increase.

### V. Environmental Statement

Issuance of this proposed rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.<sup>15</sup> This proposed rule falls within the regulatory exemption which specifies that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.<sup>16</sup> Thus, neither an environmental impact statement nor an environmental assessment is required.

### VI. Information Collection Statement

OMB regulations require that OMB approve certain information collection requirements imposed by agency rule.<sup>17</sup> This proposed rule contains no information reporting requirements, and is not subject to OMB approval.

### VII. Written Comment Procedure

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking. All comments in response to this notice should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should refer to Docket No. RM97-8-000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before November 3, 1997.

### Lists of Subjects in 18 CFR Part 388

Freedom of Information; Public Reference Materials.

By direction of the Commission.

**Lois D. Cashell,**  
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part

<sup>15</sup> Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. Regs. (Preambles 1986-90) ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

<sup>16</sup> 18 CFR 380.4(a)(5).

<sup>17</sup> 5 CFR part 1320.

388, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

### PART 388—INFORMATION AND REQUESTS

1. The authority citation for Part 388 is revised to read as follows:

**Authority:** 5 U.S.C. 301-305, 551, 552 (as amended), 553-557; 42 U.S.C. 7101-7352.

2. In § 388.106, paragraph (a) is redesignated as (a)(1); paragraph (a)(2) is added; paragraph (b) introductory text is revised; paragraph (b)(19) is redesignated as (b)(23); new paragraphs (b)(19) through (b)(22) are added; and paragraph (c)(1) is revised to read as follows:

#### § 388.106 Requests for Commission records available in the Public Reference Room.

(a)(1) \* \* \*

(2) Documents created on or after November 1, 1996, or earlier in some instances, also are electronically available on the Commission's World Wide Web site, [www.ferc.fed.us](http://www.ferc.fed.us); the Commission Issuance Posting System (CIPS) (an electronic bulletin board); or the Records Information Management Systems (RIMS). These may be accessed in person using a personal computer in the Public Reference Room, or by using a personal computer with a modem at a remote location.

(b) The public records of the Commission that are available for inspection and copying upon request in the Public Reference Room, or are otherwise available under paragraph (a)(2) of this section, include:

\* \* \* \* \*

(19) Statements of policy and interpretations which have been adopted by the Commission and are not published in the **Federal Register**;

(20) Administrative staff manuals and instructions to staff that affect a member of the public;

(21)(i) Copies of all records released under § 388.108, which, because of their nature and subject, the Director of the Office of External Affairs has determined are likely to be requested again, and

(ii) An index of the records so designated;

(22) Reference materials and guides for requesting Commission records as required by 5 U.S.C. 552(g), as amended; and

(23) Commission correspondence relating to the foregoing.

(c) \* \* \*

(1) Commission correspondence includes written communications and enclosures, in hard copy or electronic format, received from others outside the

<sup>14</sup> 5 U.S.C. 601-602.

staff and intended for the Commission or sent to others outside the staff and signed by the Chairman, a Commissioner, the Secretary, the Executive Director, or other authorized official, except those which are personal.

\* \* \* \* \*

#### § 388.107 [Amended]

3. In § 388.107(a)(1), remove the word "natural" and add, in its place, the word "national."

4. In § 388.108, paragraphs (a)(1) introductory text, (a)(1)(iii) and (a)(2) through (a)(4) are revised; new paragraph (a)(5) is added; paragraphs (b) and (c) are redesignated as (c) and (e) respectively and revised, and new paragraphs (b) and (d) are added, to read as follows:

#### § 388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).

(a)(1) Except as provided in paragraph (a)(2), of this section, a person may request access to Commission records, including records maintained in electronic format, that are not available through the Public Reference Room, by using the following procedures:

\* \* \* \* \*

(iii) The request must identify the fee category of the request, consistent with the provisions of § 388.109(b)(1) and (2).

(2) A request that fails to provide the identification required in paragraph (a)(1)(iii) of this section will not be processed until the Director, Office of External Affairs, can ascertain the requester's fee category.

(3) A request for records received by the Commission not addressed and marked as indicated in paragraph (a)(1)(i) of this section will be so addressed and marked by Commission personnel as soon as it is properly identified, and forwarded immediately to the Director, Office of External Affairs.

(4) Requests made pursuant to this section will be considered to be received upon actual receipt by the Director, Office of External Affairs, unless otherwise indicated in paragraph (a)(5) of this section.

(5) Except for the purpose of making a determination regarding expedited processing under paragraph (d)(3) of this section, no request will be deemed received while there is an unresolved fee waiver issue under § 388.109(b)(6), unless the requester has provided a written statement agreeing to pay some or all fees pending the outcome of the waiver question.

(b)(1) *Multitrack processing.* Upon receipt of a request, the Director, Office

of External Affairs, will place the request in one of three tracks for processing:

(i) *Track One*—records that are readily identifiable and were previously cleared for release (including those subject to multiple requests and placed in the Public Reference Room);

(ii) *Track Two*—records that are readily identifiable, and require limited review; and

(iii) *Track Three*—complex and/or voluminous records requiring a significant search and/or review.

(2) Each track specified in paragraph (b)(1) of this section will be processed on a first in, first out basis, where practicable. A requester may modify a request to obtain processing on a faster track.

(c) (1) *Timing of response.* Except as provided in paragraphs (c)(4) and (d)(3) of this section, within 20 working days after receipt of the request for agency records, the Director, Office of External Affairs, will comply with the request or deny the request in whole or in part, and will notify the requester of the determination, of the reasons for a decision to withhold any part of a requested document, and of the right of the requester to appeal any adverse determination in writing to the General Counsel or General Counsel's designee.

(2) The Director, Office of External Affairs, will attempt to provide records in the form or format requested, where feasible, but will not provide more than one copy of any record to a requester.

(3) Any determination by the Director, Office of External Affairs, to withhold information will, where feasible, indicate the approximate volume of information withheld, and will indicate, for partially-released materials, where redactions have been made, unless to do so would harm an interest protected by a FOIA exemption.

(4) The time limit for the initial determination required by paragraph (c)(1) of this section may be extended as set forth in § 388.110(b).

(d)(1) *Expedited processing.* A requester may seek expedited processing on the basis of a compelling need. Expedited processing will be granted if the requester demonstrates that:

(i) Failure to obtain the records on an expedited basis can reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or

(ii) In the case of a requester primarily engaged in the dissemination of information, there is an urgency to inform the public concerning Federal Government activity.

(2) A request for expedited processing under this section must be supported with detailed credible documentation, including a statement certified to be true and correct to the requester's best knowledge and belief.

(3) The Director, Office of External Affairs, will decide within 10 calendar days of receipt of the request whether it is eligible for expedited processing. The Director will notify the requester of the reasons for denial of expedited processing and of the right of the requester to appeal to the General Counsel or General Counsel's designee.

(e) The procedure for appeal of denial of a request for Commission records, or denial of a request for expedited processing, is set forth in § 388.110.

5. In § 388.109, the first sentence of paragraph (b)(2)(iii), and paragraphs (b)(2)(iv), (b)(2)(vii), and (b)(5)(ii) are revised; paragraph (b)(5)(iii) is removed; paragraph (b)(6) is redesignated as paragraph (c) and revised, and paragraphs (b)(7) and (b)(8)(i) and (ii) are redesignated as (d) and (e)(1) and (2) respectively, to read as follows:

#### § 388.109 Fees for records requests.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) For a request not described in paragraphs (b)(2)(i) or (ii) of this section the Commission will charge the employee's hourly pay rate plus 16 percent for benefits for document search time and 15 cents per page for duplication. \* \* \*

(iv) The Director, Office of External Affairs, will normally provide documents by regular mail, with postage prepaid by the Commission. However, the requester may authorize special delivery, such as express mail, at the requester's own expense.

\* \* \* \* \*

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, or otherwise reasonably believes that two or more requests constitute a single request, the Commission may aggregate any such requests and charge the requester accordingly. The Commission will not aggregate multiple requests on unrelated subjects from a requester. Aggregated requests may qualify for an extension of time under § 388.110(b).

\* \* \* \* \*

(5) \* \* \*

(ii) A requester has previously failed to pay a fee charged in a timely fashion. The Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission will begin to process a new request or a pending request from that requester. When the Commission requires advance payment or an agreement to pay under this paragraph, or under § 388.108(a)(5), the administrative time limits prescribed in this part will begin only after the Commission has received the required payments, or agreements.

(c) *Fee reduction or waiver.* (1) Any fee described in this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is:

(i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Not primarily in the commercial interest of the requester.

(2) The Commission will consider the following criteria to determine the public interest standard:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.

(3) The Commission will consider the following criteria to determine the commercial interest of the requester:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) This request for fee reduction or waiver must accompany the initial request for records and will be decided under the same procedures used for record requests.

\* \* \* \* \*

6. In section 388.110 the section heading, the first sentence of paragraph

(a)(1), paragraph (a)(2), and paragraph (b) are revised to read as follows:

**§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room, denial of requests for fee waiver or reduction, and denial of requests for expedited processing.**

(a) (1) A person whose request for records, request for fee waiver or reduction, or request for expedited processing is denied in whole or part may appeal that determination to the General Counsel or General Counsel's designee within 45 days of the determination. \* \* \*

(2) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 working days after the receipt of such appeal. An appeal of the denial of expedited processing will be considered as expeditiously as possible within the 20 working day period. If, on appeal, the denial of the request for records, fee reduction, or expedited processing is upheld in whole or in part, the General Counsel or the General Counsel's designee will notify the person making the appeal of the provisions for judicial review of that determination.

(b)(1) *Extension of time.* In unusual circumstances, the time limits prescribed for making the initial determination pursuant to § 388.108 and for deciding an appeal pursuant to this section may be extended by up to 10 working days, by the Secretary, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

(2) The extension permitted by paragraph (b)(1) of this section may be made longer than 10 working days when the Commission notifies the requester within the initial response time that the request cannot be processed in the specified time, and the requester is provided an opportunity to limit the scope of the request to allow processing within 20 working days; or to arrange with the Commission an alternative time frame.

(3) Two or more requests aggregated into a single request under § 388.109(b)(2)(vii) may qualify for an extension of time if the requests, as aggregated, otherwise satisfy the unusual circumstances specified in this section.

(4) *Unusual circumstances* means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

7. In § 388.112, paragraph(c)(1)(i)'s reference to "paragraph (b)(2)" is revised to read "paragraph (b)(1)(ii)," and paragraph (c)(1)(ii)'s reference to "paragraph (b)(3)" is revised to read "paragraph (b)(1)(iii)."

[FR Doc. 97-26065 Filed 10-1-97; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 250

#### RIN 1010-AC39

### Oil and Gas and Sulphur Operations in the Outer Continental Shelf

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a provision of the December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) Regarding Outer Continental Shelf (OCS) Pipelines. Under this MOU, the two departments jointly regulate OCS pipelines. As specified in the MOU, MMS regulations would pertain to all OCS oil or gas pipelines located upstream of the points at which operating responsibility for the pipelines transfer from a producing operator to a transporting operator.

**DATES:** MMS will consider all comments we receive by December 1, 1997. We will begin reviewing comments then and may not fully consider comments we receive after December 1, 1997.

**ADDRESSES:** Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4020; 381 Elden Street; Herndon, Virginia 20170-4817; Attention: Rules Processing Team.

**FOR FURTHER INFORMATION CONTACT:** Carl W. Anderson, Operations Analysis Branch, at (703) 787-1608; e-mail Carl\_Anderson@mms.gov.