

exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should be withheld from public disclosure.

(2) Any person submitting documents containing critical energy infrastructure information (CEII) as defined in § 388.113 should follow the procedures specified in this section.

(3) Any person submitting documents containing maps or diagrams that reveal the location of critical energy infrastructure as defined in § 388.113 but do not rise to the level of CEII should follow the procedures for filing non-Internet public (NIP) information.

(b) *Procedures.* A person claiming that information warrants special treatment as NIP, CEII, or privileged must file:

(1) A written statement requesting NIP, CEII or privileged treatment for some or all of the information in a document, and the justification for special treatment of the information; and

(2) The following, as applicable:

(i) An original plus the requisite number of copies of both the public and NIP volumes, if any, filed and marked in accordance with instructions issued by the Secretary;

(ii) An original plus two copies of the CEII volume, if any, filed and marked in accordance with instructions issued by the Secretary; and

(iii) An original only of the privileged volume, if any, filed and marked in accordance with instructions issued by the Secretary.

(c) *Effect of privilege or CEII claim.* (1) For documents filed with the Commission:

(i) The Secretary of the Commission will place documents for which privileged or CEII treatment is sought in accordance with paragraph (b) of this section in a nonpublic file while the request for privileged or CEII treatment is pending. By placing the documents in a nonpublic file, the Commission is not making a determination on any claim of privilege or CEII status. The Commission retains the right to make determinations with regard to any claim of privilege or CEII status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged or CEII treatment and a copy of the original document without the privileged or CEII information in a public file while the request is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d), (e), and (f) of this section will be followed by staff before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA or CEII requester seeks a document for which privilege or CEII status has been claimed, or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information will notify the person who submitted the document and give the person an opportunity (at least five calendar days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, or to make a limited release of CEII, will be given to any person claiming that the information is privileged or CEII no less than 5 calendar days before disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA or CEII requester.

(f) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of information for which a person has claimed privileged treatment, the Commission will notify the person who submitted the documents of the suit.

[Order 630, 68 FR 9869, Mar. 3, 2003, as amended by Order 630-A, 68 FR 46459, Aug. 6, 2003]

§ 388.113 Accessing critical energy infrastructure information.

(a) *Scope.* This section governs access to critical energy infrastructure information (CEII). The rules governing submission of CEII are contained in 18

CFR 388.112(b). The Commission reserves the right to restrict access to previously filed documents as well as Commission-generated documents containing CEII.

(b) *Purpose.* The procedures in this section are available at the requester's option as an alternative to the FOIA procedures in §388.108 where the information requested is exempted from disclosure under the FOIA and contains CEII.

(c) *Definitions.* For purposes of this section:

(1) *Critical energy infrastructure* information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

(i) Relates details about the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the general location of the critical infrastructure.

(2) *Critical infrastructure* means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

(d) *Accessing critical energy infrastructure information.* (1) An Owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(3) of this section. Non-employee agents of an owner/operator of such facility may obtain CEII relating to the owner/operator's facility in the same manner as owner/operators as long as they present written authorization from the owner/operator to obtain such information.

(2) An employee of a federal agency acting within the scope of his or her federal employment may obtain CEII directly from Commission staff without following the procedures outlined in paragraph (d)(3) of this section. Any Commission employee at or above the

level of division director or its equivalent may rule on federal agency representatives' requests for access to CEII.

(3) If any other requester has a particular need for information designated as CEII, the requester may request the information using the following procedures:

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following: Requester's name (including any other name(s) which the requester has used and the dates the requester used such name(s)), date and place of birth, title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. A requester must also file an executed non-disclosure agreement. Requesters are also requested to include their social security number for identification purposes.

(ii) Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information. The CEII Coordinator's decisions regarding release of CEII are subject to rehearing as provided in §385.713 of this chapter. Copies of requests for rehearing of the CEII Coordinator's decision must be served on the CEII Coordinator and the Associate General Counsel for General Law.

(iii) The CEII Coordinator will attempt to respond to the requester under this section according to the timing required for responses under the Freedom of Information Act in §388.108(c), and will provide notice to

the submitter in accordance with §388.112(d) and (e).

[Order 630, 68 FR 9870, Mar. 3, 2003, as amended by Order 630-A, 68 FR 46460, Aug. 6, 2003; Order 649, 69 FR 48391, Aug. 10, 2004; Order 662, 70 FR 37036, June 28, 2005; 71 FR 58276, Oct. 3, 2006]

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

AUTHORITY: 44 U.S.C. 3501-3520.

§389.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980. This part fulfills the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902-)
2.19	0058, 0015
2.55	0161
2.56a	0055
2.69	0060
2.75	0052
2.76	0051, 0052, 0055
2.77	0051, 0052, 0055
2.78	0066
2.79	0060
2.80	0128
Part 4 Subpart D	0073
Part 4 Subpart E	0058
Part 4 Subpart F	0058
Part 4 Subpart G	0115
Part 4 Subpart H	0115
Part 4 Subpart J	0115
Part 4 Subpart L	0058
Part 4 Subpart L	0115
Part 4 Subpart M	0136
4.30	0073
4.31	0073
4.32	0058, 0073, 0115, 0136
4.33	0073
4.34	0073
4.80	0073
4.81	0073
4.82	0073
Part 6	0068
Part 9	0069

18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902-)
11.3(c)	0136
11.3(d)	0136
11.4(b)	0136
11.16	0087
16.1	0058, 0115
16.14	0058, 0115
16.15	0058, 0115
16.16	0058, 0115
24.1	0079
Part 33	0082
Part 34	0043
Part 35 Subpart A	0096
35.12	0096
35.13	0096
35.26	0096
35.27	0096
35.30	0096
Part 45	0083
46.3	0114
46.6	0099
Part 101	0021, 0029
Part 116	0021
Part 125	0098
141.1	0021
141.2	0029
141.14	0106
141.51	0140
141.61	0024
Part 152	0116
Part 153	0062
Part 154	0052
154.38	0070
154.52	0070
154.61	0070
154.62	0070
154.63	0070
154.64	0070
154.65	0070
154.66	0070
154.67	0070
154.91	0055
154.92	0055
154.93	0055
154.94	0055
154.94(k)	0057
154.95	0055
154.96	0055
154.97	0055
154.98	0055
154.99	0055
154.100	0055
154.101	0055
154.102	0055
154.103	0055
154.104	0055
154.105	0055
154.106	0055
154.107	0055
154.108	0055
154.109	0055
154.110	0055
154.111(a)(3)	0070
154.301	0070
154.303	0070
154.304	0070
154.305	0070
154.306	0070
154.308	0070
154.309	0070
154.310	0070
Part 156	0061
Part 157	0052