DATE: Complaint issued Dec. 16, 1983. Decision issued Nov. 12, 1986.[1].

FOR FURTHER INFORMATION CONTACT: FTC/B-921, Patricia A. Bremer, Washington, DC 20580. (202) 724-1668.

SUPPLEMENTARY INFORMATION: On Friday, February 7, 1986, there was published in the Federal Register, 51 FR 4758, a proposed consent agreement with analysis In the Matter of Roswil, Inc., a corporation, trading and doing business as Ramey Super Markets, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.365 Employees and competitors. Subpart—Combining or Conspiring: § 13.384 Combining and conspiring; § 13.395 To control marketing practices and conditions; § 13.475 To restrict competition in buying. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-25 Displays, inhouse.

List of Subjects in 16 CFR Part 13

Grocery stores, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-27114 Filed 12-2-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Rel. No. SAB-66]

Staff Accounting Bulletin No. 66

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This Staff Accounting Bulletin (SAB) amends Topic 11.H. with respect to deposit/relending arrangements between U.S. banks and debtors in certain foreign countries, and rescinds other portions of Topic 11.H. that were originally published in SAB Nos. 49 and 49A. The rescinded portions are no longer needed because the substance of that guidance has been codified in Industry Guide 3, "Statistical Disclosure by Bank Holding Companies".

DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Wayne G. Pentrack or Edmund Coulson, Office of the Chief Accountant (202-272-2130) or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal Securities laws.

Jonathan G. Katz,

Secretary.

Staff Accounting Bulletin No. 66

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 66 to the Table found in Subpart B.

The staff hereby amends Topic 11.H. in the Staff Accounting Bulletin Series, "Disclosures by Bank Holding Companies Regarding Certain Foreign Loans".

Topic 11.H.: Disclosures by Bank Holding Companies Regarding Certain Foreign Loans

1. Deposit/relending arrangements

Facts: Certain foreign countries experiencing liquidity problems, by agreement with U.S. banks, have instituted arrangements whereby borrowers in the foreign country may remit local currency to the foreign country's central bank, in return for the central bank's assumption of the borrowers' non-local currency obligations to the U.S. banks. The local currency is held on deposit at the central bank, for the account of the U.S. banks, and may be subject to relending to other borrowers in the country. Ultimate repayment of the obligations to the U.S. banks, in the requisite non-local currency, may not be due until a number of years hence.

Question: What disclosures are appropriate regarding deposit/relending arrangements of this general type?

Interpretive Response: The staff emphasizes that it is the responsibility of each registrant to determine the appropriate financial statement treatment and classification of foreign outstandings. The facts and circumstances surrounding deposit/relending arrangements should be carefully analyzed to determine whether the local currency payments to the foreign central bank represent collections of outstandings for financial reporting purposes, and whether such outstandings should be classified as nonaccrual, past due or restructured loans pursuant to Item III.C.1. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies ("Guide 3").

The staff believes, however, that the impact of deposit/relending arrangements covering significant amounts of outstandings to a foreign country should be disclosed pursuant to Guide 3, Item III.C.3., Instruction (6)(a).[1] The disclosures should include a general description of the arrangements and, if significant, the amounts of interest income recognized for financial reporting purposes which has not been remitted in the requisite non-local currency to the U.S. bank.

[FR Doc. 86-27121 Filed 12-02-86; 8:45 am]

BILLING CODE 8010-01-M

[1] Instruction (6)(a) calls for description of the nature and impact of developments in countries experiencing liquidity problems which are expected to have a material impact on timely repayment of principal or interest. Additionally, Instruction (6)(d)(ii) to Item III.C.3. calls for disclosure of commitments to relend, or to maintain on deposit, arising in connection with certain restructurings of foreign outstandings.

---

17 CFR Parts 231 and 241

[Release Nos. 33-6677, 34-23846; FR-27; File No. S7-19-86]

Amendments to Industry Guide Disclosures by Bank Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission has authorized amendments to the Industry Guides for Statistical Disclosure by Bank Holding Companies, regarding disclosures of outstandings to borrowers

in certain foreign countries experiencing liquidity problems that are expected to have a material impact on timely repayment of principal or interest, and certain restructurings of outstandings to those countries. Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff.

EFFECTIVE DATE: The amendments are effective for filings containing, or incorporating by reference, financial statements for fiscal periods ending on or after December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Wayne G. Pentrack or Edmund Coulson, Office of the Chief Accountant, (202–272–2130), or Howard P. Hodges, Jr., Division of Corporation Finance, (202–272–2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Commission has authorized amendments ("the amendments") to the Industry Guides for Statistical Disclosure by Bank Holding Companies ("Guide 3"), regarding disclosure of outstandings [1] to borrowers in certain foreign countries experiencing liquidity problems that are expected to have a material impact on timely repayment of principal or interest ("liquidity problems"),[2] and certain restructurings of outstandings to those countries.

The amendments call for a tabular analysis of changes in aggregate outstandings to each country experiencing liquidity problems, if the aggregate amount exceeds one percent of the registrant's total assets. The analyses are to include amounts of new outstandings, collections of principal and interest, interest income accrued, and other changes. If material amounts of outstandings to such countries are restructured (or if an agreement in principle for restructuring has been reached), the amendments call for tabular presentations of pre- and post-restructuring maturities and interest rates on the restructured amounts, disclosure of commitments arising in connection with the restructurings, and disclosure of amounts removed or expected to be removed from nonaccrual status as a result of the restructurings. The amendments are intended to enable users of bank holding company ("BHC") financial reports ("users") to better assess BHCs' exposures to certain foreign countries, the nature of changes in those exposures, and the impact of significant restructurings of those exposures. The amendments are based largely on views of the Commission staff previously expressed in interpretive letters regarding disclosures of significant foreign debt restructurings.

II. Consideration of Comments Received in Response to Proposed Amendments

The amendments were originally proposed on July 31, 1986, in Release No. 33–6654. Sixteen letters of comment were received in response to the proposed amendments. The respondents were generally supportive of the proposal's efforts to codify meaningful, uniform and concise disclosure guidance; however, most respondents suggested changes to one or more provisions of the proposal. The following paragraphs summarize the main points raised by the respondents, and changes from the proposed amendments that were adopted in consideration of their views.

A. Analysis of Changes in Aggregate Outstandings

1. Need for tabular analysis of changes.—Several respondents questioned the need for the proposed tabular analyses of changes in outstandings. They suggested either that only the net change should be disclosed, that the changes could be described in narratives or in tabular presentations other than proposed tabular format, or that disclosures relating to changes are not necessary because only the amount of exposure at the end of each reported period is relevant to assessments of risk.

As stated in the proposing release, the amendments are intended to elicit uniform, concise disclosures of whether and, if so, how BHCs' exposures have changed. The final amendments retain the proposed tabular format for analyses of changes (modified as described below) to meet the objectives of uniformity and conciseness. Narrative disclosures, of course, should appropriately supplement the tabular analyses when necessary to provide adequate descriptions or to prevent them from being misleading. Furthermore, the final amendments retain the proposed reporting of gross changes (except with respect to certain short-term outstandings, as described below) in order to portray how reported amounts of exposures have changed (e.g., by relending, on a long-term basis, principal that matured in the current year or interest that was due in the current year).

2. Distinction between public and private sector amounts.—The proposed amendments called for changes in public and private sector outstandings to be analyzed separately.

Several respondents suggested that the informational value of this distinction would not justify its preparation cost because liquidity problems in any particular country would be expected to have similar effects on each type of borrower.

Other respondents noted that separate analyses of public and private sector amounts could create misleading impressions regarding the effects of deposit/relending agreements in certain foreign countries. Pursuant to such agreements (which may vary from country to country), local currency payments on private sector debt owed to a U.S. bank may be placed on deposit in the foreign country's central bank, for the account of the U.S. bank, subject to relending to other private sector borrowers in the country until sufficient amounts of non-local currency can be raised for remittance out of the country in satisfaction of the obligation to the U.S. bank. Several respondents suggested that reporting the gross components of deposit/relending activities with the private sector debtors (i.e., reporting the collection [3] from the original private sector borrower and the relending to a different private sector borrower) *and* the public sector party (i.e., reporting the increase and decrease in outstandings to the foreign central bank due to the temporary deposit) could mislead users to believe that long-term lending transactions with public sector borrowers are taking place.

In consideration of those comments, the final amendments call for analyses

[1] Outstandings to a foreign country (or "cross-border outstandings") are defined by Instruction (1) to Item III.C.3. of Guide 3 to include those loans, accrued interest, acceptances, interest-bearing deposits or investments, and other monetary assets which are denominated in U.S. dollars or other non-local currency, and those which are denominated in local currency if not hedged or funded by local borrowings.

[2] The provisions of Guide 3 distinguish liquidity problems from credit problems in countries that are currently unable to fully service their debts. Unlike credit problems, liquidity problems (i.e., current inability to raise sufficient amounts of the requisite currency to meet principal or interest repayment obligations to U.S. banks) do not necessarily affect the assessment of whether loans will ultimately be uncollectible. The amendments do not affect current guidance regarding disclosure of loans beset by credit problems.

[3] As stated in Staff Accounting Bulletin No. 49A (as amended), deposit/relending transactions require careful analysis of the surrounding facts and circumstances for purposes of determining whether collections have occurred for financial reporting purposes and whether the private sector outstandings should be classified as past due or nonaccrual loans.

of changes in outstandings to each country on an aggregate basis, rather than separately as to public and private sector portions.

3. Distinction between long- and short-term outstandings.—The proposed amendments made no distinction between long- and short-term outstandings. Several respondents suggested that reporting the gross changes in short-term trade credits and interbank deposits, which may mature and be renewed several times annually, within the proposed tabular format would not be particularly meaningful and could mislead users to believe that major amounts of long-term outstandings were being repaid and reextended.

In consideration of those comments, the analyses of changes in outstandings called for by the final amendments are to include only the net changes in trade credits and interbank deposits which, at the time they were extended, had maturities of one year or less ("short-term outstandings"). Gross changes are to be reported with respect to all other outstandings. The tabular analysis should be supplemented with the portion of aggregate outstandings to each country, at the end of the reported period, that represents short-term outstandings.

4. Description of "other changes".—The proposed amendments called for descriptions of significant changes in outstandings other than the changes reported as new outstandings, collections, and accruals of interest. Several respondents suggested that specific descriptions of reductions in BHCs' reported exposures to particular countries, resulting from sales, swaps or charge-offs of outstandings, could disadvantage BHC's efforts to collect what is legally due from debtors in those countries.

In consideration of these comments, the final amendments do not include a specific requirement for inclusion of a description of "other changes". However, a description of the components of amounts reported as "other changes" would be required to the extent that such information is material to an understanding of results of operations or financial condition, or is necessary to make information otherwise included in the filing not misleading.

5. Disclosure of off-balance sheet exposure.—Several respondents suggested that the final amendments should call for disclosure of exposures to countries experiencing liquidity problems, such as commitments for additional lending or letters of credit, that are not reported as outstandings.

No such specific provision has been added to the final amendments because Instruction (1) to Item III.C.3. of Guide 3 already calls for separate disclosure of material commitments to borrowers in foreign countries.

6. Amounts of interest accrued and collected.—Several respondents suggested that the language of proposed Instruction (6)(c) to Item III.C.3. should be clarified.

That instruction called for disclosure of the amount of interest recognized as income and the amount of interest collected on the outstandings to each country, if such amounts are not approximately equal to the amounts reported as "interest income accrued" and "collections of accrued interest", respectively, in the tabular analysis of changes in outstandings to each country.

Such disclosure would be called for (i.e., the amounts would not be approximately equal to the amounts reported in the tabular analysis) when interest is collected on outstandings that are on nonaccrual status. The collection would not normally be reflected in the "collections" that are reported in the tabular analysis, because the collection would not normally represent a reduction in the reported amount of outstandings (i.e., the collection would not result in a reduction of accrued interest, because the interest collected had not been accrued).[4] Similarly, any income recognized upon collection would not be reflected in the amount of "interest income accrued" that is reported in the tabular analysis. In these circumstances, failure to disclose total amounts of interest income recognized and collected on outstandings to a particular country could create mistaken impressions that only the amounts shown in the tabular analysis were recognized and collected. The final amendments reflect revised language, but not a change in the intent, of this instruction.

B. Disclosures Regarding Restructurings

1. *Tentative agreements to restructure.*—The proposed amendments called for specific disclosures regarding restructuring terms when material amounts of outstandings are restructured or upon tentative agreements to restructure. Several respondents suggested that the applicability of the phrase "tentative agreements" should be clarified. Others suggested that the disclosures should be provided only upon execution of restructuring agreements because the actual terms of restructurings cannot be known until that time.

The major foreign loan restructuring agreements over the past few years have been negotiated between the debtors and negotiating committees organized by creditor banks. Typically, these parties reach agreements in principle regarding the amounts of outstandings to be restructured and the new maturity and interest rate terms for those outstandings, which are subject to approval by the creditor banks. Given that the amendments call for specific disclosures of restructuring terms only with respect to material portions of outstandings to countries experiencing liquidity problems, such an agreement in principal represents a potentially significant event for creditor banks for purposes of providing disclosure.

Accordingly, the final amendments have been clarified to call for specific disclosures regarding restructuring terms upon the reaching of such an agreement in principle (or its equivalent).

2. *Tabular presentation of pre- and post-restructuring terms.*—The proposed amendments called for tabular disclosure of pre- and post-restructuring terms, and provided an example tabular presentation of the minimum disclosure regarding the affected outstandings and the impact on maturities and interest rates. Several respondents suggested that flexibility should be expressly permitted for presentations of weighted average maturities and interest rates, or equivalent data, within the table. For example, some suggested that disclosure of the range of maturities should be permitted, either to supplement or in place of the weighted average maturities. Others suggested that if interest rates are variable, disclosing the weighted average spread from the applicable index would be more meaningful than disclosing what those rates happen to be as of any particular reporting date, and questioned whether the proposal was intended to preclude such disclosure.

The example presentation provided in the proposal was intended to illustrate one concise tabular format for disclosing the minimum information that was felt necessary for portraying the overall impact of changes in maturities and interest rates on restructured outstandings, rather than to mandate any particular tabular format. Supplementing weighted average

[4] The AICPA Audit Guide, *Audits of Banks*, calls for collections of interest on nonaccrual loans to be recognized as reductions of loan principal rather than as interest income if ultimate collectibility of loan principal, wholly or partially, is in doubt. In such cases, collections of interest that had not been accrued *would* be reflected as reductions of reported amounts of outstandings in the tabular analysis.

maturities and interest rates with ranges of maturities and interest rates would not be precluded; however, presentation of ranges without weighted averages would not necessarily enable users to assess the overall impact of restructurings (unless the ranges are very narrow). Alternatively, individual years of maturities could be disclosed with respect to discernable portions of restructured outstandings, along with the interest rates on those portions.

The final amendments clarify that the example format is not intended to preclude alternative tabular formats, provided that the format used presents either the prescribed minimum weighted average disclosures or actual maturities and interest rates on discernible amounts of outstandings. Also, if interest rates are variable, the disclosure should specify the applicable index and the weighted average (or actual) spread from that index.

C. *Troubled debt restructurings.*—The proposed amendments called for disclosures regarding restructurings of foreign outstandings irrespective of whether they are troubled debt restructurings ("TDRs") as defined in Statement of Financial Accounting Standards No. 15 ("FAS 15").[5] On that basis, it was proposed that restructurings disclosed pursuant to the proposed amendments and which occurred for reasons unrelated to concerns as to ultimate collectibility need not be reported as TDRs pursuant to Item III.C.1.(c) of Guide 3. Item III.C.1. calls for reporting of aggregate amounts of what are commonly referred to as "nonperforming" loans which include, among other categories, loans that are TDRs.

Several respondents requested clarification as to whether the proposed amendments were intended to supercede or modify the accounting and/or disclosure requirements of FAS 15 for purposes of complying with generally accepted accounting principles ("GAAP"). Others suggested that the need to determine whether a foreign debt restructuring is a TDR should not depend on whether the restructuring occurred due to credit problems or liquidity problems.

The proposal was not intended to suggest that FAS 15 should be interpreted as not applicable to foreign debt restructurings that occur due to liquidity problems, nor was it intended to supercede or modify the accounting and/or disclosure requirements of GAAP with respect to TDRs. Thus, BHCs and their auditors would still need to assess whether a foreign debt restructuring is a TDR for purposes of complying with GAAP requirements.

As stated in the proposing release, (a) there may be practical difficulties in determining whether certain foreign debt restructurings are TDRs and what disclosures should be provided if they are deemed TDRs,[6] and (b) the proposed disclosures were intended to enable users to assess for themselves whether restructured foreign outstandings are "nonperforming" loans. On that basis, the separate disclosure regarding foreign restructurings was proposed to avoid the possibility of having particular restructurings of foreign outstandings reported twice within the Guide 3 disclosure (i.e., pursuant to both the new instruction (6)(d) to Item III.C.3. and, if TDRs, Item III.C.1.(c)). The final amendments retain the provision that restructurings disclosed pursuant to the new instruction, and which occurred for reasons unrelated to concerns about ultimate collectibility, need not be disclosed pursuant to Item III.C.1.(c).

D. *Updating of disclosures.*—Several respondents suggested that applicability of General Instruction 3 of Guide 3 should be clarified in regard to the need for providing the disclosures called for by the amendments in quarterly reports and for updating the disclosures in subsequent periodic reports. Others suggested that the status of Staff Accounting Bulletin ("SAB") No. 49A should be clarified. SAB No. 49A provided guidance for disclosures regarding developments, such as restructurings and implementation of deposit/relending mechanisms, occurring subsequent to the initial disclosures of outstandings to countries experiencing liquidity problems.

Disclosures regarding aggregate outstandings to an individual country experiencing liquidity problems (i.e., those called for by Instructions (6)(b) and (6)(c) to Item III.C.3. of Guide 3) should initially be made in the first periodic report (quarterly or annual) covering a period during which the disclosure threshold specified in Instruction (6)(b) is met. Subsequent to the initial disclosure, those disclosures should be provided in each annual report as long as the disclosure threshold continues to be met with respect to that country as of the end of the annual period. The disclosures need not be provided in subsequent quarterly reports unless (a) they had not been provided in the most recent annual report, (b) there have been material changes in outstandings to that country, or (c) updated disclosure is necessary to keep information previously disclosed from being misleading.

Disclosures regarding restructurings (i.e., those called for by Instruction (6)(d) to Item III.C.3. of Guide 3) should initially be provided in the first quarterly and annual reports filed after an agreement in principle for restructuring is reached. The disclosures should be updated in the first quarterly and annual reports filed after the agreement in principle is either significantly modified or finally executed.

Concurrently with the issuance of this release, the Commission's staff is rescinding the portions of SAB Nos. 49[7] and 49A which have been codified in Guide 3.

E. *Costs/benefits.*—Several respondents questioned whether their costs to provide the proposed disclosures would be justified by benefits to users.

Four BHCs stated that their costs would be substantial, primarily with regard to the proposed tabular analysis of changes in outstandings. Three of those four BHCs responded to telephone inquiries from the Commission's staff regarding the impact on costs of modifications from the proposal which are reflected in the final amendments. One stated that the modifications would result in no incremental costs being incurred to provide the disclosures; the other two stated that their incremental costs would be significantly lessened.

One BHC stated in its comment letter that the cost of compliance would be minimal.

The proposed tabular analysis of outstandings was designed to present information that has been disclosed in the past few years by most of the BHCs that are expected to be affected by the amendments. Pursuant to interpretive letters issued by the Commission's staff, these BHCs have been disclosing aggregate outstandings at the beginning

[5] FAS 15, *Accounting by Debtors and Creditors for Troubled Debt Restructurings* (Financial Accounting Standards Board, 1977), states that a TDR occurs if a creditor, for economic or legal reasons related to a debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider.

[6] For example, it may be difficult to assess whether the post-restructuring interest rate is below market rates for similar loans, because there may be no sources of significant amounts of new loans to the country, other than the lenders participating in the restructuring. FAS 15 calls for disclosures regarding TDRs that are effected through modifications of terms (e.g., interest rates and/or maturities) only if the post-restructuring interest rates are below market rates.

[7] The substance of SAB 49, regarding disclosure of loans to countries experiencing liquidity problems, had been codified in Guide 3 with the issuance of Financial Reporting Release No. 13 in August 1983.

and end of reported periods, new outstandings, and collections of principal and interest. Thus, the only incremental information called for by the amendments is the net amount of other types of changes in outstandings, which is the mathematical result of reconciling the previously disclosed data in tabular form. Furthermore, preparation costs are expected to be lessened because the tabular analyses called for by the final amendments do not retain the distinction between public and private sector outstandings and the reporting of gross changes in short-term outstandings that were originally proposed.

For these reasons, and because the amendments are unlikely to affect a large number of BHCs, it is felt that the amendments are unlikely to result in substantial incremental costs.

III. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 1982) is updated to:

1. Add a new § 401.08.e.i., entitled "Outstandings to Countries Experiencing Liquidity Problems".

2. Include in § 401.08.e.i. the portions of this release designated as section I. (Executive Summary), section II.A.4. (Description of "other changes"), section II.C. (Troubled Debt Restructurings), and II.D. (Updating of Disclosures); identified respectively as follows:

a. Executive Summary,

b. Description of "Other Changes,"

c. Troubled Debt Restructurings,

d. Updating of Disclosures.

IV. Text of Amendments

List of Subjects in 17 CFR Parts 231 and 241

Accounting, Reporting and Recordkeeping requirements, Securities.

The Industry Guides and 17 CFR Chapter II are hereby amended as follows:

Securities Act Industry Guides

1. By revising the Securities Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] by revising Instruction (4) to Item III.C.1., and revising Instruction (6) to Item III.C.3., to read as follows:

Guide 3—Statistical Disclosure by Bank Holding Companies

* * * * *

III. Loan Portfolio.

* * * * *

C. Risk Elements.

* * * * *

1. Nonaccrual, past due and restructured loans.

* * * * *

Instructions.

* * * * *

(4) No loans shall be excluded from the amounts presented, except that loans to foreign borrowers which are restructured for reasons other than concerns as to ultimate collectibility and which are included in amounts disclosed pursuant to Instruction (6)(d) to Item III.C.3. need not be included in amounts reported pursuant to Item III.C.1.(c). Supplemental disclosures may be made to facilitate understanding of the aggregate amounts reported. These disclosures may include, for example, information as to the nature of the loans, any guarantees, the extent of collateral, or amounts in process of collection.

* * * * *

3. Foreign Outstandings.

* * * * *

Instructions.

* * * * *

(6) Where current conditions in a foreign country give rise to liquidity problems which are expected to have a material impact on the timely repayment of principal or interest on the country's private or public sector debt, furnish:

(a) A description of the nature and impact of such developments.

(b) An analysis of the changes in aggregate outstandings to borrowers in each such country (except that a country need not be included if aggregate outstandings to all borrowers in the country at the end of the most recent reported period do not exceed 1% of total assets), for the most recent reported period, in the following format:

	Country A	Country B
Aggregate outstandings at (beginning of period)	$X	$X
Net change in short-term outstandings	X	X
Changes in other outstandings:		
Additional outstandings	X	X
Interest income accrued	X	X
Collections of:		
Principal	X	X
Accrued interest	X	X
Other changes	X	X
Aggregate outstandings at (end of period)	X	X

For purposes of the above table, short-term outstandings are trade credits and interbank deposits (and similar items) which, at the time they were extended, had maturities of one year or less. This table should be supplemented with the amounts of short-term outstandings that are included in the end-of-period aggregate amounts reported for each country.

(c) the total amounts recognized as interest income and the total amounts of interest collected during the most recent reported period on all outstandings to each country disclosed pursuant to subpart (b) of this Instruction, if such totals are significantly different from the amounts disclosed pursuant to subpart (b) on the lines entitled "Interest income accrued" and "Collections of accrued interest", respectively. (The amounts might be different if, for example, all or a portion of the outstandings were on a nonaccrual basis.)

(d) the following information, if a material portion of the outstandings to any country that is identified pursuant to subpart (b) of this Instruction is restructured during or subsequent to the most recent reported period, or if a material portion may be subject to restructuring pursuant to an agreement in principle (or its equivalent) which has been reached between the debtor and the registrant (or a committee organized by creditor banks to negotiate such an agreement in principle or its equivalent):

(i) information describing the pre- and post-restructuring repayment terms of the affected outstandings, including at a minimum the following (in tabular format such as the following):

	Country A	Country B
Amount restructured (or subject to restructuring)	$X	$X
Weighted average year of maturity (including any grace periods):		
Pre-restructuring	19XX	19XX
Post-restructuring	19YY	19YY
Weighted average interest rate:		
Pre-restructuring (percent)	X	X
Post-restructuring (percent)	Y	Y

Alternative tabular formats are not precluded, provided that the minimum data presented above (or their equivalent) is presented. Supplementing weighted average maturites and interest rates with ranges of maturities and interest rates is not precluded; however, ranges should not be presented without also presenting weighted averages (unless the ranges are very narrow). Alternatively, individual years of maturities could be disclosed with respect to discernable portions of restructured outstandings, along with the interest rates on those portions. If interest rates are variable, the applicable index and the weighted average spread from the index should be disclosed in lieu of the actual rates as of any particular date.

(ii) a description of commitments (e.g., new money provisions; agreements to re-lend, or to maintain on deposit, repayments of principal or interest within the country) arising or expected to arise in connection with the restructuring(s).

(iii) the amount of outstandings, separately as to each country, that has been removed or is expected to be removed from nonaccrual status as a result of the restructuring(s).

Disclosures pursuant to subpart (d) should be in reasonable proximity to disclosures pursuant to other subparts of this Instruction, and should be described as subject to change, if applicable.

* * * * *

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. By amending Part 231 by adding this Release to the list of interpretive releases set forth thereunder.

Exchange Act Industry Guides

3. By conforming Exchange Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] to Securities Act Industry Guide 3, amended as described above.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. By amending Part 241 by adding this Release to the list of interpretive releases set forth thereunder.

By the Commission.

Jonathan G. Katz,

Secretary.

November 25, 1986.

[FR Doc. 86-27123 Filed 12-2-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157, 159, 284, and 381

[Docket Nos. RM79-63-000 through 007 and RM82-31-000 through 007 and CP86-143-002; Order No. 433-A]

Fees Applicable to Natural Gas Pipelines; Texas Gas Transmission Corp.

Issued November 24, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing, denying stay, and clarifying and amending the final rule and granting refund.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing, denying stay, clarifying, and amending Order No. 433, which established fees for natural gas pipelines under the Natural Gas Act and the Natural Gas Policy Act of 1978. The Commission denies rehearing because it believes its prior determination that the fees are authorized by the Independent Offices Appropriations Act is correct. Additionally, the Commission grants a refund to Texas Gas Transmission Corporation.

EFFECTIVE DATE: The amendments to the final rule are effective November 24, 1986.

FOR FURTHER INFORMATION CONTACT: Sharon Dameron, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8583.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing, Denying Stay, and Clarifying and Amending the Final Rule and Granting Refund

Issued November 24, 1986.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of Fees Applicable to Natural Gas Pipelines, Docket Nos. RM79-63-000 through 007 and RM82-31-000 through 007 and Texas Gas Transmission Corporation, Docket No. CP86-143-002.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 433,[1] which established fees applicable to natural gas pipeline matters under the Natural Gas Act (NGA).[2] In addition, the Commission clarifies certain aspects of the order, makes several technical corrections and denies requests to stay the effective date of the order.

II. Discussion

In the final rule, the Commission established fees for the services and benefits it provides to natural gas pipelines under the Natural Gas Act and the Natural Gas Policy Act of 1978.[3] The fees were promulgated under the authority of the Independent Offices Appropriation Act of 1952 (IOAA).[4] The IOAA states, in pertinent part, that:

> It is the sense of Congress that each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible.[5]

The Commission received five requests for rehearing, three petitions for stay, and one request for clarification.[6] Petitioners argue that (1) the Commission failed to properly exclude costs that inure to the public benefit in calculating the fees; (2) the Commission failed to demonstrate the relationship between the particular costs for which the Commission seeks reimbursement and the conferring of any special benefit conferred on the regulated company; (3) the direct billing procedures are vague and subject to arbitrary application; (4) the cost basis for the fees is inadequately particularized; (5) the fees improperly discriminate against different classes of end-users; (6) the transportation certificate application fees should be paid by the shippers rather than the pipeline; (7) the final rule is unfair because of the potential adverse impact on end-users served by pipelines not electing to become open-access transporters under Order No. 436; and (8) separate fees for transportation applications and transportation reports constitute unlawful duplicate billing.

In addition, petitioners assert that the final rule is not in compliance with (1) the IOAA; (2) the Regulatory Flexibility Act of 1980; [7] (3) the National Environmental Policy Act of 1969; or (4) the notice requirements of the Administrative Procedure Act (APA) and relevant case law.[8]

Order No. 433 is the fifth in a series of fees rules issued by the Commission.[9] The four preceeding rules were challenged in and upheld by the U.S. Court of Appeals for the Tenth Circuit.[10]

---

[1] 50 FR 40,332 (Oct. 3, 1985) (FERC Statutes and Regulations ¶ 30,662).

[2] 15 U.S.C. 717-717w (1982).

[3] 15 U.S.C. 3301-3432 (1982).

[4] 31 U.S.C. 9701 (1982).

[5] *Id.* In the Omnibus Reconciliation Act of 1986, Pub. L. 99-509, Congress provided that the Commission will collect beginning in fiscal year 1987 and each fiscal year thereafter sufficient fees and annual charges to cover the costs incurred by the Commission in a fiscal year.

[6] Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company jointly (Columbia); The Process Gas Consumers Group, the American Iron and Steel Institute and the Georgia Industrial Group, jointly (Process Gas); United Gas Pipe Line Company (United); The Interstate Natural Gas Association of America (INGAA); and Transcontinental Gas Pipe Line Corporation (Transco). Additionally, the Commission received motions for stay from Columbia; Process Gas Consumers Group, American Iron and Steel Institute, The Georgia Industrial Group, and The Chemical Manufacturers Association, jointly; and Georgia-Pacific Corporation. Transco filed a request for clarification. Lone Star Gas Company filed a motion to intervene, but intervention is unnecessary to participate in a rulemaking. Columbia made a single filing consisting of both a petition for rehearing and a motion for stay. For purposes of clarity, the single filing will be treated herein as two separate filings.

[7] 5 U.S.C. 601-612 (1982).

[8] 5 U.S.C. 553(b)(3) (1982).

[9] See Fees Applicable to Producer Matters under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984), *rehearing denied and rule clarified*, 49 FR 17,435 (April 20, 1984); Fees Applicable to Natural Gas Pipeline Rate Matters, 49 FR 5083 (Feb. 10, 1984), *rehearing denied*, 49 FR 17,435 (April 24, 1984); Fees Applicable to the Natural Gas Policy Act, 49 FR 35,357 (Sept. 7, 1984); and Fees Applicable to General Activities, 49 FR 35,348 (Sept. 7, 1984), *rehearing denied*, 49 FR 44,273 (Nov. 6, 1984).

[10] Phillips Petroleum Company, *et al.* v. FERC, 786 F.2d 370 (10th Cir. 1986), *petition for cert. denied*, 55 U.S.L.W. 3220 (U.S. Oct. 7, 1986) (No. 85-2022).

The methodology used by the Commission in establishing its fees in Order No. 433 is the same methodology which the Commission employed in its four previous fees rules. The issues that petitioners raise on rehearing are virtually the same issues that were raised in the previously challenged rules. In reviewing the previous four fees rules, the U.S. Court of Appeals for the Tenth Circuit addressed the majority of issues which petitioners now raise, and upheld the Commission on all counts. With these considerations in mind, the Commission now turns to issues raised by petitioners.

(A) Public Benefit

Process Gas, United, INGAA and Transco argue that the Commission did not properly exclude costs which inure to the public benefit in calculating the fees. This argument was raised at the appellate level in *Phillips Petroleum Co.*,[11] and summarily rejected. There the court said, relying on prior court precedent,[12] that the full costs of providing a service to regulated entities can be assessed regardless of the benefit flowing to the public.

For this reason, and those discussed in the final rule, the Commission denies rehearing of this issue.

(B) Special Benefit

Process Gas, United, INGAA, and Transco argue that the Commission failed to demonstrate the relationship between the particular costs for which the Commission seeks reimbursement and the conferring of any special benefit on the regulated company.

The Commission believes that the final rule adequately demonstrates the relationship between particular costs and special benefits conferred on the regulated entity. For example, the final rule explains the special benefits which section 7(c) certificates authorizing specific activities and blanket certificates confer on interstate pipelines. The rule also explains that the fee established is designed to recover the cost of review of an application and that the fee established in § 381.208 for activities subject to prior notice procedures under a blanket certificate is less than the fee for a specific section 7(c) certificate because significantly less work per completion is required.[13]

The final rule establishes the relationship between costs and benefits in a manner paralleling that of the four previous fees rules. Petitioners' argument was raised at the appellate level in each of the four previous fees rules and was rejected by the court. The court held "that the Commission did not act arbitrarily or capriciously in demonstrating that its services confer a benefit on fee payors." [14] For this reason, the Commission rejects petitioners' argument.

(C) Direct Billing

Process Gas, United, INGAA, and Transco argue that the Commission's reservation of the direct billing option is subjective, vague, arbitrary, and capricious because the Commission failed to state specific standards for determining when a filing will trigger direct billing. For the reasons discussed below, the Commission believes it provided specific standards that are not subjective, vague, arbitrary, or capricious.

In the final rule, the Commission recognized that a few proceedings may be so extensive in scope and present such complex issues as to require an extraordinary amount of time and effort. In such cases, the fees established in the final rule would bear no reasonable relationship to the Commission's actual cost of the proceeding. The rule therefore reserved the option of "ordering a direct billing procedure pursuant to § 381.107 of its regulations not later than one year after receiving a complete filing from an applicant." [15]

The final rule states that the Commission "will not consider a filing for direct billing unless estimated staff processing time exceeds the average for that type of filing by a factor of five." [16] The rule further states that even if staff processing time is expected to exceed five times the average, the Commission must still determine that the filing is extraordinary before direct billing procedures are instituted. The Trans Alaska Pipeline System case and the Alaska Natural Gas Transportation System application are set forth as examples of the types of extraordinary filings which might be subject to direct billing. The final rule predicts that direct billing will be rare and notes that only one major and highly complicated certificate application was being directly billed at the time of issuance of the final rule. The Commission believes this standard is not subjective, vague, arbitrary or capricious. The issue of direct billing was raised at the appellate level in the four previous fees rules. The direct billing procedure in those rules matched almost verbatim the procedure specified in the final rule in this docket. Upon review, the court stated "We hold that the 'direct billing procedure' established in orders 360, 361, 394, and 395 is in accord with the IOAA and controlling law, and the Commission's procedure is not arbitrary or capricious." [17] The Commission agrees, and for these reasons it believes that petitioners' argument is without merit.

(D) Sufficiency of Data

Process Gas, United, INGAA, and Transco argue that the Commission failed to adequately particularize the cost basis for the fees. They claim that the data placed in the Commission's public files are insuffcent to verify the cost basis for each fee set forth in the final rule.

The Commission believes it provided sufficient data and explanation to justify the cost basis of its rule. The rule itself described in considerable detail the cost basis for these fees, and additional data were placed in the public file for this docket. For example, the final rule states that the cost basis includes "salaries and benefits; travel; transportation of things; rents, communications and utilities; printing; other support services; supplies; and equipment." [18] The Commission notes further that similiar claims were raised in the previous four fees rules decision and were rejected by the court.[19]

(E) True Beneficiary Test

Petitioners argue that the transportation certificate application fees should be paid by the shippers rather than the pipelines, since the shippers are allegedly the true beneficiaries of the transportation services. Petitioners also claim that the final rule improperly discriminates against different classes of end-users. Specifically, petitioners claim that pipelines will inevitably insist upon fee reimbursement clauses in their transportation contracts. Petitioners

---

[11] *Id.* at 378.

[12] National Cable Television Ass'n v. FCC, 554 F.2d 1094 (D.C. Cir. 1976) (National Cable II); Electronic Industries v. FCC, 554 F.2d 1109 (D.C. Cir. 1976); Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980); and its own decision in Nevada Power Co. v. Watt, 711 F.2d 913 (10th Cir. 1983).

[13] 50 FR 40,332, 40,334 (Oct. 3, 1985), (FERC Statutes and Regulations ¶ 30,662, 31,424).

[14] Phillips Petroleum Company, *et al.* v. FERC, 786 F.2d 370 (10th Cir. 1986), *petition for cert.* denied, 55 U.S.L.W. 3220 (U.S. Oct. 7, 1986) (No. 85–2022).

[15] 50 FR 40,332, 40,342, (Oct. 3, 1985) (FERC Statutes and Regulations ¶ 30,662, 31,436).

[16] *Id.*

[17] Phillips Petroleum Company, *et al.* v. FERC, 786 F.2d 370, 379 (10th Cir. 1986), *petition for cert. denied,* 55 U.S.L.W. 3220 (U.S. Oct. 7, 1986) (No. 85–2022).

[18] 50 FR 40,332, 40,338 (Oct. 3, 1985); (FERC Statutes and Regulations ¶ 30,662, 31,429).

[19] *Supra,* n.17.

argue that passing through of the fees to the end-users will adversely affect small end-users because the size of the Commission's fees will make small transportation transactions uneconomical. Petitioners also claim that the final rule has a discriminatory impact upon end-users served by pipelines that do not opt to transport gas under the rules promulgated by Order No. 436.

The Commission rejects the argument that the shippers are the true beneficiaries of the transportation service and should, therefore, be liable for the transportation certificate application fees. Section 7(c) of the NGA requires natural gas companies to obtain certificate authority prior to engaging in the transportation of natural gas subject to the Commission's jurisdiction. The NGA requires that the certificate be obtained by the company transporting the gas, namely the pipeline, and not the shipper. The certificate benefits the pipeline in that it is a statutory prerequisite to transporting gas—a business in which the pipeline is engaged for profit. As the certificate holder, the pipeline is properly assessed with payment of the certificate fee.

As to petitioners' claim that the final rule will have an adverse impact on small end-users, the Commission notes that pipelines can soften the impact of the fee upon small end-users by combining similar section 7 transportation applications for multiple large and small end-users into a single application, thereby incurring a single fee instead of a separate fee for each end-user. The Commission encourages pipelines to act responsibly in their filings and to combine *similar* filings wherever possible so as to lessen the financial impact on their customers.

(F) Duplicate Billing

Columbia argues that separate fees for transportation applications and transportation reports constitutes unlawful duplicate billing. The Commission does not believe it is engaging in duplicate billing since the Commission is not charging two fees for the same service. In particular, the processing of transportation applications and initial reports filed pursuant to § 284.223 of the Commission's Regulations constitutes two distinct services which the Commission provides. As such, separate filing fees are established for each. The Commission's Time Distribution Reporting System (TDRS), which serves as the basis for development of the fee schedules, provides a separate category for certificate reports. The separate reporting category ensures that duplicate billing will not occur. Moreover, consolidation of the application fee with the reporting fees would result in an initial fee equal to the sum of the separate fees because both fees are based on actual average costs.

(G) Refunds

The Commission has also decided to revise § 381.109 to permit the refunding of filing fees which are inappropriately paid for filings for which no fee is established. Similarly, applicants who submit fees in excess of the amount established will be afforded a refund of the excess amount. The underlying reason for this revision is one of equity. If a filing fee is submitted with a filing for which no fee is established, or in excess of the fee established, the Commission believes that equity requires that the fee be returned. The Commission reverses its previous decision in Texas Gas Transmission Corporation, 35 FERC ¶ 61,082 (1986), in which the Commission denied a request for refund of a filing fee paid pursuant to § 381.207 for a temporary certificate application. The Commission orders that the fee be refunded.

(H) Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [20] requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[21] Specifically, if an agency promulgates a final rule under the Administrative Procedure Act (APA) [22] a final RFA analysis may be appropriate. A final RFA analysis must contain (1) a statement of the need for and objectives of the rule, (2) a summary of the issues raised by the public comments in response to any 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 that the agency considered and ultimately rejected. An agency is not required to make an RFA analysis, however, if it certifies that a rule will not have "a significant economic impact on a substantial number of small entities." [23] In Order No. 433, the Commission performed an RFA analysis and concluded that the rule as promulgated represented a fair balance between the purposes of the IOAA and the RFA. The Commission received one comment on the RFA. In response to that comment, the Commission reviewed its earlier RFA analysis and affirms its earlier findings. As a result of this review, the Commission also certifies that the fees will not have a "significant economic impact on a substantial number of small entities."

United claims that the Commission violated the RFA. United asserts that the Commission failed to comply with the basic requirement of the RFA that the rule be developed in a manner designed to minimize its economic impact on small entities. Specifically, United argues that the Commission failed to consider and prepare a meaningful assessment of the economic impact of fees on small customers of large pipelines, distribution companies and end-users. United also argues that the Commission failed to provide a description of the significant alternatives to the rule that would minimize the economic impact on these small entities and the reasons that these alternatives were rejected.

The Commission did not fail to meet the requirements of the RFA. In the final rule,[24] the Commission detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. The Commission also considered the alternatives of reducing or eliminating the fees for small natural gas pipelines. In particular, the rule provides a mechanism for a reduction of fees to less than full cost recovery in order to prevent a disproportionate economic impact or for other good cause, including where the Commission wishes to encourage use of natural gas service. In addition, the rule contains a provision for waiver of fees for applicants that demonstrate severe economic hardship. Although the Commission did not reduce or eliminate particular filing fees for small pipelines affected, it struck a fair balance between the purposes of the IOAA and the RFA.

The Commission also believes that United misunderstands the intent of the RFA. In particular, United's argument that the Commission must consider the effects of this rule on small customers of pipelines, small distribution companies and small end-users of natural gas pipelines overstates the application of the RFA. In adopting the RFA, Congress was not asking agencies to study any potential economic effect on any small entity even if only indirectly affected by the rule. As noted in previous

[20] 5 U.S.C. 601–612 (1982).

[21] *Id.* at 604(a).

[22] *Id* at 553.

[23] *Id* at 605(b).

[24] 50 FR 40,332, 40,356 (Oct. 3, 1985) (FERC Statutes and Regulations ¶ 30,662, 31,439).

proceedings,[25] this Commission, like other agencies,[26] is required by the RFA to analyze only the effect of rules on regulated small entities to which the requirements of the rule apply.[27] Congress was clear about the reach of the statute: when an agency issues a rule that applies to small entities, the agency must consider, and try to mitigate, the burden on those small entities which must comply with the rule.[28] Order No. 433 applies to natural gas pipelines that are regulated by the Commission and that pay a fee established for services or benefits rendered by the Commission as provided for by the IOAA. For these reasons, the Commission believes that it met the requirements of the RFA in the final rule.

Even though the Commission prepared a final RFA analysis, the Commission certifies that Order No. 433 will not have a "significant economic impact on a substantial number of small entities", since most companies that must comply with the rule do not fall within the RFA's definition of small entity. As noted in the final rule,[29] most jurisdictional natural gas pipelines are not small entities as defined under the RFA [30] because they (1) are too large to be considered a "small business," and (2) natural gas pipelines are not "small organizations" because they are for profit and as holders of exclusive selling rights within a respective field of operation they are dominant within a field of operation. Accordingly, the Commission certifies that pursuant to Section 605(b) of the RFA, this rule will not have a "significant economic impact on a substantial number of small entities."

(I) National Environmental Policy Act

The National Environmental Policy Act [31] (NEPA) requires Federal agencies to prepare an environmental impact statement (EIS) any time a major action by that agency may or will have a significant effect on the quality of the human environment.

Only one commenter addressed NEPA. United claims that the Commission failed to comply with NEPA by promulgating Order No. 433 without preparing an EIS. United states that the requirements of NEPA apply to all major Federal actions and that there can be no question that rulemakings constitute major Federal actions. United claims that the fees provided for in the final rule will have a "chilling effect" on natural gas use, which in turn will lead to the substitution of "dirtier alternative fuels" and "promote more air pollution."

The provisions of the rule do not necessitate the preparation of an EIS. An environmental analysis is premised on the existence of a foreseeable direct connection between the Federal action and environmental effect. A determination concerning the need for an EIS lies with the Commission.[32] In making that determination, the Commission must look to see whether there is a foreseeable direct connection between the "major federal action" taken by the rule, and any effect on the physical environment.[33] The Commission does not find a foreseeable direct connection between the Commission's action and any environmental effect either through the regulations or the relationship between the rulemaking and the price and use of natural gas in the marketplace. Since there is no direct connection between the payment of a fee with each filing made with the Commission and any effect on the environment, no EIS is required.[34]

The Commission also disagrees with United's contention that the fees provided in this rule will "have a chilling effect on natural gas use" by increasing the burner-tip price of gas paid by ratepayers and lead to the substitution of alternative dirtier fuels. In the final rule,[35] the Commission found that the burner-tip price of gas is related to all elements of cost, including an appropriate allocation of fixed costs, commodity costs, costs of transportation and the cost of purchased gas. In comparing these costs with the fees imposed, the Commission concluded that the rate effect caused by the fees imposed under this rule is likely to be insignificant.[36]

Order No. 433 is also coincident to a variety of economic conditions and activities which themselves may independently have environmental and economic impacts. These intervening economic conditions and activities include the terms of existing and future natural gas contracts, patterns of industrial, commercial and residential gas consumption, the level of industrial activity, general economic conditions, the price of alternative fuels, the marketability of gas, fuel-switching in relation to conversion costs, and gas conservation efforts. In this instance, the rulemaking cannot be said to have any direct environmental effect whatsoever in light of these intervening considerations. Thus, United's argument, that this rulemaking will affect the environment adversely due to fuel-switching that results from higher gas prices, is inaccurate. It fails to account for the marketability of the gas, the price of alternative fuels, and other intervening conditions.

The Commission has previously determined that environmental review under NEPA is not necessary if the variables involved render any environmental consequences unforeseeable.[37] The Commission

[25] Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base, 48 FR 24,323 (June 1, 1983) (Docket No. RM81-38-000) (Order No. 298), *rehearing granted in part and denied in part*, 48 FR 46,012 (Oct. 11, 1983); Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 Fed. Reg. 22,778 (June 1, 1984) (Docket No. RM83-71-000) (Order No. 380), *order on rehearing*, 49 FR 31,259 (Aug. 6, 1984).

[26] *See, e.g.*, 47 FR 5215 (Feb. 4, 1982) (final rule of Securities and Exchange Commission).

[27] Mid-Tex Electric Co-op., Inc. v. FERC, 773 F.2d 327, 342 (D.C. Cir. 1985) (No RFA analysis is necessary when the agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule.).

[28] *See* Congressional Findings and Declaration of Purpose, section 2, Pub. L. No. 96-354, codified at 5 U.S.C. 601, note (1982).

[29] 50 FR 40,332, 40,344 (Oct. 3, 1985) (FERC Statutes and Regulations ¶ 30,662).

[30] The RFA defines a small entity as a small business, small organization or small governmental jurisdiction. A small business is defined under the Act as a small business concern under Section 3 of the Small Business Act. Small organizations are defined under the RFA as non-profit enterprises which are independently owned and operated and are not dominant in their field. Small governmental jurisdictions are governmental entities, including special districts with a population of less than 50,000. Under the RFA the Commission has the ability to deviate from the above definitions after consultation with the Office of Advocacy of the Small Business Administration and opportunity for public comment. However, the Commission has not chosen to do so.

[31] 42 U.S.C. 4332 (1982).

[32] Metlakatla Indian Community v. Adams, 427 F. Supp. 871 (D.D.C. 1977).

[33] Aluli v. Brown, 437 F. Supp. 602 (D. Ha. 1977), City of Santa Clara, California v. Kleppe, 418 F. Supp. 1243 (N.D. Cal. 1976), Como-Falcon Community, *et al.* v. U.S. Dept. of Labor, 609 F.2d 342 (8th Cir. 1979).

[34] *See* Swinowish Tribal, *et al.* v. FERC, 627 F.2d 499 (D.C. Cir. 1980), State of Louisiana v. Federal Power Commission, 503 F.2d 844 (5th Cir. 1974), where the courts required an EIS because of the direct connection between the actions of the Commission and the effect on the environment.

[35] 50 FR 40,332 (October 3, 1985).

[36] *Id.*

[37] *See* Opinion No. 770, "National Rates for Jurisdictional Sales of Natural Gas," RM75-14, issued July 27, 1976, 56 FPC 509, *reh. denied.* Opinion No. 770-A, 56 FPC 2698 (1976), *aff'd.* American Public Gas Ass'n v. FPC, 567 F.2d 1016 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 907 (1978); Order No. 94-C, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act."

Continued

adheres to the continued validity of this approach. NEPA does not require agencies to engage in environmental impact statements if the causal relationship between a Federal action and certain environmental effects is remote and conjectural.[38] The Commission believes that this principle applies here. There is no direct connection between Order No. 433 and any changed patterns of consumption or other market effects, much less the environmental effects of any such actions, that warrants further examination of the issue. Absent this direct connection between the Federal action and the impact on the physical environment, an environmental analysis under NEPA is not required.

United has also shown no direct connection between the rule and the level of air pollution. Rather, United attempts to require an EIS because of the potential impact of Order No. 433 on natural gas prices in the marketplace. The Commission and various courts have taken the position that the potential economic impact or social effects of a Federal action, without the showing of an impact on the physical environment, is insufficient to require an EIS.[39] For all these reasons, the Commission finds that Order No. 433 would not constitute a major Federal action affecting the quality of the human environment, and that it is not required to prepare an EIS for the final rule.

(I) Notice

INGAA argues that the fees established in the final rule are sufficiently different from those of the proposed rulemaking as to constitute inadequate notice under the APA. INGAA claims that there was inadequate notice of the background information and methodology upon which the Commission based the particular fees established in Order No. 433.

The Commission believes the final rule in this proceeding did not violate the requirements of the APA. Federal agencies have considerable flexibility under the APA to make changes—even substantial changes—in final rules based on comments submitted during the comment period without renoticing the new provisions.[40] As long as the changes represent a logical outgrowth of the initial notice, or develop the rule originally proposed, neither the APA nor the courts require Federal agencies to provide interested persons with a new opportunity to comment.[41]

The Commission believes that the final rule in Order No. 433 is a logical outgrowth of the Notice of Proposed Rulemaking (NOPR) issued in this docket.[42] The NOPR included thorough discussions of the identification of services, special benefits to identifiable recipients, smallest practical unit, basis of cost recovery, methodology, calculation of fees, and direct billing. The basis of cost recovery and the methodology described in the NOPR were employed in the final rule. The NOPR provided a fee of $8,800 for NGA section 7(c) certificates not set for hearing and $63,300 for NGA section 7(c) certificates set for hearing. In the final rule, issued three years after the NOPR, one fee of $12,200 was established for all NGA section 7(c) certificate applications.

As explained in the final rule,[43] the fees established were also calculated on the basis of actual time expended on docketed activities as recorded by the Commission's TDRS. The TDRS supplanted the previous reporting system, which was based on the unit supervisor's estimate of time expended, with more accurate, daily reports from employees themselves.

For the above reasons, the Commission disagrees with INGAA's contention that the fees established in the final rule are sufficiently different from those proposed in the NOPR as to constitute inadequate notice. The fees established in the final rule are a logical outgrowth of the original NOPR and, therefore, the notice requirements under section 553(b)(3) of the APA have been met.

III. Clarifications

The Commission is clarifying the final rule in response to two requests for clarification from Columbia and Transco. In addition, several situations have arisen which necessitate clarification of the rule's application.

(A) Temporary Certificates

The Commission has determined that temporary certificate applications should not be construed as amendments to section 7(c) certificate applications because the costs associated with the temporary certificate applications are included in the calculation of the fee for the related permanent certificate application. For this reason the filing fee prescribed in § 381.207(b) for pipeline certificate applications does not apply to separately filed temporary certificate applications filed pursuant to section 7(c) of the NGA. Similarly no filing fee will be assessed for temporary certificate applications filed on or after November 4, 1985, either under § 381.207(b) of the regulations promulgated in Order No. 433 or under Part 159 of the Regulations effective prior to November 4, 1985.

(B) Joint Applications

Columbia requests clarification that joint applications, such as those filed by two affiliated companies, require a single fee per application and not separate fees for each of the joint applicants. Columbia's interpretation of the rule is correct. One fee will be charged for each application, whether it is filed by a single company or filed jointly by several companies.

(C) Applications Requesting Alternative Relief

The Commission has been presented with the problem of determining the appropriate filing fee for applications which are filed in the alternative. An example of such a filing would be an application requesting a declaratory order of non-jurisdiction, or, in the alternative, a certificate. Since the filing fee for a declaratory order is different than the filing fee for a certificate, the question arises as to which fee applies.

In analyzing this type of filing, the Commission considers several factors. First, the Commission provides that only one notice of an application requesting

---

RM80-47-002, *et al.*, issued May 24, 1983, FERC Stats. & Regs., Regulation Preambles (1982-1985), ¶ 30,454.

[38] *See e.g.*, Citizens Advocates for Responsible Expansion v. Dole, 770 F.2d 423 (5th Cir. 1985); Save the Bay, Inc. v. United States Corps of Engineers, 610 F.2d 322, 326 (5th Cir. 1980); Sierra Club v. Hodel, 544 F.2d 1036, 1039 (9th Cir. 1976); Citizens Commission Against Interstate Route 675 v. Lewis, 542 F. Supp. 496, 531 (S.D. Ohio 1982).

[39] Order No. 94-C, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," RM80-47-002, *et al.*, issued May 24, 1983, FERC Stats. & Regs., Regulation Preambles (1982-1985), ¶ 30,454, Como-Falcon Community Coalition, Inc. v. U.S. Dept. of Labor, 609 F.2d 342 (8th Cir. 1979); Image of Greater San Antonio, Texas v. Brown, 570 F.2d 517 (5th Cir. 1978); Breckinridge v. Rumsfeld, 537 F.2d 864 (6th Cir. 1976), Metlakatla Indian Community v. Adams, 427 F. Supp. 871 (D.D.C. 1977), City of Santa Clara, Cal. v. Kleppe, 418 F. Supp. 1243 (N.D. Cal. 1976).

[40] *See* Mid-Tex Electric Cooperative, Inc. v. FERC 773 F.2d 327, 339 (D.C. Cir. 1985); Pennzoil Co. v. FERC, 645 F.2d 360, 371 (5th Cir. 1981); American Iron & Steel Institute v. EPA, 568 F.2d 284, 293 (3rd Cir. 1977); International Harvester Co. v. Ruckelshaus, 478 F.2d 615, 632 n.51 (D.C. Cir. 1973).

[41] United Steelworkers of America v. Marshall, 647 F.2d 1189, 1221 (D.C. Cir. 1980), *cert. denied*, 452 U.S. 530 (1981); accord BASF Wyandotte Corp. v. Costle, 598 F.2d 637, 642 (1st Cir. 1979), *cert. denied*, 444 U.S. 1096 (1980); American Paper Institute v. United States E.P.A., 660 F.2d 954 (4th Cir. 1981).

[42] Fees Applicable to Natural Gas Pipelines, 47 FR 40,634 (Sept. 15, 1982) (proposed to be codified at 18 CFR parts 2, 152, 153, 154, 156, 157, 281, 284, 375, and 381) (Docket No. RM82-31-000) (Sept. 10, 1982).

[43] 50 FR 40,332, 40,338 (Oct. 4, 1985). (FERC Statutes and Regulations ¶ 30,662, 31,429).

alternative forms of relief is published in the **Federal Register.** As a result, the application is noticed in its entirety, as opposed to sequential noticing of each form of alternative relief requested. This notice procedure benefits the applicant in that it speeds the Commission's review process.

Second, under the IOAA, the Commission has the responsibility for recovering its costs for government services for which an identifiable recipient derives a specific benefit. When alternative relief is requested, it is not known, at the time of filing, which relief (if any) will be granted. The applicant derives the special benefit of Commission consideration of the form of relief associated with the higher fee, even if that form of relief is not granted.

Third, assessing a fee that is less than the higher of the fees associated with the various alternative forms of relief requested would result in a loophole in the Commission's fee structure in that an application could be filed in the alternative solely to reduce the filing fee.

For these reasons, the Commission has determined that applications requesting alternative forms of relief will incur the higher of the fees associated with each form of alternative relief requested. Applicants who feel virtually certain that the Commission will grant the relief associated with the lower fee can avoid payment of the higher fee by simply not requesting the alternative relief associated with the higher fee. Therefore, the Commission believes it is justified in requiring payment of the higher fee for applications requesting alternative forms of relief.

(D) Blanket Certificates

Since the issuance of Order No. 433, the Commission has perceived the need to clarify the applicability of filing fees as they relate to existing blanket certificates. Prior to November 4, 1985, the effective date of Order No. 433, holders of blanket certificates were required to pay fees annually pursuant to Part 159 of the Commission's Regulations. These fees were based on a percentage (0.00195) of the actual costs of facilities constructed or acquired during the previous calendar year under the automatic authorization provisions of the blanket certificate.

The question that arises is whether holders of blanket certificates issued prior to the effective date of Order No. 433 must obtain a new blanket certificate in order to avoid paying fees pursuant to Part 159 in perpetuity. A second question that arises is whether these blanket certificate holders must submit the filing fee prescribed in § 381.207(b) in order to maintain the effectiveness of their blanket certificates.

The Commission clarifies that the holder of a blanket certificate issued prior to November 4, 1985, is not required to pay a filing fee pursuant to Part 159 for projects completed after November 4, 1985 under the automatic authorization provisions of the blanket certificate. Nor is the holder of a blanket certificate issued prior to November 4, 1985, required to submit the filing fee prescribed by § 381.207(b) in order to retain the effectiveness of that blanket certificate, since Order No. 433 did not become effective until November 4, 1985. Blanket certificates issued prior to November 4, 1985 are equally as valid as blanket certificates issued on or after November 4, 1985.

The Commission notes however, that holders of blanket certificates remain subject to the fees prescribed in § 381.208, relating to activities requiring prior notice, regardless of the date of issuance of the blanket certificate.

(E) Calculation of Blanket Certificate Fees

On June 17, 1986, Transco filed a request for clarification concerning the method for calculating fees for certain activities under blanket certificates issued prior to November 4, 1985, pursuant to Order No. 234.[44] Order No. 234 provides that fees relating to the construction or acquisition of new facilities built or acquired under a blanket certificate are to be paid in accordance with 18 CFR Part 159 and should accompany the filing of the annual report.[45] Section 159.2(d) of the Commission's Regulations provides that the fee for the construction or acquisition of new facilities shall be one-hundred and ninety-five-one-thousandths of one percent (0.00195) of the actual cost. Section 157.207(a) of the Commission's Regulations provides that annual reports shall be submitted on or before May 1 of each year.

Review of the annual reports submitted on or before May 1, 1986, revealed confusion concerning the calculation of the fees for the construction or acquisition of new facilities built or acquired under blanket certificates during calendar year 1985. Many companies were uncertain as to the applicability of the fees prescribed in Part 159 to facilities completed in 1985 under blanket certificates issued prior to November 4, 1985. As a result, numerous companies paid the fees under protest.

Transco specifically requests clarification that no fee is required for facilities completed during calendar year 1985 pursuant to a blanket certificate issued prior to November 4, 1985. Transco's interpretation is partially correct. The fee established in Part 159 (.00195 of cost) applies only to those newly constructed or acquired facilities *completed* prior to November 4, 1985, the effective date of Order No. 433. Newly constructed or acquired facilities completed on or after November 4, 1985, incur no fee since the fee for a blanket certificate under Order No. 433 is not tied to the cost of newly constructed or acquired facilities.

The Commission is using the project completion date included in the annual report to determine whether the new or old fees regulations apply to a given project because, under the old blanket certificate fees regulations, the project completion date was used to determine the year in which the fee was to be paid.

For the above reasons, applicants who either obtained or filed for a blanket certificate prior to November 4, 1985, pursuant to Order No. 234 are liable only for fees under Part 159 for newly constructed or acquired facilities completed prior to November 4, 1985. Such parties do not incur fees pursuant to Part 159 for newly constructed or acquired facilities completed on or after November 4, 1985, under the automatic authorization in the blanket certificate, nor do they incur the filing fee prescribed in § 381.207(b) for blanket certificate applications.

The Commission notes, however, that § 381.208 applies equally to prior notice requests under blanket certificates obtained before, on, or after November 4, 1985. Section 381.208 prescribes a fee for requests under the blanket certificate notice and protest procedures. Whether the blanket certificate was issued before, on, or after November 4, 1985 is immaterial to the disposition of a filing pertaining to the blanket certificate notice and protest procedures. Therefore, § 381.208 is applicable to all such filings, regardless of the date of issuance of the blanket certificate.

Applicants who inaccurately calculated their 1985 blanket certificate fees on the basis of newly constructed or acquired facilities completed throughout calendar year 1985 are advised that they are eligible for a refund to the extent that the fees are attributable to newly constructed or acquired facilities completed on or after November 4, 1985. To obtain a refund, applicants must file a request for refund

[44] 47 FR 24,254 (June 4, 1982). (FERC Statutes and Regulations ¶ 30,368).

[45] *Id. See* Footnote number 14 in Order No. 234.

with the Commission pursuant to § 381.109. The request for refund must specifically identify the newly constructed or acquired facilities completed on or after November 4, 1985, for which a fee was inappropriately paid. The total cost of the facility, project or work order number, completion date, amount of refund claimed, and docket number under which the fee was paid must also be stated in the request for refund.

(F) Blanket Certificate Projects Under $7,000

Section 159.2(e) of the Commission's Regulations effective prior to November 4, 1985, provides that no fee is required for newly constructed or acquired facilities costing less that $7,000. Under Order No. 234, this section also applies to newly constructed or acquired facilities built under a blanket certificate.[46]

Review of the annual reports submitted on or before May 1, 1986, revealed confusion concerning the calculation of the fees for projects completed under a blanket certificate that cost less than $7,000. The Commission clarifies that the $7,000 figure relates to the total sum of all projects. As an example, 100 projects each costing $6,000 would incur a fee of $1,170 (0.00195 x 600,000), and would not be viewed as 100 separate exemptions under § 159c.2(e). The Commission further clarifies that this clarification of § 159.2(e) only applies to projects completed prior to November 4, 1985 under blanket certificates since Order No. 433 did not become effective until that date and no fee was established for projects completed after that date.

(G) NGA Section 7(c) Certificates

In administering the final rule, the question has arisen as to the applicability of Part 159 to NGA section 7(c) certificate applications filed prior to the effective date of Order No. 433. The Commission clarifies that NGA section 7(c) certificate applications filed prior to November 4, 1985 are governed by the fees prescribed in Part 159 of the Commission's Regulations even if the construction or acquisition of projects authorized by the certificate is not completed until on or after November 4, 1985. For example, an application filed prior to November 4, 1985 to construct or acquire new facilities pursuant to a section 7(c) certificate would incur a $50 filing fee pursuant to § 159.1(f) of the Commission's Regulations and would also incur filing fees pursuant to §§ 159.2 (a), (b), (c), and (d), regardless of the completion date of the project. The application would not, however, incur the filing fee established in § 381.207(b) pursuant to the regulations promulgated in Order No. 433. In contrast, section 7(c) certificate applications filed on or after November 4, 1985 would only incur the filing fee prescribed by § 381.207(b) and would not be subject to fees under Part 159 of the Commission's Regulations.

(H) Reimbursable Projects

In administering the final rule, the question has arisen as to the calculation of fees for projects completed on a reimbursable basis prior to November 4, 1985 under a blanket certificate. A reimbursable project is one in which the holder of the blanket certificate is reimbursed by another party for a portion of the costs associated with the project. The question that arises is whether the holder of the blanket certificate must pay a fee based on the total cost including the reimbursable costs, or whether he must pay a fee based only on the costs which he himself incurred.

The Commission clarifies that projects completed on a reimbursable basis prior to November 4, 1985 under blanket certificate authority incur a fee under § 159.2 of the Commission's Regulations based upon the total cost of the project, to include the reimbursable costs associated with the project. Similarly, reimbursable projects completed after November 4, 1985, pursuant to section 7(c) applications filed prior to November 4, 1985, incur a fee under § 159.2 based upon the total project cost, including reimbursable costs. Section 159.2 provides that the fee be based on the "cost of construction of new facilities or of facilities to be acquired". The Commission sees no reason to interpret the word "cost" in this phrase to mean "cost, less all reimbursable costs". To exclude the reimbursable costs from the fee calculation would result in inequitable treatment of the projects subject to fees under § 159.2. As such, the Commission declines to embrace an interpretation of § 159.2 which would permit the exclusion of reimbursable costs from the fee calculation.

(I) Optional Certificates Combined With Blanket Certificates

The Commission notes that an application for an optional certificate filed pursuant to Subpart E of Part 157, which is accompanied by an application for a blanket certificate filed pursuant to Part 284, will incur two separate filing fees pursuant to § 381.207(b). Applicants will not be permitted to avoid paying a fee for both the optional certificate application and the blanket certificate application by combining the two into a single filing. Optional certificate applications and blanket certificate applications stem from two separate authorities under the Commission's Regulations. As such, the standards for determining whether the application is required by the public convenience and necessity are not identical. An application which combines a request for an optional certificate with a request for a blanket certificate entails as much effort to process as two applications which each request a single certificate.

Moreover, the applicant derives two separate benefits from the combined application. The applicant derives the benefit of Commission consideration of the request for an optional certificate, and Commission consideration of the request for a blanket certificate. Since these two certificates are separate and distinct, the applicant will derive two separate benefits should both requests be granted.

Furthermore, under the Commission's Management Information System, filings which combine optional certificate requests with blanket certificate requests are treated as two separate filings, whether they are filed together or separately. Accordingly, two separate fees will be charged for such filings.

(J) Applicability of Part 159

The Commission clarifies that Part 159 of the Commission's Regulations does not apply to applications filed on or after November 4, 1985 because it has been superseded by Order No. 433. As such, the $50 fee for abandonment applications specified in § 159.1(e) does not apply to abandonment applications filed on or after November 4, 1985. Similarly, the $50 fee for temporary certificate applications specified in § 159.3(d) is not applicable to temporary certificate applications, or to amendments to applications, filed on or after November 4, 1985. Amendments filed after November 4, 1985 to applications filed prior to November 4, 1985 are not subject to the fees prescribed in § 381.110 for substantial amendments. To prevent confusion on this matter, §§ 159.1, 159.2a, 159.3, and 159.4 of Part 159 are being removed from the regulations. Sections 159.1 and 159.2a are no longer applicable; §§ 159.3 and 159.4 are redundant in that the information in those sections is provided either in Order No. 433 or in the Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the

[46] 47 FR 24,254 (June 4, 1982). (FERC Statutes and Regulations ¶ 30, 368).

Provisions of the Natural Gas Act.[47] Section 159.2 is being revised to clearly indicate that the fees prescribed by that section are only applicable to projects constructed or acquired pursuant to section 7 applications, filed prior to November 4, 1985, or to projects completed prior to November 4, 1985, pursuant to a blanket certificate.

(K) No Fee for Applications for Abandonment Authorized Under § 157.216(b) of the Commission's Regulations

In its application for rehearing, Columbia requests that the Commission clarify that the fee established in § 381.208 for "Requests under the blanket certificate notice and protest procedures" does not apply to requests for abandonments under § 157.216(b) submitted in accordance with § 157.205(b). Section 157.216(b) provides that the abandonment is subject to the notice requirements of § 157.205. Columbia has correctly interpreted this provision of the fees rule. The fee prescribed in § 381.208 does not apply to requests for abandonment authorization under § 157.216(b) because Order No. 433 specifically states that no fee will be charged for abandonment applications at this time.[48]

(L) Effect of Order No. 436

Numerous sections of the Commission's Regulations were changed or amended as a result of Order No. 436.[49] These changes had a subsequent effect on the sections of the Commission's Regulations which implement Order No. 433. As a result of Order No. 436, some of the provisions of the regulations implementing Order No. 433 were inadvertently not revised to reflect Order No. 436 and are no longer meaningful. To correct this "housekeeping" problem, the Commission is renumbering various sections in Parts 157 and 284 concerning fees to coincide with the regulations adopted in Order No. 436 and in subsequent rulemakings.

IV. Disposition of Petitions for Stay

Columbia, Process Gas, and Georgia-Pacific filed requests for stay of the final rule. In their respective requests for stay, Columbia and Process Gas contend that a stay of the final rule's effective date is necessary to prevent irreparable harm to their own and other pipelines and to small end-users. They contend that the four standards articulated in *Virginia Petroleum Jobbers Ass'n.* v. F.P.C.,[50] for granting of a stay are satisfied. Specifically, Columbia states that it anticipates incurring fees of approximately $1,000,000 which will result in irreparable harm. Process Gas states that some smaller end-users may be irreparably harmed financially if pipelines seek reimbursement for the filing fees from customers. Similarly, Georgia-Pacific contends that the imposition of substantial filing fees for applications under section 7(c) of the NGA is unduly harsh given the uncertainty in the natural gas marketplace following Order No. 436 and that a delay of the final rule's effective date would serve to soften its impact. Georgia-Pacific recommends a 45-day delay in the effective date.

Section 705 of the APA [51] authorizes the Commission to postpone the effective date of action taken when it finds that justice so requires, but the Commission is unable to make that finding here.

First, the petitioners have not shown that implementation of Order No. 433 will cause imminent irreparable harm. Petitioners' claims as to the harm that Order No. 433 will do to small end-users and to pipelines as a result of Order No. 436 are unsubstantiated. Petitioners did not provide the Commission with any statistical data in support of their contentions. Moreover, even if the allegations are true, they would not constitute irreparable harm since the petitioners have not shown that the irreparable harm they cite, specifically monetary loss, cannot be adequately compensated for in any subsequent litigation.[52]

Second, the Commission does not believe that staying the effectiveness of Order No. 433 is in the public interest. The Commission has the responsibility under the IOAA to establish fees for the services and benefits it provides. The IOAA mandates that "each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible." [53] Order No. 433 implements this policy with respect to natural gas pipeline matters under the NGA. Accordingly, petitioners' requests for stay are denied.

V. Effective Date

Generally, a rule becomes effective not less than 30 days after it is published in the **Federal Register**. A rule may become effective sooner if it is an interpretive rule or policy statement, if it relieves a restriction or grants an exemption, or if the agency finds that there is good cause to do so.[54]

The Commission finds that the provisions of this order should become effective immediately upon issuance rather than (30) thirty days after it is published in the **Federal Register**. The clarifications contained in the rehearing are the Commission's interpretation of Order No. 433 and as such fall under the provisions of section 553(d) of the APA. The change in the Commission's policy concerning refunds relieves a restriction and can become effective immediately upon issuance under the provisions of § 553(d) of the APA. Finally the Commission has made numerous technical changes to its regulations concerning fees to coincide with the regulations adopted in Order No. 436 and in subsequent rulemakings. As noted a rule can become effective immediately upon issuance where there is good cause to do so. The good cause standard can be met where the agency finds it is impracticable, unnecessary or contrary to the public interest to abide by the 30 day period. The 30 day period is unnecessary when the rule issued is minor, or involves technical amendments which the public is not particularly interested in.[55] The Commission finds that renumbering various sections of its Regulations to conform to Order 436 and subsequent rulemakings involves technical changes. Therefore these changes will be effective immediately upon issuance under the provisions of section 553(d)(3) of the APA.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, natural gas, pipelines.

18 CFR Part 157

Natural Gas.

---

[47] 18 CFR Part 201 (1986).

[48] 50 FR 40,332, 40,335 (Oct. 3, 1985). (FERC Statutes and Regulations ¶ 30,662, 31,425).

[49] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42,408 (Oct. 18, 1985) (Order No. 436), *reh'g granted*, 50 FR 52,217 (Dec. 23, 1985) (Order No. 436–A), *reh'g granted*, 51 FR 6398 (Feb. 24, 1986) (Order No. 436–B), *reh'g denied*, 51 FR 11,566 (April 4, 1986) (Order No. 436–C), *reh'g denied*, 51 FR 11,569 (Apr. 4, 1986) (Order No. 436–D), *appeal pending*, *Associated Gas Distributors* v. *FERC*, No. 85–1811 (D.C. Cir. filed Dec. 12, 1985).

[50] 259 F.2d 921 (D.C. Cir. 1958).

[51] 5 U.S.C. 705 (1982).

[52] *Virginia Petroleum Job Ass'n* v. *Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958); *FTC* v. *Standard Oil Co.*, 449 U.S. 223, 101 S. Ct. 448 (1980).

[53] 31 U.S.C. 9701(a) (1982).

[54] 5 U.S.C. 553(d) (1982).

[55] Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* (1947) at p. 31.

18 CFR Part 159

Fees and Annual Charges Under the Natural Gas Act.

18 CFR Part 284

Continental Shelf, Natural Gas, Reporting Requirements.

18 CFR Part 381

General Fees.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The authority for Part 157 continues 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 Organizational Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 142 (1978).

2. Section 157.102(a)(1) is revised to read as follows:

§ 157.102 Contents of application and other pleadings.

(a) *General contents.* (1) Any application under this subpart must contain all information necessary to advise the Commission fully concerning the transportation, sales and other services, and facilities, construction, extension, or acquisition and operation for which a certificate and conditional pre-granted abandonment authorization is requested. All applications pursuant to this subpart must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

§ 157.205 [Amended]

3. Section 157.205(b) is amended by removing the words "this chapter and an original" and adding, in lieu thereof, the words "this chapter, except that no fee shall be assessed for abandonment activities under § 157.216(b), and an original".

4. The authority for Part 159 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 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); 43 U.S.C. 1334(c) (1982); E.O. 10085, 3 CFR 970 (1949–1953), unless otherwise noted.

§§ 159.1, 159.2a, 159.3 and 159.4 [Removed]

5. Sections 159.1, 159.2a, 159.3, and 159.4 are removed in their entirety.

§ 159.2 [Amended]

6. Section 159.2 is amended by revising the title now reading "Applications involving construction or acquisition of facilities" to read as follows:

§ 159.2 Applications filed prior to November 4, 1985 involving the construction or acquisition of facilities pursuant to section 7 of the NGA, and projects completed prior to November 4, 1985 involving the construction or acquisition of facilities pursuant to a blanket certificate.

7. Section 159.2 is further amended by removing from the introductory text the words "In addition to the fees prescribed by § 159.1, and except" and adding, in lieu thereof, the word "Except".

8. The authority for Part 284 continues 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. 7101–7352 (1982) E.O. 12009, 3 CFR 142 (1978).

§ 284.221 [Amended]

9. Section 284.221(b)(1) is amended by removing the words "must include:" and adding, in lieu thereof, the words "must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and must include:".

§ 284.244 [Amended]

10. Section 284.244 is amended by removing the words "include the following:" in the introductory text and adding, in lieu thereof, the words "be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and must include the following:".

11. The authority for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 381.109 [Amended]

12. Section 381.109 is amended by removing the words "**Federal Register.**" and adding, in lieu thereof, the words "**Federal Register** or, if the fee is inappropriately paid for a filing for which no fee is established. Fees paid in excess of the fees established under this part may be refunded to the extent of the amount paid in excess. To obtain a refund, the applicant must file a motion requesting refund with the Commission."

13. Section 381.110 is revised to read as follows:

§ 381.110 Fees for substantial amendments.

Fees established under this part for any filing will also be charged, as appropriate, for any substantial amendment to a pending filing. An amendment is considered substantial if it changes the character, nature, or the magnitude of the proposed activity or rate in the pending filing. For purposes of this section, an application for a temporary certificate is not considered to be an amendment to a pending certificate application.

§ 381.207 [Amended]

14. Section 381.207(a) introductory text is amended by removing the words "any application for authorization" and inserting, in lieu thereof, the words: "any application, other than an application for a temporary certificate, for authorization".

15. Section 381.207(a)(1) is amended by removing the words "157.103" and adding, in lieu thereof, the words "157.102", and by removing the words "284.222 and" and adding, in lieu thereof, the words "284.224 and".

§ 381.207 [Amended]

16. Section 381.207(a)(2) is amended by removing the words "§§ 284.107, 284.127, and 284.244" and adding, in lieu thereof, the words "§ 284.244".

17. Section 381.207(b) is amended by removing the words "157.103, 157.204, 284.107, 284.127, 284.221, 284.222" and adding, in lieu thereof, the words "157.102, 157.204, 284.221, 284.224".

[FR Doc. 86–27053 Filed 12–02–86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 13

[Docket No. R-86-1289; FR-2226]

Use of Penalty Mail in the Location and Recovery of Missing Children; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule on the use of penalty mail in the location and recovery of missing children, which was published on June 3, 1986 (51 FR 19829), by (1) correcting the

authority citation and (2) replacing the words "official mail" in § 13.1 with the words "penalty mail".

FOR FURTHER INFORMATION CONTACT: Sandra L. Timbrook, Chief, Mail and Transportation Branch, Office, of Administrative and Management Services, Room 5176, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-5703. (This is not a toll-free number.)

Accordingly, 24 CFR Part 13 is corrected as follows:

1. The authority citation for Part 13 is corrected to read as follows:

Authority: 39 U.S.C. 3220(a)(2); 5 U.S.C. 301.

§ 13.1 [Amended]

2. Section 13.1 is corrected by replacing the words "official mail" with the words "penalty mail".

Dated: November 26, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86-21799 Filed 12-2-86; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 807

Procedures for Issuing Air Force Publications and Forms Outside the Air Force

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This regulation provides Air Force procedures for issuing publications and forms to private citizens, organizations and commercial activities. The regulation informs the public sector to obtain administrative publications and forms from the local Air Force installation, or where not available from the local installation, the requests are referred to the proper source.

EFFECTIVE DATE: January 2, 1987.

ADDRESS: HQ USAF/DAPD, Bolling AFB, DC 20332-6468.

FOR FURTHER INFORMATION CONTACT: Walter S. Frazer, HQ USAF/DAPD, Bolling AFB, DC 20332-6468, telephone (202) 767-6077.

SUPPLEMENTARY INFORMATION: On April 23, 1986, the Air Force published a proposed rule on issuing Air Force publications and forms outside the Air Force (51 FR 15352). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 807

Government contracts, Government procurement.

Accordingly, 32 CFR, Chapter VII, is amended by adding Part 807 as set forth below:

PART 807—ISSUING AIR FORCE PUBLICATIONS AND FORMS OUTSIDE THE AIR FORCE

Authority: Sec. 8012, 70A Stat. 488, 10 U.S.C. 8012.

§ 807.1 Issuing publications and forms to private citizens, private organizations, and commercial activities.

(a) Classified publications, accountable forms, or forms requiring storage safeguards will not be released to private citizens, private organizations or commercial activities except as stated in § 807.2 and Part 806 of this chapter.

(b) Publications marked For Official Use Only (FOUO) and Limited (L) distribution will be processed as follows:

(1) FOUO publications will be processed in accordance with Part 806 of this chapter.

(2) Requests for limited (L) distribution will be referred to the Automatic Data Processing System (ADPS) manager.

(c) Except as stated in paragraphs (a) and (b) of this section, requests from private citizens and organizations will be processed as follows. The fee schedule and charges outlined in Part 813 of this chapter will be used. Non-user charge transactions, waiver or reduced charges, other special charges and exclusions will be processed in accordance with Part 812 of this chapter. Requests will be processed according to locally established procedures.

(1) If requested items are not immediately available from local stocks, the Publishing Distribution Office will obtain them from the Air Force Publishing Distribution Center for release to the requester. Where special release prohibitions are indicated on the cover or title page, the publication will be processed according to the instructions shown.

(2) If an item is not stocked by the Air Force Publishing Distribution Center, and the index indicates availability from another source, the request will be referred to that source and the requester advised of the referral.

(3) If the request is submitted under the Freedom of Information Act as defined in Part 806 of this chapter, it will be referred to the local Freedom of Information Act Office.

(4) If a request is received by HQ USAF or the Air Force Publishing Distribution Center, it will be referred to the Air Force installation nearest to the requester for processing.

(d) Publications and forms will be issued free to commercial activities only under the conditions set forth in § 807.2; otherwise, Parts 806, 812 and 813 of this chapter apply.

§ 807.2 Issuing publications and forms free outside the Air Force.

(a) If an Air Force publication or form requested concerns invitation for bid, then it is available for review by prospective bidders and may be obtained free from the Air Force procurement authority concerned.

(b) If an Air Force publication or form is needed in connection with contract performance, then it may be obtained free from the Air Force or Defense Logistics Agency (DLA) official responsible for administering the contract, as follows:

(1) One-time issue to contractor.

(2) Followup or recurring issue to contractors of Federal Supply Catalog handbooks and manual chapters when guaranteed by contract (otherwise contractor must purchase from Superintendent of Documents, GPO).

(3) Followup or recurring issue to contractor of Air Force publication or form when the Air Force contract administering official determines issue to be necessary to contract performance.

(c) If an Air Force publication or form is desired in small quantities, and is one-time issue to another federal, state, or local government agency, then it is available free subject to security regulations on classified material; Part 806 of this chapter for FOUO publications; release requirements on L distribution items; and special release statements on individual items. The publications may be obtained from the Publishing Distribution Office or other issuing activity. Recurring requests and requests for large quantities will be referred to the procuring headquarters