

The Enforcement Office does not intend to use its limited resources to pursue enforcement action against airlines for requiring proof of a service animal's vaccination, training, or behavior so long as the documentation is not required for passengers seeking to travel with a service animal that is not an ESA or PSA. Under section 382.27, carriers may not require advance notice to obtain services or accommodations, except under circumstances specifically permitted by rule. As noted above, however, under DOT's rule, airlines are permitted to ask for up to 48 hours' advance notice for passengers using PSAs and ESAs. 14 CFR 382.27(c)(8). The Department permits airlines to require 48 hours' advance notice of a passenger wishing to travel with an ESA or PSA in order to provide the carrier the necessary time to assess the passenger's documentation.<sup>4</sup> As such, the Enforcement Office does not intend to use its limited resources to pursue enforcement action against airlines for requiring proof of a service animal's vaccination, training, or behavior for passengers seeking to travel with an ESA or PSA. At present, the Enforcement Office is not aware of any airline requesting information from ESA or PSA users that would make travel with those animals unduly burdensome or effectively impossible (e.g., requiring veterinarians to directly guarantee or certify that an animal will behave appropriately onboard an aircraft). The Enforcement Office will continue to monitor the types of information sought by ESA and PSA users, however.

#### *Containing Emotional Support Animals in the Cabin*

Part 382 does not clearly specify whether or how airlines may restrict the movement of service animals in the cabin. The FAA determined as a matter of aircraft safety that passengers may carry service animals in their lap during all stages of flight, so long as the animal does not weigh more than a lap child (i.e., a child that has not reached his or her second birthday).<sup>5</sup> The Enforcement Office then interpreted section 382.117 as prohibiting an airline from requiring service animals to be harnessed in the cabin, and requiring airlines to transport service animals in the cabin free of restraining devices while accompanying users at their seats in accordance with applicable safety requirements since

there appeared to be no safety reason to do so.<sup>6</sup>

However, because the regulatory text is not explicitly clear on this topic and the FAA order does not address the behavior of service animals, the Enforcement Office now intends to exercise its enforcement discretion with respect to carriers that restrict the movement of ESAs in the cabin. We recognize the possibility that ESAs may pose greater in-cabin safety risks because they may not have undergone the same level of training as other service animals (including PSAs). Accordingly, at this time, the Enforcement Office will not take action against carriers that impose reasonable restrictions on the movement of ESAs in the cabin so long as the reason for the restriction is concern for the safety of other passengers and crew. Such restrictions may include requiring, where appropriate for the animal's size, that the animal be placed in a pet carrier, the animal stay on the floor at the passenger's feet, or requiring the animal to be on a leash or tether.

#### **Request for Comments**

This interim statement of enforcement priorities reflects the Department's current view of where to focus its limited resources with respect to service animal issues, given airlines recently announced service animal policies. In appropriate cases, the Enforcement Office may take enforcement action against carriers for violations that are not described in this interim statement. The Department solicits comment on the effects and implications of adopting these enforcement priorities. The comment period will remain open for 15 days after publication in the **Federal Register**. Late-received comments will be considered to the extent practicable. After the close of the comment period, the Department will issue a final statement of enforcement priorities. Comments relating to amending the Department's disability regulation should be directed to the ANPRM docket: DOT-OST-2018-0067.

<sup>6</sup> See letter dated March 22, 2010 from the Department's Office of Aviation Enforcement and Proceedings stating that the office "has long interpreted this provision to mean that, in general, service animals should be transported in the cabin free of restraining devices while accompanying users at their seats in accordance with applicable safety requirements, and prohibits carriers from otherwise mandating conditions or restrictions not stated in section 382.117." DOT-OST-2008-0272-0091 at <https://www.regulations.gov/document?D=DOT-OST-2008-0272-0091>.

Issued this 9th day of May, 2018, in Washington, DC.

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## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **18 CFR Part 385**

[Docket No. RM18-7-000; Order No. 846]

#### **Withdrawal of Pleadings**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission adopts a more accurate title of "Withdrawal of pleadings (Rule 216)," for Rule 216 of the Commission's Rules of Practice and Procedure. The Commission also clarifies the text of the Rule.

**DATES:** This rule is effective June 22, 2018.

**FOR FURTHER INFORMATION CONTACT:** Vince Mareino, 888 First Street NE, Washington, DC 20426, (202) 502-6167, [Vince.Mareino@ferc.gov](mailto:Vince.Mareino@ferc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Order No. 846**

##### **Final Rule**

(Issued May 17, 2018)

1. In this Final Rule, as proposed in its Notice of Proposed Rulemaking,<sup>1</sup> the Commission revises the title and text of Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216. The Commission adopts the more accurate title of "Withdrawal of pleadings (Rule 216)." The Commission also clarifies the text of the Rule.

#### **I. Discussion**

2. The Commission shall implement two changes to Rule 216. First, the preexisting title may confuse some readers by implying that Rule 216 governs the withdrawal of tariff or rate filings, which are instead governed by separate regulations.<sup>2</sup> Thus, the Commission revises the title from "Withdrawal of pleadings and tariff or

<sup>1</sup> *Withdrawal of Pleadings*, 83 FR 8019 (February 23, 2018), 162 FERC ¶ 61,111 (2018) (NOPR).

<sup>2</sup> E.g., 18 CFR 35.17, 154.205, 284.123, 341.13 (2017).

<sup>4</sup> See 73 FR 27614, 27636 (May 13, 2008).

<sup>5</sup> FAA Order 8400.10, FSAT 04-01A (2004) at [http://fsims.faa.gov/WDocs/Bulletins/Information%20Bulletins/Air%20Transportation%20Info%20Bulletins%20\(FSAT\)/FSAT0401A.htm](http://fsims.faa.gov/WDocs/Bulletins/Information%20Bulletins/Air%20Transportation%20Info%20Bulletins%20(FSAT)/FSAT0401A.htm).

rate filings (Rule 216)” to “Withdrawal of pleadings (Rule 216).”

3. Second, the Commission revises the first sentence of Rule 216(a) to read, “Any person may seek to withdraw its pleading by filing a notice of withdrawal.” This change clarifies that it is the person who has submitted a pleading that may withdraw that pleading. The Commission also makes a conforming change, to refer to “person” rather than “party,” in Rule 216(c).

4. The Commission received one comment, from A. Hewitt Rose III, an attorney who practices before the Commission. Mr. Rose generally supports the proposed rule but objects to the use of the word “its” in the phrase, “Any person may seek to withdraw its pleading by filing a notice of withdrawal.” Mr. Rose argues that “it” is not necessarily the correct pronoun for the word “person,” which refers not only to legal entities but also to natural persons. Mr. Rose notes, however, that the best replacement pronoun, “their,” is not universally recognized as the correct pronoun for a singular subject. Therefore, Mr. Rose proposes adjusting the sentence so that “it” refers to the pleading, not the person: “Any person that filed a pleading may seek to withdraw it by filing a notice of withdrawal.” We accept Mr. Rose’s proposal, which serves the Commission’s goal of developing a clear and concise set of Rules of Practice and Procedure, and we revise Rule 216(a) accordingly.

**II. Regulatory Requirements**

*A. Information Collection Statement*

5. Review by the Office of Management and Budget, pursuant to section 3507(d) of the Paperwork Reduction Act of 1995, is not required since this Final Rule does not contain new or modified information collection or recordkeeping requirements.

*B. Environmental Analysis*

6. 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>3</sup> Section 380.4(a)(1) of the Commission’s regulations exempts certain actions from the requirement that an Environmental Analysis or Environmental Impact Statement be prepared.<sup>4</sup> Included is an exemption for procedural actions. As this Final Rule

falls within that exemption, issuance of the Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission’s regulations implementing the National Environmental Policy Act, and, thus, does not require an Environmental Analysis or Environmental Impact Statement.

*C. Regulatory Flexibility Act Analysis*

7. The Regulatory Flexibility Act of 1980 (RFA)<sup>5</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns clarifications to agency procedure. The Commission certifies that the proposed clarifications will not have a significant economic impact upon a substantial number of small entities in Commission proceedings and, therefore, an analysis under the RFA is not required.

*D. Document Availability*

8. 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 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

9. From the Commission’s Home Page on the internet, this information is available on 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 eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for eLibrary and the Commission’s website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at 202-502-8371, TTY 202-502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

*E. Effective Date and Congressional Notification*

11. These regulations are effective June 22, 2018. 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 in 18 CFR Part 385**

Electric power rates, Electric power, Reporting and recordkeeping requirements.

By the Commission.

Issued: May 17, 2018.

**Kimberly D. Bose,**  
*Secretary.*

In consideration of the foregoing, the Commission hereby amends part 385, chapter I, title 18, *Code of Federal Regulations*, as follows:

**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. 717–717w, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

■ 2. In § 385.216, revise the section heading and paragraphs (a) and (c) to read as follows:

**§ 385.216 Withdrawal of pleadings (Rule 216).**

\* \* \* \* \*

(a) *Filing.* Any person that filed a pleading may seek to withdraw it by filing a notice of withdrawal. The procedures provided in this section do not apply to withdrawals of tariff or rate filings, which may be withdrawn only as provided in the regulations under this chapter.

\* \* \* \* \*

(c) *Conditional withdrawal.* In order to prevent prejudice to other participants, a decisional authority may, on motion or otherwise, condition the withdrawal of any pleading upon a requirement that the withdrawing person leave material in the record or otherwise make material available to other participants.

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<sup>3</sup> *Regulations Implementing National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

<sup>4</sup> 18 CFR 380.4(a)(1) (2017).

<sup>5</sup> U.S.C. 601–12 (2012).