DGAC advises of excessive play measured on the collector.

ECF has issued AS 332 Service Bulletin Nos. 05.00.45, Revision 1, dated August 16, 1999, and SA 330 Alert Service Bulletin 05.88, dated June 8, 2001. The service bulletins specify checking the condition of the bearings and the collector-to-rotor attachment shaft at regular intervals, measuring the radial play, measuring the rotation torque of the collector, and state the acceptable radial and rotational tolerances. The DGAC classified the service bulletins as mandatory and issued AD No. 2001–317–082(A), dated July 25, 2001, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopter models of these same type designs registered in the United States. Therefore, the proposed AD would require inspecting the radial play and the rotational torque on the collector initially at 100 hours time-in-service (TIS) or 6 months, whichever occurs first, and repetitively at 110 hours TIS or 6 months, whichever occurs first. If the radial play or the rotational torque exceeds 0.1 millimeter or 3.5 daN, respectively, the proposed AD would also require replacing the collector with an airworthy part. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to inspect and replace the collector, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1260 to replace the collectors on the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–66–AD.

Applicability: Model SA330F, SA330G, SA330J, AS332C, AS332L, and AS332L1 helicopters with a tail rotor blade de-icing rotating collector (collector), part number (P/N) APCL 110–265–201, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 100 hours time-in-service (TIS) or 6 months, whichever occurs first, unless accomplished previously, and then at intervals not to exceed 110 hours TIS or 6 months, whichever occurs first.

To prevent wear of a collector bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the radial play and the rotation torque of the collector in accordance with the Accomplishment Instructions, paragraph 2.B., of Eurocopter France AS 332 Service Bulletin No. 05.00.45, Revision 1, dated August 16, 1999, for the Model AS 332 helicopters, or Eurocopter France SA 330 Alert Service Bulletin No. 05.88, dated June 8, 2001, for the Model SA 330 helicopters. If the radial play exceeds 0.1 millimeter (0.004 inches) or the rotational torque exceeds 3.5 daN (7.9 lbs), before further flight, replace the collector with an airworthy part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction General De L'Aviation Civile (France) AD No. 2001–317–082(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on May 28, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–14250 Filed 6–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM98–10–011]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

May 31, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Federal Energy Regulatory Commission is requesting comments with respect to the issues remanded by the United States Court of Appeals for the District of Columbia Circuit to the Commission regarding Order No. 637.

Specifically, the Commission requests comments on issues pertaining to the right of first refusal (''ROFR'') term matching cap, the relationship of the ROFR to tariff provisions, backhauls and forwardhauls to the same point, and the waiver of posting and bidding for prearranged releases.

DATES: Comments are due on or before June 30, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT: Diego A. Gomez, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2703.

SUPPLEMENTARY INFORMATION:

Notice Requesting Comments

On April 5, 2002, the United States Court of Appeals for the District of Columbia Circuit issued an opinion generally affirming Order No. 637.[1] The Court, however, reversed and remanded Order No. 637 [2] with respect to two issues and remanded, without reversing, with respect to two other issues. As discussed below, the Commission solicits comments from interested parties on these issues. This notice will enable the Commission to decide the remanded issues with the benefit of the views of all interested parties.

Background

The four issues the Court has remanded to the Commission are the following:

1. Right of First Refusal Term Matching Cap

The Court reversed and remanded Order No. 637's policy that shippers exercising their right of first refusal (ROFR) to retain capacity need only match contract term lengths of up to five years. The ROFR originated in Order No. 636,[3] where the Commission tempered the pipeline's pre-granted authority to abandon contracts upon their termination with a ROFR for firm customers with a contract longer than one year.[4] Specifically, the Commission adopted a regulation providing that such a shipper could retain its service under a new contract by matching the term and the rate (up to the maximum rate) offered by the highest competing bidder.[5] In Order No. 636–A, the Commission capped the contract length the existing shipper must match at twenty years.

On appeal of Order No. 636, the Court found the twenty-year cap was not justified by the record and remanded it for further explanation.[6] The Court stated that the Commission had not adequately explained how the twenty-year term matching cap protects against the pipelines' preexisting market power, particularly why the twenty-year cap would prevent bidders on capacity constrained pipelines from using long contract duration as a price surrogate to bid beyond the maximum approved rate, to the detriment of captive customers. On remand in Order No. 636–C, the Commission changed its policy and adopted a five-year term matching cap. It relied on the fact most commenters in the Order No. 636 proceeding had supported a term matching cap in the range of five years and more recent evidence showed that five years was about the median length of all contracts of one year or longer between January 1, 1995 and October 1, 1996.[7]

On rehearing in Order No. 636–D, the Commission recognized that pipelines had raised legitimate concerns about whether the five-year term matching cap was causing a bias toward short-term contracts, with adverse economic consequences for both pipelines and captive customers. The Commission, however, deferred further consideration of the term cap to the proceeding which became the Order No. 637 proceeding in Docket No. RM98–10–000, where a more current record could be developed. In Order No. 637, the Commission continued the five-year cap policy, finding that none of the parties presented evidence to support the conclusion that a five-year contract is atypical in the current market.

On appeal, the Court found that the Commission had not addressed the objections that had been raised concerning the five-year cap and had relied on the same evidence that it had used to make its decision in Order No. 636–C, namely the fact that five years was about the median length of all contracts of one year or longer.[8] The Court concluded that the only evidence supporting the Commission's final decision to choose a five-year cap was the original record, which in the Commission's own view was incomplete. The Court held the Commission had neither given an affirmative explanation for its selection of five years, nor had it responded to its own or the pipelines' objections to the five-year cap. The Court also questioned why the Commission used a median to function as a ceiling. The Court thus vacated the five-year cap and remanded the issue to the Commission.

2. Relationship of ROFR to Tariff Provisions

The Court remanded, without reversing, a second issue concerning the ROFR. In Order No. 637, the Commission stated that shippers always have the ROFR set forth in 18 CFR 284.221(d), regardless of the provisions set forth in their contract.[9] In Order No. 637–A, the Commission stated that shippers' regulatory ROFR is effective ''regardless of the terms of any tariff.'' [10] The Court found that the Commission had not adequately explained whether, through these statements, the Commission intended to provide that the regulatory ROFR is self-executing, and applies regardless of any inconsistent language in the pipeline's tariff or whether tariff language is necessary to effect the right. Accordingly the Court remanded this issue to the Commission to explain its current position on this issue and, to the extent that the language in the Order Nos. 637 and 637–A is legally unsustainable, to modify it.

3. Backhauls and Forwardhauls to the Same Point

In Order No. 637, the Commission also addressed segmentation of capacity,

[1] Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002) (*INGAA*).

[2] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,091 (February 9, 2000); *order on reh'g,* Order No. 637–A, FERC Stats. & Regs, Regulations Preambles (July 1996–December 2000) ¶ 31,099 (May 19, 2000); *order denying reh'g,* Order No. 637–B, 92 FERC ¶ 61,062 (2000).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (April 16, 1992), FERC Statutes and Regulations, Regulations Preambles January 1991–June 1996 ¶ 30,939 at 30,446–48 (April 8, 1992); *order on reh'g,* Order No. 636–A, 57 FR 36,128 (August 12, 1992), FERC Statutes and Regulations, Regulations Preambles January 1991–June 1996 ¶ 30,950 (August 3, 1992); *order on reh'g,* Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992); *reh'g denied,* 62 FERC ¶ 61,007 (1993); *aff'd in part and remanded in part,* United Distribution Companies v. FERC, 88 F.3d 1105 (D.C. Cir. 1996); *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[4] Order No. 636 at 30,446–48.

[5] 18 CFR § 284.221(d)(2)(ii) (2001).

[6] United Distribution Companies v. FERC, 88 F.3d 1105, 1140–41 (D.C. Cir. 1996) (*UDC*).

[7] Order No. 636–C at 61,774 and 61,792.

[8] *INGAA* at *78.

[9] Order No. 637, at 31,341.

[10] Order No. 637–A, at 31,647.

under which shippers may divide their mainline capacity into segments with each mainline segment equal to the contract demand of the original contract. As a general matter, shippers may overlap those mainline segments, but only up to the contract demand of the underlying contract. In Order No. 637–A, the Commission clarified that a shipper using a forwardhaul and backhaul to bring gas to the same delivery point in an amount that exceeds its contract demand is not overlapping mainline capacity. On appeal, the Court found that the Commission had not adequately addressed whether this policy modified the contracts between the pipeline and its shippers or adequately supported the need for any contract modification. The Court remanded these issues for further explanation, but did not reverse the Commission's holdings.

4. Waiver of Posting and Bidding for Prearranged Releases

Finally, the Court reversed and remanded Order No. 637 on an issue concerning the posting of prearranged capacity releases for bidding. Before Order No. 637, the Commission provided that releasing shippers need not post prearranged deals at the maximum rate for bidding. However, Order No. 637 waived the maximum rate for capacity releases of less than one year until September 30, 2002. The Commission therefore found that all prearranged releases of less than one year must be posted for bidding. The Commission, however, stated that in individual cases where a local distribution company (LDC) considers an exemption from the posting and bidding requirement essential to further a state retail unbundling program, the LDC together with the appropriate state regulatory agency, could request the Commission to waive the posting and bidding requirement. The Commission also stated that if the LDC requests such a waiver, the LDC must be prepared to have all its capacity release transactions limited to the applicable maximum rate for pipeline capacity.

The Court found that the Commission failed to support its rule conditioning the waiver of posting and bidding requirements on the applicant's being prepared to have all of its capacity release transactions limited to the applicable maximum rate. The Court accordingly reversed the Commission on this issue and remanded for the Commission to review the matter and reframe the waiver conditions.

Discussion

The Commission is requesting comments from all interested parties on their views concerning what actions the Commission should take in response to the Court's remand of the above described four issues. All comments should be filed within 30 days of the date this order issues. The Commission is particularly interested in comments on the following issues concerning the term matching cap for the ROFR and backhauls and forwardhauls to the same point.

ROFR Questions

1. *Balancing of risk between shipper and pipeline.* In remanding the issue of the appropriate term matching cap for the ROFR, the Court pointed out that both in Order No. 636–D and the notice of proposed rulemaking that led to Order No. 637, the Commission expressed concern that the five-year term matching cap resulted in a bias toward short-term contracts by providing a disincentive for an existing shipper to enter into a contract of more than five years. This could foster an imbalance of risks between existing shippers and pipelines, allowing shippers indefinite control over pipeline's capacity, but giving pipelines not corresponding protection. Accordingly, the Commission requests comments on what approach to the term-matching cap strikes a proper balance between the concerns of captive customers about their ability to retain capacity under reasonable terms and conditions when their contracts expire and the concerns of pipelines about a bias toward short-term contracts.

2. *Need for any term matching cap.* In *Tennessee Gas Pipeline Company (Tennessee),*[11] the Commission found that no term matching cap is necessary where a pipeline uses the net present value method to allocate unsubscribed capacity among bidders for that capacity. The Commission reasoned that, in that context, the Commission's existing regulatory controls are sufficient to constrain pipelines from exercising market power to pressure shippers into longer contracts than they desire. Because the Commission limits the rates pipelines can charge to maximum just and reasonable levels and requires pipelines to sell all available capacity to shippers willing to pay the maximum rate, the only way a pipeline could create scarcity to force shippers to accept longer term contracts would be to refuse to build additional capacity when demand requires it. However, the Commission found pipelines would have a greater incentive to build new capacity to serve all the demand for their service, than to withhold capacity, since the only way the pipeline could increase current revenues and profits would be to invest in additional facilities to serve the increased demand.

a. The Commission requests comment on whether the same regulatory controls which *Tennessee* found constrain the pipeline's ability to exercise market power in the allocation of its unsubscribed capacity provide justification for the removal of any term matching cap in the ROFR setting.

b. The Commission also requests comment on whether there are reasons, other than the need to control the pipeline's exercise of market power, why a term matching cap is necessary in the ROFR context. The Commission provides existing long-term maximum rate shippers a ROFR in order to enable the Commission to make the finding required by NGA section 7 that abandonment of service following contract expiration is in the public convenience and necessity. Does the need to satisfy the requirements of NGA section 7 require a term matching cap regardless of the pipeline's ability to exercise market power? What findings are necessary to satisfy NGA section 7 other than a finding that the pipeline cannot exercise market power?

3. *Term Cap Length.* To the extent any commenting party asserts that a term matching cap is necessary as part of the ROFR, the Commission requests that said party propose a term cap length which it deems appropriate. Moreover, the Commission requests that such proposed term cap length be justified and explained in detail. In order to assist parties in presenting comments on this issue (and the other issues discussed above concerning the ROFR), the Commission has developed detailed information concerning the term lengths in contracts entered into since the issuance of Order No. 636. That information is set forth in the Appendix to this notice.[12] Parties should comment on what conclusions should be drawn from the information in the Appendix as to the appropriate length of any term matching cap or whether the information provides support for removing any term matching cap.

[11] Tennessee Gas Pipeline Co., 91 FERC ¶ 61,053 (2000), reh'g, 94 FERC ¶ 61,097 (2001), *appeal pending sub nom. Process Gas Consumers Group* v. *FERC,* D.C. Circuit, Case No. 01–1151.

[12] Table I shows the lengths of all contracts entered into between 1996 and 2001, including contracts which have expired. Table II shows all presently active contracts entered into since 1992.

Forwardhaul/Backhaul Questions

The Commission also solicits comments on the remanded forwardhaul/backhaul issue.

1. *Contract violation.* The Commission requests that the parties comment on why and how a pipeline's contracts are violated by the policy established in Order No. 637-A concerning forwardhauls and backhauls to the same delivery point. Pipelines' service agreements with their customers generally provide that the contract incorporates the terms and conditions in the pipeline's tariff. Given this fact, if the Commission requires the pipeline to modify the terms and conditions in its tariff consistent with its backhaul/forwardhaul policy, is there any violation of the contract between the pipeline and its customer? To the extent a commenter asserts that there is a contract violation, it should provide the specific contractual provisions which it believes the policy violates.

2. *Benefits to the market.* The Commission requests comments on whether forwardhauls and backhauls to the same delivery point help foster more competitive markets. Are there sufficient competitive benefits to justify action under NGA section 5 to implement the policy concerning backhauls and forwardhauls to the same point?

3. *Operational feasibility.* The Commission requests comments on whether there are any operational issues or impacts with providing forwardhauls and backhauls to the same delivery point which should be considered in responding to the Court's remand.

While the Commission is primarily interested in comments on the above described issues, parties may also comment on the two other issues the Court remanded to the Commission (*i.e.,* the relationship of the ROFR to tariff provisions and the waiver of posting and bidding for prearranged releases).

The Commission orders:

Interested parties to the above-captioned proceeding are invited to file comments on the issues discussed above on or before 30 days after the issuance of this order.

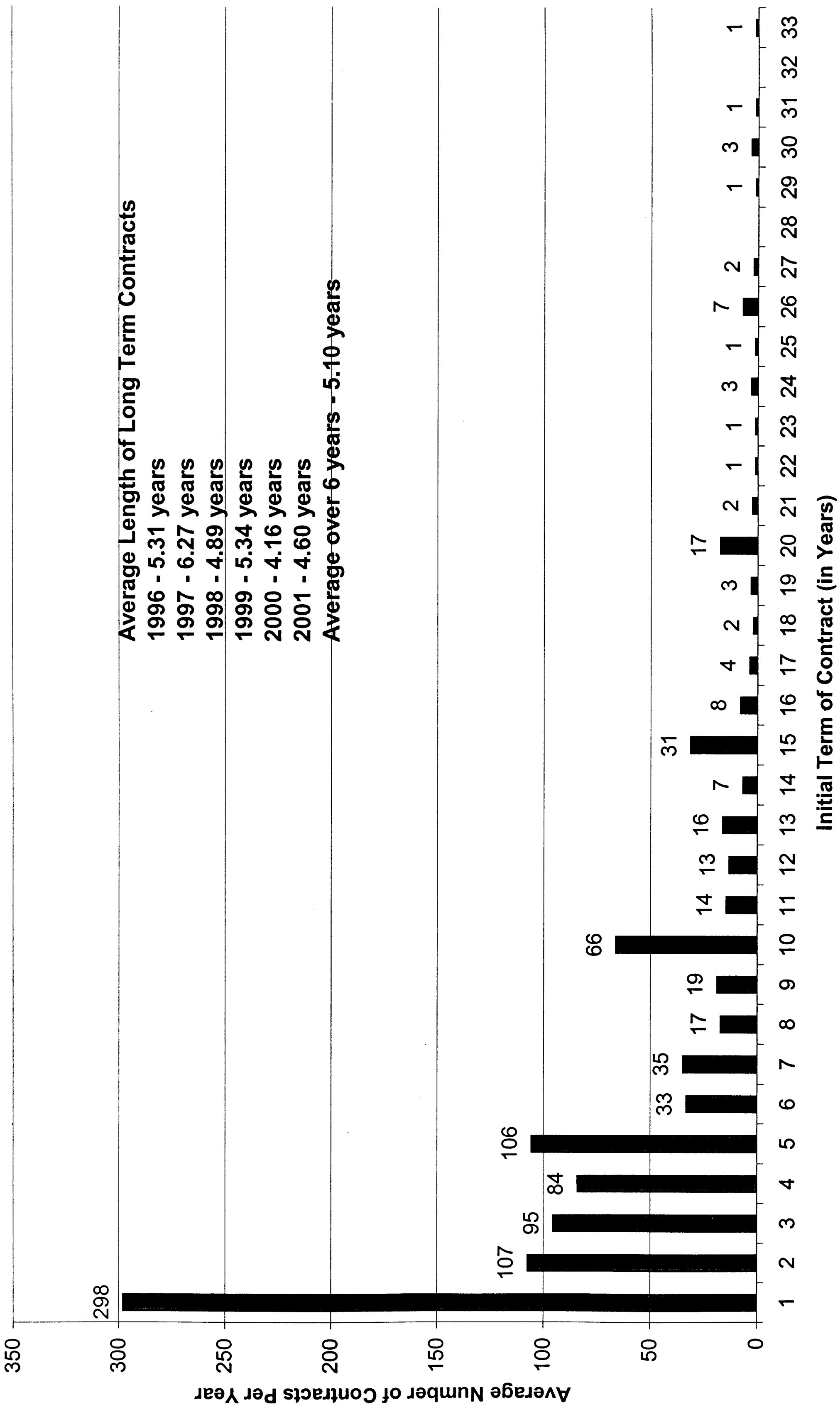
By direction of the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

BILLING CODE 6717–01–P

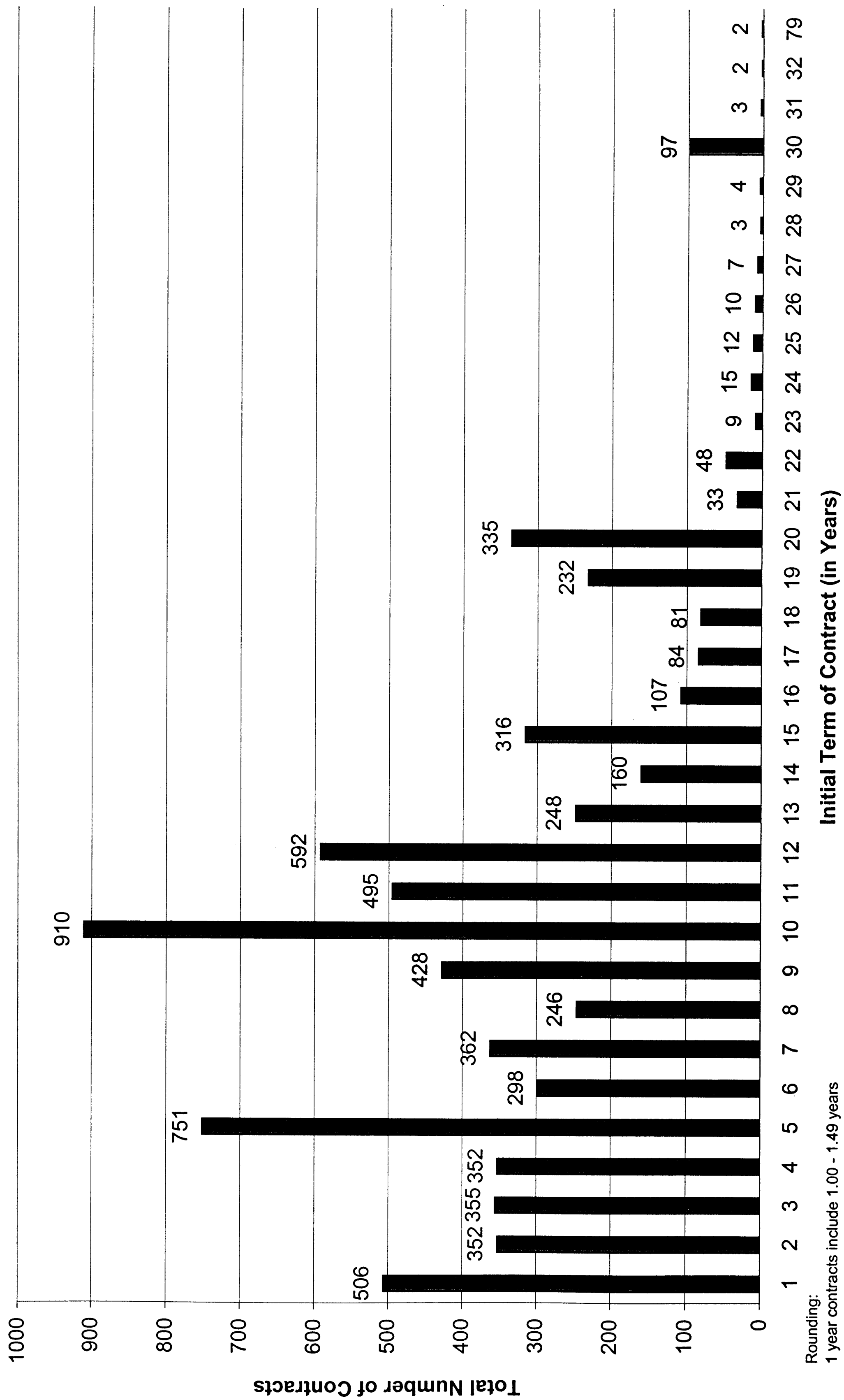
Table I
Average Number of Long Term Contracts Initiated Each Year
1996 - 2001



Rounding:
1 year contracts include 1.00 - 1.49 years
2 year contracts include 1.50 - 2.49 years
same for 3 year contracts and beyond

Source: Index of Customer Reports

Table II
Currently Effective Long Term Gas Contracts
Service Initiated 1992 - 2002



Rounding:
1 year contracts include 1.00 - 1.49 years
2 year contracts include 1.50 - 2.49 years
same for 3 year contracts and beyond

Source: Index of Customers Reports
January 1, 2002 and April 1, 2002

[FR Doc. 02–14176 Filed 6–6–02; 8:45 am]

BILLING CODE 6717–01–C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

RIN 1515–AC98

Civil Fines for Importation of Merchandise Bearing a Counterfeit Mark

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the importation of merchandise bearing a counterfeit mark to clarify the limit on the amount of a civil fine which may be assessed by Customs when merchandise bearing a counterfeit mark is imported. The regulations currently use, as a measurement for determining the limit, the domestic value of merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure. The language set forth in the proposed rule adheres more closely to the statutory language, basing the limit of the civil fine on the value of the genuine goods according to the manufacturer's suggested retail price (MSRP), without any reference to domestic value. Because the MSRP excludes retail sales and markdowns, it is usually greater than the good's domestic value. Removing the distinction between the statutory and regulatory language will clear up confusion and result in Customs more uniformly determining the amount of a civil fine when merchandise bearing a counterfeit mark is imported.

DATES: Comments must be received on or before August 6, 2002.

ADDRESSES: Written comments, regarding both the substantive aspects of the proposed rule and how it may be made easier to understand, may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Lynne O. Robinson, Office of Regulations and Rulings: (202) 927–2346.

SUPPLEMENTARY INFORMATION:

Background

The Anticounterfeiting Consumer Protection Act of 1996 (the ACPA; Pub. L. 104–153, 110 Stat. 1386) was signed into law on July 2, 1996, to ensure that Federal law adequately addresses the scope and sophistication of modern counterfeiting which costs American businesses an estimated $200 billion a year worldwide. Toward that end, the ACPA amended section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), to provide two new tools to fight the importation of counterfeit goods: (1) The seizure, forfeiture, and destruction of merchandise bearing a counterfeit mark under 19 U.S.C. 1526(e) (section 1526(e)), as amended by section 9 of the ACPA, and (2) the imposition of a civil fine under 19 U.S.C. 1526(f) (section 1526(f)), a new section of law created under section 10 of the ACPA.

Under section 1526(e), merchandise bearing a counterfeit mark that is seized and forfeited must be destroyed except where the merchandise is not unsafe or a hazard to health and the trademark owner has consented to its disposal by one of several alternative methods (see sections 1526(e)(1), (2) and (3)). This provision ensures that a violator cannot regain possession of the forfeited goods and distribute them in some other manner (including making another attempt to import them at another U.S. port or into another country). Under section 1526(f)(1), a civil fine is assessed against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under section 1526(e). Section 1526(f)(2) provides for a fine for the first seizure in an amount up to the value the imported merchandise would have had if it were genuine, according to the manufacturer's suggested retail price (MSRP). Section 1526(f)(3) provides for a fine for subsequent seizures in the amount of up to twice the value the imported merchandise would have had if it were genuine, according to the MSRP.

On November 17, 1997, Customs published interim regulations in the **Federal Register** (62 FR 61231) to amend § 133.25 of the Customs Regulations (19 CFR 133.25) to reflect the ACPA's amendment of 19 U.S.C. 1526. The interim amendments were adopted as a final rule published in the **Federal Register** (63 FR 51296) on September 25, 1998. A final rule document published in the **Federal Register** (64 FR 9058) on February 24, 1999, redesignated § 133.25 as § 133.27.

Under § 133.27 of the Customs Regulations (19 CFR 133.27), Customs may impose a civil fine, in addition to any other penalty or remedy authorized by law, against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark that is seized under § 133.21 (and 19 U.S.C. 1526(e)). Under § 133.27(a), the fine imposed for the first violation (seizure) will not be more than the domestic value of the merchandise (as set forth in § 162.43(a)) as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure. Under § 133.27(b), the fine imposed for subsequent violations will not be more than twice the domestic value of the merchandise as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure.

Upon review of § 133.27, Customs has determined that the language of the regulation is inconsistent with the language of section 1526(f). The regulation employs the term ''domestic value'' (of the merchandise) while the statute does not use that term. Moreover, because the MSRP is exclusive of any sale or markdown of a good at retail, it is usually greater than the good's domestic value. Therefore, setting the maximum amount of a civil fine by means of a formula that includes both the domestic value of the merchandise and the value of genuine merchandise according to the MSRP is confusing and contributes to misunderstanding by both Customs personnel and the public.

A review of the regulatory history indicates that Customs, in using the term ''domestic value'' in § 133.27 (§ 133.25 when published as a final rule on September 25, 1998), relied on 19 U.S.C. 1606 (section 1606) and § 162.43(a) of the Customs Regulations (19 CFR 162.43(a)). Section 1606 provides that Customs will determine the domestic value of merchandise seized under the Customs laws at the time and place of appraisement. Section 162.43(a) provides that ''domestic value'' as used in section 1606 means the price for which seized or similar property is freely offered for sale at the time and place of appraisement and in the ordinary course of trade.

While this ''domestic value appraisement rule'' of section 1606 and § 162.43(a) is applicable in various circumstances involving merchandise seized under the Customs laws, its application is qualified. Under 19 U.S.C. 1600, the procedures set forth in 19 U.S.C. 1602 through 1619, including the use of domestic value as laid out in section 1606, apply to seizures of property under any law enforced or