

Act of 1958 is clear in that both air commerce and the needs of national defense must be considered. In addition, Executive Order 10854 extended application of the Act outside of U.S. jurisdiction under appropriate international agreements and consistent with the requirements of national defense.

As a result of the DOD's willingness to work toward a solution beneficial to both civil and military aviation, the DOD and FAA were able to reach an agreement on use of the offshore airspace which permits establishment of the new civil jet route. In the interest of a more efficient National Airspace System, Jet Route J-174 and its associated control area will be extended from Hampton, NY, to Snow Hill, MD, effective June 6, 1985. In the interest of maintaining the DOD's national defense capability, the FAA will simultaneously effect the nonrule airspace actions below.

Ancillary Nonrule Actions

Effective June 6, 1985, Warning Areas W-105, W-106, W-107, and W-108 will be reconfigured, and, to accomplish the reconfiguration, Atlantic Routes A-20 and A-23 will be realigned. In addition, certain fixes and a holding pattern and associated holding pattern airspace area will be established whose boundaries will not overlap into Warning Area airspace.

The nonrule action upon which all others are dependent is the reconfiguration of W-107. Essentially, W-107 will be expanded to the north to assure continued operating ability of DOD mission aircraft. The expansion of W-107 to the north will be accomplished by realigning A-20 6 degrees to the north and A-23 3 degrees to the north. The new northern edge of W-107 will be its boundary with the protected airspace of A-20. The complete reconfiguration of W-107 will result in a complex of subdivisions. Subdividing the Warning Area is accomplished to provide warning area airspace above and below the jet route and to assure, by procedural agreement, that when certain portions or altitudes are not in use by the DOD, efficient use of the available airspace may be made by ATC. For example, a subdivision of W-107 will exist below J-174 up to and including 17,000 feet MSL.

The expansion to the north of W-107 and the resultant realignment of A-20 and A-23 to the north will also require the reconfiguration of W-105 to provide necessary protected airspace on the north side of A-23. In addition, a certain amount of W-106 which underlies W-105 will be reconfigured to assure

useable airspace by ATC to control and flow oceanic air traffic to and from the New York airport complex. Again, the subdivisions of W-105 and W-106 are the result of procedural agreement perceived by both agencies to be the most efficient use of airspace consistent with the needs of ATC and the DOD mission activity.

W-108 will be slightly reconfigured to assure the most efficient use and accessibility by DOD mission aircraft.

Jet Route J-174, Atlantic Routes A-20 and A-23 and the reconfigured Warning Areas W-105, W-106, W-107, and W-108 will appear on appropriate charts dated June 6, 1985. Although the decision to reconfigure and chart the warning areas has been made in accordance with FAA/DOD agreement, the FAA is circularizing the warning area reconfiguration to all interested parties to provide full user awareness of and participation in the changes being made. In this regard, the FAA will consider all comments received from the circularization of the warning areas and may make changes on the basis of comments received. Any changes made as a result of public circularization of the warning areas will be fully coordinated with the DOD. Sections 71.161 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations extend Jet Route J-174 offshore from Hampton, NY, to Snow Hill, MD, and alter an associated control area. The vertical limits of the jet route extend from Flight Level 180 to and including Flight Level 410 from Hampton, NY, to lat. 38°45'00" N., long. 74°44'00" W.; and from Flight Level 240 to and including Flight Level 410 from lat. 38°45'00" N., long. 74°44'00" W.; to Snow Hill, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Control areas, Jet routes, Aviation safety.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, § 71.161 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—[AMENDED]

§ 71.161 [Amended]

J-174 [Revised]

From Snow Hill, MD, via Hampton, NY; Hyannis, MA, to HERIN INT. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°44'00" W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

PART 75—[AMENDED]

§ 75.100 [Amended]

J-174 [Revised]

From Snow Hill, MD, via Hampton, NY; INT Hampton 069° and Hyannis, MA, 237° radials; Hyannis, MA, to the INT of Hyannis 080° and Nantucket, MA, 066° radials. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°44'00" W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on April 18, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-9826 Filed 4-23-85; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. PL85-1-000]

Regulatory Treatment of Payments Made in Lieu of Take-or-Pay Obligations

Issued: April 10, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Statement of policy and interpretative rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) establishes a policy with regard to the buy-out of contractual take-or-pay obligations of natural gas pipelines, and how those costs are to be treated in future rate cases. The statement of general policy states that payments made by jurisdictional pipelines to first sellers of natural gas for revising or waiving take-or-pay obligations or similar minimum purchase obligations are not "purchased gas costs." Pipelines may, however, file to recover them in any non-Purchased Gas Adjustment rate filing under section 4(e) of the Natural Gas Act. The particulars of the recovery of these costs and their apportionment among the customers of the pipelines will be addressed on a case-by-case basis and pipeline customers will be afforded an opportunity to question the prudence of such payments. In any case, the Commission stated that such payments do not violate the maximum lawful price limitations of the Natural Gas Policy Act. As a general policy, the Commission intends that any certificate amendments or abandonment authorizations needed to effectuate such transactions will be expeditiously granted.

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Colette Bohatch, Federal Energy Regulatory Commission, Office of the General Counsel, Washington, D.C. 20426, (202) 357-8522.

Statement of Policy and Interpretive Rule

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

In the matter of regulatory treatment of payments made in lieu of take-or-pay obligations, Docket No. PL 85-1-000.

I. Introduction

On March 29, 1985, the Federal Energy Regulatory Commission (FERC) concluded public proceedings in Phases I, II, and III of our Notice of Inquiry in Docket No. RM85-1-000, commenced in December of 1984.¹ In that proceeding the Commission received over 200 detailed comments from entities representing all facets of the natural gas industry as well as from members of Congress, the Department of Energy, the Federal Trade Commission, state public utility commissions and other public

entities. Those comments addressed a wide range of topics and provided a wealth of information and insight to guide the Commission.

During these three months, we have also begun to observe the actual behavior of the industry—including developments in field markets, burner tip markets and capital markets—following the partial removal of wellhead price controls on January 1, 1985, in accordance with the Congressionally mandated schedule.

We have also begun to have the initial guidance of reviewing courts of appeal on some of the initiatives set in motion over the last year and a half in anticipation of partial wellhead decontrol.²

The time has come to begin sorting our way through the many issues raised by the commenters in response to our Inquiry in Docket No. RM85-1-000. The task will not be easy. But we assure all members of the industry, the public and the Congress that we will endeavor to take the appropriate steps at the appropriate time, with a healthy respect for the need for caution, courage and well-informed judgment.

II. Summary

The Commission is establishing a policy concerning regulatory treatment to be accorded in the future to payments made by jurisdictional pipelines to first sellers of natural gas for the purpose of waiving or revising purchase obligations under natural gas sales contracts.

As detailed below, the Commission determines that such payments are not "purchased gas costs" for purposes of our regulations under the Natural Gas Act (NGA), in particular 18 CFR 154.38(d)(4), nor do they constitute payments made for a "first sale" of natural gas for purposes of section 504(a) of the Natural Gas Policy Act (NGPA). Rather, they are expenses related to the acquisition of natural gas supply.

Accordingly, with regard to payments made as consideration for waiving or revising an agreement for the first sale of natural gas, the Commission adopts a new § 2.7b of our regulations to provide the following:

(1) A first seller of natural gas does not violate section 504(a) of the NGPA by receiving payments as consideration for waiving or amending the take-or-pay or similar minimum payment provisions of a contract for the first sale of natural gas;

(2) A pipeline which has made such payments to first sellers may file to recover them in any non-PGA section 4(e) rate filing;

(3) Questions as to such matters as how the pipeline may recover these costs and how it should apportion them among customers will be addressed on a case by case basis in the context of individual rate case filings;

(4) The customers of pipelines that seek to recover such costs will have the full opportunity contemplated by section 4 of the NGA to raise questions as to the prudence of such payments, the apportionment of costs among customers proposed by the filing pipeline and any other reasonably related matters; and

(5) With regard to natural gas the sale of which is subject to the Commission's jurisdiction under the NGA, where such payments are accompanied by a change in or a termination of the first seller's contractual obligation to provide natural gas service, the Commission will, as a general policy under sections 7(c) and 7(b) of the NGA, expeditiously grant any certificate amendments or abandonment authorizations required to effectuate such contractual or service modifications.

III. Background

Contracts for the sale of natural gas in field markets have traditionally contained provisions requiring the purchaser to take, or to pay for, if tendered by the seller and not taken, some specified quantity of natural gas.³ Typically, the contracts provided for a specified period during which gas paid for but not taken could be "made up" by the buyer. Indeed, during the 1950's following a period during which a number of pipelines experienced take-or-pay difficulties, the Commission promulgated a rule in effect requiring a five year make-up period for jurisdictional sales.⁴

In view of the fact that such gas could be made up, the payments made pursuant to such provisions constituted in effect "prepayments" for the gas not taken. As such, the amounts paid are treated for ratemaking purposes as an asset, similar to prepayment of a lease. Thus, they are not "purchased gas costs" as defined in our regulations, 18 CFR 154.38(d) (n. 1), but are booked to Account 165, a rate base account.

¹ Interstate Transportation of Gas for Others, 50 FR 114 (January 2, 1985) (Phase I); Natural Gas Pipeline Rate-making, Risk, and Financial Implications After Partial Wellhead Decontrol, 50 FR 3801 (January 28, 1985) (Phases II and III).

² See *Consolidated Edison Co. v. FERC*, No. 83-2316 (D.C. Cir., March 29, 1985) (dismissing one petition for review of blanket transportation certificate rule).

³ 4 Williams, *Oil and Gas Law*, Section 724 (1981).

⁴ Order No. 334, 32 FR 865 (January 25, 1967), [37 FPC 110 (1967)]; and Order No. 334-A, 32 FR 5257 (37 FPC 587 (1967)) [promulgating 18 CFR 154.103 (1964)].

Under this approach, when a pipeline files a general rate change, it might include as a part of its claimed cost of service a "working capital allowance" on the appropriate Account 165 balances. When rates reflecting in part the Account 165 balances go into effect, the pipeline begins to recover from its customers the carrying charges (*i.e.*, weighted cost of debt, return on equity and associated income taxes) on those amounts. We have assumed that the prepayments were financed in the same ratios of debt and equity as were applicable to the pipelines' total capital structures.

When the prepaid gas is "made up" the pipeline credits its Account 165 in an equal amount. As the prepaid gas is delivered by the pipeline, the pipeline includes the gas purchase cost as part of its subsequent purchase gas adjustment (PGA) filing. Then, when the next general rate change is filed, the removal of the prepaid amounts from Account 165 will be reflected in the working capital portion of rate base, in effect eliminating from the pipeline's rates that portion of its claimed cost of service predicated on the former Account 165 balances.

Since the early 1980's, with the arrival of a substantial surplus of gas deliverability,⁵ a number of major natural gas pipeline companies have incurred significant liability for take-or-pay prepayments. For example, according to Form 2's on file with the Commission, Account 165 balances (as of December 31, 1983) totalled approximately \$1 billion.⁶ According to published estimates prepared by industry trade associations, the potential liability under take-or-pay provisions is substantially greater.⁷

This state of affairs has raised a number of questions concerning such issues as: (1) Innovative arrangements for financing take-or-pay prepayments; (2) with regard to prepayments to producers which are likely to be (or are indeed) forfeited by the pipeline due to the inability to make up the prepaid gas, the implications under section 504(a) of the NGPA and under sections 4 and 7 of the NGA; and (3) ratemaking treatment for payments made to producers as

consideration for revising or waiving the terms of existing gas purchase agreements.

The question of how best a pipeline can finance take-or-pay prepayments is essentially a question for pipeline management. The Commission has only been involved to the extent the pipeline has sought some innovative rate arrangement for funding the prepayments.⁸

The second question is whether prepayments to a producer for gas *not taken* but which cannot be made up by the purchaser must be added to payments made to that producer for gas *taken* by the pipeline for purposes of determining the producer's compliance with the maximum lawful prices set out in Title I of the NGPA. This forfeiting of amounts prepaid might result from a variety of causes, including *e.g.*, the reserves having been depleted or having been drained by another seller, or the expiration of the contract prior to the end of the make-up period, or the expiration of make-up period specified in the contract. These forfeited prepayments are paid (or would be paid) pursuant to the contract, not as any consideration for revisions to or waivers of the contract. The present policy statement does not speak to this issue.

The final issue relates to payments made to producers, not pursuant to the terms of a gas purchase agreement, but rather as full or partial consideration for revisions to or waiver of the terms of a gas purchase agreement. These payments have been styled "one time non-recoupable payments," "lump sum payments" or simply take-or-pay "buy-outs." Two issues are raised:

(1) Whether such payments must be taken into account for purposes of determining a producer's compliance with the maximum lawful prices for first sales of natural gas set forth in Title I of the NGPA; and

(2) If such payments are lawful, what is the appropriate ratemaking treatment for a pipeline seeking recovery of these expenses from ratepayers.

The present policy statement addresses questions relating to such one-time non-recoupable payments only and is intended to provide guidance to producers and pipelines as they continue to seek a restructuring of existing contracts to better reflect today's market realities.

⁵ See *e.g.*, *State of Michigan and Michigan Public Service Commission v. Trunkline Gas Co., et al.*, 24 FERC ¶ 61,013 (1983) (Docket Nos. RP81-103-000); *Texas Gas Transmission Corp., et al.*, 24 FERC ¶ 61,049 (1983) (Docket No. RP82-137-000); and *Columbia Gas Transmission Corp. v. Tennessee Gas Pipeline Co.*, — FERC ¶ — (1985) (Docket Nos. RP83-8-000, *et al.*) (issued April 16, 1985).

IV. Discussion

The take-or-pay provisions of gas purchase agreements have been the focus of much discussion in Phases I, II and III of our Notice of Inquiry.⁹ Parties from all segments of the industry have indicated the considerable role these contract provisions continue to play in distorting market signals. A variety of views have been expressed, however, as to who should shoulder the financial consequence for some of what are now uneconomic contracts. Producers generally expressed a willingness to negotiate reasonable revisions to pipeline contracts, but noted little cooperation from pipelines. Absent such a willingness, producers insist on the sanctity of their contractual rights and assert that the Commission has no power to abrogate take-or-pay provisions. As to how the take-or-pay obligations are met, producers expressed indifference whether pipelines or their customers paid; they are willing to leave the policy decision to the Commission.¹⁰

Pipelines generally argued that, if the Commission does not override take-or-pay obligations, these should be paid for by the pipelines' ratepayers as a legitimate and prudent cost of business.¹¹

While some distributors agreed that customers should bear the cost of all prudently incurred take-or-pay obligations,¹² Peoples Gas and Pacific Gas Lighting argued that the NGPA had already put pipelines on notice that they are responsible for their gas purchase practices; pipelines rather than customers must therefore bear take-or-pay costs.¹³

With regard to allocation of prepayment costs among customers, most distributors urged the Commission to proceed on a case-by-case basis.¹⁴

⁹ See, *supra* n.1.

¹⁰ See the Phases II and III comments of the Designated Producers (at 11).

¹¹ See the Phases II and III comments of Natural Gas Pipeline Co. of America (at 37); Consolidated Gas Transmission Corp. (at 22); United Gas Pipeline Co. (at 25-26); Transcontinental Gas Pipeline Corp. (at 24); Western Gas Interstate (at 12); and ARKLA Energy Resources (at 13).

¹² See the Phases II and III comments of East Tennessee Group (at 28) (current take-or-pay responsibilities should be shared between pipeline and customer) and the Wisconsin Distributors Group (at 17-19).

¹³ See the Phases II and III comments of Peoples Gas Light and Coke (at 39-40) and Pacific Gas Lighting Corp. (at 22).

¹⁴ See the Phases II and III comments of Northern Illinois Gas Co. (at 14-15) and the American Gas Association (at 27).

⁵ Energy Information Administration, Department of Energy, *Natural Gas Monthly* (January 1985) (Table 23).

⁶ Energy Information Administration, Department of Energy, *Statistics of Interstate Natural Gas Pipeline Companies* (1983) (Table 20).

⁷ Interstate Natural Gas Association of America, "The Gas Contracts Problem: Results of an INGAA Survey" (May 1983); Natural Gas Supply Association, "Analysis of the Take-or-Pay Problem," Prepared by Foster Associates, Inc. (March 1984).

End users who addressed this question mostly agreed that customers ought to be responsible for take-or-pay costs, but only firm sales customers on whose behalf such costs were incurred. Thus, transportation and interruptible customers should not bear any take-or-pay related costs.¹⁵

The commenters frequently did not distinguish between prepayments made pursuant to a contract that may have been (or may be) forfeited because of the inability to make up the prepaid gas and payments made as full or partial consideration to revise a contract. We find that distinction significant, however, and adopt the present policy regarding the latter type of payment only.

New § 2.76(a) of our statement of general policy and interpretation declares:

A first seller of natural gas that receives payments as consideration for amending or waiving the take-or-pay or similar minimum payment provisions of a contract for the first sale of natural gas is not in violation on section 504(a) of the NGPA.

This conclusion of law flows straight from the NGPA. Section 504(a) makes it unlawful for any person "to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this Act." The maximum lawful prices themselves are set forth in sections 102 to 109 of the Act. In each case the maximum lawful price is imposed on the "first sale" of natural gas only. The term "sale" is defined by section 2(20) to include any "sale, exchange, or other transfer for value." The term "first sale" is defined by section 2(21) to encompass the sales of "any volume of natural gas" to or by specified entities.

It appears plain that nowhere in the NGPA did Congress establish statutory ceilings on payments which purchasers of natural gas may make to producers for the purpose of resolving past or future liability for actual or potential breaches of contract, not for paying a "first sale" price for "natural gas" "delivered" during a particular month.

The fact that there are no statutory ceilings under the NGPA on such payments does not mean that such payments are exempt from regulatory review. Rather, they assume the status of countless other types of expenses for unregulated goods and services which pipelines incur in the course of their business operations.

Indeed the simplest analogy would be to an electric utility which purchases coal to generate electricity and makes

all its sales subject to our jurisdiction under the Federal Power Act. As to price, coal is a wholly unregulated commodity, similar to price-decontrolled natural gas supplies at the wellhead. A jurisdictional electric utility that entered into long term contracts for the purchase of coal might find itself with more coal than it could use. It might negotiate with its coal suppliers and make payments to terminate or modify its purchase obligations. The utility could file under section 205 of the FPA to recover these payments from its jurisdictional customers. The customers would have the opportunity to review and contest the prudence of the utility's action. While there is a presumption of prudence that may attach, the ultimate burden of establishing prudence is on the filing utility.¹⁶

The same approach applies under section 4 of the NGA. This is now spelled out in § 2.76 (b)-(d).

Finally, we note that in some instances, subsequent Commission action under section 7 of the NGA may be required to effectuate contract renegotiations. This arises from the fact that the sale of some gas remains subject to our NGA jurisdiction. For example, if a pipeline were to agree with a producer to terminate their contract so that the producer could seek alternative markets for its gas, the producer would require abandonment authorization under section 7(b) of the NGA. Similarly, if the agreement included a modification of the contract terms, the producer might be required to seek an amendment to its certificate issued under section 7(c) of the NGA.

It would appear that, as a general matter, the public interest will be furthered by expeditiously granting the required regulatory approvals under these circumstances. This policy is set forth in § 2.76(e).

V. Conclusion

The Commission is well aware of the industry's ongoing efforts to adjust the underlying wellhead contracts to better reflect current market realities. We believe that one workable approach to this problem is the payment of one-time

non-recoupable amounts in exchange for contractual revision or termination. We intend the present policy statement to provide guidance to the public as efforts continue to adapt to the partial removal of wellhead price controls, pursuant to Congressional mandate.

VI. Public Procedure and Effective Date

In accordance with section 4(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), the Commission finds that public notice and comment on this statement of policy and interpretive rule are unnecessary. Insofar as the amendment to Part 2 of the Commission's regulations is not merely procedural in nature, it is a statement of policy and interpretive rule that articulates the Commission's policy disposition and does not have the force and effect of law. Although the Commission is mindful that application of this policy in individual cases must be supported as if the policy had not been issued, it expects that, where appropriate, this approach to disposing of the type of payments discussed above will apply to Commission proceedings.

In accordance with section 4(d)(2) of the APA (5 U.S.C. 553(d)(2)), this statement of policy and interpretive rule is effective immediately.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 2, Chapter I, Title 18 of the Code of Federal Regulations, is amended as set forth below.

By the Commission,
Kenneth F. Plumb,
Secretary.

1. The authority citation for Part 2 is added to read as follows:

Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Exec. Order No. 12009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 792-825r (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 432-436i (1978), unless otherwise indicated.

2. The Table of Contents of Part 2 is amended by adding a new § 2.76, to read as follows:

¹⁵ *Southern California Edison Co.*, 8 FERC ¶ 61,190 (1979), *aff'd sub nom. Cities of Anaheim, et al.*, v. FERC, 609 F.2d 779, 800-801 (D.C. Cir. 1981); *New England Power Co.*, 8 FERC ¶ 61,064 (1979), *aff'd sub nom. NEPCO Municipal Rate Committee v. FERC*, 668 F.2d 1327 (D.C. Cir. 1981), *cert. denied*, 457 U.S. 1117 (1982); *Northern States Power Co.*, Opinion No. 134, 17 FERC ¶ 61,196 (1981), *aff'd sub nom. South Dakota Public Utilities Commission v. FERC*, No. 82-1276 (8th Cir. Oct. 19, 1982); *Pennsylvania Power Co.*, 26 FERC ¶ 61,354 (1984); *Public Service Co. of New Hampshire*, 6 FERC ¶ 61,299 (1979); and *Minnesota Power & Light Co.*, 11 FERC ¶ 61,313 (1980).

¹⁶ See the Phases II and III comments of Process Gas Consumers Group and American Paper Institute.

PART 2—GENERAL POLICY AND INTERPRETATIONS

Statements of General Policy and Interpretations Under the Natural Gas Act

Sec.

2.76 Regulatory treatment of payments made in lieu of take-or-pay obligations.

3. Section 2.76 is added to read as follows:

§ 2.76 Regulatory treatment of payments made in lieu of take-or-pay obligations.

With respect to payments made to a first seller of natural gas as consideration for waiving or revising any agreement for the first sale of natural gas, as defined by section (2)(21) of the Natural Gas Policy Act (NGPA), the Commission sets forth the following statement of general policy and interpretation of law.

(a) *Payments in consideration.* A first seller of natural gas that receives payments as consideration for amending or waiving the take-or-pay or similar minimum payment provisions of a contract for the first sale of natural gas is not in violation of section 504(a) of the NGPA.

(b) *Recovery in rates.* A pipeline that makes any payments referred to under paragraph (a) to first sellers may file to recover such costs in any section 4(e) rate filing other than a filing to recover purchased gas costs.

(c) *Case-specific review.* A pipeline's method of recovering these costs and how it should apportion them among customers will be addressed on a case-by-case basis in the context of individual rate case filings.

(d) *Customers' rights.* When a pipeline seeks to recover payments referred to under paragraph (a) of this section, its customers will have the full opportunity contemplated by section 4 of the Natural Gas Act to raise questions as to the prudence of such payments, the apportionment of costs among customers proposed by the filing pipeline, and any other reasonably related matters.

(e) *Certificate amendments and abandonment.* With regard to natural gas the sale of which is subject to the Commission's jurisdiction under the Natural Gas Act, if any payments referred to under paragraph (a) of this section are accompanied by a change in or a termination of, the first seller's contractual obligation to provide natural gas service, the Commission will, as a general policy under sections 7(c) and

(b) of the Natural Gas Act, expeditiously grant any certificate amendments or abandonment authorizations required to effectuate such contractual or service modifications.

[FR Doc. 85-9843 Filed 4-23-85; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 78N-0281]

GRAS Status of Magnesium Carbonate, Magnesium Chloride, Magnesium Hydroxide, Magnesium Oxide, Magnesium Phosphate, Magnesium Stearate, and Magnesium Sulfate

Correction

In FR Doc. 85-8142, beginning on page 13557, in the issue of Friday, April 5, 1985, make the following corrections:

§ 184.1425 [Corrected]

1. On page 13559, first column, seventh line of § 184.1425(c)(1), "\$ 180.3" should have read "\$ 170.3".

§ 184.1426 [Corrected]

2. Also on page 13559, first column, third line of § 184.1426(b), "p. 117" should have read "p. 177".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300113A; FRL-2823-2]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Mono and Dialkyl (C₈-C₁₈) Methylated Ammonium Chloride Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts mono- and dialkyl (C₈-C₁₈) methylated ammonium chloride compounds, where the alkyl group(s) are derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids, from the requirement of a tolerance when used as inert ingredients (surfactants and related adjuvants of surfactants) in pesticide formulations. This regulation was requested by Akzo Chemie America.

EFFECTIVE DATE: Effective on April 24, 1985.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460
Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of February 13, 1985 (50 FR 6011), which announced that Akzo Chemie America, McCook, IL 60025, had requested that 40 CFR 180.1001(d) be amended by expanding the existing exemption from the requirement of a tolerance from "dialkyl (C₈-C₁₈) dimethyl ammonium chloride, (C₈-C₁₈) groups from tallow" to "mono- and dialkyl (C₈-C₁₈) methylated ammonium chloride compounds, where the alkyl group(s) (C₈-C₁₈) are derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids." The existing exemption is listed for use as surfactants and related adjuvants of surfactants in pesticide formulations applied to growing crops only. The amendment would also be for use as surfactants and related adjuvants of surfactants. A separate entry is not necessary in order to reflect this change.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 182.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nonoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, these ingredients are useful and do not pose a hazard to humans or the environment.

There were no comments or requests for referral to an advisory committee

received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption for the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: April 10, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(d) is amended by removing the entity "dialkyl (C₈-C₁₈) dimethyl ammonium chloride, (C₈-C₁₈) group from tallow." and alphabetically inserting the following entry, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(d) * * *

Inert ingredients	Limits	Uses
Dialkyl (C ₈ -C ₁₈) dimethyl ammonium chloride, (C ₈ -C ₁₈) group from tallow. [Deleted].		Surfactants, related adjuvants of surfactants. [Deleted].
Mono and dialkyl (C ₈ -C ₁₈) methylated ammonium chloride compounds, where the alkyl group(s) (C ₈ -C ₁₈) are derived from coconut, cottonseed, soya, tallow, or hogtail fatty acids.		Surfactants, related adjuvants of surfactants.

[FR Doc 85-9602 Filed 4-23-85; 8:45 am]

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40 CFR Part 180

[OPP-300114A; FRL-2823-3]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Sodium Benzoate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts sodium benzoate from the requirement of a tolerance when used as an inert ingredient (anticaking agent, stabilizer, preservative) in pesticide formulations. This regulation was independently requested by American Cyanamid Co. (for use as an anticaking agent) and Fairfield American Corp. (for use as a stabilizer/preservative).

EFFECTIVE DATE: Effective on April 24, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the *Federal Register* of February 13, 1985 (50 FR 6012), which announced that the American Cyanamid Co., Wayne, NJ 07470, and the Fairfield American Corp., Frenchtown, NJ 08825, had requested that 40 CFR 180.1001(e) be amended by establishing an exemption from the requirement of a tolerance for sodium benzoate when used as an anticaking agent (American Cyanamid Co.) or stabilizer/preservative (Fairfield American Corp.) in pesticide formulations applied to animals.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers; and

emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a (e)))

Dated: March 21, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(e) * * *

Inert ingredients	Limits	Uses
Sodium benzoate (CAS Registry No. 532-32-1).		Anticaking agent/stabilizer/preservative.

[FR Doc. 85-9601 Filed 4-23-85; 8:45 am]

BILLING CODE 5560-50-M