retained in hard-copy for the required time period.

Issued in Washington, DC on may 29, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–14805 Filed 6–4–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 10

Rules of Practice; Proposed Amendments

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On April 3, 1998, the Commission published in the **Federal Register** a notice requesting comments on proposed amendments to its Rules of Practice, which govern most adjudicatory proceedings brought under the Commodity Exchange Act, as amended, except for reparations actions. The original comment period expires on June 2, 1998. 63 FR 16453 (April 3, 1998). In a letter dated May 28, 1998, the Committee on Commodities and Futures Law of the New York State Bar Association requested an extension of the comment period. To assure that an adequate opportunity is provided for the submission of meaningful comments, the Commission has determined to extend the comment period by an additional thirty (30) days.

DATES: Comments must be received on or before July 2, 1998.

ADDRESSES: Comments on the proposed amendments should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by electronic mail to secretary@cftc.gov. Reference should be made to ''Proposed Amendments to the Rules of Practice.''

FOR FURTHER INFORMATION CONTACT: Stephen Mihans, Office of Chief Counsel, Division of Enforcement, at (202) 418–5399 or David Merrill, Office of Chief Counsel, at (202) 5120, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued at Washington, DC, on this 1st day of June, 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–14961 Filed 6–2–98; 2:33 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket No. RM98–8–000]

Alternative Methods for Regulating Natural Gas Pipeline Facilities and Services on the Outer Continental Shelf; June 1, 1998

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission is initiating an inquiry into alternatives to the Commission's recent methods of exercising its jurisdiction over natural gas pipeline facilities and services on the Outer Continental Shelf.

The goal of the notice of inquiry is to generate public comment that will assist the Commission in exploring possible alternatives to the application of the existing ''primary function'' test to offshore pipeline facilities—as well as possible complimentary and/or alternative modes of regulation under the Outer Continental Shelf Lands Act.

The notice of inquiry invites all interested persons to participate in the inquiry and to submit answers to several specific questions.

DATES: Written comments must be received on or before July 16, 1998; an original and 14 copies should be filed.

ADDRESSES: All comments should refer to Docket No. RM98–8–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert Wolfe, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2098.

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 at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service 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. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

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

I. Introduction

In 1995, in response to heightened interest in Outer Continental Shelf (OCS) exploration and development, the Commission undertook a review of its OCS gathering policy through a notice of inquiry in Docket No. RM96–5–000. On February 28, 1996, the Commission issued a statement of policy respecting pipeline facilities on the OCS.[1] The policy statement concluded that facilities located in deep water (a depth of 200 meters or more) would be

[1] Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Land's Act (Policy Statement), 74 FERC ¶ 61,222 (Feb. 26, 1996).

presumed to be gathering facilities up to the point where they reach proximity to, or the point or points of interconnection with, the existing interstate pipeline grid. Beyond that point, the facilities' primary function would be determined under the Commission's existing ''primary function'' test discussed below.

On February 19, 1997, the United States Court of Appeals for the Fifth Circuit, in *Sea Robin Pipeline Co.* v. FERC (*Sea Robin*),[2] vacated and remanded the Commission's decision that Sea Robin Pipeline Company's (Sea Robin) offshore natural gas pipeline system, which has been regulated by the Commission under the Natural Gas Act (NGA) for almost 30 years, is properly classified as a jurisdictional interstate pipeline facility.[3] The basic ruling of the court was that the Commission did not give adequate attention to the physical and operational characteristics of Sea Robin's system in applying the ''primary function'' test to determine its jurisdictional status.[4] The court left open how the Commission should proceed on remand and offered no judgement as to the proper result. The court stated that the Commission is free to reconsider the applicability of the factors in its primary function test to offshore pipeline systems and then, if necessary, reformulate this test.[5]

To assist it in responding to the court's direction in *Sea Robin*, the Commission is initiating an inquiry in the above captioned proceeding to explore once more what methods it should apply in exercising its jurisdiction under the NGA and the Outer Continental Shelf Lands Act (OCSLA) over natural gas facilities and services on the OCS.

As with the earlier policy statement in Docket No. RM96–5–000, the Commission's objective is to consider the possibilities for a simplified regulatory approach that will not impede or distort developmental or production activities on the OCS and which, at the same time, will provide shippers the full protection established by the NGA and the OCSLA. Accordingly, the Notice of Inquiry (NOI) will seek comments and information on alternatives to the current ''primary function'' test for making NGA jurisdictional determinations, as well as alternative methods of regulating OCS pipelines under the NGA and/or the OCSLA. Of primary interest to the Commission are industry comments on: alternatives to the Commission's ''primary function'' test that will simplify the process and/or standard for determining the jurisdictional status of OCS pipeline facilities under the NGA; the extent of the Commission's authority under the OCSLA to regulate rates charged by OCS pipelines; and modes of regulating OCS pipelines under the OCSLA, with or without the exercise of concurrent NGA jurisdiction.

II. Statutory Framework

A. The Natural Gas Act (NGA)

The basic purpose of Congress in enacting the NGA was to ''occupy the field,''[6] of the regulation of natural gas moving in interstate commerce by the primary grant of jurisdiction to the Commission over those aspects of such regulation over which the states may not act.[7] To that end, Congress meant to create a comprehensive regulatory scheme of dual state and federal authority.[8] Section 1(b) of the NGA embodies the primary grant of jurisdiction to the Commission. At the same time, section 1(b) exempts from the Act's coverage ''the production or gathering of natural gas.'' Thus, section 1(b) first grants to the Commission broad plenary authority to regulate the business of transporting and of wholesaling natural gas moving in interstate commerce. Secondly, section 1(b), by operation of the ''production and gathering'' exemption, removes from that plenary grant of federal jurisdiction those aspects of natural gas regulation which are the proper subject of state regulation.

B. The Outer Continental Shelf Lands Act (OCSLA)[9]

An additional source of the Commission's regulatory authority over OCS pipeline facilities and activities are sections 5(e) and 5(f) of the OCSLA.[10] Generally, these statutory provisions give the Commission certain responsibilities and authorizations to ensure that natural gas pipelines on the OCS will be operated in accordance with competitive principles and in a nondiscriminatory manner. The OCSLA and the NGA are to be applied reciprocally in furtherance of their individual regulatory purpose.[11]

Sections 5(e) of the OCSLA requires pipelines to transport natural gas produced from the OCS ''without discrimination'' and in such ''proportionate amounts'' as the Commission, in consultation with the Secretary of Energy, determines to be reasonable. Section 5(f)(1) of the OCSLA requires pipelines transporting gas on or across the OCS to adhere to certain ''competitive principles''. These ''competitive principles'' include a requirement that the pipeline must provide ''open and nondiscriminatory access to both owner and nonowner shippers.''[12] Section 5(f)(3) requires the Commission to consult with the Attorney General ''on specific conditions to be included in any permit, license, * * * or grant of authority in order to ensure that pipelines are operated in accordance with the competitive principles set forth in (Section 5(f)(1)).''[13]

The applicability of the provisions of Sections 5(e) and 5(f)(1) is not restricted to interstate pipelines that are subject to the Commission's NGA jurisdiction. The only pipelines that may be exempt from the Commission's authority under the OCSLA are certain ''feeder lines'', that are defined in section 5(f)(2) of the OCSLA[14]/ as a pipeline which feeds into a facility where oil and gas are ''first collected'' or a facility where oil and gas are ''first separated, dehydrated, or otherwise processed.'' These ''feeder lines'' may only be exempted from the requirements of the OCSLA by order of the Commission.

III. Specific Questions for Response by All Commenters

In light of the Fifth Circuit's opinion, it is not clear what the best course of action in the Sea Robin proceeding is. Given the divergence between the court's ruling and the Commission's prior orders in this proceeding, respecting the limited significance offshore of certain physical factors of the ''primary function'' test and the significance of certain nonphysical factors, the continued viability of the current ''primary function'' test as a method of making jurisdictional

[2] 127 F.3d 365 (Fifth Cir. 1997); *reh'g denied*, February 5, 1998.

[3] 71 FERC ¶ 61,351 (1995), *reh'g denied*, 75 FERC ¶ 61,332 (1996).

[4] 137 F.3d at 370–71.

[5] *Id.* at 372.

[6] *See* Schneidwind v. ANR Pipeline Co., 485 U.S. 293, 310–311 (1988).

[7] Interstate Natural Gas Co. v. FPC, 331 U.S. 682, 690 (1947).

[8] FPC v. Louisiana Power & Light Co. V. FPC, 406 U.S. 621 (1972).

[9] 43 U.S.C. 1334 *et. seq.*

[10] 43 U.S.C. 1334(e), (f).

[11] *See* Continental Oil Co. V. FPC, 370 F. 2d 57, 67 (Fifth Cir. 1966).

[12] The conference report states that section 5(f) ''is intended to prevent ''bottleneck monopolies'' and other anticompetitive situations involving OCS pipelines'' and that it ''is a reaffirmation and strengthening of subsection 5(e), which provides for the transport or purchase of all OCS oil and gas ''without discrimination.'' Conf. Rep. 95–372, 95th Cong. 2d Sess.

[13] 43 U.S.C. 1334 5(f)(3).

[14] 43 U.S.C. 1334(f)(2).

determinations that are consistent with the fundamental purposes of the NGA has been cast into doubt. A number of other proceedings now await either the Commission's reaffirmation of its existing ''primary function'' test or the establishment of a new standard for gathering on the OCS in light of the Fifth Circuit's action. Accordingly, the Commission seeks assistance in responding to the court's invitation to reconsider the applicability of the factors in the ''primary function'' test to offshore pipeline systems and, if necessary, reformulate the test.

The Commission has compiled a list of questions, set forth below, answers to which, if supported by legal analysis where appropriate, will be helpful in assessing the Commission's current policy and in developing and assessing possible policy alternatives. This list is not meant to be all inclusive. Commenters are invited to present alternative solutions not specifically referenced in this notice.

A. The ''Primary Function'' Test

1. What are the physical and operational characteristics of an OCS pipeline facility that have value in assisting the Commission in determining where gathering ends in the offshore context?

a. What distinguishing physical and operational characteristics are unique to OCS gathering systems?

b. What distinguishing physical and operational characteristics are unique to OCS transmission systems?

2. What factors, other than a pipeline facility's physical and operational characteristics, are relevant to making jurisdictional determinations in the offshore context?

3. Are there any elements of the existing ''primary function'' test as it applies to OCS facilities that should be eliminated for lack of relevance, value, undue complexity, or for any other reason?

4. What alternatives are there to the concept of the ''primary function'' test as a method of making OCS jurisdictional determinations?

5. Should the Commission adopt the OCSLA's definition of ''feeder lines'' as a definition of gathering lines on the OCS?

6. How can the Commission simplify the process of making OCS jurisdictional determinations?

7. How much, and to what degree of quality, is OCS gas processed at locations other than onshore or in shallow waters?

B. The Effect Upon Existing Certificated Facilities

1. What would be the practical results of the following possible Commission determinations if made under the existing ''primary function'' test?

a. All existing certificated facilities are jurisdictional?

b. All existing certificated facilities are nonjurisdictional?

c. Only those facilities downstream of a central point are jurisdictional?

2. Are there alternative outcomes in this proceeding other than 1.a., b., and c?

3. Could the Commission make a determination that all, or part of a pipeline's facilities are exempt from regulation under the NGA, contingent upon a judicial affirmation of the Commission's interpretation of the extent of its rate and conditioning authority under the OCSLA?

C. The OCSLA

1. What is the extent of the Commission's authority under the OCSLA respecting rates for gas pipeline services?

2. Does the OCSLA provide sufficient remedial authority for the Commission to ensure nondiscriminatory access by prohibiting discriminatory or excessive rates?

3. Does the Commission have sufficient authority under the OCSLA to prohibit, eliminate or alter rates that are clearly discriminatory or rates that are so high that they would have the effect of denying access to shippers?

4. Is there a legal basis under the OCSLA for the Commission to regulate generally the level of rates for services performed by OCS pipelines?

5. Does the OCSLA provide the Commission with sufficient authority to protect the interests of historical customers of existing offshore interstate pipelines if these pipelines were declared to be gathering facilities?

6. Should the Commission issue a rule under the OCSLA imposing terms and conditions on OCS facilities to protect existing shippers on existing OCS interstate pipelines from excessive rates or discrimination in the event such facilities are declared nonjurisdictional?

a. What terms and conditions should such a proposed rule require?

b. Should a similar rule also be considered that would apply to all customers of any OCS pipeline?

c. Should such a proposed rule require all OCS pipelines to have rates, terms and conditions on file with the Commission?

d. Would the Commission have authority under the OCSLA to provide a remedy for an excessive rate that applied uniformly to all customers of a pipeline/gatherer? Would such a rate constitute a form of discrimination under the OCSLA?

7. Could the Commission adopt a uniform regulatory regime for the OCS under which both NGA nonjurisdictional and NGA jurisdictional pipelines would be regulated solely pursuant to the Commission's authority under the OCSLA to pro-rate capacity in a pipeline and to address discrimination in rates?

a. Under this approach, would shippers on OCS interstate pipelines be adequately protected in the absence of cost-of-service rates?

b. If this approach were adopted, should existing interstate pipelines be given the option of remaining under traditional NGA regulation?

8. Is it feasible, as a matter of law and policy, to adopt a light-handed regulatory approach under the OCSLA that relies on complaints about discriminatory access or rates?

a. If such an approach is adopted, is there a need to distinguish between new and existing pipelines to determine how much regulation is necessary?

b. What would be the legal and policy basis for distinctions between new and existing pipelines?

c. Does the Commission have the authority to require the electronic reporting of the price and terms of all agreements for the movement of natural gas through all OCS pipeline facilities as a mechanism for implementing a complaint driven regulatory approach ?

9. Does the Commission have the authority under the OCSLA to regulate OCS pipelines as common carriers?

a. What is the effect of section 185(r)(1) of the Mineral Leasing Act of 1970 [15] which requires that pipelines authorized under section 185 be operated as common carriers?

IV. Procedure for Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position on the issues raised in the NOI. Commenters are requested to identify the specific question posed by the NOI that their discussion addresses and to use appropriate headings. Additionally,

[15] 30 U.S.C. 185(r)(1).

commenters should double space their comments.

The original and 14 copies of such comments must be received by July 14, 1998. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 and should refer to Docket No. RM98–8–000.

In addition, commenters are asked to submit their written comments and executive summaries on 3½-inch diskette formatted for MS–DOS based computers. In light of the ability to translate MS–DOS based materials, the text need only be submitted in the format and version for which it was generated (*i.e.*, MS DOS WORD, WordPerfect, ASC III, etc.). For Macintosh users, it would be helpful to save the documents in word processor format and then write them to files on a diskette formatted for MS–DOS machines.

Commissioner Bailey dissented in part with a separate statement attached.

By direction of the Commission.

David P. Boergers,

Acting Secretary.

BAILEY, Commissioner, Dissenting in Part

I am dissenting in part from this NOI. This document poses a series of questions for public comment addressing alternatives to the Commission's current method of exercising its jurisdiction on the OCS. I have already expressed my disagreement with many of the Commission's jurisdictional determinations with respect to pipelines on the offshore. After seeing the application of the 1996 policy statement to specific cases, I concluded that continued application of the primary function test on the offshore is largely unworkable. There is a host of conflicting precedent, as is evident from looking at the record in the Sea Robin case.[1] Although I certainly understand the need for this Commission to rethink these issues, I have already reevaluated my position as indicated in earlier dissents.[2] And I certainly feel that, to the extent the Sea Robin remand goes unanswered, that is unacceptable.

Let me reemphasize some points I have made in the past. I continue to believe that we should adopt a common sense definition of gathering as outlined by the Court of Appeals in the EP Operating decision.[3] We should recognize that today's deep water production means even longer and wider lines to move production to market, and that the movement of gas across the OCS is often a collection process. While it might be ideal to preserve FERC/NGA jurisdiction as a backstop in case a complaint arises, I do not think we have that right if the function of a line can be viewed as gathering under a common sense analysis.

Producers on the OCS are not without statutory protection. The antidiscrimination provisions of the Outer Continental Shelf Lands Act are real. The law has not changed. This Commission has acknowledged its jurisdiction pursuant to that statue and would respond promptly to complaints filed by shippers on OCS gathering lines that are not otherwise subject to the Commission's NGA jurisdiction. Ultimately, if an unduly discriminatory rate is found to be without remedy under the OCSLA, a legislative solution would be a viable option if that need were demonstrated.

In sum, I do not find the fear of regulatory gap to be so compelling that we should adopt a strained definition of what constitutes a gathering line. While I will certainly review the comments we receive in response to this current NOI, I do want to emphasize my thinking on these issues. My thoughts are based on the extensive record we developed at the time of the 1996 Policy Statement addressing many of these questions, as well as the cases decided subsequently. I look forward to the continuing dialogue, and I urge the Commission, for the sake of those cases that are lingering, to resolve some of these outstanding issues as expeditiously as we can.

Vicky A. Bailey,

Commissioner.

[FR Doc. 98–14964 Filed 6–4–98; 8:45 am]

BILLING CODE 6717–01–P

[1] Sea Robin Pipeline Company v. FERC, 127 F.3d 365 (Fifth Cir. 1997); reh'g denied, February 5, 1998.

[2] See Shell Gas Pipeline Company, 78 FERC ¶ 61,192 (1997).

[3] EP Operating Company v. FERC, 876 F.2d 46 (Fifth Cir. 1989).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 350

[FHWA Docket No. FHWA–98–3611]

Development of Functional Specifications for Performance-based Brake Testers Used To Inspect Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Request for comments.

SUMMARY: The FHWA is requesting public comment concerning the development of functional specifications for performance-based brake testing machines purchased with Federal funds through the FHWA's Motor Carrier Safety Assistance Program (MCSAP). The FHWA is nearing the completion of a multi-year research program to evaluate prototype performance-based brake testing technologies, including roller dynamometers, flat-plate brake testers, breakaway torque brake testers, an on-board electronic decelerometer, and an infrared brake temperature measurement system. To date, the FHWA has determined that certain performance-based brake testing machines are eligible for funding under MCSAP, but only as screening and sorting devices in commercial vehicle inspections. The FHWA is requesting public comments on generic functional specifications that would be applicable to a range of brake testing technologies. The States would use the functional specifications as guidelines to determine whether the purchase of a specific brake tester would be an eligible expense item under the MCSAP.

DATES: Comments must be received on or before August 4, 1998.

ADDRESSES: Submit written, signed comments to the docket identified at the beginning of this notice, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009; or Mr. Steve Keppler, Intelligent Transportation Systems—Commercial Vehicle Operations Division, Office of Motor Carrier Safety and Technology, (202) 366–0950, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: