

(2) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);

(3) Rules of Department organization, procedure, or practice;

(4) Decisions of Department adjudications under 5 U.S.C. 554, or similar statutory provisions;

(5) Internal guidance directed to the Department that is not intended to have substantial future effect on the behavior of regulated parties; or

(6) Internal executive legal advice or legal opinions addressed to executive branch officials.

Pre-enforcement ruling means a formal written communication by the Department in response to an inquiry from a person concerning compliance with legal requirements that interprets the law or applies the law to a specific set of facts supplied by the person. The term includes informal guidance under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Title II), as amended, letter rulings, advisory opinions, and no-action letters.

Secretary means the Secretary of Commerce.

Significant guidance document means a guidance document deemed to be significant by OIRA because it may reasonably be anticipated to:

(1) Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

§ 29.2 Procedures for issuing guidance documents.

(a) The Department will indicate prominently that each guidance document does not bind the public, except as authorized by law or as incorporated into a contract.

(b) The Department will comply with Executive Orders 12866, 13563, 13609, 13771 and 13777 in issuing guidance documents.

(c)(1) For a significant guidance document, as determined by the Administrator unless the Department and the Administrator agree that exigency, safety, health, or other

compelling cause warrants an exception from some or all requirements, the Department will:

(i) Provide a period of public notice and comment of at least 30 days before issuance of a final guidance document, and a public response from the Department to major concerns raised in comments, except when the Department for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest;

(ii) Seek approval on a non-delegable basis by the Secretary or by a Department component head appointed by the President, before issuance; and

(iii) Submit the significant guidance document for review by OIRA under Executive Order 12866 before issuance.

(2) This section does not apply to pre-enforcement rulings.

(3) This section does not apply to any document that falls within a class which the Administrator or the Administrator's designee has determined is exempt from consideration as significant guidance documents.

§ 29.3 Public petition for withdrawal or modification.

(a) The public may petition for withdrawal or modification of a particular guidance document by submitting such petition through the designated website: Department of Commerce: www.commerce.gov/guidance; Bureau of Economic Analysis (BEA): www.bea.gov/guidance; Bureau of Industry and Security (BIS): www.bis.doc.gov/guidance; U.S. Census Bureau: www.census.gov/guidance; Economic Development Administration: www.eda.gov/guidance; International Trade Administration (ITA): www.trade.gov/guidance; Minority Business Development Agency (MBDA): www.mbda.gov/guidance; National Institute of Standards and Technology (NIST): www.nist.gov/guidance; National Oceanic and Atmospheric Administration (NOAA): www.noaa.gov/guidance; National Technical Information Service (NTIS): www.ntis.gov/guidance; National Telecommunications and Information Administration (NTIA): www.ntia.doc.gov/guidance; and U.S. Patent and Trademark Office (USPTO): www.uspto.gov/guidance.

(b) The Department or the relevant individual bureau will provide a response to such petition within 90 days of receipt of the petition.

§ 29.4 General provisions.

Notwithstanding any other provision in this part, nothing in this part shall apply:

(a) To any action that pertains to foreign or military affairs, or to a national security or homeland security function of the United States (other than guidance documents involving procurement or the import or export of articles and services subject to the Department's jurisdiction);

(b) To any action related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related investigation by the Department of Justice, including any action related to a civil investigative demand under 18 U.S.C. 1968;

(c) To any investigation of misconduct by a Department employee or any disciplinary, corrective, or employment action taken against a Department employee;

(d) To any document or information that is exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b); or

(e) In any other circumstance or proceeding to which application of this section, or any part of this part, would, in the judgment of the Secretary, undermine the national security.

Dated: August 19, 2020.

Robert Blair,

Director of Policy and Strategic Planning.

[FR Doc. 2020–18604 Filed 9–25–20; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM19–18–001]

Formal Requirements for Filings in Proceedings Before the Commission

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order addressing clarification and arguments raised on rehearing.

SUMMARY: In this order, the Federal Energy Regulatory Commission (Commission) acknowledges a request for clarification of Order No. 862 or, in the alternative, rehearing of that Order. Order No. 862 amended the Commission's regulations to require that the filings and submissions to be

delivered to the Commission, other than by the United States Postal Service, are instead to be sent to the Commission's off-site security screening facility. In this order, the Commission grants clarification and, therefore, does not address the arguments raised on rehearing.

DATES: The order addressing clarification is effective September 28, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Cook, Office of the Secretary, 888 First Street NE, Washington, DC 20426, (202) 502-8102, christopher.cook@ferc.gov. Mark Hershfield, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8597, Mark.hershfield@ferc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

1. In Order No. 862, the Commission amended its regulations to require that any filings and submissions to be delivered to the Commission, other than by the United States Postal Service (USPS), should be sent to the Commission's off-site security screening facility.¹ The regulations still permitted USPS mail to be sent directly to the Commission's headquarters. Spiegel & McDiarmid LLP (Spiegel) requested clarification, or, in the alternative, rehearing in order "to ensure that a legally valid back-up means of timely filing will remain available, in the event the Commission's electronic filing ("eFiling") system experiences an unexpected malfunction on the day a filing is due."² For the reasons discussed below, we grant clarification and, therefore, do not address the arguments raised on rehearing.

2. Pursuant to *Allegheny Defense Project v. FERC*,³ the rehearing request filed in this proceeding may be deemed denied by operation of law. As permitted by section 313(a) of the Federal Power Act,⁴ and section 19(a) of the Natural Gas Act,⁵ however, we are modifying Order No. 862 and continue

to reach the same result in this proceeding, as discussed below.⁶

II. Discussion

A. Order No. 862

3. The Commission's prior regulations provided that filers should send hard-copy submissions directly to the Commission's principal office, which is located at 888 First Street NE, Washington, DC 20426. In Order No. 862, the Commission determined that sending hard-copy (including hand-delivered) submissions, other than by USPS, to an off-site facility for security screening and processing, prior to being delivered to the Commission's principal office, would better protect the safety of the Commission, its employees, and the public. The revised regulations still permitted USPS mail to be sent directly to the Commission's headquarters.⁷ Deliveries may be made to the off-site facility in-person (by the filing entity or its designee) during the hours of 7:00 a.m. to 3:30 p.m. The Commission explained that revising the Commission's procedures to have hardcopy/hand-delivered submissions delivered to an off-site facility for security screening, before delivery to the Commission, was consistent with government-wide guidance.⁸

4. Moreover, the Commission determined that Order No. 862 would not affect the public's ability to make timely filings. The Commission reiterated that the public is strongly encouraged to submit filings and submissions electronically, through the Commission's eFiling application, at <https://www.ferc.gov/>.⁹ The Commission also explained that the off-site facility would log all deliveries when received and would provide the Commission with the log so that the documents may

be stamped and recorded by the Commission as received on that date.

B. Request for Clarification or, in the Alternative, Rehearing

5. Spiegel seeks clarification as to whether the Commission will establish "a legally valid back-up to electronic filing . . . in the event the eFiling system experiences an unexpected malfunction on the day a filing is due."¹⁰ Spiegel offered several options to ensure that the Commission has in place a legally valid back-up to its eFiling system. First, Spiegel recommends that the Commission consider clarifying that, if the eFiling system is malfunctioning during certain hours, the filing deadline will roll over to the next available business day.¹¹ Second, Spiegel proposes that the Commission could formalize its email system to accept filings when they are unable to be filed through normal eFiling. Third, Spiegel suggests combining its first two recommendations, which it considers to be its principal recommendation. Finally, Spiegel states that, if these alternatives are not considered legally and practically feasible, the Commission should allow hand-deliveries to be made at Commission headquarters and logged in before being sent to the off-site facility for screening.¹² To limit security risks, Spiegel suggests that the option of hand-deliveries could be limited to known entities.

6. As an alternative to the Commission providing clarification, Spiegel requests rehearing, asserting that the Commission erred, in Order No. 862, in three aspects. First, Spiegel argues that the Commission erred in determining that the final rule would not "affect the public's ability to make timely filings." Second, Spiegel states that the Commission did not adequately consider the implication of changing the filing deadline for hand-deliveries from 5:00 p.m. ET to 3:30 p.m. ET. Finally, Spiegel notes that the Commission erred in concluding that the final rule was the best option for balancing physical security against the ability of parties to make timely filings.¹³

C. Commission Determination

7. In response to Spiegel's request for clarification, we clarify the practice that the Commission currently uses (and will continue to use) if a filer experiences a Commission eFiling system malfunction

¹ *Formal Requirements for Filings in Proceedings Before the Commission*, Order No. 862, 84 FR 46438 (Sept. 4, 2019), 168 FERC ¶ 61,120 (2019).

² Spiegel Request at 1.

³ *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

⁴ 16 U.S.C. 825(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

⁵ 15 U.S.C. 717r(a).

⁶ *Allegheny Def. Project*, slip op. at 30. The Commission is not changing the outcome of Order No. 862. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁷ USPS has existing "security, screening, and control processes" that comply with U.S. Department of Homeland Security's best practices. See Alex Dobuzinskis, *Screening for Poisons, Explosives in Mail a Daily Reality After U.S. Threats*, Reuters (Oct. 3, 2018) (USPS "has developed a comprehensive approach to protecting the mail system by utilizing a targeted strategy of specialized technology, screening protocols and employee training.").

⁸ See U.S. Department of Homeland Security, *Best Practices for Managing Mail Screening and Handling Processes: A Guide for the Public and Private Sectors*, at 17 (Sept. 2012) <https://www.cisa.gov/sites/default/files/publications/isc-mail-handling-screening-nonfouo-sept-2012-508.pdf>.

⁹ See 168 FERC ¶ 61,120 at P 6 (citing 18 CFR 385.2001(a)(1)(iii)); see also *Filing Via the internet*, Order No. 703, 72 FR 65659, (Nov. 23, 2007), 121 FERC ¶ 61,171 (2007).

¹⁰ Spiegel Request at 9 (citing 18 CFR 385.2007(a)(2), and *Cities of Batavia v. FERC*, 672 F.2d 64, 72-73 (D.C. Cir. 1982)).

¹¹ *Id.* at 7.

¹² See *id.* at 7-8.

¹³ *Id.* at 3-4.

while attempting to timely submit a filing. As Spiegel acknowledges, electronic filing will “often suffice.”¹⁴ In fact, based on the Commission’s experience, eFiling system malfunctions are infrequent and typically resolved on the day of their occurrence. However, as explained below, in the rare instance where a Commission eFiling system malfunction prevents a timely filing, the filer may continue to use the Commission’s established practice of contacting the Commission’s Office of the Secretary (OSEC) through ferconlinesupport@ferc.gov to report the eFiling system malfunction. We outline this practice in detail below to provide clarity.

8. Specifically, should an entity attempt to make a filing during a Commission eFiling system malfunction, the filer shall email OSEC at ferconlinesupport@ferc.gov to notify staff of the malfunction. That email shall: (1) Summarize the problem; (2) attach, if feasible, the public version of the filing solely to indicate proof of the filer’s attempt to submit a filing;¹⁵ and (3) provide any other evidence of timely attempts to file, such as screenshots of error messages. OSEC staff will verify the existence of the reported malfunction and the filer’s attempt to make a timely submission. OSEC will also acknowledge and respond to the filer’s email.

9. Importantly, however, a filer’s email informing OSEC of an eFiling malfunction does not itself constitute a formal submission of the filing and will not be processed as such. If the eFiling system error is not corrected in a manner that permits filing by 5:00 p.m. on the date the filing was attempted, the filer must also comply with the following steps. In addition to notifying OSEC by email, the filer must, at the earliest possible time on the next business day, either: (1) Formally submit the filing electronically through the eFiling system; or (2) submit the filing by hard copy to the off-site screening facility. Of the foregoing two options, the filer shall choose the most expedient option.

10. In sum, we note that, should an entity attempt to make a filing during a Commission eFiling system malfunction, in order for a filing to be deemed timely made, the filer must: (i) Notify OSEC by email containing the

evidence of a timely attempt to file as outlined in paragraph 8 above; and (ii) complete the filing as set forth in paragraph 9 above. If the filer meets each of the requirements set forth herein, the filing will be considered timely filed by the Commission.

11. Given that the process outlined above addresses Spiegel’s principal concern, we do not address Spiegel’s proposed approaches to ensuring the timely submission of filings in the event of an eFiling system malfunction. For the same reason, we do not address Spiegel’s alternative request for rehearing.

III. Document Availability

12. 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>). At this time, the Commission has suspended access to the Commission’s Public Reference Room due to the President’s March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

13. 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.

14. User assistance is available for eLibrary and the Commission’s website during normal business hours from the Commission’s Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at 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.

15. *The Commission orders:*

In response to Spiegel’s request for clarification or, in the alternative, request for rehearing, Order No. 862 is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

Issued: August 18, 2020.

Kimberly D. Bose,
Secretary.

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DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 11212]

RIN 1400–AF14

International Traffic in Arms Regulations: Temporary Update to Republic of Cyprus (Cyprus) Country Policy

AGENCY: Department of State.

ACTION: Temporary final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update defense trade policy toward the Republic of Cyprus (Cyprus) by temporarily removing prohibitions on exports, reexports, retransfers, and temporary imports of non-lethal defense articles and defense services destined for or originating in Cyprus. On June 2, 2020 the Secretary of State, exercising authority under section 1250A(d) of the National Defense Authorization Act for Fiscal Year 2020 and section 205(d) of the Eastern Mediterranean Security and Energy Act as delegated from the President, determined that it was essential to the national security interest of the United States to waive the limitations on non-lethal defense articles and defense services destined for or originating in Cyprus. The waiver is effective for one fiscal year. This amendment reflects that waiver.

DATES: This temporary rule is effective on October 1, 2020, and expires on September 30, 2021, unless subsequently extended.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2809, or email deccspmddtc@midatl.service-now.com. ATTN: Regulatory Change, ITAR Section 126.1 Cyprus Country Policy Update.

SUPPLEMENTARY INFORMATION: Section 1250A(d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92) and section 205(d) of the Eastern Mediterranean Security and Energy Act (Div. J., Pub. L. 116–94) provide that the policy of denial for exports, reexports, or transfers of defense articles on the United States Munitions List (USML) to Cyprus shall remain in place unless the President determines and certifies to the appropriate congressional committees not less than annually that: (A) Cyprus is continuing to cooperate with the U.S. Government in anti-money laundering reforms; and (B) Cyprus has taken the

¹⁴ *Id.* at 5.

¹⁵ Any information that the filer believes is subject to privileged treatment under the Commission’s regulations shall be redacted from the version emailed to OSEC. If the file is too large to send via email the filer should identify that issue in its email to OSEC through ferconlinesupport@ferc.gov.