

3. Changes to Other Filing Instructions

11. The Commission is also revising the filing instructions in 18 CFR 388.112(b) to remove language directing filers to segregate CEII and privileged material wherever practical into separate documents or appendices, and instead directing filers to file CEII, privileged, and NIP in separate "volumes." Since Order No. 630 became effective, the Commission has received numerous filings that have been difficult to process because of confusion regarding which portions are public, which are NIP, which are CEII, and which are privileged. The staff in the Office of the Secretary and the staff in the Office of the Executive Director who process filings and are responsible for placing documents into FERRIS are not the same staff that review the documents for substantive content. The processing staff does not have the time to read each filing page-by-page to see where materials may be marked for special treatment in the middle of a document. By using the term "volume," the Commission is specifying that materials for which special treatment is sought be physically separate from other portions of the filing, making for easier processing, with less of a chance for NIP, CEII, or privileged information to inadvertently be logged in as standard public information. The Commission is also deleting parallel filing instructions that allowed filers to redact material from a filing instead of using the separate volume approach. The redaction approach results in numerous versions of the same material being filed, increasing filer costs, staff processing time, and the possibility of confusion. For this reason, the regulation will no longer include a redaction option in 18 CFR 388.112.

12. In addition, the Commission is revising the filing provisions to reflect that filings should be marked and packaged according to instructions provided by the Secretary's Office. In Order No. 630, the Commission provided detailed instructions in 18 CFR 388.112(b) regarding the marking, packaging, and filing of CEII. The Commission has now determined to provide general instructions in the regulatory text with more detailed information provided in instructions from the Secretary's Office. This allows the Commission more flexibility and will permit the details to be modified as the need arises. Key elements, such as the numbers of copies required, are still covered by the regulation itself.

4. Changes to Effect and Notification Provisions

13. The Commission is revising the language in paragraphs (c), (d), and (e) of § 388.112 of its regulations to specifically reference CEII requests. In Order No. 630, the language in these provisions refers to both traditional privileged information and CEII as privileged information. To eliminate the potential for confusion, the Commission believes it is necessary to clearly distinguish between CEII and materials that companies have traditionally submitted with requests for privileged treatment, such as confidential information or Privacy Act information. Accordingly, the Commission is amending § 388.112(c) of its regulations to clarify that it applies to claims for CEII status as well as privileged claims. Similarly, the Commission is amending 18 CFR 388.112(d) to include language to clarify that it is relevant to CEII requests. The Commission also is amending § 388.112(e) of its regulations to clarify that the Commission will notify submitters prior to releasing information for which the submitter has requested CEII treatment. In addition, language is added in both 388.112(d) and (e) to clarify that the five days referred to in each are calendar days.

C. Changes to 18 CFR 388.113 CEII Request Procedures

14. After several months of experience processing CEII requests, the Commission is changing 18 CFR 388.113 to make certain minor changes to its CEII request procedures. The Commission is amending § 388.113(d)(3)(i) of its regulations to require that CEII requesters sign their CEII. Although 18 CFR 385.2005(a) already requires that any filing made with the Commission be signed, the Commission is revising § 388.113(d)(3)(i) to specify that CEII requests should be signed. As with § 385.2005, the purpose of the signature is to verify that the signer knows the contents of the filing and that "the contents are true as stated to the best knowledge and belief of the signer."¹¹ In addition, the Commission is amending that same section to require requesters to provide their birth name and any other names that they may have had or been known by in addition to their current name. This will help the Commission verify the identity of the requester where the birth name or other names do not match the requester's current name. Finally, 18 CFR 388.113(d)(3)(i) is being revised to read

that requests "must" contain specific information listed in the regulation.¹² This will make it more clear that the information is mandatory.

15. In response to requests from Federal agencies, the Commission is also revising the CEII request regulations at § 388.113(d)(3)(i) to require less personal information from a Federal agency requester who requests information in an official capacity. Employees at Federal agencies are subject to background checks as a condition of their Federal employment. Consequently, Federal employees require less screening prior to gaining access to CEII. The Commission, therefore, is adding a sentence to 18 CFR 388.113(d)(3)(i) to clarify that "Federal agency employees making requests on behalf of Federal agencies may omit their social security number, and date and place of birth."

16. The Commission also is adding language at the end of § 388.112(d)(ii) of its regulations to direct that "[C]opies of requests for rehearing of the CEII Coordinator's decision should be served on the CEII Coordinator and the Associate General Counsel for General Law." This will facilitate the Commission's processing of rehearing requests by ensuring that relevant staff is notified of the request as soon as possible.

D. Clarification Regarding LNG Environmental Resource Reports

17. Order No. 630 listed information that the Commission considers to be CEII because it provides more than simply location information. In error, that listing included "environmental resource reports for LNG facilities."¹³ It should have read "environmental resource report 13 for LNG facilities," which contains engineering and design information for liquified natural gas facilities.¹⁴

E. Review of Effectiveness of CEII Process

18. This rule, as well as the final rule in RM03-6, represents the Commission's best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. The Commission believes that it has struck an appropriate balance; however, it

¹² The original language in Order No. 630 stated that a request "shall" contain the listed information in 18 CFR 388.113(d)(3)(i).

¹³ 68 FR 9857 at p. 9862, III FERC Stats. & Regs. P31.

¹⁴ See 18 CFR 380.12(o).

¹¹ See 18 CFR 385.2005(2)(ii)(2003).