are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''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 rule, when promulgated, 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

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Fort Rucker, AL [Revised]

Fort Rucker, Cairns AAF, AL
(Lat. 31°16′37″N, long. 85°42′36″W)
Andalusia—Opp Airport, Andalusia, AL
(Lat. 31°18′32″N, long. 86°23′38″W)
Florala Municipal Airport, AL
(Lat. 31°02′38″N, long. 86°18′37″W)

That airspace extending upward from 700 feet or more above the surface within the area bounded by a line beginning at lat. 31°38′01″N, long. 86°23′30″W, to lat. 31°45′01″N, long. 85°38′00″W; to lat. 31°17′01″N, long. 85°26′00″W; to lat. 31°04′01″N, long. 85°52′00″W; to lat. 31°03′02″N, long. 86°11′04″W, to and clockwise along the arc of a 6.5-mile radius circle of Florala Municipal Airport to lat. 31°02′14″N, long. 86°26′10″W; to the point of beginning and within a 7-mile radius of Andalusia—Opp Airport.

* * * * *

Issued in College Park, Georgia, on June 29, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–17758 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Subchapter O, Parts 330 and 385

[Docket No. RM99–5–000]

Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf; Notice of Proposed Rulemaking

June 30, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to exercise its authority under the Outer Continental Shelf Lands Act (OCSLA) to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS). To achieve this, the Commission is considering requiring OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. Making this information available will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. This will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The Commission believes this proposed regulatory regime is a key step to developing a uniformly-applied, light-handed regulatory standard equally applicable to all OCS gas service providers.

DATES: Comments on the Notice of Proposed Rulemaking are due August 27, 1999. Comments should be filed with the Office of the Secretary and should refer to Docket No. RM99–5–000.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marc Poole, Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426, (202) 208–0482.

Gordon Wagner, Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 219–0122.

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 from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 or 8.0. 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 Home page 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, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

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I. Introduction

The Commission is proposing to exercise its authority under the Outer Continental Shelf Lands Act (OCSLA) [1] to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS).[2] To achieve this, the Commission is considering requiring OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. Making this information available will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. This will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The Commission believes this proposed regulatory regime is a key step to developing a uniformly-applied, light-handed regulatory standard equally applicable to all OCS gas service providers.

[1] 43 U.S.C. 1301–1356 (1988).

[2] The OCS is defined as ''all submerged lands lying seaward and outside of the area of lands beneath navigable waters . . . and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.'' 43 U.S.C. 1331(a). *See also* 43 U.S.C. 1301(a)(1), defining ''lands beneath navigable waters'' as ''all lands within the boundaries of each of the respective States.'' Thus, the federal OCS does not include offshore areas that are within state boundaries.

II. Background

A. The Increasing Importance of OCS Gas Supplies

The OCS is the nation's most promising source of stable energy supplies, both currently and for the foreseeable future. Already, the OCS, mainly the Gulf of Mexico, is one of the nation's most important natural gas supply areas. The Gulf area currently accounts for approximately 26.2 percent of U.S. annual natural gas marketed production [3] and is becoming increasingly important to the energy security of the United States. Gas production from the Gulf of Mexico in 1997 was 5.24 trillion cubic feet (Tcf).[4] The relative importance of the Gulf's gas production to the U.S. grew very rapidly from only 1–2 percent of production in the mid-1950s. Estimates of the Gulf resources are large and the current production levels of 5 Tcf can be maintained or increased for years. As of 1997, proven natural gas reserves in the Gulf of Mexico totaled 27.9 Tcf [5] with estimated resources up to 155 Tcf. The Department of Energy forecasts that offshore production will rise to 6.81 Tcf in 2010 and 7.83 Tcf in 2020. The rapid development of new offshore production and transmission technologies over the past several years has spawned a dynamic expansion of exploration, development, production, construction, and transmission activities throughout the Gulf area. In 1997, 84 percent of new field discoveries were in the federal OCS Gulf of Mexico, along with 56 percent of new reservoir discoveries in old fields.[6]

Clearly, the increasing OCS gas resource development is driving pipeline development. Since 1990, the gas industry has installed approximately 4,000 miles of new pipe in the Gulf. Stated otherwise, over 30 percent of the active offshore pipelines have been constructed over the past nine years. Already, 1,512 miles of new pipe have been planned and recent estimates predict that another 7,400 miles of pipe will be needed in the region over the next 15 years.

B. Federal Regulatory Responsibilities

Under the federal scheme, the responsibility for the various aspects of OCS pipeline regulation resides in several agencies. The Minerals Management Service (MMS) of the U.S. Department of the Interior has the responsibility to award permits to pipelines that transport gas and other products across the OCS. The approval process covers design, fabrication, and installation plans, as well as the granting of rights-of-way for the pipeline and accessory structures. Although section 5(e) of the OCSLA grants ''right-of-way'' responsibility to the MMS, it also requires consultation with the Secretary of Transportation to assure environmental protection and safety. Section 5(e) of the OCSLA further states that pipelines with approved permits must be operated in accordance with competitive principles.

Section 5(e) of the OCSLA also requires that gas (and oil) be transported without discrimination, pursuant to standards established by the Commission. Specifically, section 5(e) requires pipelines to ''transport or purchase without discrimination'' OCS gas ''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 states that a pipeline transporting gas on or across the OCS shall adhere to certain competitive principles, which include the requirement that ''[t]he pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.'' Sections 5(e) and (f) are to be read together, with the more recently adopted section 5(f) as a ''reaffirmation and strengthening of subsection 5(e).'' [7]

To assure offshore pipelines adhere to competitive principles, section 5(f)(3) of the OCSLA requires the Commission (and the Secretary of Energy) to consult with the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way or grant of authority on the OCS.[8]

C. The Commission's OCS Regulatory Activity

The Commission currently exercises authority over offshore gas service providers under the NGA, the OCSLA, and the Natural Gas Policy Act (NGPA).[9] This Notice of Proposed Rulemaking

[3] Annual Energy Review 1997, Energy Information Administration.

[4] Annual Energy Review 1997, Energy Information Administration, at 12.

[5] U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves 1997 Annual, Energy Information Administration, at 28.

[6] *Id.*, at 30.

[7] *See* the Joint Explanatory Statement of the Committee of Conference, discussing 1978 amendments to the OCSLA. H.R. Conf. Rep. 1474, 95th Cong., 2d Sess. 37, *reprinted in* 1978 U.S. Code Cong. & Admin. News 1674, 1687.

[8] Section 5(f)(3) adds that in preparing requested views, the Attorney General shall consult with the Federal Trade Commission.

[9] Offshore, the NGPA is of relatively little significance, since the only facilities to which it alone applies are intrastate facilities in state waters. Intrastate facilities that extend seaward beyond the reach of state waters are subject to the OCSLA; interstate facilities located in state waters are subject to the NGA.

(NOPR) requests comments on whether these multiple, overlapping regulatory regimes complement one another or may be a cause of inefficient competitive inequities. The Commission expects that a single set of limited reporting requirements, uniformly applied to all OCS gas service providers covered under this proposal, will eliminate any distortions in the offshore marketplace due to competitors' compliance with different regulatory regimes. We also expect the simplicity and certainty afforded by a single set of reporting requirements to encourage continued investment in the development of OCS resources.

When the NGA was passed in 1938, offshore production was negligible, and as a result, that statute and the regulatory regime developed to enforce it made no effort to distinguish between the different characteristics of gas operations onshore and offshore.[10] As gas companies began to extend their onshore lines into shallow waters, the Commission was able to effectively apply its NGA regulatory scheme to these facilities near shore. However, as production areas were developed farther from shore, and as pipelines were constructed to access these increasingly remote locations, the validity of the Commission's means for identifying the primary function of offshore facilities was called into question.[11]

To determine whether a specific facility was engaged in interstate transmission, and thus subject to the NGA, or was performing primarily production or gathering, and thus exempt from the NGA pursuant to section 1(b), the Commission applied a test based on several physical characteristics.[12] Because this test grew out of the physical characteristics of gas operations onshore, the Commission modified its application to suit the different nature of gas operations offshore.[13]

The OCSLA was passed in 1953 to promote and provide federal oversight of the exploration, development, and production of OCS minerals. Section 5(f) of the statute specifies that competitive principles are to govern OCS pipeline operations. The Commission determined that adherence to NGA open access provisions would satisfy OCSLA nondiscrimination requirements.[14]

The increasing importance and level of OCS activity in recent years has generated a concomitant increase in the importance of the Commission's responsibility under the OCSLA to ensure a competitive market for gas pipeline services on the OCS. Over the past several years, the Commission has been concerned with and attentive to its regulatory authority over activities on the OCS.

In separate Notices of Inquiry in 1995[15] and 1998,[16] the Commission sought comments on the most suitable means to regulate OCS activities. Both Notices of Inquiry asked whether the Commission might act under the OCSLA to regulate offshore pipeline facilities—either in conjunction with or absent the exercise of any concurrent NGA jurisdiction—without impeding or distorting offshore development or production. In developing the regulations proposed in this docket, we have taken into account those portions of the comments that address our OCSLA authority.[17]

In 1988, the Commission acted under the OCSLA to require adherence to the section 5 principles of open and nondiscriminatory transportation by issuing an NGA section 7 blanket transportation certificate to every offshore NGA-jurisdictional pipeline.[18] Pursuant to Subpart G of the Commission's regulations, blanket certificate holders transport gas on an open access basis subject to a rate schedule on file with the Commission. The Commission stated its belief ''that the condition of nondiscriminatory access (open access) placed on the [blanket] transportation program established in Order Nos. 436 and 500 will satisfy in substantial measure, the nondiscriminatory access requirements in section 5 of the OCSLA.''[19] At that time, although affirming ''that all pipelines on the OCS have a duty to provide open and nondiscriminatory access to transportation services,''[20] the Commission did not require NGA-exempt OCS pipelines to act to meet this mandate, stating:

If problems do arise with respect to either the movement of OCS gas (1) through state waters, or (2) through gathering or producer-owned facilities on the OCS, the Commission possesses ample ancillary authority under the OCSLA to ensure that the statutory requirements of the OCSLA are not thwarted.[21]

Until recently, we have not encountered circumstances prompting us to act under the OCSLA to remedy anticompetitive behavior. However, lately we have been presented with allegations of offshore discrimination for which the NGA regulatory regime appears either inapplicable[22] or

[10] Less than one half of one percent of the offshore facilities today were in place prior to 1960.

[11] *EP Operating Co.* v. *FERC,* 876 F. 2d 48 (5th Cir. 1989).

[12] The ''primary function'' test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983), which took into consideration the following factors as relevant: (1) The length and diameter of the pipeline, (2) the extension of the facility beyond the central point in the field, (3) the pipelines' geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The primary function test has been found by the Commission to be applicable to both onshore and offshore facilities, as modified as applied to offshore facilities in Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990). The criteria set out in Farmland were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the Natural Gas Policy Act of 1978.

[13] Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990). The Commission's application of its primary function test to gas operations offshore was challenged in *Sea Robin Pipeline Company* v. *FERC (Sea Robin),* 127 F.3d 365 (5th Cir. 1997), *reh'g denied,* (February 2, 1998); the court vacated and remanded a Commission decision involving the exercise of its NGA jurisdiction over an OCS pipeline system. In an order on remand in Docket No. CP95–168–002, the Commission clarifies the application of its modified primary function test for offshore facilities. This NOPR is not intended to address issues specific to Sea Robin.

[14] *See* Interpretation of, and Regulations Under, Section 5 of the OCSLA Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the OCS, Order No. 509, 53 Fed. Reg. 50,925 (December 19, 1988), FERC Stats. & Regs. ¶ 30,842 (1988), *order on reh'g,* Order No. 509–A, 54 FR 8,301 (February 28, 1989), FERC Stats. & Regs. ¶ 30,848 (1989).

[15] The 1995 Notice of Inquiry led to a 1996 Policy Statement that established a presumption that facilities located in deep water of 200 meters or more were engaged in production or gathering. 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 Lands Act, 74 FERC 61,222 (1996), *reh'g dismissed,* 75 FERC ¶ 61,291 (1996).

[16] Alternative Methods for Regulating Natural Gas Pipeline Facilities and Services on the Outer Continental Shelf, 83 FERC ¶ 61,235 (1998).

[17] The Notices of Inquiry also sought responses regarding the scope of the Commission's NGA authority offshore, and the 1998 Notice of Inquiry was informed by the 1997 decision in Sea Robin.

[18] *See* Interpretation of, and Regulations Under, Section 5 of the OCSLA Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the OCS, Order No. 509, 53 FR 50,925 (December 19, 1988), FERC Stats. & Regs. ¶ 30,842 (1988), *order on reh'g,* Order No. 509–A, 54 FR 8,301 (February 28, 1989), FERC Stats. & Regs. ¶ 30,848 (1989).

[19] Order No. 491 at 61,031; *see also* Order No. 509 at 31,274.

[20] Order No. 509 at 31,289.

[21] *Id.* at 31,280. On rehearing, in response to concerns that this placed offshore gathering facilities not regulated under the NGA beyond the reach of the OCSLA provisions, the Commission stated that if it ''receives complaints regarding gathering facilities it will, on a case-specific basis, use its ancillary authority, its authority under sections 4 and 5 of the NGA, and its authority under section 5 of the OCSLA, as appropriate under the circumstances presented.'' Order No. 509–A, at 31,333.

[22] For example, in *Murphy Exploration & Production Company,* 81 FERC ¶ 61,148 (1997), the

inadequate.[23] Such allegations, and a review of offshore regulation in general, persuades us that the best way to ensure adherence to the nondiscriminatory provisions of the OCSLA is to adopt an even-handed approach whereby OCS gas service providers covered under the proposed rule will be held to a single, uniform reporting standard.

Making information available pursuant to the regulations proposed herein will allow the Commission and interested persons to monitor the activities of OCS gas service providers and identify potential violations of the OCSLA and, we anticipate, of the NGA as well. Whereas all OCS gas service providers are subject to the OCSLA, only a subset thereof are also subject to the NGA.[24] The competitive inequities that this can cause could be mitigated if OCS operators would be subject to identical, light-handed regulations under the proposed inform-and-enforce regime. We expect disclosure to serve as a means to enable market discipline to displace part of the Commission's role in overseeing OCS operations.

D. The Proposed Regulations

The Commission has completed a review of its policy governing offshore natural gas facilities and services, informed by the comments submitted in response to the 1998 Notice of Inquiry. We conclude that the key issue for shippers using OCS facilities is the assurance of open access and nondiscriminatory conditions of service, including nondiscriminatory rates. Accordingly, to ensure that these competitive characteristics will exist on all facilities used to move gas on or across the federal OCS, the Commission believes it is necessary to institute a single set of regulatory requirements under the OCSLA that are equally applicable to NGA-jurisdictional and NGA-exempt offshore gas service providers. Thus, all OCS gas service providers will be subject to the same OCSLA regulatory regime and, unless exempt under proposed section 330.3(a), make available the information specified in proposed sections 330.2(a) and (b).

The Commission anticipates that the proposed reporting requirements will result in lighter-handed oversight than under the NGA while offering even-handed treatment for all market participants. The approach the Commission proposes balances the OCS gas service providers' interest in light-handed regulation with OCS shippers' interest in ensuring they are not subject to discriminatory practices. This should encourage competitive options for offshore producers and onshore purchasers of natural gas.

III. Discussion

A. Purpose

Sections 5(e) and (f) of the OCSLA state that offshore gas pipelines must transport or purchase OCS gas without discrimination and provide open and nondiscriminatory access to both owner and nonowner shippers. The Commission is proposing to require OCS gas service providers to make certain information available to assist the Commission and interested persons in monitoring compliance with these OCSLA mandates.

Currently, offshore pipeline companies subject to the Commission's NGA jurisdiction must, among other requirements, make information available to assist the Commission and interested persons in assessing whether the pipeline companies are providing open and nondiscriminatory access.[25] However, there are no similar reporting requirements applicable to offshore pipelines that are not regulated under the NGA. The proposed OCSLA reporting requirements will apply to both NGA-jurisdictional and NGA-exempt OCS pipelines. Because the proposed OCSLA reporting requirements are less rigorous than those in place under the NGA, to the extent an OCS gas service provider is subject to the NGA, it should be able to fulfill the proposed OCSLA reporting requirements, in large part or in full, by referencing information already on file with the Commission pursuant to present NGA regulations.

The proposed regulations are intended to enable a shipper—or the Commission or any other interested person—to compare the terms and rates under which offshore gas service providers offer service to shippers. If a shipper believes it has been subject to discrimination or has been unjustifiably denied access by a gas service provider, it may seek redress through a number of means, including use of the Commission's Enforcement Hotline,[26] alternative dispute resolution (ADR) processes,[27] or by filing a complaint.[28]

The Commission is requesting comments on the proposed regulations, including the practicality of the proposed reporting requirements as a means to prevent, monitor, and remedy anticompetitive practices by OCS gas service providers. In addition, the Commission requests comments on the extent to which NGA and NGPA obligations may be met by relying on OCS competitors' adherence to the proposed OCSLA reporting requirements.

B. Scope of Proposed Regulations

1. Reporting Requirements

The reporting requirements are contained in proposed sections 330.2(a) and (b). Proposed section 330.2(a) states that an OCS gas service provider must identify itself, the facilities it operates, and its affiliates. Proposed section 330.2(b) states that a gas service provider must submit copies of all current customer contracts or, alternatively, the OCS gas service provider must instead submit a statement of its conditions of service with a detailed description of rates charged and if rates are not uniform, the gas service provider must list each of its

Commission was faced with a case of alleged rate discrimination on an offshore gathering line. In response, the Commission stated that because NGA jurisdiction does not extend to facilities used for gathering and production, it would act to remedy discrimination on the NGA-exempt line, if necessary, under its authority under the OCSLA. Commission action on this order is pending. A similar approach was employed in Bonito Pipe Line Company, 61 FERC ¶ 61,050 (1992), wherein the Commission found OCS oil facilities were exempt from the Commission's authority under the Interstate Commerce Act but were subject to the OCSLA. After determining that a refusal to provide new service contravened the OCSLA section 5 open access requirement, the Commission acted pursuant to the OCSLA to order an existing OCS oil line to provide the requested service. This decision was affirmed in *Shell Oil Company* v. *FERC,* 47 F.3d 1186, 1200 (D.C. Cir. 1995), in which the court ''accept[ed] the Commission's determination that it had authority to order an interconnection with an existing pipeline with excess capacity where the interconnection is necessary to the Commission's enforcement of the open access requirements of the OCSLA.''

[23] For example, Sea Robin's February 26, 1999 proposal in Docket No. RP99–238–000 to revise its tariff in order to charge certain discounted rates was protested, not as being inconsistent with the NGA, but on the grounds that such discounting could lead to different rates for similarly situated shippers in contravention of the OCSLA nondiscrimination provisions. *See* Burlington Resources Oil & Gas' March 10, 1999 Protest.

[24] As indicated in note 9, we expect there are very few facilities subject exclusively to the OCSLA and the NGPA.

[25] In addition to information made available in support of an NGA certificate application, NGA-regulated pipelines are required to file periodic publicly available reports, for example, the Major Natural Gas Pipeline Annual Report, Form No. 2, 18 CFR 260.1; Non-Major Pipeline Annual Report, Form No. 2a, 18 CFR 260.2; Quarterly Statement on Monthly Data, Form No. 11, 18 CFR 260.3; Index of Customers Report, 18 CFR 284.106(c) and 18 CFR 284.223(b); or the Discount Rate Report, 18 CFR 284.7(c)(6).

[26] 18 CFR Part 1b.

[27] 18 CFR 385.604–06.

[28] 18 CFR 385.206. The Commission's procedures for responding to allegations of improper action or inaction were revised and expanded in the recently issued Complaint Procedures, Final Rule, 64 FR 17,087 (April 8, 1999), FERC Stat. & Regs. ¶ 31,071 (1999), 86 FERC ¶ 61,324 (1999), *reh'g pending.*

customers, the services provided, and the rates applicable thereto.

One area of the Commission's concern is the potential for discrimination between the affiliates and non-affiliates of a gas service provider. Identifying service provider and shipper affiliations [29] should permit interested persons to judge whether a gas service provider is treating an affiliate more favorably than a non-affiliate and to weigh whether such treatment amounts to discrimination or a denial of access.

The reporting requirements of proposed sections 330.2(a) and (b) are met by filing the specified information with the Commission. However, such information is of use only as long as it remains accurate, since interested persons cannot meaningfully compare and consider conditions of service unless they reflect current conditions. Thus, proposed section 330.3(d) states that an OCS gas service provider that files information pursuant to proposed sections 330.2(a) and (b) must refile in the event that there are changes to the information initially filed. To ensure information on file remains up to date, proposed section 330.3(d) directs an OCS gas service provider to submit a description of changes in its affiliates, customers, rates, or terms and conditions of service within 15 days of the date the change occurs. An OCS gas service provider that has fulfilled the proposed reporting requirements need not subsequently submit any further information for as long as its status remains unchanged.

As to the initial filing, we direct all affected OCS gas service providers to submit the information described in proposed sections 330.2(a) and (b) within 60 days of the issuance date of the final rule in this proceeding.

The proposed regulations would amend Rule 2011 of the Commission's Rules of Practice and Procedure to allow all filings made pursuant to the proposed sections 330.2(a) and (b) to be via electronic media.

2. Circumstances Under Which the Proposed Regulations Will Not Apply

As discussed below, the proposed regulations will exempt certain types of facilities, based on their location, and certain gas service providers, based on the nature of the service performed. The Commission is considering whether it would be more appropriate to omit this latter exemption and apply the proposed reporting requirements to OCS gas service providers universally, without regard to the type of service offered or shippers served. Our aim is to strike a balance between, on the one hand, instituting a reporting regime broad enough to ensure that shippers are able to identify potential discrimination and, on the other hand, narrowing the applicability of this reporting regime to exclude circumstances where the prospects of finding discrimination are remote. However, given the limited use to date of the OCSLA to define, prevent, and remedy discrimination, and given that where there is no information available on conditions of service there is no way to discover potential discrimination, we are concerned that instituting exemptions for certain gas service providers might compromise the efficient development and transportation of offshore gas supplies. Therefore, the Commission is requesting comments on whether it would be prudent to issue a final rule without the exclusions contained in sections (b) and (c) below.

a. *Feeder Lines.* Section 5(f)(2) of the OCSLA states that the Commission may exempt ''any pipeline or class of pipelines 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'' from the requirements of open and nondiscriminatory access. The Commission is exercising its authority to do so, as provided in proposed section 330.3(a)(2).

b. *Pipelines Dedicated to Service for a Single Shipper.* Where an OCS gas service provider carries gas exclusively for a single shipper, either itself or another party, there is no possibility for multiple shippers to be subject to different, potentially discriminatory conditions of service. In such circumstances, we see no reason to require the gas service provider to make information concerning its terms and rates available for public inspection; indeed, where the gas service provider is carrying gas only for itself, there may be no rates or terms and conditions of service as such. Thus, proposed section 330.3(a)(1) states that the reporting requirements regarding affiliates and terms and conditions of service would not apply in such circumstances. Such circumstances would be present where a single OCS gas producer owns and operates a pipeline to carry its own gas from a producing field to shore or to an interconnection with another offshore pipeline. As long as the OCS producer serves only itself or a single other party, we see no cause to be concerned about anticompetitive practices.

If a gas service provider offers new service to a second shipper, this gives rise to the prospect of similarly situated shippers on the same pipeline being subject to different and potentially discriminatory conditions of service. Pursuant to proposed section 330.3(c), the reporting requirements would then apply.

A request for new service from a second shipper may also give rise to the possibility for similarly situated shippers to be served under different and potentially discriminatory terms or rates. If the gas service provider accepts the request to serve a second shipper, then as noted above, this offer to serve triggers the obligation to comply with the reporting requirements under proposed section 330.3(c).

If the gas service provider denies service on the grounds that it is physically unable to transport the requested volumes, and the party denied service complains, the Commission will first address and assess the rationale for denying service, without triggering the reporting requirements. If the Commission deems the denial justifiable—*e.g.*, if the receipt of additional volumes could cause gas from producing wells to be shut in contrary to the OCSLA section 5(e) admonishment concerning conservation or the prevention of waste, or if the content of the proposed gas stream would be incompatible with the characteristics of gas volumes currently flowing—then, as described in proposed section 330.3(a)(1), the reporting requirements would not apply, and the gas service provider may continue to serve its single customer. However, if the gas service provider's claim that it is physically unable to serve another customer is found to be unwarranted and rejected by the Commission, or if the gas service provider denies access on some other basis, then the prospective shipper may pursue its claim respecting the denial of service, and the gas service provider's response must include the information specified in the proposed reporting requirements.

c. *Other Self-Owned Pipelines.* In general, we do not believe allegations of anticompetitive conduct will arise unless a gas service provider is carrying gas for more than one shipper, hence the preceding reporting exemption for single-shipper pipelines. We also believe there are certain circumstances where a pipeline carrying gas for multiple parties has no incentive to discriminate. Where a pipeline is used exclusively to transport gas to shore or to an interconnection with another gas service provider's facilities, and the same parties jointly own all interests in

[29] For purposes of applying the proposed regulations, the Commission herein adopts the definitions of ''affiliate'' and ''control'' as defined in sections 161.2(a) and (b) respectively of the Commission's regulations.

the pipeline and the gas carried by that pipeline, we see no need to require disclosure of the conditions of service on that pipeline. The Commission views this as the equivalent of the above example of an OCS producer that owns and operates a pipeline to carry its own gas production. Presumably, each of the several parties holding ownership interests in the gas produced, and the pipeline over which that gas is carried, is fully informed regarding the conditions of service on its own pipeline. Therefore, in such situations, the proposed reporting requirements will not apply.

This exemption will cease if one of the existing shippers alleges denial of access or discrimination. Further, this exemption will end if the OCS gas service provider operating the pipeline offers service to any person that does not hold an ownership interest in both the pipeline and the gas produced from the field served by the pipeline. Finally, this exemption will end if the gas service provider rejects a service request submitted by a person that has no ownership interest, unless the Commission determines the requested service was denied due to a physical inability to accept the proposed additional volumes. If the Commission finds that physical access is possible or if the reason for refusing service is based on other grounds, then the OCS gas service provider would have to comply with the proposed reporting requirements.

3. Enforcement of the Proposed Regulations

The proposed reporting requirements will provide the Commission and interested persons with information on OCS gas service providers' affiliates and conditions of service as a means to examine and identify discriminatory practices. Although we expect to monitor compliance with the proposed reporting requirements, we do not expect to scrutinize each submission with the aim of identifying and challenging every aspect of a gas service provider's operations that could conceivably lead to an OCSLA-barred act. Instead, we anticipate the proposed regulations will result in a shipper-initiated, complaint-driven enforcement process.

This approach differs from NGA regulation, under which natural gas companies must obtain Commission authorization prior to initiating, altering, or abandoning facilities or services. In contrast, under the proposed OCSLA regulation, gas service providers will not be required to obtain Commission approval prior to acting. In this sense, regulation under the OCSLA will be lighter-handed; compliance will consist of describing affiliations and operations. While the proposed OCSLA regulations will impose a new reporting requirement on certain OCS gas service providers that do not currently file any information with the Commission, the proposed regulations impose no new constraints on these gas service providers' actions. Information made available pursuant to the proposed reporting requirements should aid our efforts to enforce the current OCSLA nondiscrimination provisions.

Actions that shippers or others believe constitute discrimination under the OCSLA should be described in a complaint to the Commission.[30] Where a denial of access is alleged, the gas service provider will respond with an explanation of whether and why service was denied. The Commission will review the response and may instruct the gas service provider to submit the information specified in proposed sections 330.2(a) and (b) if it has not previously done so. Where the gas service provider's response contains information previously unavailable to the complaining shipper, the shipper may cite this as cause to request that it be allowed to supplement its initial filing.

IV. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[31] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[32] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[33]

This proposed rule is procedural in nature. It directs certain offshore gas service providers to make certain information publicly available. Thus, no environmental assessment or environmental impact statement is necessary for the requirements proposed in the rule.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[34] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.[35]

The Commission does not believe that this rule would have a significant economic impact on small entities. Most entities that will be required under the proposed rule to file for the first time do not fall within the RFA's definition of small entity.[36] Further, many of the entities that will be required to meet the new reporting requirements are currently regulated under the NGA and as such have already submitted information to the Commission that largely fulfills the proposed new requirements. To the extent information submitted pursuant to NGA regulations duplicates that required under the proposed OCSLA regulations, NGA-regulated gas companies may satisfy the proposed OCSLA reporting requirements by referencing that already-filed information. Hence, this new rule should have little impact on these companies. Further, NGA-regulated gas companies with offshore facilities are generally too large to fall within the RFA definition of a small entity. Similarly, we anticipate that the non-NGA gas service providers that file for the first time will, for the most part, fall outside of the RFA definition of a small entity. With respect to small entities, the effort involved to comply with the proposed reporting requirements should be minimal. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Information Collection Requirements

The following collection of information contained in this proposed rule (proposed new Subchapter O) is being submitted to the Office of Management and Budget (OMB) for

[30] The recent Complaint Procedures Final Rule provides for different processing paths that the Commission may use to resolve issues raised in complaints. ''These complaint resolution paths are (1) alternative dispute resolution, (2) decision on the pleadings by the Commission, and (3) hearing before an ALJ.'' Order No. 602, 64 FR 17,087 (April 8, 1999), FERC Stat. & Regs. ¶ 31,071 at 30,764 (1999), 86 FERC ¶ 61,324 (1999), *reh'g pending.*

[31] Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), codified at 18 CFR Part 380.

[32] 18 CFR 380.4(a)(2)(ii).

[33] 18 CFR 380.4.

[34] 5 U.S.C. 601–612 (1988).

[35] 5 USC 605(b) (1988).

[36] 5 U.S.C. 601(3) (1988), citing to section 3 of the Small Business Act, 15 USC 632 (1988). 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 operations.

review under Section 3507(d) of the Paperwork Reduction Act of 1995.[37] The Commission proposes to identify the information required as FERC-545 for OCSLA-jurisdictional gas service providers. Currently, NGA-jurisdictional companies file with the Commission most or all the information that will be required by this NOPR under Subchapters E, G, and I. Thus, the reporting burden imposed on NGA-jurisdictional companies will be minimal or merely ministerial, as they can comply with the proposed rules in large part or in full by submitting a statement describing the extent to which the information required by this OCSLA NOPR is already on file pursuant to existing NGA regulations.

The proposed regulations impose new reporting requirements on OCS gas service providers that offer service to multiple non-owner shippers, requiring them to make an initial submission of specific information—information which should be readily available in the ordinary course of business—and then make timely filings if there are any changes in the initially submitted information. To the extent the status of a gas service provider's affiliations, customers, and conditions of service remain the same, there is no need to file again. To the extent that a gas service provider is currently subject to the NGA's reporting requirements, the proposed OCSLA reporting requirements should call for little or no additional information. The proposed regulations would not apply to service provided by means of facilities located upstream of a point where gas is first collected, separated, dehydrated, or otherwise processed.

Considering the complex nature of the offshore operating environment, we cannot state with assurance the exact number of entities that will be subject to the proposed regulations. Consequently, we request parties submitting comments to clarify whether and to what extent the proposed requirements might apply to offshore operations. In addition, we seek comments 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–545	70	2	8	1,120

Total Annual Hours for Collection

(Reporting + Record Keeping, (if appropriate)) = *1,120*

For NGA-jurisdictional gas companies, the current annual reporting burden for FERC–545 is 58,201 hours. Over the next year, the total annual burden under the proposed OCSLA reporting requirements is estimated to be 1,120 hours. Based on the Commission's experience with processing filings by NGA-regulated pipelines for the fiscal year 1996–1997, it is estimated that about 140 filings per year will be made with an average burden of 8 hours per response. The burden under the proposed OCSLA regulations would minimally increase current burden levels for pipelines already subject to the NGA.

During the first year after the proposed rules become effective, most of the burden will consist of an initial, one-time compliance filing. In subsequent years, most of the burden will consist of minor filings updating the initial filing.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

Annualized Capital/Startup Costs	0.
Annualized Costs (Operations and Maintenance)	$56,000 ($50 per hour).
Total Annualized Costs	$56,000.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[38] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collection to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal).

Action: Proposed Data Collection.

OMB Control No.: 1902–0154. The respondent 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: Initial, one-time filing; updated if status changes.

Necessity of the Information: The proposed rule implements the Commission's authority under the OCSLA to assure open and nondiscriminatory access for gas moving on or across the OCS by collecting certain information concerning OCS gas service providers' affiliations and conditions of service. Without this information, neither the Commission nor a prospective or existing shipper will be able to determine whether the existing or proposed conditions of service discriminate or deny access. Implementation of these data requirements will help the Commission carry out its responsibilities under the OCSLA 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 proposed reporting requirements. The Commission's staff will use the data in the OCS gas service providers' filings to determine whether their operations are consistent with the nondiscriminatory, open access provisions of the OCSLA. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

[37] 44 U.S.C. 3507(d) (1988).

[38] 5 CFR 1320.11.

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, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, e-mail: michael.p.miller@ferc.fed.us].

For submitting comments concerning the collection of information and the associated burden estimate, 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].

VII. Comment Procedure

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be recieved by the Commission before 5 p.m., August 27, 1999. 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. RM99–5–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–5–000; the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects

18 CFR Part 330

Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Commissioners Bailey and Hébert dissented with separate statements attached.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter 1, Title 18, of the Code of Federal Regulations, as set forth below.

1. A new Subchapter O, including part 330 is added to read as follows:

SUBCHAPTER O—REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT (OCSLA)

PART 330—CONDITIONS OF SERVICE REPORTING REQUIREMENTS

Sec.
330.1 Definitions.
330.2 Reporting requirements.
330.3 Applicability of reporting requirements.

Authority: 43 U.S.C. 1334.

§ 330.1 Definitions.

(a) Outer Continental Shelf (OCS) has the same meaning as found in section 2(a) of the OCSLA (43 U.S.C. 1331(a)); and

(b) Gas Service Provider means any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS.

(c) Affiliate has the same meaning as found in 18 CFR 161.2(a).

(d) Control has the same meaning as found in 18 CFR 161.2(b).

§ 330.2 Reporting requirements.

(a) Gas Service Providers must file with the Commission a declaration of affiliation consisting of:

(1) The date of the filing;

(2) The name and address of the Gas Service Provider;

(3) The name and address of a contact person;

(4) The title, name, and address of the Gas Service Provider's officers if a corporation or general partners if a partnership;

(5) A description and map of the facilities operated by the Gas Service Provider, denoting the facilities' location, length, and size; and

(6) For all entities affiliated with the Gas Service Provider: the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the Gas Service Provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the Gas Service Provider (where the Gas Service Provider holds control jointly with other interest holders, so state and name the other interest holders).

(b) Gas Service Providers must file with the Commission its conditions of service consisting of:

(1) Copies of all current Gas Service Provider and customer contracts for gas shipments or, alternatively;

(2) A statement of the Gas Service Provider's rules, regulations, and conditions of service that includes:

(i) The rate between each pair of receipt and delivery points available under the Gas Service Provider's contracts, if point-to-point rates are charged;

(ii) The rate per unit per mile, if mileage-based rates are charged;

(iii) Any other rate employed by the Gas Service Provider, with a detailed description of how such rate is derived, identifying customers and the rate charged to each customer;

(iv) Any adjustments made by the Gas Service Provider to the rates charged based on gas volumes shipped, the terms and conditions of service, or other criteria, identifying customers and the rate adjustment applicable to each customer.

§ 330.3 Applicability of Reporting Requirements.

(a) The § 330.2 (a) and (b) reporting requirements do not apply with respect to:

(1) A Gas Service Provider that serves exclusively a single entity (either itself or one other party), until such time as

the Gas Service Provider offers to serve a second shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial;

(2) A Gas Service Provider that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from the field connected to the pipeline, until such time as the Gas Service Provider offers to serve a non-owner shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial; and

(3) Services rendered over facilities that feed into a facility where natural gas is first collected, separated, dehydrated, or otherwise processed.

(b) A Gas Service Provider that makes no filing pursuant to § 330.3(a)(1) must comply with the specified reporting requirements within 15 days of offering to serve a new shipper or when required by the Commission.

(c) A Gas Service Provider subject to these reporting requirements that alters its affiliates, customers, rates, or terms and conditions of service must file with the Commission a description of the change within 15 days of the effective date of such alteration.

PART 385—RULES OF PRACTICE AND PROCEDURE

2. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

3. In § 385.2011, new paragraph (b)(6) is added to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(b) * * *

(6) Material submitted electronically pursuant to § 330.2 of this chapter.

Note: The following appendix to the preamble will not appear in the Code of Federal Regulations.

Appendix to the Preamble

Bailey, Commissioner, *dissenting.*

I respectfully dissent from the issuance of this rulemaking proposal. As noted in my dissent in the *Sea Robin* remand proceeding (also decided today), my views reflect the evolution of my thinking about OCS issues over the last several years.

The jurisdictional status of existing OCS pipelines reflects conflicting applications of the primary function test. This situation was aggravated by the implementation of the 1996 OCS Policy Statement, when it became apparent that lines declared to be gathering only a few years earlier would be found jurisdictional if decided under the new policy.

Attempts to define gathering versus transmission on the OCS continue to be driven by concerns for the need to retain FERC/NGA rate jurisdiction as a backstop in case a complaint arises. But, as I have stated on other occasions, I do not think we have that right if the function of a line can be viewed as gathering under a common sense analysis. Without a statutory definition of gathering, I find the analysis set forth in *EP Operating Company* v. *FERC,* 876 F. 2d 46 (Fifth Cir. 1989) to be controlling. In the end, I remain convinced that the movement of gas across the OCS is most often a collection process.

I appreciate that these proposed OCSLA regulations are a first step in preparing for what is an expected increase in the number of lines found to be gathering under the reformulated primary function test outlined in today's *Sea Robin* remand order. And I respect the effort to create what is meant to be a light-handed regulatory approach. I believe, however, that the proposal is not necessary, and I am concerned that it raises new OCS issues without resolving the already difficult ones presented to us.

I would prefer to accept that, under the *EP Operating* analysis, much of the activity on the OCS is gathering. I would likewise prefer to continue the current practice of relying on the antidiscrimination provisions of the OCSLA if, and when, complaints are filed by shippers on OCS gathering lines. I do not find any compelling evidence that we need to expand our OCSLA regulatory regime by promulgating these rules. The Commission has acknowledged quite clearly its jurisdiction pursuant to this statute and specifically emphasized in the 1996 Policy Statement that it would respond promptly to complaints filed thereunder. We receive very few such complaints.

In sum, I see no reason to endorse a proposal that will create, at least initially, a dual scheme of regulation for certain pipelines on the OCS. And I am uncomfortable embarking on a course that may invite new legal challenges to our regulation of the offshore, without resolving the confusion underlying our attempts to apply the existing primary function test.

Vicky A. Bailey,

Commissioner.

Hebert, Commissioner, *dissenting.*

In this proposed rulemaking the Commission is developing a series of regulations to enhance its ability to ensure that the competitive principles governing pipeline operation on the Outer Continental Shelf (OCS) are met. As I understand it, the Commission in response to the precepts of Section 5(e) of the Outer Continental Shelf Lands Act (OCSLA)[1] which requires that pipelines must provide open and nondiscriminatory access to both owner and nonowner shippers, has proposed these regulations to ensure that the Commission has the authority to address any allegations of discriminatory treatment on the OCS or concerns about open access.

While I fully support the competitive principles on the OCS, and I recognize the importance of these principles, I am not comfortable with how the majority has chosen in this document to address OCSLA regulation. Specifically, the NOPR intends to require OCS gas transportation service providers to file with the Commission information regarding the conditions under which they render service on the OCS and indicating their affiliates. While the provision of this information will obviously not be burdensome to service providers currently subject to NGA jurisdiction, the NOPR's requirement also goes to a population that is currently not subject to NGA jurisdiction.

The indications from this NOPR are that once filed, the information used to support Commission OCSLA jurisdiction will be used only as part of a light-handed, complaint driven regulatory process. Under normal circumstances I would find a proposal to replace NGA jurisdiction with light-handed complaint driven regulation as appropriate, but in this situation, the pairing of lighter regulation for NGA companies with regulation for currently non-jurisdictional companies is unacceptable. Yes, the regulatory scheme would be light-handed but when compared to no regulation, it can only be seen as heavy-handed. (REGULATORY GAP).

My uncomfortableness with extending Commission jurisdiction in this proposal is not a failure to uphold the competitive principles of the OCS. Instead, I believe that the OCSLA provides the Commission with the necessary authority to act to address issues of discrimination and open access through its own provisions, even though that authority has heretofore lain dormant. As opposed to subjecting the Commission's jurisdiction under the OCSLA to the vagaries of future and inevitable court challenges which a NOPR of this design would involve, the Commission should act with confidence on any complaints that are brought before it under the OCSLA. The Commission has recently refined and expedited its complaint process which is a workable vehicle for bringing these issues to the Commission in a timely manner. Additionally, as has been noted by Commissioner Bailey on this matter, if the OCSLA did ultimately fail to remedy a showing of discriminatory rates, a legislative solution could be pursued. I also take guidance from the Circuit Court's statement that the ''need for regulation cannot alone create authority to regulate.''[2]

While I can understand the interest some may have in ensuring full comprehension of the extent of the Commission's powers under the OCSLA, I think the more appropriate course of action would be to be receptive and responsive to filed complaints, with the confidence of assured jurisdiction, as opposed to the exploration through a proposed rulemaking of the very same property.

My belief that the Commission can remedy violations of the competitive principles of the

[1] 43 U.S.C. 1334(f) (1988).

[2] 127 F.3d at 371.

OCS as well as my concern that the extension of jurisdiction, light-handed as it may be, to currently non-jurisdictional OCS companies prevents me from providing the instant NOPR with my support. Accordingly, I dissent from the issuance of this proposed rulemaking.

Respectfully,

Curt Hébert, Jr.,

Commissioner.

[FR Doc. 99–17251 Filed 7–12–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–113909–98]

RIN 1545–AW63

Withdrawal of Guidance Under Subpart F Relating to Partnerships and Branches and Issuance of New Guidance Under Subpart F Relating to Certain Hybrid Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal; Notice of proposed rulemaking; and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations that was published in the **Federal Register** on March 26, 1998, providing guidance under subpart F relating to partnerships and branches. This document contains new proposed regulations relating to the treatment under subpart F of certain transactions involving hybrid branches. These regulations are necessary to provide guidance on transactions relating to such entities. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, and outlines of oral comments to be discussed at the public hearing scheduled for December 1, 1999, must be received by November 10, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–113909–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–113909–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Valerie Mark, (202) 622–3840; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1998 (63 FR 14669, March 26, 1998), the IRS issued proposed regulations (REG–104537–97) relating to the treatment under subpart F of certain partnership and hybrid branch transactions. The provisions of the proposed regulations relating to hybrid branch transactions were also issued as temporary regulations (TD 8767) (63 FR 14613, March 26, 1998). Certain members of Congress and taxpayers raised concerns about the proposed and temporary regulations relating to hybrid branch transactions. On June 19, 1998, the Treasury announced in Notice 98–35 (1998–27 I.R.B. 35) that the temporary regulations would be removed and that the proposed regulations relating to hybrid transactions would be re-proposed with new dates of applicability to give Congress the opportunity to consider in greater depth the issues raised by hybrid transactions.

As provided in Notice 98–35, these proposed regulations substantially restate the regulations relating to hybrid transactions issued in March of 1998. These proposed regulations, however, contain certain clarifications requested by taxpayers. Further, as described in greater detail below, unlike the effective date rules announced in Notice 98–35, these regulations are proposed to be effective only for payments made in taxable years commencing after the date that is five years after the date of finalization of these regulations. The permanent grandfather relief described in Notice 98–35 remains unchanged.

These proposed regulations represent the IRS and Treasury's views of how current law should be enforced. Treasury is currently undertaking a comprehensive study of subpart F. These proposed regulations will not control the results of the study. For example, an objective analysis of the policies and goals of subpart F may lead to the conclusion that subpart F should be significantly restructured.

To the extent, however, that Congress does not restructure subpart F in a manner that would alter the rules enforced by these regulations, Treasury and the IRS believe that these regulations will be necessary to preserve the integrity of the current statutory scheme. The use of hybrid arrangements, which is greatly facilitated by the ''check-the-box'' entity classification regulations (§§ 301.7701–1 through 301.7701–3), would otherwise give rise to the following inconsistency: if sales income is shifted from one CFC to a related CFC in a different jurisdiction, subpart F income may arise; if sales income is shifted from one CFC to its branch in a different jurisdiction, subpart F income may arise; if income is shifted through interest payments from one CFC to a related CFC in a different jurisdiction, subpart F income may arise; however, if income is shifted through interest payments from one CFC to its hybrid branch in a different jurisdiction, subpart F income will not arise. This final result does not seem an appropriate policy outcome within the framework of current subpart F, and is almost certainly inconsistent with the Congressional intent underlying the rules being interpreted here.

Treasury anticipates that taxpayers will comment both on the appropriateness of these proposed regulations under current law, and on the contents of its subpart F study, including any conclusions that the study might draw about potential changes to subpart F. To allow proper time to consider all these issues, Treasury and the IRS have significantly modified and liberalized the effective date rules set forth in Notice 98–35. New regulations regarding the treatment of a controlled foreign corporation's distributive share of partnership income will be proposed at a later date.

Explanation of Provisions

I. In General

In these proposed regulations, Treasury and the IRS set forth a framework for dealing with issues arising under subpart F (sections 951 through 964) that relate to the use of certain entities that are regarded as fiscally transparent for purposes of U.S. tax law.

II. Hybrid Branches

Treasury and the IRS understand that certain taxpayers are using arrangements involving hybrid branches