

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### **PART 71—[AMENDED]**

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

##### **§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

AGL MI E5 Detroit, MI [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 43°00'00"N, long. 82°25'00"W; on the Canadian boundary to lat. 43°04'00"N, long. 82°30'00"W; to lat. 42°56'00"N, long. 83°00'00"W; to lat. 42°45'00"N, long. 83°50'00"W; to lat. 42°30'00"N, long. 83°50'00"W; to lat. 42°10'00"N, long. 84°00'00"W; to lat. 42°00'00"N, long. 83°30'00"W; thence east along the 42nd parallel to the Canadian boundary, thence along the Canadian boundary to point of beginning.

\* \* \* \* \*

Issued in Des Plaines, Illinois on January 17, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–3232 Filed 2–7–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 153

[Docket No. RM97–1–000]

#### Applications for Authorization To Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas

February 3, 1997.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is issuing a Notice of Proposed Rulemaking (NOPR) to amend the regulations codifying the Commission's responsibilities under the Natural Gas Act and Executive Order 10485, as amended. The Commission proposes to update its regulations governing the filing of applications for the siting, construction, and operation of facilities for the import or export of natural gas under section 3 of the Natural Gas Act and the issuance and modification of Presidential Permits for the construction and operation of border facilities. The proposal is necessary to conform the Commission's regulations to the Commission's current responsibilities, as delegated by the Secretary of Energy.

**DATES:** Comments are due no later than April 11, 1997.

**ADDRESSES:** An original and 14 copies of written comments must be filed. All filings must refer to Docket No. RM97–1–000 and be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

#### FOR FURTHER INFORMATION CONTACT:

Albert J. Francese, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0736.

Richard W. Foley, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2245.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and Word Perfect 5.1 format. CIPS user assistance is available at 202–208–2474.

CIPS also is available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: <http://www.fedworld.gov> and select the "Go to the FedWorld Telnet Site" button. When your Telnet software connects you, log-on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line type:/go FERC. FedWorld also may be accessed by Telnet at the address [fedworld.gov](http://fedworld.gov).

Finally, the complete text on diskette in Word Perfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, NE, Washington, DC, 20426.

#### I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend part 153 of its regulations governing the siting, construction, and operation of facilities for the import and export of natural gas between the United States and a foreign country. Part 153 has not been significantly revised since the Commission's predecessor, the Federal Power Commission (FPC), recodified its regulations in 1947.<sup>1</sup>

The Commission intends to conform its filing requirements in part 153 to the Commission's current responsibilities as changed by intervening legislation and Department of Energy (DOE) delegation orders. The DOE delegation orders divide jurisdiction and authority over natural gas import and export issues between the Commission and DOE. Thus, the proposed revisions to part 153 implement the Commission's currently delegated responsibilities under section

<sup>1</sup> Order No. 141, 12 FR 8596 (December 19, 1947). The part 153 regulations originally became effective on July 11, 1938, in FPC Order Nos. 52 (section 3 authorizations) and 66 (Presidential Permits).

3 of the Natural Gas Act (NGA) <sup>2</sup> and Executive Order 10485, as amended, regarding the construction and operation of facilities for the import and export of natural gas.<sup>3</sup>

The proposed regulatory revisions generally make the part 153 regulations current and more readable. To that end, the proposed rule redefines and clarifies the Commission's role with respect to granting the authorizations necessary to construct and operate facilities for the import and export of natural gas between a foreign country and the United States. The proposed regulations codify existing practice which requires the applicant proposing to construct

LNG facilities to file exhibits concerning the environmental and safety features of those facilities. The proposed regulations also delete references to the Commission's previous authority to approve the import and export of natural gas.

The changes to the Commission's regulations are proposed to be effective 60 days after publication of the final rule in the Federal Register.

**II. Information Collection Statement**

The following collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the

Paperwork Reduction Act of 1995.<sup>4</sup> FERC identifies the information provided under part 153 as FERC-539.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

*Public Reporting Burden:* Estimated Annual Burden:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC-539 .....	12	12	200	2,400

Total Annual Hours for Collection (Reporting + Recordkeeping, (if appropriate)) = 2,400.

Based on the Commission's experience with processing applications for siting and facilities' construction over the last three fiscal years (FY94-FY96), it is estimated that about 12 filings per year will be made over the next three years at a burden of 200 hours per filing, for a total annual burden of 2,400 hours under the proposed regulations.<sup>5</sup> The current annual reporting burden for FERC-539 under the current regulations is 38,400 hours. The simplified filing requirements under the proposed regulations and a projected reduced number of filings per year would result in a reduction of 36,000 hours per year from the current OMB burden inventory for FERC-539 data collection.

Applications for import/export facilities vary in size and regulatory complexity depending on the project proposed. Accessibility of documents through commonly available electronic search services, government bulletin boards, and the public record greatly affects research time needed to understand the import/export regulatory structure and application filing requirements. The total burden for a typical new pipeline application under NGA section 3 is estimated at a maximum of 200 hours based on an applicant with general knowledge of the

Federal regulatory scheme for natural gas projects. Applications to amend existing authorizations and Presidential Permits would have a significantly lesser burden since less background work would be needed.

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs—0  
Annualized Costs (Operations & Maintenance)—\$120,000 (\$50 per hour)  
Total Annualized Costs—\$120,000

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>6</sup> Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collection to OMB.<sup>7</sup>

*Title:* FERC-539, Gas Pipeline Certificate: Import/Export.

*Action:* Proposed Data Collection.

*OMB Control No.:* 1902-0062. The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

*Respondents:* Business or other for-profit, including small businesses.

*Frequency of Responses:* On occasion.

*Necessity of the Information:* The proposed rule revises the requirements contained in 18 CFR part 153. Because the Commission no longer grants authorizations for the import or export of natural gas, the major filing requirements imposed by FERC-539 are no longer applicable and revisions of the regulations are needed to reflect these changes. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and Executive Order 10485, as amended, and coincide with the current competitive regulatory environment which the Commission fostered under Order No. 636.

*Internal Review:* The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Pipeline Regulation will use the data included in applications to determine whether proposed facilities are in the public interest as well as for general industry oversight. This determination involves, among other things, an examination of adequacy of design, cost, reliability, redundancy, safety, and environmental acceptability of the proposed facilities. These requirements conform to the Commission's plan for efficient information collection,

<sup>2</sup> 15 U.S.C. 717b.

<sup>3</sup> Executive Order 10485, 3 CFR, 1949-1953 Comp., p. 970, as amended by Executive Order 12038, 3 CFR 1978 Comp., p. 136.

<sup>4</sup> 44 U.S.C. 3507(d).

<sup>5</sup> The 200 hour burden applies to an application by a pipeline to construct non-LNG facilities. The

200 hour burden does not include the environmental burden on non-pipeline applicants proposing to construct LNG facilities. These applicants would prepare proposed environmental exhibits E, E-1, and F, which the Commission identifies as under reporting requirement FERC-577.

<sup>6</sup> 5 CFR 1320.11.

<sup>7</sup> On December 29, 1996, OMB approved a 90-day extension of current FERC-539 data collection (from May 31, 1997 until August 31, 1997) to allow the Commission to obtain public comment on its proposed rule to modify the current reporting requirements.

communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Division of Information Services, Phone: (202)208-1415, fax: (202)273-0873, email: mmiller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395-3087, fax: (202)395-7285]

### III. Discussion

#### A. Background and Statutory Authority

Section 3 of the NGA requires prior authorization before exporting or importing natural gas from or to the United States. Agency implementation of section 3 has evolved in three stages. Initially, the FPC was vested with exclusive jurisdiction under section 3 to decide all natural gas import and export issues, including the authorization to import and export natural gas and to construct and operate necessary facilities.<sup>8</sup> The FPC also had the authority, pursuant to Executive Order 10485, as amended, to issue or modify a Presidential Permit for the construction and operation of border facilities at the international boundary between the United States and Canada or Mexico.

The Department of Energy Organization Act (DOE Act), enacted in 1977, transferred all the FPC's authority over natural gas imports and exports to the Secretary of Energy "unless the Secretary assigns such a function to the [Federal Energy Regulatory] Commission."<sup>9</sup> Between October 1, 1977 and February, 1984, DOE and the Commission shared responsibility over natural gas import and export issues pursuant to DOE delegation orders (which have since been rescinded). The Secretary of Energy administered his authority over natural gas import and export issues pursuant to FPC rules in place on September 30, 1977, until DOE

issued its own final regulations.<sup>10</sup> During this transition period, however, "the lines of jurisdiction and authority between the two agencies [were] not entirely clear."<sup>11</sup>

The Secretary issued new delegation orders 0204-111 and 0204-112, discussed below, in February 1984, to minimize problems of coordination on certain import/export issues.<sup>12</sup> These delegation orders allocated regulatory functions concerning the import and export of natural gas to the Commission and DOE/Economic Regulatory Administration (ERA).<sup>13</sup> DOE and the Commission continue to share responsibility for determining natural gas import/export issues under these currently applicable delegation orders.

Under DOE Delegation Order 0204-111, effective February 22, 1984, the Secretary of Energy delegated to the Administrator of ERA authority under section 3 of the NGA to regulate the import (including the place of entry) and the export (including the place of exit) of natural gas.<sup>14</sup> On the same date, the Secretary of Energy issued Delegation Order 0204-112 which delegated to the Commission exclusive authority over specific import/export matters.

The responsibilities delegated to the Commission include the authority to approve or disapprove proposals for the construction, operation, and siting of facilities, and when the construction of new domestic facilities is involved, the place of entry for imports or place of exit for exports. The Commission's delegated authority is subject to DOE's right of disapproval if the Administrator finds disapproval to be appropriate "in the circumstances of a particular case." Thus, under the most recent and presently applicable delegation orders, the facility and siting aspects of natural gas import and export are delegated and

assigned to the Commission for determination of the public interest.

Section 3 of the NGA provides that the Commission "shall issue an order upon application, unless \* \* \* it finds that the proposed exportation or importation will not be consistent with the public interest." The Commission determines the public interest in particular proceedings upon consideration of all relevant factors. For example, the Commission will authorize the construction and operation of import/export facilities under NGA section 3 upon its conclusion that the proposal is necessary to access new foreign gas supplies and to deliver imported gas to an industrial user.<sup>15</sup> The Commission will also grant authorization under NGA section 3 if the Commission concludes that the new construction will enhance system reliability, flexibility, the dependability of international energy trade, and will not adversely affect the service or rates of existing customers.<sup>16</sup>

A person applying to the Commission for authority under section 3 must also apply to the Commission, pursuant to DOE Delegation Order No. 0204-112, for the issuance of a Presidential Permit or an amendment to an existing Presidential Permit if the proposed facilities are to be located at the borders of the United States and Canada or Mexico. A Presidential Permit authorizes the applicant to construct, operate, maintain, or connect natural gas pipeline facilities at the international borders.

The Commission has the jurisdiction, pursuant to Executive Order 10485, as amended, to condition a Presidential Permit "as the public interest may in its judgment require."<sup>17</sup> In addition, Executive Order 10485, as amended, requires the Commission to obtain the concurrence of the Secretary of State and the Secretary of Defense who will consider foreign policy and national security aspects of the application.

An applicant proposing to alter a term of an existing Presidential Permit that does not also necessitate new construction, e.g., a revision to the authorized operating or design capacity of an existing import/export facility,

<sup>15</sup> See National Steel Corporation, 45 FERC ¶ 61,100 (1988).

<sup>16</sup> Great Lakes Transmission Limited Partnership, 76 FERC ¶ 61,148 (1996).

<sup>17</sup> These conditions are stated as "articles" in the body of a Presidential Permit. The articles describe the facilities, design capacity, nature of the service and include various uniform provisions concerning transferability of the Presidential Permit or facilities, inspection and access to the facilities, liability for damages, filing of information, removal of facilities, possession by the United States, and control by a foreign government.

<sup>8</sup> See *Distrigas Corporation v. FPC*, 495 F.2d 1057 (D.C. Cir. 1974).

<sup>9</sup> See sections 301(b), 402(a) and 402(f) of the Department of Energy Organization Act, 42 U.S.C. 7151(b), 7172(a) and 7172(f).

<sup>10</sup> DOE's final rules establishing procedures for processing applications for the import and export of natural gas and revised *ex parte* rules became effective on September 6, 1984. 49 FR 35302 (September 6, 1984).

<sup>11</sup> DOE, New Policy Guidelines and Delegation Orders on the Regulation of Imported Natural Gas, at 23, 49 FR 6684 (February 22, 1984).

<sup>12</sup> Both delegation orders were published at 49 FR 6684 (February 22, 1984).

<sup>13</sup> Effective on February 7, 1989, the Assistant Secretary for Fossil Energy (DOE/FE) assumed the delegated responsibilities of the Administrator of ERA. See DOE Delegation Order No. 0204-127. 54 FR 11436 (March 20, 1989).

<sup>14</sup> The Energy Policy Act of 1992, which added paragraphs (b) and (c) to section 3 of the NGA, requires the DOE to grant applications for the import or export of natural gas "without modification or delay" if the United States has a free trade agreement in effect with the foreign country into which the imported or exported natural gas flows.

must file to amend its Presidential Permit.<sup>18</sup> That applicant, however, does not also require section 3 authorization. On the other hand, the applicant granted authorization under NGA section 3 does not require a Presidential Permit for the construction of natural gas import/export facilities located at tidewater or on the border of the United States and international waters.<sup>19</sup>

#### B. Objectives of the Proposed Rule.

Part 153 currently imposes specific filing requirements on applicants for authorization under section 3 and Executive Order 10485, as amended, to site, construct, and operate facilities for the import or export of natural gas.<sup>20</sup> The proposed part 153 incorporates basic housekeeping changes to eliminate obsolete and redundant language and sections. The proposed part 153 also makes conforming changes to regulations to reflect the Commission's diminished responsibilities in the regulation of natural gas imports and exports under DOE's currently effective delegation orders.

The proposed rule also updates the type of information and exhibits that an applicant must include in its application. The Commission proposes to revise its filing requirements to match its current responsibilities and does not propose to change its substantive policies.

Other proposed changes to part 153 reflect the separate but related nature of the Commission's and DOE's responsibilities concerning natural gas import and export issues. The Commission's proposed revisions will make clear that the part 153 regulations apply only to the siting, construction, operation, or modification of facilities for the import or export of natural gas. On the other hand, DOE's responsibility is the authorization of requests to import/export natural gas.<sup>21</sup>

Proposed § 153.6, codifying current Commission practice, requires that an application to the Commission under section 3 be filed simultaneously with

or after the filing of the related application with DOE for authority to import or export natural gas.<sup>22</sup> The information an applicant must file with FERC to support its requested authorization is different from that required to be filed to support an application to import/export natural gas.<sup>23</sup>

#### C. Electronic Filing

The Commission is not proposing to modify part 153 at this time to require an applicant to file its applications on electronic media. The Commission will review in a future proceeding the electronic filing requirements for the entire certificate application process, including existing electronic filing requirements for part 157 applications and appropriate electronic filing procedures to adopt for part 153 applications. The Commission will determine where changes are necessary to reflect current policies and modify existing electronic filing requirements as necessary to streamline and update the filing process.

As was done in NOPRs in Docket Nos. RM95-3-000<sup>24</sup> and RM95-4-000,<sup>25</sup> the Commission will solicit participation of the industry and other users of filed information in formulating final electronic filing instructions.

#### D. The Revised Regulations

The proposed part 153 is arranged by subparts. General provisions, including the regulatory purpose and definitions, are set out in subpart A. Applications under NGA section 3 and applications for a Presidential Permit are addressed in subparts B and C, respectively, with revised section designations. The requirements for paper filing and certain procedural matters are set forth in subpart D.

Since the amendments to part 153 are extensive (with some regulatory text

retained and other text deleted), it is appropriate to republish the entire regulatory text of part 153 instead of identifying many fragmentary amendments to the current text. The proposed regulations are discussed below.

#### 1. Part 153—Applications for Authorization To Construct, Operate or Modify Facilities Used for the Export or Import of Natural Gas

The Commission proposes the new heading for part 153 to replace the current heading (application for authorization to export or import natural gas).

#### 2. Authority Citation

The Commission is proposing to revise the authority citation for part 153 to reflect current legal authority—DOE Delegation Order No. 0204-112 and Executive Order 10485, as amended by Executive Order 12038.

#### 3. Subpart A—General Provisions

a. *Section 153.1 Purpose.* Proposed § 153.1 states that the purpose of part 153 is to implement the Commission's authorities delegated under section 3 of the Natural Gas Act and Executive Order 10485, as amended. Part 153 establishes revised procedures for applying for authorization under section 3 and for a Presidential Permit.

b. *Section 153.2 Definitions.* The Commission is proposing to define the terms "DOE/FE" (Department of Energy/Office of Fossil Energy), "NBSIR" (National Bureau of Standards Information Report), and "person" for purposes of part 153.

The Commission proposes in § 153.2 to cross-reference DOE's definition of "person" stated at 10 CFR 590.102(m), which DOE uses for purposes of considering applications for import/export authorization.<sup>26</sup> A "person" is defined by DOE as "any individual, firm, estate, trust, partnership, association, company, joint-venture, corporation, United States local, state and federal governmental unit or instrumentality thereof, charitable, educational or other institution, and others including any officer, director, owner, employee, or duly authorized representative of the foregoing." The Commission's proposed definition replaces the undefined use of "person" in current § 153.1(a) with a comprehensive listing of potential applicants.

The proposed new definition would by its own terms automatically incorporate any future changes by DOE

<sup>18</sup> See *Panhandle Eastern Pipe Line Company*, 62 FERC ¶ 61,190 (1993).

<sup>19</sup> See *EcoElectrica, L.P.*, 75 FERC ¶ 61,157 (1996), *Yukon Pacific Corporation* 39 FERC ¶ 61,216 (1987), and *Phillips Petroleum Company*, 37 FPC 777 (1967).

<sup>20</sup> Thus, the part 153 regulations and this NOPR do not address filing requirements applicable to the construction of any connecting facilities transporting natural gas in interstate commerce. Such facilities would be within the scope of section 7 and the Commission's part 157 regulations.

<sup>21</sup> Under DOE regulations, applications must be filed at least 60 days prior to the proposed import or export, unless a later date is permitted for good cause shown. See 10 CFR 590.202. DOE processes applications for import/export authority on an expedited basis.

<sup>22</sup> The person filing with DOE for import or export authorization may be a shipper of the FERC applicant and need not be the FERC applicant.

<sup>23</sup> DOE's regulations permit an applicant to submit copies of relevant documents filed or intended to be filed with FERC to satisfy the requirements of DOE's regulations. See 10 CFR 590.202. These regulations would permit a DOE applicant to submit its application before FERC to satisfy DOE's requirement that the applicant provide a description of the facilities to be used or constructed for the proposed import/export. The information that a DOE applicant files with DOE concerning imports/exports would not, however, generally satisfy the informational requirements of part 153.

<sup>24</sup> Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, 60 FR 3111 (January 13, 1995).

<sup>25</sup> Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 3141 (January 13, 1995).

<sup>26</sup> 10 CFR 590.102(m).

in its definition of "person." The proposed definition would not change current Commission practice in processing applications under section 3 or Executive Order 10485, as amended. The Commission would administer the proposed definition of "person" consistent with its statutory authority.<sup>27</sup>

#### 4. Subpart B—Application under Section 3

a. *Section 153.5 Who Shall Apply.* Proposed § 153.5(a) retains the requirement that a person file an application to seek authorization under section 3 and adds a new provision, codifying current practice, requiring the filing of an application in order to amend an existing authorization. References to the necessity of filing an application for import/export authority are deleted.

Current § 153.1(b) is rewritten as proposed § 153.5(b) to revise and restate the current cross-reference to Presidential Permits as a requirement that an applicant must also simultaneously apply under subpart C for a Presidential Permit for the construction of border facilities at the international boundary between the United States and Canada or Mexico.

b. *Section 153.6 Time of Filing.* Current filing requirements as to the form and number of paper copies of applications are deleted from current § 153.2 and are included in new subpart D to avoid duplication of regulatory text.

The portion of the third sentence of current § 153.2 stating the time of making applications for the import and export of natural gas is deleted. In its place, proposed § 153.6 codifies current practice to require the simultaneous or prior filing of an application with DOE for authority to import or export natural gas. Proposed § 153.6 recognizes the related nature of applications before the Commission and DOE. The current section heading is revised.

c. *Section 153.7 Contents of Application.* Proposed § 153.7 eliminates obsolete references in the text and heading of current § 153.3 to information concerning import or export applications and to filing fees.<sup>28</sup> Informational requirements in current §§ 153.3(a) through 153.3(c) identify the

applicant. These informational requirements are revised and retained in proposed § 153.7(a)(1) through (a)(3) with a paragraph heading added. The informational requirements in current §§ 153.3(d) through 153.3(f) are deleted because they are associated with the import and export of natural gas.

The requirement in current paragraph 153.3(g) to describe proposed facilities is retained, expanded, and redesignated as proposed § 153.7(b) with a separate paragraph heading added. The information required by § 153.7(b) should provide the Commission with sufficient details of the applicant's proposal to permit the Commission to process applications under subparts B and C, as applicable.

Proposed § 153.7(b) requires the applicant to include a summary of its proposal. In addition, proposed § 153.7(b) requires the applicant to file a description of the proposed facilities and a description of state, foreign, or other Federal licenses or permits for the construction or operation of facilities (revising a similar requirement in current § 153.11(d) applicable to Presidential Permits). The reference in current § 153.11(d) to permits in connection with the import/export of natural gas is deleted. Proposed § 153.7(b) includes a new requirement that the applicant must also state the status of any non-FERC regulatory proceedings (United States or foreign) related to the proposal.

Proposed § 153.7(c) requires the applicant to file two statements with its application. One statement reflects a revision of the requirement in current § 153.3(h)(1) that an applicant demonstrate that its proposal will not be inconsistent with the public interest and the other statement requires, for the first time, a description of the nature of the transportation service offered. A separate heading is added. Proposed § 153.7(c)(1) identifies illustrative elements of the public interest (without restriction on the Commission's ability to request other information as necessary in proposed § 153.21(b) to cure deficiencies in an application.

The first illustrative element of the public interest is reflected in Commission precedent under NGA section 3 (and section 7) and is not part of the current part 153 regulations.

Proposed § 153.7(c)(1)(i) requires the applicant to file a statement demonstrating that the proposal will access new foreign supplies of natural gas and new markets, enhance system reliability and flexibility and not impair service to existing customers. For example, a freeze-up of Gulf coast production platforms may require

increased reliance on Canadian or Mexican-source natural gas, which could necessitate the construction of additional border-crossing facilities. Also, the possibility of a break-down in service over critical energy corridors at the borders or the existence of transportation bottlenecks could warrant the construction of looping transportation facilities.

Proposed § 153.7(c)(1)(ii) deletes the reference to bundled sales service in current paragraph (h)(2) and substitutes "transportation service" in the provision requiring the applicant to show that the proposal will not impair service to United States customers.

Proposed § 153.7(c)(iii) revises the requirement to file a statement describing certain contracts in current § 153.11(c) applicable to Presidential Permits. Proposed § 153.7(c)(iii) requires the applicant for section 3 authorization to file a statement describing any existing contracts involving the control of operations at import/export facilities or transportation rates that could prevent competing United States companies from extending their activities in the same general area. Such agreements could interfere with free trade in natural gas between the United States and Canada or Mexico. They may also be inconsistent with proposed § 153.10 which provides that section 3 authorizations are not exclusive to the holder.

Proposed § 153.7(c)(2) establishes a new requirement that the applicant include a statement that the proposed import/export facilities will be used: (1) To render transportation services under Part 284, (2) to provide private transportation, or (3) to provide service that is exempt from the provisions of the NGA pursuant to sections 1(b) or 1(c) thereof.<sup>29</sup> This requirement will enable the Commission to determine whether the applicant's operations are consistent with the Commission's open access transportation policies. Current § 153.5 (other information) is redesignated as proposed § 153.21(b)(rejection of applications), and § 153.5 is deleted.

d. *Section 153.8 Required Exhibits.* The Commission proposes to

<sup>29</sup> Section 1(b) states that the provisions of the NGA apply, *inter alia*, to the transportation of natural gas in interstate commerce but not to "any other transportation," the local distribution of natural gas, or the production or gathering of natural gas. Section 1(c) exempts a Hinshaw pipeline from the provisions of the NGA. The Commission, however, regulates the activities of these exempt entities in foreign commerce under section 3. See, e.g., Vermont Gas System, Inc., 24 FERC ¶ 61,366 (1983) (LDC); Interenergy Sheffield Processing, 78 FERC ¶ 61,085 (1997) (gathering); and Havre Pipeline Company, *et al.*, 71 FERC ¶ 61,292 (1995) (intrastate pipeline/gatherer engaging in foreign commerce).

<sup>27</sup> The Commission has plenary and elastic authority under NGA section 3 to prevent gaps in regulation between Federal and local jurisdiction as applied to import and export facilities. See *Distrigas Corporation v. FPC*, 495 F.2d 1057 at 1064 (D.C. Cir. 1974).

<sup>28</sup> The informational filing requirements in proposed §§ 153.7 and 153.8 are proposed to apply to applications under subpart C for Presidential Permits for the construction of import/export facilities at the border as well.

redesignate current § 153.4 as proposed § 153.8, which retains the requirement to file current Exhibits A through C in new paragraphs (a)(1), (a)(2), and (a)(3), respectively, with editorial revisions. Current Exhibit A is revised to incorporate the requirement of current § 153.11(a)(3) that an applicant for a Presidential Permit describe the amount and classes of capital stock issued by a corporate applicant and the nationality of officers, directors, and stockholders, and the amount and class of stock held by each. The Commission proposes to eliminate obsolete exhibits D and E (contracts for the export or import of natural gas).

Proposed § 153.8(a) requires an applicant to file new exhibits D (copy of any construction and operation agreements), E (LNG-related engineering data), E-1 (LNG-related seismic information for certain facilities), and F (an environmental report required by part 380 for LNG and non-LNG related facilities). Applicants may refer to the "Guidance Manual for Environmental Report Preparation" to assist in the preparation of these exhibits.

New exhibit D codifies current practice in processing applications under section 3 for pipeline facilities, which do not involve the import/export of LNG. Exhibit D requires the applicant to verify the business feasibility of the import/export project by filing copies of construction and operation agreements. These contracts will show how the applicant and its Canadian or Mexican counterpart intend to jointly construct and operate the border-crossing facilities.

New exhibits E, E-1, and F codify existing practice which requires an applicant for the construction of LNG facilities to provide sufficient information that will enable the Commission to determine whether the new facilities will be constructed and operated safely and with minimal adverse environmental impact. These exhibits are justified by the significant safety and environmental implications of LNG terminal facilities. The proposed rule revises the existing map exhibit as proposed Exhibit G to eliminate the current reference to a scale not greater than 20 miles to the inch and, in its place, to require a map of suitable scale.

*e. Section 153.9 Transferability.* The Commission proposes to redesignate current § 153.6 as § 153.9, revise current paragraph (a) to delete references to authorizations for the import/export of natural gas, and substitute references to authorizations under section 3. Proposed § 153.9 adds headings to current paragraphs (a) and (b) to clarify

that authorizations under subpart B are not transferable or assignable.

*f. Section 153.10 Authorization Not Exclusive.* The Commission proposes to redesignate current § 153.7 as § 153.10 and to revise the current regulation to eliminate references to authorizations for the import/export of natural gas, replacing them with references to authorizations for construction and operation under section 3 of the NGA. Under proposed § 153.10, which codifies current Commission practice, if the Commission authorizes the construction of facilities pursuant to section 3, the Commission is not prevented from granting authorization to another applicant under section 3 at the same general location.<sup>30</sup> Current § 153.8 (filing of import/export contracts, rate schedules, etc.) is proposed to be deleted as obsolete.

#### 5. Subpart C—Application for a Presidential Permit

*a. Section 153.15 Who Shall Apply.* The existing heading prefacing current §§ 153.10 through 153.12 is deleted and replaced with a more concise heading (Application for a Presidential Permit) substituted under a new subpart C of part 153. The Commission is proposing to redesignate current § 153.10 as § 153.15 and to divide proposed § 153.15 into paragraphs (a) and (b) with individual headings.

The Commission is proposing to use the same definition of person in paragraph (a) as is used in subpart B and is deleting the reference in current § 153.10 to any "person, firm or corporation." It is appropriate to use the same definition because the same entity that applies under subpart C to construct and operate border facilities would need to apply for authorization under subpart B. Proposed paragraph (b) cross-references the requirement to file simultaneously an application under subpart B for the siting or construction of facilities, deleting the current cross-reference to applications for authorization to import or export natural gas.

*b. Section 153.16 Contents of Application.* The Commission is proposing to redesignate current § 153.11 as § 153.16, with a revised heading. Filing requirements for Presidential Permit applications stated in the first sentence of current § 153.11 are deleted and relocated to new subpart D of part 153. Obsolete references to the payment of filing fees are deleted.

<sup>30</sup> See, e.g., Tenneco Baja California Corporation, 75 FERC ¶ 61,192 (1996) and Pacific Interstate Offshore Company, 74 FERC ¶ 61,350 (1996).

Current informational requirements for filing an application for a Presidential Permit for the construction or modification of border facilities are virtually identical to the current informational requirements for applications under NGA section 3. Thus, to avoid duplication of regulatory text, filing requirements for applications for Presidential Permits are the same as those stated in subpart B for section 3 authorization. Proposed § 153.16(a) states that an applicant for a Presidential Permit for the construction and operation of border facilities that complies with the informational filing requirements under subpart B is not required to satisfy separate filing requirements under subpart C.

Accordingly, current §§ 153.11(a)(1) and (a)(2) and the first part of paragraph (a)(3) are deleted as they duplicate the same provisions in proposed § 153.7(a). The remainder of current § 153.11(a)(3) is redesignated in proposed § 153.8 (Exhibit A). Current § 153.11(a)(4) is revised to update references to applicants "subventioned" (subsidized) by a foreign government and is relocated to proposed § 153.7(a)(3). Current § 153.11(b), requiring an applicant to file a map, is deleted because it duplicates the same requirement in current § 153.4 and proposed § 153.8(a)(8) (Exhibit G).

Current § 153.11(c), concerning anti-competitive agreements, and § 153.11(d), concerning permits granted by a foreign government, are revised to eliminate out-dated references to bundled gas service, "landing licenses," and import/export permits. These sections are redesignated as proposed §§ 153.7(c)(1)(iii) and 153.7(b), respectively.

Certain amendments to an existing Presidential Permit do not involve related section 3 applications because these amendments do not propose the construction or modification of import/export facilities. For example, an applicant may propose to revise articles of an existing Presidential Permit that deal with non-facilities issues, e.g., authorized design capacity, name of the Permittee, or whether the facility may be used both to import and export natural gas. Proposed § 153.16(b) requires that applicant to provide information identifying itself pursuant to proposed § 153.7(a) and to fully explain and justify its proposed amendment. This applicant would not be required to provide the remainder of information required by proposed §§ 153.7 and 153.8, applicable to the construction of facilities.

Current § 153.12, authorizing the Commission to request such other

information in connection with an application as it may deem pertinent, is deleted. In its place, proposed § 153.21(b) authorizes the Commission to direct the applicant to file such information as may be necessary to cure a deficient application.

c. *Section 153.17 Effectiveness of Presidential Permit.* Proposed § 153.17 codifies the Commission's existing practice of requiring a Permittee to accept an issued Presidential Permit by executing, with proof of proper authorization, the Testimony of Acceptance of the Presidential Permit. The Permittee would be required to file a copy of the executed Testimony of Acceptance with the Secretary prior to the start of construction.<sup>31</sup>

#### 6. Subpart D—Paper Media and Other Requirements

a. *Section 153.20 General Rule.* The Commission proposes to relocate its current filing requirements for paper media in subpart D.

b. *Section 153.21 Conformity with Requirements.* Proposed § 153.21 states the requirement that an application must conform to the requirements of part 153.

c. *Section 153.22 Amendments and Withdrawals.* Proposed § 153.22 applies the Commission's Rules of Practice and Procedure applicable to amending or withdrawing pleadings to amending or withdrawing an application under subpart B or subpart C of part 153.

d. *Section 153.23 Reporting Requirement.* The NOPR would delete as obsolete the only post-authorization reporting requirement in current part 153.<sup>32</sup> Interstate pipelines are currently required to file operational information about facilities authorized under section 3 in their FERC Form No. 2 (annual report), FERC Format No. 567 (annual system flow diagram), and annual report of estimated peak capacity pursuant to 18 CFR 284.12.

Commission regulations, however, do not require applicants which are not natural gas companies to file operational information with the Commission concerning facilities authorized under section 3.<sup>33</sup> Accordingly, the Commission proposes in § 153.23 to require applicants which are not otherwise required to file operating

information concerning facilities authorized under section 3 with the Commission to report the completion of construction or modification, the date service commenced, and annually the continued operation of the import/export facilities.<sup>34</sup>

#### IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.<sup>35</sup> The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule would have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.<sup>36</sup> Further, the filing requirements of small entities are reduced by the rule. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### V. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.<sup>37</sup> No environmental consideration is raised by the promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended.<sup>38</sup> The instant rule updates the part 153 regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

<sup>34</sup> Effective November 13, 1995, the Commission eliminated its annual report of import/export volumes in FPC Form 14. See Final rule, Revisions to Uniform System of Accounts, Forms, Statements and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995). The Commission eliminated FPC Form 14 because importers/exporters currently file quarterly reports with DOE/FE including the same volume and price information.

<sup>35</sup> 5 U.S.C. 601–612.

<sup>36</sup> 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

<sup>37</sup> 18 CFR 380.4.

<sup>38</sup> 18 CFR 380.4(a)(2)(ii).

#### VI. Public Comment Procedures

The Commission invites all interested persons to submit written comments on this NOPR.

An original and 14 copies must be filed with the Commission no later than April 11, 1997. Comments must refer to Docket No. RM97–1–000 and be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Additionally, comments should be submitted on computer diskette in WordPerfect 5.1/5.2 format (Dos or Windows version) or in ASCII format, with the name of the filer, Docket No. RM97–1–000, and the format used (WP or ASCII) on the outside of the diskette.

All written submissions will be placed in the Commission's public file and will be available for public inspection, during regular business hours, at the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426.

#### List of Subjects in 18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.  
Lois D. Cashell,  
Secretary.

For the reasons set out in the preamble, the Commission proposes to revise 18 CFR part 153 to read as follows.

### **PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS**

#### **Subpart A—General Provisions**

Sec.  
153.1 Purpose and scope.  
153.2 Definitions.

#### **Subpart B—Application Under Section 3**

153.5 Who shall apply.  
153.6 Time of filing.  
153.7 Contents of application.  
153.8 Required exhibits.  
153.9 Transferability.  
153.10 Authorization not exclusive.

#### **Subpart C—Application for a Presidential Permit**

153.15 Who shall apply.  
153.16 Contents of application.  
153.17 Effectiveness of Presidential Permit.

#### **Subpart D—Paper Media and Other Requirements**

153.20 General rule.  
153.21 Conformity with requirements.  
153.22 Amendments and withdrawals.  
153.23 Reporting Requirements.

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as

<sup>31</sup> See MidCon Texas Pipeline Corporation, 77 FERC ¶ 61,205 (1996).

<sup>32</sup> Current § 153.8 (filing of import/export contracts and rate schedules pursuant to part 154 of the Commission's regulations).

<sup>33</sup> The Commission has imposed such reporting as a condition in individual section 3 proceedings. See, e.g., Yukon Pacific Company, L.P., 71 FERC ¶ 61,197 (1995) and EcoElectrica, L.P., 75 FERC ¶ 61,157 (1996).

amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204-112, 49 FR 6684 (February 22, 1984).

### Subpart A—General Provisions

#### § 153.1 Purpose and scope.

The purpose of this part is to implement the Commission's delegated authorities under section 3 of the Natural Gas Act and Executive Order 10485, as amended by Executive Order 12038. Subpart B of this part establishes filing requirements an applicant must follow to obtain authorization under section 3 of the NGA for the siting, construction, operation, place of entry for imports or place of exit for exports. Subpart C of this part establishes filing requirements an applicant must follow to apply for a Presidential Permit, or an amendment to an existing Presidential Permit, for border facilities at the international boundary between the United States and Canada or Mexico.

#### § 153.2 Definitions.

(a) *DOE/FE* means the Department of Energy/Office of Fossil Energy or its successor office.

(b) *NBSIR* means the National Bureau of Standards Information Report.

(c) *Person* means an individual or entity as defined in 10 CFR 590.102(m).

### Subpart B—Application Under Section 3

#### § 153.5 Who shall apply.

(a) *Applicant*. Any person proposing to site, construct, operate, or modify facilities which are to be used for the export of natural gas from the United States to a foreign country or for the import of natural gas from a foreign country or to amend an existing authorization shall file with the Commission an application for authorization therefor under subpart B of this part and section 3 of the Natural Gas Act.

(b) *Cross-reference*. Any person applying under paragraph (a) of this section to construct facilities at the borders of the United States and Canada or Mexico must also simultaneously apply for a Presidential Permit under subpart C of this part.

#### § 153.6 Time of filing.

An application filed pursuant to § 153.5(a) shall be made simultaneous with or after the filing of any related applications with DOE/FE for exporting or importing natural gas, except where otherwise ordered by the Commission for good cause shown.

#### § 153.7 Contents of application.

Every application under subpart B of this part shall include, in the order indicated, the following:

- (a) *Information regarding applicant*.
- (1) The exact legal name of applicant;
  - (2) The name, title, and post office address, telephone and facsimile numbers of the person to whom correspondence in regard to the application shall be addressed;
  - (3) If a corporation, the state or territory under the laws of which the applicant was organized, and the town or city where applicant's principal office is located. If applicant is incorporated under the laws of, or authorized to operate in, more than one state, all pertinent facts should be stated. If applicant company is owned wholly or in part by any government entity, or directly or indirectly subsidized by any government entity; or, if applicant company has any agreement for such ownership or subsidization from any government, provide full details of ownership and/or subsidies.

(b) *Summary*. A detailed summary of the proposal, including descriptions of the facilities utilized in the proposed export or import of natural gas; state, foreign, or other Federal governmental licenses or permits for the construction, operation, or modification of facilities in the United States, Canada, or Mexico; and the status of any state, foreign, or other Federal regulatory proceedings which are related to the proposal.

(c) *Statements*. (1) A statement demonstrating that the proposal or proposed construction is not inconsistent with the public interest, including, where applicable, a demonstration that the proposal:

(i) Will access new foreign supplies of natural gas and serve new market demand, enhance the reliability and flexibility of the applicant's pipeline system, the dependability of international energy trade, and will not impair transportation service to existing customers;

(ii) Will not impair the ability of the applicant to render transportation service at reasonable rates to customers in the United States; and,

(iii) will not involve any existing contract(s) between the applicant and a foreign government or person concerning the control of operations or rates for the delivery or receipt of natural gas which may restrict or prevent other United States companies from extending their activities in the same general area, with copies of such contracts.

(2) A representation that the proposal will be used to render transportation

services under part 284 of this chapter, private transportation, or service that is exempt from the provisions of the Natural Gas Act pursuant to sections 1(b) or 1(c) thereof.

#### § 153.8 Required exhibits.

(a) An application must include the following exhibits:

(1) *Exh. A*. A certified copy of articles of incorporation, partnership or joint venture agreements, and by-laws of applicant; the amount and classes of capital stock; nationality of officers, directors, and stockholders, and the amount and class of stock held by each;

(2) *Exh. B*. A detailed statement of the financial and corporate relationship existing between applicant and any other person or corporation;

(3) *Exh. C*. A statement, including signed opinion of counsel, showing that the construction, operation, or modification of facilities for the export or the import of natural gas is within the authorized powers of applicant, that applicant has complied with laws and regulations of the state or states in which applicant operates;

(4) *Exh. D*. If the proposal is for a pipeline interconnection to import or export natural gas, a copy of any construction and operation agreement between the applicant and the operator(s) of border facilities in the United States and Canada or Mexico;

(5) *Exh. E*. If the proposal is to import or export LNG, evidence that an appropriate and qualified concern will properly and safely receive or deliver such LNG, including a report containing detailed engineering and design information. The Commission staff's "Guidance Manual for Environmental Report Preparation" may be obtained from the Commission's Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426;

(6) *Exh. E-1*. If the LNG import/export facility is to be located at a site in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map of the United States, or where there is a risk of surface faulting or ground liquefaction, a report on earthquake hazards and engineering. Guidelines are contained in "Data Requirements for the Seismic Review of LNG Facilities," NBSIR 84-2833. This document may be obtained from the National Technical Information Service or the Commission's Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426;

(7) *Exh. F*. An environmental report as specified in § 380.3 of this chapter. Refer to Commission staff's "Guidance Manual for Environmental Report Preparation;" and



(8) *Exh. G.* A geographical map of a suitable scale and detail showing the physical location of the facilities to be utilized for the applicant's proposed export or import operations. The map should indicate with particularity the ownership of such facilities at or on each side of the border between the United States and Canada or Mexico, if applicable.

(b) The applicant may incorporate by reference any exhibit required by paragraph (a) of this section already on file with the Commission.

#### § 153.9 Transferability.

(a) *Non-transferable.* Authorizations under subpart B of this part and section 3 of the Natural Gas Act shall not be transferable or assignable. A Commission order granting such authorization shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of facilities used thereunder by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to operations of the facilities remains substantially the same as before the transfer and as stated in the initial application for such authorization.

(b) *Supplemental orders.* The Commission also may make, at any time subsequent to the original order of authorization, after opportunity for hearing, such supplemental orders concerning the operation of the facilities as it may find necessary or appropriate.

#### § 153.10 Authorization not exclusive.

No authorization granted pursuant to subpart B of this part and section 3 of the Natural Gas Act shall be deemed to prevent the Commission from granting authorization under subpart B to any other person at the same general location, or to prevent any other person from making application for such authorization.

#### Subpart C—Application for a Presidential Permit.

##### § 153.15 Who shall apply.

(a) *Applicant.* Any person proposing to construct, operate, maintain, or connect facilities or to change the operation or maintenance of facilities at the borders of the United States and Canada or Mexico, for the export or import of natural gas to or from those countries, or to amend an existing Presidential Permit, shall file with the

Commission an application for a Presidential Permit under subpart C of this part and Executive Order 10485, as amended by Executive Order 12038.

(b) *Cross-reference.* Any person applying under paragraph (a) of this section for a Presidential Permit for the construction and operation of border facilities must also simultaneously apply for authorization under subpart B of this part.

#### § 153.16 Contents of application.

(a) *Cross-reference.* The submission of information under §§ 153.7 and 153.8 of subpart B of this part shall be deemed sufficient for purposes of applying for a Presidential Permit or an amendment to an existing Presidential Permit under subpart C of this part for the construction and operation of border facilities.

(b) *Amendment Not Proposing Construction.* An applicant proposing to amend the article(s) of an existing Presidential Permit (other than facilities aspects) must file information pursuant to § 153.7(a) and a summary and justification of its proposal.

#### § 153.17 Effectiveness of Presidential Permit.

A Presidential Permit, once issued by the Commission, shall not be effective until it has been accepted by the highest authority of the Permittee, as indicated by Permittee's execution of a Testimony of Acceptance, and a certified copy of the accepted Presidential Permit and the executed Testimony of Acceptance has been filed with the Commission.

#### Subpart D—Paper Media and Other Requirements

##### § 153.20 General rule.

(a) *Number of Copies.* Applications under subpart B of this part must be submitted to the Commission in an original and 7 conformed paper copies. Applications under subpart C of this part must be submitted to the Commission in an original and 9 conformed paper copies.

(b) *Certification.* All applications must be signed in compliance with § 385.2005 of this chapter.

(1) The signature on an application constitutes a certification that: the signer has read the filing signed and knows the contents of the paper copies; and, the signer possesses the full power and authority to sign the filing.

(2) An application must be signed by one of the following:

(i) The person on behalf of whom the application is made;

(ii) An officer, agent, or employee of the governmental authority, agency, or

instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(c) *Where to file.* The paper copies and an accompanying transmittal letter must be submitted in one package to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

#### § 153.21 Conformity with requirements.

(a) *General rule.* Applications under subparts B and C must conform with the requirements of this part.

(b) *Rejection of applications.* If an application does not conform to the requirements of this part, the Director of the Office of Pipeline Regulation will notify the applicant of all deficiencies. Deficient applications not amended within 20 days of the notice of deficiency, or such longer period as may be specified in the notice of deficiency, will be rejected by the Director of the Office of Pipeline Regulation as provided by § 385.2001(b) of this chapter. Copies of a rejected application will be returned. An application which relates to an operation, service, or construction concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

#### § 153.22 Amendments and withdrawals.

Amendments to or withdrawals of applications must conform to the requirements of §§ 385.215 and 385.216 of this chapter.

#### § 153.23 Reporting requirements.

Each person authorized under part 153 that is not otherwise required to file information concerning the start of construction or modification of import/export facilities, the completion of construction or modification, and the commencement of service must file such information with the Commission within 10 days after such event. Each such person must also report by March 1 of each year the estimated peak day capacity and actual peak day usage of its import/export facilities.

[FR Doc. 97-3199 Filed 2-7-97; 8:45 am]

BILLING CODE 6717-01-P