Statutory Authority

The Commission is proposing these amendments to Regulation E and Regulation A under the Securities Act of 1933 pursuant to sections 3(b) and 3(c) of the Securities Act of 1933 [15 U.S.C. 77c(b), (c)] and section 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-37].

By the Commission.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23615 Filed 9-6-84; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 375, 381, 385, and 389

[Docket No. RM82-35-000; Order No. 395]

Fees Applicable to General Activities

Issued August 31, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish fees for certain general activities of the Commission, including petitions for declaratory orders, requests for interpretation from the Office of the Chief Accountant, review of Department of Energy denials (DOE) of adjustments, review of DOE remedial orders, and search time for Freedom of Information Act requests. This is the third of a series of rules to be issued on fees. These fees are authorized by the Independent Offices Appropriation Act, which provides for the collection of fees to make agencies self-sustaining to the extent possible.

EFFECTIVE DATE: This rule is effective October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Oliver G. Richard III.

I. Introduction

By this rule, the Federal Energy Regulatory Commission amends Part 381 of its regulations to establish fees for the general activities of the Commission. In an earlier rulemaking, the Commission adopted the methodology for establishing fees with respect to services and benefits provided by the Commission as well as the procedures for billing, collecting, waiving, and updating fees.[1] This rule primarily applies this methodology to establish the following fees:

(1) $4,900 for a petition for issuance of a declaratory order other than one solely concerned with matters arising under Part I of the Federal Power Act;

(2) $100 for a request for interpretation from the Office of Chief Accountant;

(3) $3,700 for a petition for review of a Department of Energy (DOE) denial of adjustment if the amount in controversy exceeds $30,000; $600 if the amount in controversy is $10,000 up to and including $29,999; and $100 if the amount in controversy is $0 up to and including $9,999;

(4) $2,900 for review of a DOE remedial order if the amount in controversy exceeds $30,000; $600 if the amount in controversy is $10,000 up to and including $29,999; and $100 if the amount in controversy is $0 up to and including $9,999; and

(5) $5.60 per quarter hour for professional employees, and $2.40 per quarter hour for clerical employees for search time performed while responding to Freedom of Information Act requests.

II. Background

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for services and benefits it provides.[2] The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,[3] which states that a fee should be assessed for each measurable unit or amount of Government service or property from which an identifiable recipient derives a special benefit.

In accordance with the IOAA and authoritative interpretations of that statute,[4] the Commission, in establishing any fee, must:

(a) Identify the service for which the fee is being assessed;

(b) Explain why that particular service benefits an identifiable recipient more than it benefits the general public;

(c) Base the fee on as small a category of service as practical;

(d) Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) Set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule for general activities of the Commission meet these requirements.

III. Summary and Analysis of Comments

This rule establishes fees for four general activities of the Commission: reviewing petitions for issuance of declaratory orders, reviewing requests for interpretations by the Office of Chief Accountant, reviewing DOE denials of adjustments, and reviewing DOE remedial orders.

Under Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1983), a person may file a petition for issuance of a declaratory order to terminate a controversy or remove uncertainty concerning matters under the Natural Gas Policy Act of 1978; the Public Utility Regulatory Policies Act of 1978; the functions delegated to the Commission by the Department of Energy Organization Act and the Secretary of Energy; and the Commission's regulations. For these types of declaratory orders a filing fee of $4,900 has been set. However, the Commission has excluded declaratory orders that solely concern hydroelectric matters under Part I of the Federal Power Act (FPA) because these costs are included in calculating annual charges under section 10(e) of the FPA, 16 U.S.C. 803(e) (1982). (See Section III.F.3 below).

A person can also request an interpretation by the Office of Chief Accountant in accordance with § 3.8 of the Commission's regulations, 18 CFR 3.8 (1983). An interpretation states a staff opinion of the proper application of the Commission's reporting and record retention requirements and Uniform

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[1] Final Rule, Fees Applicable to Producer Matters under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984) (Docket No. RM82-25-000). *See also*, Final Rule, Fees Applicable to Natural Gas Pipeline Rate Matters, 49 FR 5083 (Feb. 10, 1984) (Docket No. RM83-2-000).

[2] Act of Aug. 31, 1951, Ch. 376, Title V, section 501, 65 Stat. 290, *as codified*, 31 U.S.C. 9701 (1982).

[3] Bureau of the Budget Circular A-25 (Sept. 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the Act." FPC v. New England Power Co., 415 U.S. 345, 351 (1974).

[4] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Mississippi Power & Light Co. v. NRC, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); National Cable Television Association, Inc. v. FCC, 554 F.2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 554 F.2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F.2d 1118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976).

Systems of Accounts in light of the particular facts or circumstances raised by the applicant. This fee is $100.

The Commission reviews a Department of Energy (DOE) denial of adjustment under Subpart J of its regulations, 18 CFR Part 385, Subpart J (1983). Review provides appellants with another opportunity to seek relief from DOE rules and orders. Appellants initiate review and must, by statute, do so before seeking judicial review. Similarly, the Commission reviews DOE remedial orders under Subpart I of its regulations, 18 CFR Part 385, Subpart I (1983). Review may result in the Commission's revocation or modification of a DOE remedial order. As with DOE denials of adjustments, appellants initiate review and must do so before seeking judicial review. The fees for these two types of reviews range from $100 to $3,700 depending on the amount in controversy.

The Commission is adopting in this rule a procedure to update fees for Freedom of Information Act (FOIA) requests. This rule also applies that procedure to update FOIA fees and establish fees of $5.60 per quarter hour of search time performed by a professional employee and $2.40 per quarter hour for search time performed by a clerical employee. The fees for duplication will remain the same.

The Commission has decided not to establish a fee for filing a petition for rehearing at this time. In those cases where an applicant's petition for rehearing seeks a private benefit, the Commission believes it could charge a fee for reviewing that petition. However, there are also cases where a petition for rehearing raises matters that, on balance, address more general public interest issues. In those cases, the Commission does not believe it would be reasonable to impose a fee. Because of the large administrative burden involved in trying to segregate which rehearing petitions could be subject to a fee, the Commission has decided not to set a fee for a petition for rehearing at this time.

One commenter states that the Commission should not charge a fee for rulemakings. The Commission is not charging a fee for rulemakings in this rule. The Commission is also not charging a fee for a number of other actions it takes relating to its jurisdictional statutes. Those actions include Commission preliminary and formal enforcement investigations, Commission enforcement-related settlements and litigation, news releases, and litigation in the courts. As for these activities, the Commission believes that these actions generally do not manifest the necessary, identifiable benefit to an individual entity. As for rulemakings, while the Commission believes that these actions might warrant fees, the Commission has decided not to establish a separate fee category for these items at this time.[5]

A. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A-25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service.[6] In addition, the Circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values * * * than those which accrue to the general public."[7]

A number of commenters state that to be classified as an allowable "fee" under the IOAA, a particular charge must be incident to a voluntary act. Seeking guidance on the proper application of jurisdictional statutes or Commission regulations, they say, are not voluntary acts but are required because violations of Commission statutes and regulations may carry heavy penaltites. Likewise, review of DOE actions, they say, are not voluntary acts, but are required by the Department of Energy Organization Act before initiating judicial review. This type of argument has previously been rejected in *National Cable Television Association, Inc.* v *FCC*, 554 F.2d 1094 (D.C. Cir. 1976); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); and *Electronic Industries Association* v. *FCC*, 554 F.2d 1109 (D.C. Cir. 1976).

In response to the argument put forth by cable television operators that they receive no benefit from an FCC license because the cable television industry would have developed better without FCC regulation, the D.C. Circuit in *National Cable Television* said "[a]ll that may be true, but these distinctions have not relevance here. The fact is that the FCC has undertaken to regulate this industry and has so far been sustained by the Supreme Court in this endeavor, with the result that a certificate of compliance *has* become a necessary and therefore valuable license."[8] The Fifth Circuit in *Mississippi Power & Light* similarly held that since a license from the NRC is an absolute prerequisite to operating a nuclear facility, that license is a benefit not shared by other members of society.[9] In addition, the D.C. circuit held in *Electronic Industries Association* that agencies can charge for services which assist a person in complying with his statutory duties because these services create an independent private benefit.[10] Hence, the Commission believes this issue has been settled by the courts and need not be the subject of further discussion in this rule.

Many commenters argue that the proposed rule fails to explain how requesters of these services receive a greater benefit from the Commission's regulations than the general public. They claim that the Commission's regulations offer no greater benefit than the authorization to carry out activities in interstate commerce in conformity with a regulatory scheme which benefits only the general public. Other commenters raise related arguments: that Commission regulation is not a benefit but a detriment to those regulated; that the courts have held that the Commission's activities are primarily for the benefit of the general public, and that the Commission itself has recognized that its functions primarily benefit the general public.

While consumers may be ultimate beneficiaries from Commission regulation, that is not determinative of the Commission's right to charge fees under the IOAA. The IOAA provides for the collection of fees for each service or thing of value provided by the agency.[11] Commission review of DOE actions and interpretations of its enabling statutes and regulations are the types of services for which the IOAA expressly authorizes the collection of fees. Not only is the statute clear on its face, but the D.C. Circuit has held that a fee otherwise authorized by the IOAA is not rendered invalid because the public may also enjoy downstream benefits.[12] In

[5] The Commission is considering, in other rulemakings, fees to recover the costs of certain rulemakings. In those cases, the Commission believes that there are special benefits provided to identifiable recipients.

[6] Budget Circular A-25, at 1-2.

[7] *Id.* at 2.

[8] 554 F.2d at 1101-02 (footnotes omitted, emphasis in original).

[9] 601 F.2d at 229.

[10] 554 F.2d at 1115.

[11] 31 U.S.C. 9701 (1982).

[12] Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976). In that case, petitioners argued that fees should not be assessed for tariff filings or equipment testing and approval. The court answered that even though both activities were required by statute, the FCC was entitled to charge for services which assisted a person in complying with his statutory duties. Such services, the court said, create an independent private benefit

Continued

addition, the fact that the Federal Power Commission (FPC) took an opposite approach toward fees in 1965 does not prevent this successor Commission from adopting a different policy. Not until the 1970's did the courts begin reviewing fee structures of various agencies. It was after those cases were decided that the law became clear, and the Commission now believes that it can charge the fees established by this rule.

Commenters also assert that the imposition of a substantial fee to review DOE remedial orders and denials of adjustments are barred by due process considerations because the fee may have a chilling effect on the exercise of the right to judicial review due to economic hardship or indigency. The Commission disagrees with these assertions because we believe that the reduced fees and the case-by-case waiver procedures will prevent economic hardships and adequately protect the rights of indigents.

B. Smallest Practical Unit

In designing a fee schedule, the Commission has established fees on the smallest unit or category of service that is practical. In remanding fees established by the FCC, the United States Court of Appeals for the D.C. Circuit set forth the most authoritative interpretation of this IOAA requirement as follows:

> [W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees or services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines; but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[13]

Further, Budget Circulars A-25 states that "[c]osts shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose."[14]

Commenters argue that fees for declaratory orders should be determined based on subject area because the time spent on requests in one area of the Commission's jurisdiction may differ from the time spent on another area. The Commission understands these concerns, but one fee for declaratory orders is necessary because of administrative limitations. Specifically, the Commission, in keeping with Budget Circular A-25, classifies its fees by types of applications or proceedings (*i.e.* declaratory orders). The Commission has calculated its fees from its Management Information System (MIS). The MIS is an agency system established to track workload. The MIS tracks time by work-months based on types of applications or proceedings. The Commission is establishing one fee for an entire application or proceeding because that application or proceeding is the smallest unit practical for which the Commission can develop fees.[15]

C. Basis of Cost Recovery

1. Direct and Indirect Costs Included

The Commission's fee schedule is designed to account for all types of recoverable costs associated with the processing of the specified applications and filings under the Commission's jurisdictional statutes. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. The attributable costs include these direct salary costs as well as the substantial amount of indirect costs which the Commission expends in its reviews. As the Fifth Circuit has stated, employees

> * * * must be supplied [with] working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that * * * [they are] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application.[16]

Accordingly, the Commission has included in its fee calculations a proportionate share of the following items: salaries and benefits; travel; rents; communications and utilities; printing; other support services; supplies; and equipment.

2. Methodology

(a) *Underlying Considerations.* The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's Management Information System (MIS), which provides the amount of time spent on all Commission functions. The functions are grouped into categories which represent the Commission's various programs, including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, hydropower regulation, and electric power regulation. The MIS workload data are recorded on a monthly basis.

With respect to each function, the supervisor records for the MIS the number of projects initiated (receipts) and completed (completions) in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities." The supervisor in each organizational unit reports to the MIS the amount of time spent by staff on each functional category in terms of work-months. A "work-month" is the unit of work represented by one employee's devotion of 100% of his or her time for one month. In addition, time sheets are coded by functional categories and are filled out Commission-wide every two weeks. Supervisors check employee time sheets for accuracy in coding.

Support functions regularly undertaken, with respect to any program, are not docketed and may not be measured in terms of receipts and completions. The nature of these functions makes impractical any measurements in terms of receipts and completions, but these functions are nevertheless essential to the completion of any docketed activity. This time is also allotted and reported by unit supervisors in terms of work-months.

Only those support functions that are related to providing a benefit are included in the calculations. These support functions will be referred to as "support activities" and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and

since they provide a means for the carrier to obtain its revenues and to regulate subscriber use of its facilities. The court concluded that although the statute was enacted in order to protect the public against excessive or unreasonably discriminatory or preferential charges, that result is only an incidental benefit from the service which is rendered by the agency, *i.e.*, providing the means for carriers to comply with the statute.

[13] Electronic Industries Association v. FCC, 554 F.2d 1109, 1116 (D.C. Cir. 1976).

[14] Budget Circular A-25, at 3.

[15] The Commission has recently updated the MIS by starting to track its workload on a new system (Time Distribution Reporting System) which may provide an even greater degree of accuracy of Commission workload. At this time, however, the Commission does not have sufficient data to develop actual fees from this system.

[16] Mississippi Power & Light Co. v. NRC, 601 F.2d at 232.

routine administrative functions such as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave. This category can be labeled as "administrative services" and is included in the fee structure because it is essential to the Commission's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, from the Congress, from the General Accounting Office, and from other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications" because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work on the Commission budget, management information systems, and program development functions such as special studies or briefings on relevant subjects, but which are not identified with just one docketed activity. This category is therefore an integral part of completing docketed activities.

The comments indicate confusion as to the difference between indirect costs and support functions. While both are types of indirect costs, they are channeled into the cost calculation at different times. Direct and indirect costs (such as physical plant overhead) are added together to come up with an average monthly cost per Commission employee of $4,770.67. That figure is multiplied by the time (in work-months) taken to review a type of application. Support activities represent work-months expended which cannot be allocated directly to each individually-tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of application and also a pro-rata share of the time spent on support activities associated with reviewing that type of application.

(b) *Calculation of Fee Amounts.* For purposes of this rule, the Commission has used the same methodology to determine the cost of providing any service or benefit as it has used in the other final fees rules. First, the work-months reported for a class of docketed activity are added to a pro-rata share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for a year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's FY 1983 actual costs.

Salaries and benefits	$46,228
Based on year and payroll data and benefits at 26%	
Travel	726
Transportation of things	7
Rents, communications & utilities	3,185
Printing	1,899
Other services—excludes direct program contracts	4,684
Supplies	477
Equipment	42
Total	$57,248

The total was divided by 12 to yield an average work-month cost of $4,770.67.

Third, in order to determine the cost of an activity, the Commission multiplied the average work-month cost by the average number of work-months required to complete the activity.[17]

There were numerous complaints about the cost methodology proposed in the Notice of Proposed Rulemaking (NOPR), 47 FR 27375 (June 24, 1982), such as inadequate information to verify the costs, calculations based on salary and overhead from one year and time per project from another year, use of budgeted figures as opposed to actual figures, use of average work-month costs rather than median or mode, and use of only one year for determining fees.

As for what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs to the Government. Thus, there is no reason to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. Second, in devising its fee schedule, the Commission is authorized to determine or estimate its costs "from the best available records in the agency."[18] For this Commission, that means the MIS.

The NOPR proposed to use 1982 budgeted figures to determine its costs, and 1981 actual completions and work-months to determine the fees. In addition, the method of updating the fees was tied to 1981 as the "base year." Each subsequent year was to be adjusted by the change in costs between the base year and the year in consideration. Many commenters argue that 1981 may not be a typical year for completions and work-months, and thus, should not be the base year. The Commission agrees with this argument, and believes it is more accurate to calculate fees from actual completions and work-months, as well as actual costs. Consistent with its decision in the other final fees rule, the Commission is using actual fiscal year figures in this rule as well as in updating the fees in subsequent years (see section III D. below). The fees in this rule are based upon actual fiscal year 1983 direct and indirect costs, completions, and work-months. This approach eliminates any inaccuracies which could arise from using budgeted figures and will keep data current.

One commenter claims that the Commission gives no consideration to the number of staff personnel actually involved in a specific activity, but rather the commenter says the Commission assumes it will operate with a full staff. The Commission's MIS calculates work-months for every office at the end of each month, based on the number of full time employees actually working at the time of calculation. Thus, no assumptions are made regarding staffing levels.

Finally, a number of commenters claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine fees based on the salary of only those employees processing particular filings. As permitted under the requirements of Budget Circular A-25, the Commission's accounting system employs an agency-wide figure so the Commission is entitled to use an agency-wide figure as the basis for its costs.

D. Actual Fees Established and Procedure for Updating Fees

The following table summarizes for 1983 the total number of work-months, completions, and average cost per completion in rendering the services for which the Commission is establishing fees in this final rule. (FOIA search fees are subject to a different methodology, as discussed below).

[17] Updated data sheets have been placed in the Commission's Public File Room detailing the calculations.

[18] Budget Circular A-25, at 3.

Service	Total WM's in 1983	Total completions in 1983	Average number WM's per completion in 1983	Average cost per completion in 1983
Interpretations by Office of Chief Accountant	26.02	653	.04	$190.82
Petitions for issuance of declaratory orders (except under Part I of FPA)	129.87	50	2.59	12,356.03
Review of DOE denials of adjustments	39.76	20	1.98	9,445.92
Review of DOE remedial orders	36.1	23	1.57	7,489.95

The Commission believes that the average cost per completion for petitions for issuance of declaratory orders, review of DOE denials of adjustments, and review of DOE remedial orders is such that to recover these costs fully would substantially discourage the use of these services. In addition, these services may be requested by a broad spectrum of regulated entities, and there are a substantial number of small businesses and other organizations within this class. In keeping with its obligation to consider inequitable burdens on small entities and as a matter of administrative fairness, the Commission believes that a categorical reduction for each of these three categories of general activities is in the best interest of the public and of the Commission. The categorical reductions are policy judgments by the Commission representing its best estimate of the magnitude of reduction that may be necessary to avoid discouraging the use of these services. It is possible that higher percentages could be necessary, but more experience under this fee structure is needed before that judgment can be made. Accordingly, the fees for each of these services have been reduced by approximately sixty percent. The issue of categorical fee reductions is discussed generally in section III.E.1 below.

In addition, the Commission is particularly concerned with the inequitable burden on small entities from seeking review of DOE denials of adjustments and DOE remedial orders. Consequently, these two fees have been categorically reduced further when the amounts in controversy are below $30,000. Specifically, if the amount in controversy is $10,000–$29,999 then the fee is $600. Similarly, if the amount in controversy is less than $10,000, then the fee is $100. The Commission believes these additional fee reductions will prevent inequities and undue burdens on small entities that, by their size, generally have lesser amounts in controversy.

The following fees are therefore established:[19]

Services	Fee
Interpretations by Office of Chief Accountant	$100
Petitions for issuance of declaratory orders (except under Part I of the FPA)	4,900
Review of DOE denials of adjustments	
Amount in controversy:	
$0 to $9,999	100
$10,000 to $29,999	600
$30,000 or above	3,700
Review of DOE remedial orders	
Amount in controversy:	
$0 to $9,999	100
$10,000 to $29,999	600
$30,000 or above	2,900

The Commission will update its fees under Part 381 each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the **Federal Register** after the close of the preceding fiscal year. The updated fees will be based on actual completions, work-months, and costs from the preceding fiscal year. In this way, the fees will reflect, using the most current data available, the benefits to the recipients.

The NOPR also stated that the Commission's fees under the Freedom of Information Act (FOIA), 5 U.S.C. 552 (1982), would also be updated annually based on these procedures. However, only the direct cost for search and duplication of documents may be recovered under FOIA.[20] Specifically, the fees for FOIA requests under the Commission's regulations, 18 CFR 3.8(k) (1983), are based on the average cost for professional employees (GS–10 or above) and clerical employees (GS–9 or below) and the average cost of duplication. So, the Commission will update FOIA fees each year based on the average cost per quarter hour of professional employees, and clerical employees, and the average cost of agency record duplication for the previous fiscal year, as required by the FOIA. The Executive Director will publish the updated fees in the **Federal Register.**

Based on this methodology, this rule updates the FOIA fees based on fiscal year 1983 costs. Those fees are set at (1) $5.60 per quarter hour for search services performed by a professional employee; and (2) $2.40 per quarter hour for search services performed by a clerical employee. The fees for duplication are unchanged.

E. Exceptions to Full Cost Recovery

1. Reductions in Fee Amounts by Category

The Commission has established in this rule a certain fee which includes all the recoverable costs associated with the particular benefits and services provided, and has categorically reduced other fees. The Commission, based on its expertise, recognizes that there may continue to be instances in which establishing full cost recovery fees would have an adverse effect on applicants, or would undermine Commission activities. In such cases, the Commission may again exercise its discretion to reduce fees to less than full cost recovery in order to prevent a disproportionate economic impact or for other good cause. Good cause would include situations where the Commission wishes to encourage use of a service, where less Commission time is required than staff time, or where there is a reduction in the amount of time required to process a filing. Any new reduction in a fee would be initiated only by the Commission by rulemaking. The same percentage of reduction will carry over to subsequent years for any categorical reduction unless further notice is given that the Commission is altering that reduction.

Commenters argue that the Commission needs more specific guidelines in this area, particularly to include undue economic hardship as a standard. The Commission believes that the standards enumerated are sufficiently specific, particularly since any categorical reductions in fee amounts is done in the context of a rulemaking. Moreover, any determination on whether to establish a fee at less than full cost recovery amount takes into account economic hardship, as discussed above, if it applies to a class of applicants. This is to be distinguished from the situation where an individual applicant can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

2. Case-by-Case Waiver Procedure

The Commission also realizes that a different situation could arise in which a person is unable to pay fees as set by the Commission due to severe economic

[19] Fees are established by taking actual costs and rounding down to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

[20] 5 U.S.C. 552(a)(4)(A) (1982). *See* Final Rule, Fees Relating to Freedom of Information Act Requests, 47 FR 23148 (May 27, 1982); 47 FR 24961 (June 8, 1982) (Docket No. RM81–40–000).

hardship. If a person is suffering from a period of severe economic hardship, he will have the burden of presenting evidence to the Commission, such as a financial statement, showing that he is either economically unable to pay the fee or that, if he does the pay the fee, it will place him in a state of financial distress or emergency. As stated by the D.C. Circuit:

> The applicant for waiver must articulate a specific pleading, and adduce concrete support, preferably documentary.[21]

This material must be included with the petition for waiver at the time of filing. The Commission, or its designee, will analyze petitions for waiver to determine whether the standards for waiver have been met. The Commission will notify the petitioner as to whether the petition for waiver has been denied or accepted.

3. Exempt Classes

One commenter asserts that States and municipalities are exempt from fees collected under IOAA. The Commission agrees when a State or municipality uses a Commission service to serve the general public,[22] but this may not be the case every time the Commission acts upon a filng from a State or municipality. However, because of the large administrative burden involved in trying to segregate which services and benefits rendered to States and municipalities could be subject to fees, the Commission has decided to exempt States and municipalities from fees collected under the IOAA. The IOAA also exempts any person engaged in the transaction of official business of the Federal government. So, the Commission has provided an exemption for this situation as well.

The Commission is permitted under section 10(e) of the FPA to assess licensees an annual charge for the purpose of reimbursing the United States for the cost of administering Part I of the FPA. Consequently, the Commission has decided to make petitions for the issuance of declaratory orders that solely concern matters under Part I of the FPA exempt from the fee normally charged for declaratory orders because these costs will be used to determine the annual charges assessed to licensees. A petitioner should file a petition for exemption that summarizes the issues raised in its petition for issuance of a declaratory order and explains why the exemption is applicable. If the petition is denied, the petitioner will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission. The Commission will not use the time spent processing petitions for which a fee has been paid to calculate annual charges.

F. Procedures for Paying Fees

The Commission's notice states that fees must be submitted by certified check, made payable to the United States Treasury. A number of commenters argue that there is no reason to require certified checks. They state that a corporate check should be sufficient.

The Commission has decided to delete the certified check requirement. However, a check made payable to the United States Treasury must still be included with the filing or application unless a petition for waiver or exemption is submitted in lieu of the fee. The check must indicate for what the fee is being submitted, *e.g.*, review of a Department of Energy remedial order. This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or a petition for waiver or exemption, it will be considered deficient and will not be processed.

Commenters complain of the Commission's decision to exclude the possibility of fee refunds. They argue that the Commission should include a provision in the final rule whereby a person could receive a refund if his filing was rejected on grounds other than nonpayment of fees, or if the Commission did not respond within a reasonable amount of time. One commenter also argues that the Commission must provide for refunds so that Commission business can continue while the proposed fees are undergoing judicial review.

The Commission's decision not to allow refunds is consistent with the policy behind the IOAA. That statute authorizes and orders Government agencies to become self-sustaining to the extent possible. To do so, the agency is to collect fees for services and benefits it provides. The Congress gave this commission the duty of carrying out functions under a number of statutes. These functions are the basis of the services for which the IOAA authorizes the collection of fees. These services are performed by reviewing the petition, application or answer, not guaranteeing the issuance of a declaratory order, interpretation, or order. The Commission reviews every petition, request, or answer. Some petitions and requests are accepted, some are not, but the vast majority are accepted. The Commission's fees cover the time and cost of providing these services. It does not cost the Commission any less when it rejects a petition or request or upholds an action by DOE.

In addition, the Commission's decision not to allow refunds is consistent with its current policy of no refunds of fees charged for services in other areas of Commission activity and of annual charges under the FPA.

G. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time of processing filings and the actual agency-wide costs involved with this processing. The Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. That figure is then multiplied by the average cost per work-month to arrive at the fee.

However, the Commission occasionally receives filings which are not average. These filings may be extensive in scope and present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. The standard fees established in this rule bear no reasonable relationship to the actual cost of processing those extraordinay filings. Moreover, if the costs of processing extraordinay filings are included in the costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. So, in the case of an extraordinary filing, the Commission reserves the option of ordering a direct billing procedure when the processing of the filing begins, or at any time up to one year after receiving a complete filing.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. If the decision to bill a lesser amount is based upon the presence of intervenors in a proceeding, the Commission is retaining the discretion to determine whether some of the costs not directly billed to an applicant should instead by billed to the intervenors. The Commission doubts this will occur frequently since intervention usually does not occur in the general activities covered by this final rule or, if it does, the intervenors are raising issues oriented toward protecting the public interest as opposed

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[21] United Gas Pipe Line Company v. FERC, 707 F.2d 1507, 1511 (D.C. Cir. 1983).

[22] Beaver, Bountiful, Enterprise v. Andrus, 637 F.2d 749 (10th Cir. 1980).

to a private interest. Any decision to directly bill intervenors will be made on a case-by-case basis.

Commenters state that the direct billing procedure is entirely too vague. These commenters object to this direct billing method because they claim that the complexity of a filing might result simply from the participation of intervenors, that it is impossible to know beforehand if a matter will be complex, and that a proceeding may be complex because it contains important public policy issues where the potential benefit to the applicant is secondary to that of the public or to other industry members. A suggestion has been made that if the Commission does require direct billings in complex cases, it should allocate the fees among the intervenors as well as the applicant since the intervenors receive the same benefit as the original applicant. The Commission recognizes the points made by these commenters. Consequently, the possible allocation of some costs to intervenors in direct billing situations will be handled on a case-by-case basis.

Also, a commenter requests that the Commission itemize all direct billings so that there will be a means of appealing the billed amount. Finally, one commenter suggests that, in the case of unsuccessful staff contests of filings, there be no additional direct billing costs. Where there is a direct billing, the Commission will itemize, to the best degree of accuracy under the MIS, the costs involved in the direct billing. There is no way the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter. In addition, the staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. Moreover, the Commission will credit a person whose filing becomes subject to direct billing with any fee paid under this fee system.

IV. Summary of Final Rule

This final rule establishes fees for services and benefits provided by the Commission in new Part 381 of Chapter 1, Title 18 of the Code of Federal Regulations.

Section 3.8 is amended to update search fees to $5.60 per quarter hour for professional employees and $2.40 per quarter hour for clerical employees. The fees for duplication are unchanged.

Section 381.301 establishes a $100.00 fee payable upon the submission of a written request for an interpretation by the Office of Chief Accountant.

Section 381.302 establishes a $4,900 fee payable upon submission of a petition for a declaratory order.

Section 381.303 establishes fees ranging from $100 to $2,900 based on the amount in controversy. These fees are payable upon filing of an answer in a proceeding to review DOE remedial orders.[23]

Section 381.304 establishes fees ranging from $100 to $3,700 based on the amount in controversy. These fees are payable upon the filing of a petition for review of a DOE denial of an adjustment request.

In addition, this rule makes a number of technical, conforming amendments to the Commission's regulations. These conforming amendments: (1) Provide the appropriate delegations to Commission staff to implement the procedures for waiving fees, updating fees, and exempting persons; (2) address the above-mentioned categories of service; and (3) ensure that the requirement that the proper fees are filed with each request, petition, or appeal (except FOIA requests) is clearly stated in the appropriate sections of Parts 3 and 385. In addition, section 3.8(k) requires the publication of an updated fee schedule each year for Freedom of Information Act requests to reflect the most current Commission costs.

V. Final Regulatory Flexibility Analysis

When an agency promulgates a final rule under the Administrative Procedure Act (APA), 5 U.S.C. 553 (1982), after being required by that section or any other law to publish a notice of proposed rulemaking, a final regulatory flexibility analysis may be appropriate under the Regulatory Flexibility Act of 1980. Each final regulatory flexibility analysis must contain (1) a statement of need for and objective of the rule, (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A-25.

[23] The fee accompanies an answer because the proceeding may be initiated by a filing with the Secretary of Energy. *See* 18 CFR 385.904 (1983).

During the past year, approximately 54 petitions for declaratory orders, 653 requests for interpretations of the Uniform Systems of Accounts, 17 requests for review of DOE remedial orders, and 13 requests for review of DOE denials of adjustments were filed with (as distinct from completed by) the Commission. These requests, petitions, and answers have been submitted by all types of entities, some of which are regulated by the Commission and some of which are not.

The Small Business Administration's (SBA) regulations do not establish specific size standards for each of the entities regulated by the Commission that would be subject to this rule.[24] Most natural gas and oil pipelines and electric utilities are large businesses, yet a portion of this group would probably be considered small. A greater number of natural gas producers and hydroelectric facility licensees, however, might be classified as small businesses. In addition, within the class of individuals and entities not regulated by the Commission but which could be expected to seek the services covered by this proposal, there may be many small businesses. For instance, this proposal will also affect those individuals and entities which seek Commission review of DOE denials of adjustments and DOE remedial orders. These entities include retailers, resellers, refiners, and oil producers and within these various classes of entities, the Commission believes there may be some small businesses. Therefore, the Commission believes this rule may have an economic impact on a certain, but not necessarily substantial, number of small entities, primarily natural gas producers, hydroelectric licensees, and permittees, retailers, resellers, and oil and gas refiners.

Where a rule will have a significant economic impact on a substantial number of small entities, section 604(a)(3) of the RFA requires the Commmission to discuss significant alternatives to the proposal. The Commission has already fully detailed its attempt to minimize and disproportionate burden the proposal would have on a small entity. For example, the fees for petitions for issuance of a declaratory order, review of DOE denials of adjustments, and

[24] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR part 121).

review of DOE remedial order have been categorically reduced by approximately sixty percent to avoid discouraging use of these services, particularly by smaller entities. In addition, the fees for review of DOE denials of adjustments and DOE remedial orders have been further reduced when the amount in controversy is below $30,000. This additional tiered system of reductions is expected to ease any undue burden on small entities. The rule also contains a provision for individual waiver of those fees to further protect any individuals or entities from economic hardship. The Commission could, of course, consider reducing the fees further, or even eliminating the fees, with respect to small businesses. However, in proposing the present fee schedule, the Commission is also attempting to satisfy the statutory directive of the IOAA to be "self-sustaining to the extent possible." The Commission believes the rule, as adopted, represents a fair balance which will satisfy the purposes of both the IOAA and the FRA.

Three commenters discuss the Initial Regulatory Flexibility Analysis. Two commenters argue that the Commission's analysis is inadequate, and that the Commission did not consider the possibility of not imposing fees. Another commenter complains that the effects on non-profit public interest organizations are not discussed.

The Commission believes it followed the requirements of the Regulatory Flexibility Act in its notice of proposed rulemaking and in this final rule. Further, while the Commission has operated for a long time without charging fees for these categories of services, its adoption of this fee schedule is authorized by statute.

Paperwork Reduction Act Statement and Effective Date

The information collection provisions of this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1984). OMB issued Control Number 19020132 for these sections. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Joseph Hartsoe (202) 357–8033). This rule will become effective October 9, 1984.

List of Subjects

18 CFR Part 3

Organization, Operation, Information and requests.

18 CFR Part 375

The Commission.

18 CFR Part 381

General fees.

18 CFR Part 385

Rules of practice and procedure.

19 CFR Part 389

Paperwork Reduction Act, OMB control numbers.

In consideration of the foregoing, the Commission is amending Parts 3, 375, 381, 385, and 389 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 3—[AMENDED]

1. Part 3 is amended as follows:

a. The authority citation for 18 CFR Part 3 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 552 and 553 (1982), unless otherwise noted.

b. In § 3.8(k)(2)(i), by removing the number "$5.75" and adding, in its place, the number "$5.60";

c. In § 3.8(k)(2)(ii), by removing the number "$2.50" and adding, in its place, the number "$2.40"; and

d. By adding a sentence at the end of paragraph (h) and by adding a new paragraph (k)(7) to read as follows:

§ 3.8 Public information and submittals.

* * * * *

(h) * * * Each inquiry directed to the Chief Accountant that requires a written response must be accompanied by the fee prescribed by § 381.301 of this chapter.

* * * * *

(k) *Fees for Freedom of Information Act requests.*

* * * * *

(7) *Annual adjustment of fees*—(i) *Update and publication.* The Commission, by its designee the Executive Director, will update the fees established in this section each fiscal year according to the formula in paragraph (k)(7)(iii) of this section. The Executive Director will publish the fees in the **Federal Register.**

(ii) *Payment of updated fees.* The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received for purposes of section 388.107, 18 CFR 388.107 (FOIA timetables and procedures).

(iii) *Formula.* The fee for each quarter-hour of professional employee search time will be the approximate average hourly cost (including the cost of fringe benefits) to the Commission for professional employees (GS–10 or above) for the previous fiscal year. The fee for each quarter hour of clerical employee search time will be the approximate quarter-hour cost (including the cost of fringe benefits) for clerical employees (GS–9 or below) for the previous fiscal year. Duplication costs will be determined by estimating the cost to copy each type of agency record, and will be based on the cost of supplies used and the machine leased.

(iv) *Effective date of fee.* Any fee updated under this section is effective on the thirtieth day after publication in the **Federal Register,** unless otherwise specified in the **Federal Register** notice.

PART 375—[AMENDED]

2. Part 375 is amended as follows:

a. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

b. In § 375.303, by adding a new paragraph (g) to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(g) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in § 381.301 of this chapter in accordance with § 381.106(b) of this chapter.

c. In § 375.310, by adding a new paragraph (b) to read as follows:

§ 375.310 Delegations to the Director of the Office of Opinions and Review.

* * * * *

(b) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303 and 381.304 of this chapter in accordance with § 381.106(b) of this chapter.

d. By revising § 375.313 to read as follows:

§ 375.313 Delegations to the Executive Director.

The Commission authorizes the Executive Director or the Executive Director's designee to:

(a) Prescribe the updated fees for Part 381 of this chapter in accordance with § 381.104 of this chapter.

(b) Prescribe the updated fees for Part 381 of this chapter in accordance with § 3.8(k)(7) of this chapter.

(c) Deny or grant, in whole or in part, petitions for waiver of fees prescribed in § 381.302 of this chapter in accordance with § 381.106(b) of this chapter.

(d) Deny or grant, in whole or in part, petitions for exemption from fees prescribed in Part 381 of this chapter in accordance with § 381.108 of this chapter.

e. In § 375.314, by adding a new paragraph (gg) to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(gg) Deny or grant, in whole or in part, petitions for exemption from the fee for declaratory order petitions prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chapter.

PART 381—[AMENDED]

e. Part 381 is amended as follows:

a. The authority citation for Part 381 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Independent Offices Appropriation Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

§ 381.106 [Amended]

b. In § 381.106(a), by removing the words "submit a" in the first sentence and adding, in their place, the words "submit an original and two copies of a";

c. By adding a new § 381.108 to Subpart A, General Provisions, to read as follows:

§ 381.108 Exemptions.

(a) *Filing of Petition.* States, municipalities and anyone who is engaged in the official business of the Federal government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee.

(b) *Decision on petition.* A petitioner may claim this exemption by filing an original and two copies of a petition for exemption that includes evidence that the petitioner is a State or municipality, or is engaged in the official business of the Federal government. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the petitioner whether it is granted or denied. If the petition is denied, the person will have thirty days from the date of notification of the denial to submit the appropriate fee to the Commission.

d. By adding a new Subpart C to read as follows:

Subpart C—Fees Applicable to General Activities

Subpart C—Fees Applicable to General Activities

§ 381.301 Request for interpretation by the Office of Chief Accountant.

The fee established for a request for an interpretation by the Chief Accountant under § 3.8 of the Commission Rules of Practice and Procedure, 18 CFR 3.8 (1983), that requires a written response is $100. The fee must be submitted in accordance with Subpart A of this part.

§ 381.302 Petition for issuance of a declaratory order (except under part I of the Federal Power Act).

(a) Except as provided in § 381.302(b), the fee established for filing a petition for issuance of a declaratory order under § 385.207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1983), is $4,900. The fee must be submitted in accordance with Subpart A of this part.

(b) No fee is necessary to file a petition for issuance of a declaratory order that solely concerns the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with its petition for issuance of a declaratory order. The petition for exemption should summarize the issues raised in the petition for issuance of a declaratory order and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is denied, the petitioner will have thirty days from the date of notification of the denial to submit the appropriate fee to the Commission.

§ 381.303 Review of a Department of Energy remedial order.

(a) *Except as provided § 381.303(b),* the fee established for filing a petition for review of a Department of Energy remedial order under Subpart I of the Commission's Rules of Practice and Procedure, 18 CFR Part 385, Subpart I (1983), is $2,900. The fee must be submitted in accordance with Subpart A of this part.

(b) If the amount in controversy is below $30,000, then the fee to file a petition for review of a DOE remedial order is reduced as follows:

	Fee
Amount in controversy:	
$0 to $9,999	$100
$10,000 to $29,999	600

(c) In order to qualify for the fees in paragraph (b) of this section, the check must be accompanied by an affidavit by the petitioner that states the amount in controversy.

§ 381.304 Review of a Department of Energy denial of adjustment.

(a) *Except as provided in § 381.304(b),* the fee established for review of a Department of Energy denial of an adjustment request under Subpart J of the Commission's Rules of Practice and Procedure, 18 CFR Part 385, Subpart J (1983), is $3,700. The fee must be submitted in accordance with Subpart A of this part.

(b) If the amount in controversy is below $30,000, then the fee to file a petition for review of a DOE denial of an adjustment is reduced as follows:

	Fee
Amount in controversy:	
$0 to $9,999	$100
$10,000 to $29,999	600

(c) In order to qualify for the fees in paragraph (b) of this section, the check must be accompanied by an affidavit by the petitioner that states the amount in controversy.

PART 385—[AMENDED]

4. Part 385 is amended as follows:

a. The authority citation for Part 385 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

b. In § 385.207, by adding a new paragraph (c) to read as follows:

§ 385.207 Petitions (Rule 207).

* * * * *

(c) Except as provided in § 381.302(b), each petition for issuance of a declaratory order must be accompanied by the fee prescribed in § 381.302(a).

c. In § 385.906, by adding a new sentence at the end of paragraph (b)(1) to read as follows:

§ 385.906 Pleadings (Rule 906).

* * * * *

(b) *By the petitioner.* (1) * * * Each answer filed with the Secretary of the Commission by the petitioner, in accordance with this paragraph, must be accompanied by the fee prescribed by § 381.303 of this chapter.

* * * * *

d. By amending § 385.1004 as follows:

a. In paragraph (c), by adding the words "and the fee required by paragraph (c) of this section" following the words "petition for review"; and then redesignating paragraph (c) as paragraph (d).

b. By adding a new paragraph (c) to read as follows:

§ 385.1004 Commencement of proceedings (Rule 1004).

* * * * *

(c) Each petition for review filed with the Secretary of the Commission must be accompanied by the fee prescribed by § 381.304 of this chapter.

* * * * *

PART 389—[AMENDED]

5. Part 389 is amended as follows:

a. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 389.101 [Amended]

b. The Table of OMB Control Numbers in § 389.101(b) is amended by adding "381.108" in the numerical order in the Section column, and "0132" in the corresponding position in the OMB Control Number Column.

c. The Table of OMB Control Numbers in § 389.101(b) is further amended by adding "381.302" in the numerical order in the Section column, and "0132" in the corresponding position in the OMB Control Number Column.

d. The Table of OMB Control Numbers in § 389.101(b) is amended by adding "381.303" in the numerical order in the Section column, and "0132" in the corresponding position in the OMB Control Number Column.

e. The Table of OMB Control Numbers in § 389.101(b) is further amended by adding "381.304" in the numerical order in the Section column, and "0132" in the corresponding position in the OMB Control Number Column.

[FR Doc. 84-23569 Filed 9-6-84; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Parts 157, 274, 284, 375, 381, and 385

[Docket No. RM82-30-000; Order No. 394]

Fees Applicable to the Natural Gas Policy Act

Issued: August 31, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish fees for services and benefits it provides under the Natural Gas Policy Act. The rule establishes fees for applications for adjustment under the NGPA, Commission review of well-category determinations by jurisdictional agencies, reports for transactions authorized under Title III of the NGPA, and requests for interpretation of the NGPA from the Office of the General Counsel. These fees are authorized by the Independent Offices Appropriations Act, which provides for the collection of fees to make agencies self-sustaining to the extent possible.

EFFECTIVE DATE: This rule will become effective October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Fred A. Wolgel, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Oliver G. Richard III.

I. Introduction

By this rule, the Federal Energy Regulatory Commission (Commission) amends Part 381 of its regulations to establish fees for services and benefits provided under the Natural Gas Policy Act (NGPA).[1] In an earlier rulemaking, the Commission adopted its basic methodology for establishing fees with respect to services and benefits provided by the Commission, as well as the procedures for billing, collecting, waiving, and updating fees.[2] This rule applies the basic methodology to establish the following fees:

(1) Application for adjustment under section 502(c) of the NGPA, including exemptions from incremental pricing under section 206(d) of the NGPA, $6,000;

(2) Commission review of a jurisdictional agency determination, $25;

(3) Petition for approval of rates and charges for transportation of natural gas under 18 CFR 284.123(b)(2), $2,000;

(4) Initial or extension reports filed in accordance with 18 CFR 284.106, 284.126, 284.148 and 284.163 for transactions authorized under Title III of the NGPA, $800; and

(5) Request for interpretation of the NGPA by the Office of the General Counsel, $1,200.

II. Background

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for services and benefits it provides.[3] The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,[4] which states that a fee should be assessed for each measurable unit or amount of government service or property from which an identifiable recipient derives a special benefit.

In accordance with the IOAA and authoritative interpretations of that

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[1] 15 U.S.C. 3301–3432 (1982).

[2] Final Rule, Fees Applicable to Producer Matters under the Natural Gas Act, 49 FR 5074 (Feb. 10 1984) (Docket No. RM 82-25-000), *reh'g denied and rule clarified*, 49 FR 17435 (Apr. 24, 1984), *appeal pending*, No. 84-1846 (10th Cir. June 2, 1984).

[3] Act of Aug. 31, 1951, Ch. 376, Title V, Section 501, 65 Stat. 290, *as codified*, 31 U.S.C. 9701 (1982).

[4] Bureau of the Budget Circular A-25 (Sept. 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the Act." FPC v. New England Power Co., 415 U.S. 345, 351 (1974).

statute,[5] the Commission, is establishing any fee, must:

(a) Identify the service for which the fee is to be assessed;

(b) Explain why the particular service benefits an identifiable recipient more than it benefits the general public;

(c) Base the fee on as small a category of service as practical;

(d) Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) Set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule meet these requirements.

III. Summary and Analysis of Comments

On June 2, 1982, the Commission issued its notice of proposed rulemaking (NOPR) in this docket.[6] The NOPR proposed fees for certain services and benefits provided under the NGPA. As indicated above, this final rule establishes fees for the following services and benefits provided under the NGPA:

(1) Adjustments requested under section 502(c) of the NGPA, including exemptions from incremental pricing under section 206(d), and filed in accordance with Subpart K of 18 CFR Part 385;

(2) Review of jurisdictional agency determinations under section 503 of the NGPA filed in accordance with 18 CFR 274.104;

(3) Approval of rates and charges for transportation of natural gas under 18 CFR 284.123(b)(2);

(4) Review of initial or extension reports filed in accordance with 18 CFR 284.106, 284.126, 284.148, and 284.163 for transactions authorized under Title III of the NGPA; and

(5) Interpretations of the NGPA rendered by the Office of the General Counsel, requested in accordance with 18 CFR Part 1901.

A. Identification of Services

Under section 502(c) of the NGPA, the Commission has established rules for the making of such adjustments as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens. The rules governing applications for adjustment are set forth in Subpart K of 18 CFR Part 385 of the Commission's regulations. Under § 385.1104(a), an applicant must show, among other things, "how the denial of relief will cause the applicant to suffer special hardship, inequity, or unfair distribution of burdens." These adjustment procedures enable an applicant to obtain relief from an order or rule issued by the Commission that implements the requirements of the NGPA. The category of adjustments include the granting of exemptions under section 206(d), in whole or in part, from incremental pricing.

Federal and state "jurisdictional agency" determinations under section 503 of the NGPA establish the NGPA maximum lawful price applicable to the sale of natural gas from particular wells. If producers wish to sell gas at the prices authorized by sections 102, 103, 107 and 108 of the NGPA, they must submit an application to the jurisdictional agency for a well-category determination. The Commission reviews the initial determination made by the jurisdictional agency. If the Commission does not reverse the jurisdictional agency's determination, the producer is allowed to receive the applicable maximum lawful price. As a practical matter, that price may be higher than the price the producer could have obtained in the absence of the determination.

Under sections 311 and 312 in Title III of the NGPA, the Commission authorizes several types of transactions on a self-implementing basis without subjecting these transactions to the Commission's jurisdiction under the Natural Gas Act (NGA). These types of transactions include: (1) Transportation of natural gas by an interstate pipeline on behalf of any intrastate pipeline or local distribution company for a period up to two years; (2) sale or transportation of gas by an intrastate pipeline to, or on behalf of, any interstate pipeline or local distribution company served by any interstate pipeline for a period of up to two years; and (3) assignment of an intrastate pipeline's contractual right to receive surplus gas to any interstate pipeline or local distribution company. Pipelines benefit from this program by being able to carry on the designated transactions without the need for prior Commission approval. However, pipelines that utilize the program and engage in these specific transactions are required to submit reports as specified in Part 284 of the Commission's regulations describing which transactions have been undertaken.[7]

Under § 385.1901 of the Commission's regulations, the Office of the General Counsel provides, at the request of any person, interpretations of the NGPA. The information and analysis provide guidance that may be used by the recipient to assist its decision making and planning of transactions or activities affected by the NGPA.

As proposed in the NOPR, the Commission has decided not to establish fees for certain other actions it takes relating to the NGPA. These actions include preliminary and formal enforcement investigations, Commission enforcement-related settlements and administrative litigation, news releases, and litigation in the courts. The Commission believes that these actions generally do not manifest the necessary identifiable benefit to an individual entity.

B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge fees under the terms of the IOAA, Budget Circular A-25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service.[8] In addition, the Circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values than those which accrue to the general public." [9]

Many commenters argue that the benefits under the proposed rules inure primarily to the public or to consumers. Commenters claim that no special benefit is conferred on an identifiable recipient, as is required by the IOAA. Some commenters argue that it is unfair to charge a fee for complying with the regulations and that the purpose of obtaining an interpretation is to avoid a penalty, not to receive a special benefit.

While consumers may be ultimate beneficiaries from the regulation of natural gas under the NGPA, that is not determinative of the Commission's right to charge fees under the IOAA. The IOAA provides for the collection of fees for a "service or thing of value provided by the agency.[10] Commission review of

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[5] *See Nat'l Cable Television Ass'n Inc.* v. *United States*, 415 U.S. 336 (1974); *FPC* v. *New England Power Co.*, 415 U.S. 345 (1974); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); *Nat'l Cable Television Ass'n Inc.* v. *FCC*, 554 F.2d 1094 (D.C. Cir. 1976); *Electronic Indus. Ass'n* v. *FCC*, 554 F.2d 1109 (D.C. Cir. 1976); *Nat'l Ass'n of Broadcasters.* v. *FCC*, F.2d 1118 (D.C. Cir. 1976); *Capital Cities Communications, Inc.* v. *FCC*, 554 F.2d 1135 (D.C. Cir. 1976).

[6] Fees Applicable to the Natural Gas Policy Act, 47 FR 24736 (June 8, 1982). The Commission received fifty-five comments in response to the NOPR.

[7] *See* 18 CFR 284.106, 284.126, 284.148.

[8] Budget Circular A-25, at 1-2.

[9] *Id.* at 2.

[10] 31 U.S.C. 9701 (1982). This phrase was changed in 1982 from "any work, service, publication, report

Continued

requests for adjustments under, or interpretations of, the NGPA and Commission regulations and review of well category determinations and Title III transactions are the types of services for which the IOAA contemplates the collection of fees. The Court of Appeals for the D.C. Circuit has held that a fee otherwise authorized is not rendered invalid even where the benefit to the public is greater than the benefit to the applicant.[11] The court also held that an agency is entitled to charge a fee for services which assist a person in complying with a statute.[12]

Commenters also assert that it is unfair to impose fees on entities that are suffering hardship and are seeking relief therefrom. One commenter asserts that it is illegal to do so. Another commenter argues that the fee will foreclose use of the "safety value" established in section 502(c) of the NGPA. The Commission disagrees with these assertions. The case-by-case waiver procedures in 18 CFR 381.106 should adequately protect those entities from suffering economic hardship as a result of the filing fees imposed.

C. Smallest Practical Unit

In designing a fee schedule, the IOAA requires the Commission to base fees on the smallest unit or category of service that is practical. The Court of Appeals for the D.C. Circuit set forth the general rule:

> * * * [W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees of services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines; but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[13]

Further, Budget Circular A-25 states that "costs shall be determined or established from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose." [14]

The Commission, in keeping with Budget Circular A-25, is classifying its fees by types of applications or filings, which are the smallest practical unit. The Commission has calculated its fees from its Management Information Systems (MIS). The MIS is an agency system established to track workload. The MIS tracks time, by work-months, based on types of applications or proceedings. The Commission is establishing one fee for an entire filing or proceeding because that filing or proceeding is the smallest unit practical for the Commission to develop fees.[15] In the NOPR in this docket, the Commission stated that it anticipated establishing two separate fee categories for initial Title III reports and for extension reports under Title III. After calculating the time spent on these two areas and the resulting fees, the Commission has found the fees to be so nearly identical that, for logical and administrative efficiency reasons, only one fee category for both activities is being established.

However, the Commission has also determined that the time spent on processing one type of Title III application differs significantly from the time spent on all other Title III activities. These applications involve the transportation of gas by intrastate pipelines on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline under 18 CFR 284.123(b)(2). Under § 284.123(b)(1), an intrastate pipeline in certain circumstances may elect to use a rate methodology already on file with the appropriate state public utility commission (PUC), and such rates are presumed to be fair and equitable. Alternatively, under § 284.123(b)(2), an intrastate pipeline may petition the Commission for approval of its proposed rates and charges for such transportation, and file information purporting to show that the proposed rates and charges are fair and equitable. If the pipeline makes the election under § 284.123(b)(2), the Commission must establish a rate rather than simply review an existing rate on file with a state PUC. The average costs for such determinations are substantially higher than for all other transportation transactions pursuant to Title III of the Act.

Accordingly, the final rule separates out applications under § 284.123(b)(2) from other Title III activities and establishes a separate fee based on the substantially higher processing costs for these applications.

D. Basis of Cost Recovery

1. Direct and Indirect Costs Included

The Commission's fee schedule is designed to account for all types of recoverable costs associated with the processing of specified applications and filings under the Commission's jurisdictional statutes. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. The attributable costs include the direct salary costs as well as the substantial amount of indirect salary costs which the Commission expends in its reviews. As the Fifth Circuit has stated, employees

> * * * must be supplied working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that * * * [they are] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application.[16]

Accordingly, the Commission has included in its identification of costs the following items: salaries and benefits; travel; transportation of things; rents; communications and utilities; printing; other support services; supplies; and equipment.

2. Methodology

(a) *Underlying Considerations.* The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's Management Information System (MIS), which provides the amount of time spent on all Commission functions. The functions are grouped into categories which represent the Commission's various programs,

document, benefit, privilege, authority, or similar thing of value or utility" for consistency and to eliminate unnecessary words. H.R. Rep. No. 651, 97th Cong., 2d Sess. 226 (1982).

[11] The court discussed the FCC's implementation of language in Budget Circular A-25 that precludes fees for activities when the "identification of the ultimate beneficiary is obscure and the service can be *primarily* considered as benefitting broadly the general public" (emphasis added):

> The term "primarily" is misleading, and we reject any suggestion that the Commission should be limited to charging fees for those services where the benefit to the private party is greater than the benefit to the public; but with that word eliminated, we endorse the agency's language.

Electronics Indus. Ass'n v. *FCC*, 554 F.2d 1109, 1114 n. 12 (D.C. Cir. 1976).

[12] *Id.* at 1115.

[13] *Electronic Indus. Ass'n* v. *FCC*, *supra* note 5, at 1116–17.

[14] Budget Circular A-25, at 3.

[15] The Commission has recently updated the MIS by starting to track its workload on a new system (Time Distribution Reporting System), which may provide an even greater degree of accuracy of Commission workload. At this time, however, the Commission does not have a year's worth of complete data to develop actual fees from the new system.

[16] *Mississippi Power & Light Co.* v. *NRC*, *supra* note 5, at 232.

including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, hydropower regulation, and electric power regulation. The MIS workload data is recorded on a monthly basis.

With respect to each function, the supervisor records for the MIS the number of projects initiated (receipts) and completed (completions) in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities." The supervisor in each organization unit reports to the MIS the amount of time spent by staff on each functional category in terms of work-months. A "work-month" is the unit of work represented by one employee's devotion of 100% of his or her time for one month. In addition, time sheets are coded by functional categories and are filled out Commission-wide every two weeks. Supervisors check employee time sheets for accuracy in coding.

Many non-docketed support functions are essential to the completion of any docketed activity. However, they cannot be measured in terms of receipts and completions because the nature of these functions makes it impractical to do so. Like other functions, the time spent on support activities is reported by unit supervisors in terms of work-months.

Only those support functions that are related to providing a benefit are included in the fee calculations. These support functions will be referred to as "support activities' and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and routine administrative functions. Routine administrative functions include such activities as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave. The entire cateogry is labeled as "administrative services" and is included in the fee structure because it is essential to the FERC's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, from the Congress, from the General Accounting Office, and from other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications" because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work on the FERC budget, management information systems, and program development functions such as special studies or briefings on relevant subjects, but which are not identified with just one docketed activity. This category is therefore an integral part of completing docketed activities.

Support activities represent a type of indirect cost, but are channeled into the cost calculations separately from all other indirect costs (such as physical plant overhead). These other indirect costs are added together with direct costs to come up with an average monthly cost per Commission employee of $4,770.67. That figure is multiplied by the time (in work-months) taken to review a type of application. Support activities represent work-months expended which cannot be allocated directly to each individually-tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of application and also a pro-rata share of the time spent on support activities associated with reviewing that type of application.

(b) *Calculation of Fee Amounts*. For purposes of this rule, the Commission has used the following methodology to determine the cost of providing any service or benefit. First, the work-months reported for a class of docketed activity are added to a pro-rata share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for a year, is divided by the number of completions for the year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's FY (Fiscal Year) 1983 actual costs.

Salaries and benefits	$46,228
(Based on year-end payroll data and benefits)	
Travel	726
Transportation of things	7
Rents, communications & utilities	3,185
Printing	1,899
Other services—excludes direct program contracts	4,684
Supplies	477
Equipment	42
Total	$57,248

The total was divided by 12 to yield an average work-month cost of $4,770.67.

Third, in order to determine the cost of an activity, the Commission multiplied the average cost per work-month by the average number of work-months required to complete the activity.[17]

Commenters provide many different reasons for why they believe that the Commission's cost methodology is either severely flawed or excessively vague. Some of these reasons include use of actual salaries from one year and the time figures from another year, use of mean work-month costs rather than the median or mode, use of only one year's data for determining fees, inadequate explanation of support costs calculations, and inclusion of costs that do not benefit an identifiable recipient or are not actually incurred by the Commission in rendering a particular service.

Several commenters claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine fees based on the average salary of only those employees processing particular filings. As permitted under Budget Circular A-25, the Commission's accounting system employs an agency-wide figure for salaries and therefore the Commission has used an agency-wide figure as the basis for its costs.

As for what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs of the Government. Thus, there is no reason to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. All other support activities are an integral part of completing docketed activities and therefore are included in the calculations. Second, in devising its fee schedule, the Commission is authorized to determine or estimate its costs "from the best available records in the agency." [18] For this Commission, that means the MIS.

[17] Updated data sheets are being placed in the Commission's Public File Room detailing the calculations.

[18] Budget Circular A-25, at 3.

The proposed rule used FY 1982 budgeted figures to determine its costs, and FY 1981 actual completions and work-months in the fee calculation. The method of updating the fees was tied to FY 1981 as the "base year." Each subsequent year was to be adjusted by the change in costs between the base year and the year in consideration. Under the proposed rule, the number of completions and work-months would not be changed from the FY 1981 base-year numbers. The Commission now believes it is more accurate to calculate fees from actual completions and work-months, as well as actual costs. Consistent with its other final fees rules, the Commission has decided to use actual fiscal year figures in this rule as well as in updating the fees in subsequent years (see section III.E. below). Accordingly, the Commission has calculated the fees in this rule from actual fiscal year 1983 direct and indirect costs, completions, and work-months. This approach will keep data more current. This approach also eliminates any inaccuracies which could arise from using budgeted figures. In addition, by updating completions and work-months with the most recently available data, the fees will reflect any improvements that may occur in the average number of work-months per completion.

E. Actual Fees Established and Procedure for Updating Fees

The following table summarizes for FY 1983 the total number of work-months, completions, and the average cost per completion in rendering the services for which the Commission is establishing fees in this final rule.

Service	Total WM's in 1983	Total completions in 1983	Average number WM's per completion in 1983	Average cost per completion in 1983
Adjustment under NGPA § 502(c)	127.93	35	3.65	$17,412.94
Jurisdictional agency determination	295.11	59,429	.00496	[19] 29.59
Petitions for rate approval pursuant to § 284.123(b)(2)	58.33	138	.4226	2,016.08
All other initial and extension reports under title III	135.95	804	.1690	806.24
OGC interpretations of the NGPA	35.84	47	.762	3,635.25

[19] The average cost per completion for review of jurisdictional agency determinations also includes computer costs incurred by the Energy Information Administration and reimbursed by the Commission, equivalent to approximately $5.93 per determination.

The Commission believes the costs associated with petitions for adjustment and OGC interpretations are such that to fully recover these costs through fees would substantially discourage the use of these services. In addition, these services may be requested by a broad spectrum of regulated entities, and there are a substantial number of small businesses, such as small gas producers, within this class. The Commission, therefore, has reduced the fees for requests for adjustments to $6,000. This represents a sixty percent reduction of the full-cost recovery amount plus an additional five percent reduction because the Commission itself is not normally involved in issuing any order. This total sixty-five percent reduction is the same percentage proposed in the NOPR. The fee for requests for OGC interpretations has been reduced to $1,200. This is also a sixty-five percent reduction from full-cost recovery, consistent with the Commission's reduction policy for adjustments.

These categorical reductions are policy judgments by the Commission representing its best estimate of the magnitude of reductions that may be necessary to avoid discouraging the use of these services. It is possible that higher percentages could be necessary, but more experience under this fee structure is needed before that judgment can be made. Therefore, unless subsequently modified, these same percentages of reduction from full-cost recovery will carry over to future years as costs are updated.

The following fees are therefore established: [20]

Services	Fees
Adjustments under NGPA section 502(c)	$6,000
Jurisdictional agency determination reviews	25
Petitions for rate approval pursuant to § 284.123(b)(2)	2,000
All other initial or extension reports under title III	800
OGC interpretatios of the NGPA	1,200

The Commission will update its fees under Part 381 each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the **Federal Register**, after the close of the preceding fiscal year. The updated fees will be based on actual completions, work-months and costs from the preceding fiscal year. In this way, the fees will reflect, using the most current data available, the benefits to the recipients.

With regard to fees for Title III transactions, if an intrastate pipeline seeks to establish a new rate for six on-going transportation arrangements under § 284.123(b)(2), it would accompany that petition with a single $2,000 fee. In contrast, if the intrastate pipeline later seeks to extend the six transportation arrangements, a total of $4,800 (six times $800) is due. Note that the $800 fee is due for an initial full report or extension report irrespective of whether or not that transaction is subject to a § 284.123(b)(2) rate approval proceeding.

F. Exceptions to Full Cost Recovery

1. Reduction in Fee Amounts by Category

As outlined above, the Commission has established in this rule fees which include all the recoverable costs associated with the particular benefits and services provided. In doing so, the Commission has categorically reduced the fees for adjustments under the NGPA by approximately 65 percent, and requests for OGC interpretations by approximately 65 percent. The Commission recognizes that there may be other instances in the future where the Commission determines that full-cost recovery fees would have an adverse effect on applicants, or would undermine Commission activities. In such cases, the Commission may again exercise discretion to reduce fees to less than full-cost recovery in order to prevent a disproportionate economic impact or for other good cause. Good cause would include situations where the Commission wishes to encourage use of a service, where less Commission time is required than staff time, or where there is a reduction in the amount of time required to process a filing. Any new, future reduction in a fee would be initiated only by rulemaking. The same percentage of reduction would carry over to subsequent years unless further notice was given by the Commission that it was altering that reduction.

Some commenters argue that the standards for exceptions to full cost recovery are vague, and that the Commission should adopt regulations setting forth specific standards for waiver from full-cost recovery. The Commission believes that the standards enumerated above are sufficiently specific for parties to be apprised of the circumstances under which the Commission may reduce fees to less

[20] Fees are established by taking actual costs and rounding *down* to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

than full cost recovery. However, the Commission emphasizes that even where these standards may apply, a decision to reduce fees to less than their full cost for a class of applicants involves policy judgments as well as the Commission's expertise. Any categorical reductions in fee amounts will be done by rulemaking. If a rulemaking is developed, the Commission will take into account economic hardship to the class of applicants. This is as specific as is possible given the degree of flexibility the Commission needs in determining good cause for a categorial reduction. This is to be distinguished from a situation where an individual applicant can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

2. Case-by-Case Waiver Procedures

The Commission also realizes that a different situation could arise in which an individual applicant is unable to pay fees as set by the Commission due to severe economic hardship. The Commission recently promulgated a rule establishing the general procedures for case-by-case waiver determinations.[21] If an applicant is suffering from a period of severe economic hardship, the applicant will have the burden of presenting evidence to the Commission, such as a financial statement, showing that the applicant is either economically unable to pay the fee, or that if the applicant does pay the fee, it will place the applicant in a state of financial distress or emergency. The material must be included with the petition for waiver at the time of filing the application. The Commission, or its designee will analyze petitions for waiver to determine whether the standards for waiver have been met. The Commission will notify the applicant as to whether the petition for waiver has been denied or accepted.

G. Procedures for Paying Fees

The Commission's notice stated that fees must be submitted by certified check, made payable to the United States Treasury. A number of commenters argue that there is no reason to require certified checks. They state that a corporate check should be sufficient.

The Commission has already deleted the certified check requirement in establishing its general fee procedures (*see* 18 CFR 381.105). In all cases except for review of jurisdictional agency determinations, a check made payable to the United States Treasury must still be included with the filing or application unless a petition for waiver is submitted in lieu of the fee. The check must indicate for what the fee is being submitted, *e.g.*, request for adjustment under section 502(c). This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or a petition for waiver, it will be considered deficient and will not be processed until remedied by the company.

Many commenters, including several jurisdictional agencies, strongly oppose the Commission's proposed procedure of using the jurisdictional agencies to collect the fees for well-category determinations on behalf of the Commission, for eventual forwarding to the Commission. The commenters raise three arguments: (1) The jurisdictional agencies would have to shoulder the additional costs of handling and accounting for the checks, (2) the extent of liability for the theft, loss, or embezzlement is unclear, and (3) the jurisdictional agencies do not have authority to make collections on behalf of the Federal government.

The Commission has decided that it will collect this fee directly from applicants through an annual billing procedure at the end of each calendar year. Under 18 CFR 274.104, the Commission receives a notice of determination from the jurisdictional agency. Following receipt of that notice, the Commission notifies the applicant that it has received the jurisdictional agency determination. At the end of each calendar year, the Commission will mail bills to each producer for all jurisdictional agency determinations received by the Commission in that year related to that producer's wells, beginning with jurisdictional agency determinations received by the Commission after the effective date of this rule. The producer will be required to submit the fee to the Commission within thirty days of the billing date.

Commenters complain of the Commission's decision to exclude the possibility of fee refunds. They argue that the Commission should include a provision in the final rule whereby an applicant could receive a refund if the application were rejected on grounds other than nonpayment of fees, or if the Commission did not respond within a reasonable amount of time.

The Commission's decision not to allow refunds is consistent with the policy behind the IOAA. The statute authorizes Goverment agencies to become self-sustaining to the fullest extent possible. To do so, the agency is to collect fees for services and benefits it provides. The Congress gave this Commission the duty of carrying out functions under the NGPA, the services for which involve reviewing each petition or application, not guaranteeing the issuance of an order or interpretation. The Commission reviews every petition, filing, or request. Some petitions and requests are accepted, some are not. The Commission's fees cover the time and cost of providing these services, as authorized by the IOAA. It does not necessarily cost the Commission any less when it rejects a petition or request. In addition, the Commission's decision not to allow refunds is consistent with its current policy of no refunds of fees under the NGA under Part 159 of the Commission's regulations.

H. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time of processing filings and the actual agency-wide costs involved with this processing. The Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. The figure is then multiplied by the average cost per work-month to arrive at the fee.

However, the Commission occasionally receives filings which are not average. These filings may be extensive in scope and present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. The standard fees established in this rule bear no reasonable relationship to the actual cost of processing extraordinary filings. Moreover, if the costs of processing extraordinary filings are included in the costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. So, in the case of an extraordinary filings, the Commission reserves the option of ordering a direct billing procedure when the processing of the filing begins, or at any time up to one year after receiving a complete filing. While the Commission does not expect direct billings to be used often in the fee areas covered by this rule, it is necessary to allow the degree of flexibility.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing unless a lesser amount is determined to be fair and equitable. The staff

[21] Final Rule, Fee Applicable to Producer Matters Under the Natural Gas Act, *supra* note 2.

resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. If the decision to bill a lesser amount is based upon the presence of intervenors in a proceeding, the Commission is retaining the discretion to determine whether some of the costs not directly billed to an applicant should instead be billed to the intervenors. Any decision to directly bill intervenors will be made on a case-by-case basis.

Commenters state that the direct billing procedure is too vague. Commenters also object to the direct billing method because they claim that the complexity of a filing might result from the participation of intervenors and that intervenors should be assessed some of the fee. One commenter states that a proceeding may be complex because it contains public policy issues where the potential benefit to the applicant is secondary to that of the public. As noted above, the Commission agrees that it may be appropriate to allocate some of the costs to intervenors in direct billing situations and that this will be determined on a case-by-case basis.

Also, one commenter requests that an applicant be given an advance estimate of costs, especially since the Commission can prevent an applicant from withdrawing a filing. Finally, one commenter suggests that, in the case of unsuccessful staff contests of filings, there should be no direct billing of additional costs. Where there is a direct billing, the Commission will itemize, to the best degree of accuracy under the MIS, the costs involved in the direct billing. There is no way the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter in the filed application. Moreover, the Commission will credit an applicant whose filing becomes subject to direct billing with any fee paid under this fee system.

IV. Other Minor and Conforming Amendments

A number of minor and conforming amendments are necessary to implement the fees for services and benefits provided by the Commission under the NGPA.

This rule adds a requirement in 18 CFR 385.1104(a)(6) that the applicant must send to the Commission, along with an application for adjustment, the fee prescribed in Part 381 or a petition for waiver of the fee.

This rule adds a requirement in 18 CFR 385.1901(d)(6) that the requester must send to the Commission, along with a request for an interpretation, the fee prescribed in Part 381 or a petition for waiver of the fee.

As discussed earlier in Section III.G., *supra*, this rule adds a requirement to Subpart B of Part 274 (in § 274.201) that those producers seeking review of a jurisdictional agency determination must pay annually to the Commission the fee prescribed in Part 381 or submit a petition for waiver of the fee.

This rule adds a requirement in Part 284 (in §§ 284.106 and 284.126) that pipelines filing Title III transaction reports with the Commission are required to send with their filings the fee prescribed in part 381 or a petition for waiver of the fee. Conforming amendments in other sections of Part 284 have been made where necessary to add appropriate cross-references.

This rule makes conforming amendments in Part 375 to provide the appropriate delegations to Commission staff to implement the procedures for waiving or reducing the fees prescribed in Part 381.

V. Regulatory Flexibility Act Statement

When an agency promulgates a final rule under the Administrative Procedure Act (APA), 5 U.S.C. 553, after being required by that section or any other law to publish a notice of proposed rulemaking, a final regulatory flexibility analysis may be appropriate under the Regulatory Flexibility Act of 1980, Section 3, 5 U.S.C. 601–612 (1982). Each final regulatory flexibility analysis must contain (1) a statement of need for, objectives of, and legal basis for the rule, (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A–25.

This rule affects natural gas producers, natural gas pipelines, and industrial end-users of natural gas subject to incremental pricing. There are approximately 10,000 natural gas producers, 300 pipelines, and 1,500 industrial end-users subject to incremental pricing in the United States.

Application for well-category determinations are received almost entirely from producers. Of the 10,000 producers in the United States, a substantial majority will eventually require well-category determinations.

During the course of implementing the NGPA section 502(c) adjustment procedures, the Commission has received approximately 300 applications. Slightly more than 50 percent of those requests come from producers pursuant to Title I. Approximately a third are received from pipelines seeking either an adjustment from the Title III regulations or an adjustment from curtailment priority regulations under Title I. Less than 15 percent come from incrementally-priced end-users pursuant to Title II of the NGPA.

Approximately 400 applications for interpretations have been received. Most of those requests have been received from producers and pipelines seeking interpretations of Title I of the NGPA.

Initial and extension reports for transportation transactions are filed by pipelines. Approximately 100 pipelines have participated in such transactions under Title III of the Act.

The Small Business Administration's (SBA) regulations do not establish specific size standards for gas pipelines or producers.[22] Most pipelines, especially interstate pipelines, are large businesses and few of the pipelines subject to Title IV curtailment priorities or engaging in Title III transactions would be small.

The industrial end-users subject to incremental pricing are large users of natural gas. A few of these large users may qualify as small businesses; however, the Commission does not believe they would represent a substantial number based on a sample review of the filings received to date.

While the SBA has not established size standards for producers, a significant proportion of this country's 10,000 natural gas producers would probably be classified as small businesses. Therefore, this rule may have some degree of economic impact on a number of small producers. However, the Commission does not

[22] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concerns" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

believe that this impact will be significant for a substantial number of these small producers. The fees established in this final rule for well-category determination are much lower than the fees proposed in the notice of proposed rulemaking, and are so minimal ($25 per application) that the Commission does not believe that they will impose a significant economic burden on any natural gas producer, no matter how small.

With regard to the fees for requests for adjustments and requests for interpretations, the Commission has categorically reduced these fees by approximately sixty-five percent. The Commission has also previously adopted rules (18 CFR 381.106) providing for a waiver of fees for an individual applicant where such applicant can show economic hardship. These reductions and waiver provisions should prevent these fees from causing severe economic hardship to a producer, or to any other small entity subject to the fees. In this regard, it is important to note that the Commission is also required to satisfy the IOAA's statutory directive to be "self-sustaining to the full extent possible." Hence, there is no blanket exemption for small entities. The Commission believes the rule as now promulgated represents a fair balance between the purposes of both the IOAA and the Regulatory Flexibility Act.

VI. Effective Date

The amendments made by this final rule will be effective on October 9, 1984.

List of Subjects

18 CFR Part 157

Natural gas.

18 CFR Part 274

Natural gas, Wage and price controls.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

General fees.

18 CFR Part 385

Administrative procedures and practice.

In consideration of the foregoing, the Commission amends Parts 157, 274, 284, 375, 381, and 385 of Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 157—[AMENDED]

1. Part 157 is amended as follows:

a. The authority citation for 18 CFR Part 157, Subpart F reads as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 142 (1978) unless otherwise noted.

b. A new paragraph (d)(3) is added to § 157.209 to read as follows:

§ 157.209 Transportation.

* * * * *

(d) *Special conditions.*

* * * * *

(3) Each initial report required by paragraph (g)(1) of this section must be accompanied by the fee set forth in § 381.404 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

PART 274—[AMENDED]

2. Part 274 is amended as follows:

a. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978), unless otherwise noted.

b. In § 274.201, a new paragraph (e) is added to read as follows:

§ 274.201 General requirements.

* * * * *

(e) *Filing fees.* Each applicant must pay the fee prescribed in § 381.402 of this chapter. The applicant will be billed annually by the Commission for each jurisdictional agency determination received by the Commission. The applicant shall submit the fee, or petition for waiver pursuant to § 381.106, within 30 days following the billing date.

PART 284—[AMENDED]

3. Part 284 is amended as follows:

a. The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978).

b. In § 284.105, paragraphs (a) and (b) are revised to read as follows:

§ 284.105 Extensions.

(a) *General rule.* An interstate pipeline seeking to extend a transportation arrangement (1) initially authorized under § 284.102(a), (2) subsequently extended under this section, or (3) extended for an additional two-year term under § 284.107 shall file an extension report as required in a § 284.106 (c) and (e).

(b) *Approval.* If an extension report as required in § 284.106 (c) and (e) is duly filed, the proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, and after opportunity for written comments, determines, by order, that the proposed extension is not authorized. If the Commission determines, by order, that the proposed extension shall be modified, the extension may take effect only as modified.

* * * * *

c. In § 284.106, a new paragraph (e) is added to read as follows:

§ 284.106 Reporting requirements.

* * * * *

(e) *Filing fees.* Each initial full report required by paragraph (a) of this section and each extension report required by paragraph (c) of this section must be accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

d. In § 284.123, paragraph (b)(2)(i) is revised to read as follows:

§ 284.123 Rates and charges.

* * * * *

(b) * * *

(2)(i) If an intrastate pipeline does not choose to make any election under paragraph (b)(1) of this section, it shall apply for Commission approval, by order, of the proposed rates and charges by filing with the Commission the proposed rates and charges, and information showing the proposed rates and charges are fair and equitable. Each petition for approval filed under this paragraph must be accompanied by the fee set forth in § 381.403 or by a petition for waiver pursuant to § 384.106 of this chapter. Upon filing the petition for approval, the intrastate pipeline may commence the transportation service and charge and collect the proposed rate, subject to refund.

* * * * *

e. In § 284.125, paragraph (a) is revised to read as follows:

§ 274.125 Extensions.

(a) *General rule.* An intrastate pipeline seeking to extend a transportation arrangement (1) initially authorized under § 274.122(a), (2) subsequently extended under this section, or (3) extended for an additional two year term under § 284.127 shall file an extension report as required in § 284.126(c) and (e).

* * * * *

f. In § 284.126, a new paragraph (e) is added to read as follows:

§ 284.126 Reporting requirements.

* * * * *

(e) *Filing fees.* Each initial report required by paragraph (a) of this section and each extension report required by paragraph (c) of this section must be accompanied by the fee set forth in § 381.404 of this chapter, or a petition for waiver pursuant to § 381.106 of this chapter.

g. In § 284.148, a new paragraph (e) is added to read as follows:

§ 284.148 Reporting requirements.

* * * * *

(e) *Filing fees.* Each initial report required by paragraph (a) of this section and each extension report required by paragraph (c) of this section must be accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

h. In § 284.163, a new paragraph (d) is added to read as follows:

§ 284.163 Special rule.

* * * * *

(d) *Filing Fees.* The reports required under §§ 284.4(b) and 284.165(d) are accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

PART 375—[AMENDED]

4. Part 375 is amended as follows:

a. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

b. In § 375.307, paragraph (u) is revised to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(u) Deny or accept, in whole or in part, petitions for waivers of the fees prescribed in §§ 381.201, 381.202, 381.203, 381.204, 381.205, 381.206, 381.401, 381.402, 381.403, and 381.404 of this chapter in accordance with § 381.106(b) of this chapter.

c. In § 375.309, a new paragraph (e) is added to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(e) Deny or accept, in whole or in part, petitions for waivers of the fees prescribed in § 381.405 in accordance with § 381.106 of this chapter.

PART 381—[AMENDED]

5. Part 381 is amended as follows:

a. The authority citation for Part 381 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

b. In § 381.103, paragraph (a) is revised to read as follows:

§ 381.103 Filings.

(a) *Submittal of fees.* Except as provided in §§ 274.201(e) and 381.106, a fee in the amount set forth in this part shall accompany each filing for which a fee has been established.

* * * * *

c. A new Subpart D is added to read as follows:

Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

Sec.

Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

§ 381.401 Adjustments.

The fee established for an application for adjustment under section 502(c) of the NGPA, including a request for exemption from incremental pricing under section 206(d) of the NGPA, is $6,000. Such fee must be submitted in accordance with Subpart A of this part and § 385.1104.

§ 381.402 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is $25. Such fee must be submitted in accordance with Subpart A of this part and § 274.201(e).

§ 381.403 Petitions for rate approval pursuant to § 284.123(b)(2).

The fee established for a petition for rate approval pursuant to § 284.123(b)(2) is $2,000. Such fee must be submitted in accordance with Subpart A of this part and § 284.123(b)(2).

§ 381.404 Initial or extension reports for Title III transactions.

The fee established for an initial or extension report is $800. Such fee must be submitted in accordance with Subpart A of this part and §§ 157.209(d), 284.105(a), 284.106(e), 284.126(e), 284.148(e), and 284.165(d).

§ 381.405 Interpretations by the Office of the General Counsel.

The fee established for an OGC interpretation of the NGPA is $1,200. Such fee must be submitted in accordance with Subpart A of this part and § 385.1901.

PART 385—[AMENDED]

6. Part 385 is amended as follows:

a. The authority citation for Part 385 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1970); Natural Gas Act, 15 U.S.C. 717–717z (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

b. In § 385.1104, a new paragraph (a)(6) is added to read as follows:

§ 385.1104 Initial petition (Rule 1104).

(a) * * *

(6) The petition must be accompanied by the fee prescribed in § 381.401 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

c. In § 385.1901, a new paragraph (d)(6) is added to read as follows:

§ 385.1901 Interpretations and interpretative rules under the NGPA (Rule 1901).

* * * * *

(d) * * *

(6) The request must be accompanied by the fee prescribed in § 381.405 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

[FR Doc. 84–23570 Filed 9–6–84; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 79N–0371]

GRAS Status of Lactic Acid and Calcium Lactate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that lactic acid and calcium lactate are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective October 9, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1061 and 184.1207 effective on October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1980 (45 FR 32324), FDA published a proposal to affirm that lactic acid and calcium lactate are GRAS for use as direct human food ingredients. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

Subsequently, the agency published in the **Federal Register** of February 25, 1983 (48 FR 8086), a tentative final rule that omitted the listing of the use levels and food categories that appeared in the proposal. The tentative final rule also modified the specifications paragraph of the regulation on each substance to reference the third edition of the Food Chemicals Codex (1981). The agency made these modifications in an effort to make these regulations consistent with a proposal that the agency had issued on September 7, 1982 (47 FR 39199), to include conditions of use for substances affirmed as GRAS under 21 CFR 184.1(b)(1) only when appropriate. (FDA finalized this rule on Oct. 19, 1983 (48 FR 48457).)

The agency also modified the proposed regulations to include a method for synthesizing lactic acid in § 184.1061(a) and to include calcium hydroxide in § 184.1207(a) as a substance that could be used in the production of calcium lactate. FDA made these modifications in response to comments on the proposed rule.

In the preamble to the tentative final rule, FDA stated that it would review any comments it received within the 60-day comment period that were relevant to the omission of the use levels and food categories. The agency did not receive any comments on these issues, but it did receive two comments that addressed other issues.

1. The tentative final rule excluded the use of calcium lactate and lactic acid in infant foods and infant formulas from the uses of these ingredients that the agency proposed to affirm as GRAS. One comment requested that FDA exclude only the use of the DL and D forms of lactic acid and calcium lactate in infant foods and infant formulas from GRAS affirmation. The comment cited opinions of both the Select Committee on GRAS Substances (the Select Committee) of the Federation of American Societies for Experimental Biology and the 10th, 17th, and 18th meetings of the Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Expert Committee on Food Additives in support of its claim that use of the L-isomers of these ingredients should not be restricted on the basis of safety. The comment stated that the L-isomers of these ingredients are used in Europe in infant milk products of the acid-tasting type and reported that they are used in the United States as well.

FDA agrees that neither the Select Committee report on lactic acid and calcium lactate nor the FAO reports cited in the comment present evidence that L-lactic acid or L-calcium lactate produce toxic effects in infants. The agency also is not aware of any evidence that would raise questions about the safety of these substances for consumption by infants. Nevertheless, the agency believes that adequate evidence does not exist to affirm as GRAS the general use of these ingredients in infant foods and infant formulas. Neither the comment nor the Select Committee report contained information or safety data on the general use of these ingredients in infant foods and formulas. On the contrary, the Select Committee reported that it was not aware of any use of these ingredients in infant formulas except in products designed for special dietary or therapeutic purposes, and it did not evaluate these specialty uses. Moreover, in both Europe and the United States, the only current uses of these ingredients in infant formulas are in specialty products. Thus, no evidence exists that these ingredients are in common use in infant formulas. Based on this fact and on the current lack of safety data on the use of the L-isomers in infant foods, FDA has concluded that an appropriate basis on which to affirm that the general use of these ingredients in infant formulas and infant foods in GRAS does not exist. As the agency pointed out in the proposal on lactic acid and calcium lactate, published in the **Federal Register** of May 16, 1980, the reported use of these substances in acidified infant products in Europe and in special dietary and therapeutic infant products in the United States are outside the scope of the GRAS review. Therefore, FDA has not modified the tentative final rule in response to this comment.

2. One comment noted an error in the description of the chemical synthesis of lactic acid that appeared in the preamble to the tentative final rule (48 FR 8087). The comment noted that lactic acid may be synthesized by a process involving reaction of acetaldehyde and hydrogen cyanide, but that it is not prepared with acetonitrile and hydrogen cyanide as described in the preamble.

The agency agrees with the comment that the description of this process in the preamble was incorrect. However, the agency finds that the description of the process in paragraph (a) of § 184.1061 in the tentative final rule was correct. Therefore, the agency has not modified the tentative final rule in response to this comment.

FDA has made a minor editorial change in the regulation on lactic acid.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed Dec. 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.