from 700 ft. and 1,200 ft. above the surface within the Wales, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Wales Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations 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 14 CFR 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 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Wales, AK [New]

Wales Airport, AK

(lat. 65° 37′26″ N., long. 168° 05′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.35-mile radius of the Wales Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 65°24′00″ N 168°30′00″ W to 65°53′00″ N 168°30′00″ W to 66°′00′00″ N 167°50′00″ W to 65°24′00″ N 167°50′00″ W to point of beginning excluding that airspace within Tin City Class E airspace area.

* * * * *

Issued in Anchorage, AK, on February 11, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–4173 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM04–4–000]

Creditworthiness Standards for Interstate Natural Gas Pipelines

February 12, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its regulations to require interstate natural gas pipelines to follow standardized procedures for determining the creditworthiness of their shippers. The proposed regulations are intended to promote consistent practices among interstate pipelines and provide shippers with an objective and transparent creditworthiness evaluation. In addition, the Commission is proposing to incorporate by reference standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) dealing with creditworthiness requirements for pipeline service.

DATES: Comments on the proposed rule are due March 26, 2004.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Jason Stanek, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8403.

Marvin Rosenberg, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8292.

Kay Morice, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–6507.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

	Paragraph No.
I. Background	2.

TABLE OF CONTENTS—Continued

	Paragraph No.
II. Discussion	6.
A. Adoption of WGQ Standards	12.
B. Criteria for Determining Creditworthiness	14.
C. Collateral Requirements for Non-Creditworthy Shippers	20.
1. Collateral for Service on Existing Facilities	22.
2. Collateral for Construction Projects	26.
a. Mainline Construction	27.
b. Lateral Line Construction	31.
3. Collateral for Loaned Gas	32.
a. Imbalances	33.
b. Lending Services	35.
4. Interest on Collateral	38.
D. Timeline for Suspension and Termination of Service	39.
E. Capacity Release	45.
1. Creditworthiness Requirements for Replacement Shippers	47.
2. Rights of Replacement Shipper on Termination of Releasing Shipper's Contract	48.
3. Time for Proffering Collateral for Biddable Releases	51.
4. Notice to Releasing Shippers	59.
5. Creditworthiness Requirements for Permanent Releases	60.
III. Notice of Use of Voluntary Consensus Standards	65.
IV. Information Collection Statement	66.
V. Environmental Analysis	72.
VI. Regulatory Flexibility Act Certification	73.
VII. Comment Procedures	74.
VIII. Document Availability	77.

1. The Federal Energy Regulatory Commission (Commission) proposes to amend §§ 284.8 and 284.12 (18 CFR 284.8 and 284.12 (2003)) of its open access regulations governing capacity release and standards for business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to incorporate by reference 10 creditworthiness standards promulgated by the North American Energy Standards Board (NAESB) and adopt additional regulations related to the creditworthiness of shippers on interstate natural gas pipelines. These regulations are intended to benefit customers of the pipelines by establishing standardized processes for determining creditworthiness across all interstate pipelines.

I. Background

2. Since Order Nos. 436[1] and 636[2], the Commission has established terms and conditions relating to the credit requirements for obtaining open access service on interstate pipelines in individual proceedings. Recently, a number of interstate natural gas pipelines have made filings before the Commission to revise the creditworthiness provisions in their tariffs. These pipelines claimed that, due to increased credit rating downgrades to many energy companies, industry attention has focused on issues relating to a pipeline's risk profile and its credit exposure. As a result, the pipelines have argued that tariff revisions are needed to strengthen creditworthiness provisions and minimize the potential exposure to the pipeline and its other shippers in the event that a shipper defaults on its obligations.

3. In September 2002, the Commission issued orders that began to examine and investigate issues relating to a pipeline's ability to determine the creditworthiness of its shippers.[3] Several parties in these proceedings requested that the Commission develop uniform guidelines for pipeline creditworthiness provisions. The parties claimed that the issuance of creditworthiness guidelines would require the pipelines to make good-faith determinations using transparent and commercially reasonable methods to assess the credit risks borne by the pipeline. The parties further argued that generic guidelines would reduce the potential burden faced by customers who otherwise would need to comply with inconsistent and overly burdensome credit requirements.

4. The Commission agreed that it could be valuable to develop a generic standard for creditworthiness determinations since shippers would be able to provide the same documents to every pipeline to obtain capacity. The Commission therefore encouraged the parties to initiate the standards development process at the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) to see whether a consensus standard could be developed for creditworthiness determinations. In addition, the Commission requested that NAESB file a report with the Commission by June 2003 indicating whether standards had been adopted, or if consensus could not be reached, an account of its deliberations, the standards considered, the voting records, and the reasons for the inability to reach consensus, so the Commission could determine if further action is necessary.

5. On November 6, 2002, the WGQ Business Practices Subcommittee (BPS) initiated the standards development process and eventually prepared a

[1] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, FERC Stats. and Regs., Regulations Preambles (1982–1985) ¶ 30,665, at 31,505 (1985).

[2] 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 Stats. and Regs., 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 36128 (August 12, 1992), FERC Stats. and Regs., Regulations Preambles (January 1991–June 1996) ¶ 30,950 (August 3, 1992); *order on reh'g,* Order No. 636–B, 57 FR 57911 (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).

[3] *See* Tennessee Gas Pipeline Co., 100 FERC ¶ 61,268 (2002), Northern Natural Gas Co., 100 FERC ¶ 61,278 (2002), and Natural Gas Pipeline Co. of America, 101 FERC ¶ 61,269 (2002).

recommendation of 24 proposed standards to the Wholesale Gas Quadrant's Executive Committee of NAESB (WGQ EC).[4] The WGQ EC, however, was unable to reach consensus on the ''package'' of 24 creditworthiness standards and adopted only ten of the BPS's proposed standards. Subsequently, on June 16, 2003, as supplemented on June 25, 2003, NAESB filed a progress report with the Commission in Docket No. RM96–1–000 containing the approved standards, the voting record, and comments from WGQ EC members describing the reasons for their opposition to some of the proposed standards, or their abstention. A number of parties also filed comments with the Commission after NAESB filed its report.[5] Many of these comments focused on issues relating to creditworthiness requirements for capacity release.

II. Discussion

6. The Commission is proposing to incorporate by reference the creditworthiness standards adopted by NAESB. In addition, the Commission is proposing to amend its regulations to include its own creditworthiness standards as well as creditworthiness requirements for capacity release. These standards are intended to promote greater efficiency on the national pipeline grid by creating uniform rules under which shippers acquire and maintain service on interstate pipelines.

7. In implementing Order Nos. 436 and 636, the Commission sought to establish policies regarding credit standards for obtaining open access service. However, as became clear after reviewing pipeline tariffs in the recent creditworthiness cases, the Commission's policies have at times conflicted with each other, or have not been applied consistently, resulting in pipeline tariff provisions on creditworthiness that are neither consistent nor uniform.

8. The goal of the Commission in Order Nos. 436 and 636 was to create a seamless and integrated pipeline grid that promotes competition by enabling shippers to move gas from the most competitive supply areas, across multiple pipelines, to the burner tip. Varying and overly burdensome credit and collateral requirements on pipelines can defeat this goal. If shippers face a myriad of different requirements for obtaining or retaining service on individual pipelines, they may be unable to easily and efficiently transport gas across the pipeline grid. In the past, lack of uniform tariff creditworthiness provisions may not have been as critical since the number of pipeline customers facing credit issues was small. However, in the current environment in which credit is an issue for a number of pipeline customers, standards are important to ensuring non-discriminatory and open access service. The Commission believes that customers, and pipelines, should be able to rely upon common, and reasonable practices and procedures for obtaining such open access service.

9. The 10 adopted WGQ standards provide procedural rules by which pipelines should deal with their customers with respect to credit issues, such as providing shippers with reasons for requesting credit information, procedures for communications between pipelines and customers, and the timeline for providing responses to requests for credit reevaluation. But the WGQ EC was unable to reach agreement on a number of important substantive policy questions relating to creditworthiness.

10. While the WGQ consensus standards process has been invaluable in creating business practice and communication standards that have benefited the natural gas industry, the Commission recognizes that a standards organization composed of representatives from every facet of the gas industry may be unable to reach consensus on policy issues that have disparate effects on each of the industry segments. In the past when the WGQ has been unable to reach consensus on issues concerning Commission policy, the Commission has endeavored to resolve the policy disputes when standardization is necessary to create a more efficient interstate grid.[6]

11. The Commission is therefore proposing regulations governing a range of creditworthiness issues to create a uniform and standardized policy. These include standards for the information shippers can be required to provide pipelines to establish creditworthiness, and a requirement that pipelines' creditworthiness determinations be made on the basis of objective and transparent criteria, collateral requirements for service on existing facilities as well as service obtained through pipeline construction, timelines for suspension and termination of service, and standards governing credit requirements for capacity release transactions. These proposals seek to balance the interests of the pipelines in obtaining reasonable assurances of creditworthiness against the need to ensure that open access services are reasonably available to all shippers. Like other Commission standards, the standards proposed here establish the minimum requirements that pipelines need to meet; pipelines can still choose to propose tariff provisions that are more lenient than the requirements contained in the standards.

A. Adoption of WGQ Standards

12. The Commission proposes to incorporate by reference the ten consensus standards[7] that were passed by the WGQ.[8] Among the consensus standards, a pipeline would be required to state the reason it is requesting credit evaluation information from existing shippers. Additionally, shippers would be required to acknowledge the receipt of a pipeline's request for information for creditworthiness evaluation, and the pipeline would be required to acknowledge to the shipper when it received that requested information.[9]

13. The WGQ approved the standards under its consensus procedures.[10] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad

[4] A complete list of the 24 proposed standards voted on by the WGQ EC, along with the voting record, can be found at: *http://www.naesb.org/pdf/wgq_ec060503a1.pdf.*

[5] Parties filing comments in Docket No. RM96–1–000 include the American Gas Ass'n; Consolidated Edison Co. of New York, Inc. and Orange and Rockland Utilities, Inc.; Encana Marketing (USA) Inc.; KeySpan Delivery Companies; Interstate Natural Gas Ass'n of America; Midland Cogeneration Venture, LP; National Fuel Gas Distribution Corp.; Reliant Energy Services, Inc.; and Stand Energy Corp.

[6] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–G, 68 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs., Regulations Preambles (July 1996–December 2000) ¶ 31,062 at 20,668–72 (Apr. 16, 1998) (resolving disputes over the bumping of interruptible service by firm service).

[7] Standards 0.3.zB, 0.3.zC, 0.3.zD, 0.3.zE, 0.3.zF, 0.3.zK, 0.3.zL, 0.3.zQ, 5.3.zD, and 5.3.zF. Request No.: 2003 Annual Plan Item 6 (July 28, 2003).

[8] Pursuant to the regulations regarding incorporation by reference, copies of the creditworthiness standards are available from NAESB. The standards can be found in the Final Actions portion of the WGQ Web site, *http://www.naesb.org/wgq/final.asp.* They can also be viewed, but not copied, in the Commission's Public Reference Room. 5 U.S.C. 552(a)(1); 1 CFR part 51 (2001).

[9] The Commission is also proposing technical corrections to its regulations, including revising the regulations to reflect NAESB's name change and its recent change of address, and to correct an incorrect cross reference.

[10] NAESB's voting process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of the WGQ's general membership must ratify the standards.

spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires Federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB's WGQ, as means to carry out policy objectives or activities.[11]

B. Criteria for Determining Creditworthiness

14. In the recent orders on credit requirements, the Commission has found that pipelines must establish clear criteria governing the financial data and information shippers must provide to establish their creditworthiness as well as use objective criteria for determining creditworthiness.[12] Standardizing the types of information shippers have to provide to the pipeline to establish their credit should increase a shipper's ability to obtain and retain service on multiple pipelines by ensuring that the shipper would not have to assemble different packages of documentation for each pipeline. Such standards also could benefit pipelines because shippers will be able to more quickly respond to credit inquiries by the pipelines.

15. The WGQ EC considered, but did not pass, a proposed standard (0.3z.A) which would have established a uniform set of documents that shippers would have to provide to pipelines, distinguishing between the various customer groups that use pipeline services. This standard was supported by a majority of voting members on the Executive Committee, but failed principally because it did not obtain the required two votes from each of the five sectors.[13] The list of information under this standard is as follows:

a. Audited Financial Statements;
b. Annual Report;
c. List of Affiliates, Parent Companies, and Subsidiaries;
d. Publicly Available Information from Credit Reports of Credit and Bond Rating Agencies;
e. Private Credit Ratings, if obtained by the shipper;
f. Bank References;
g. Trade References;
h. Statement of Legal Composition;
i. Statement of Length of Time Business has been in Operation;
j. Most recent filed statements with the Securities and Exchange Commission (or an equivalent authority) or such other publicly available information;
k. For public entities, the most recent publicly available interim financial statements, with an attestation by its Chief Financial Officer, Controller, or equivalent (CFO) that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with Generally Accepted Accounting Principles (GAAP) or equivalent;
l. For non-public entities, including those that are State-regulated utilities:
i. The most recent available interim financial statements, with an attestation by its CFO that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with GAAP or equivalent;
ii. An existing sworn filing, including the most recent available interim financial statements and annual financial reports filed with the respective regulatory authority, showing the shipper's current financial condition;
m. For State-regulated utility local distribution companies, documentation from their respective State regulatory commission (or an equivalent authority) of an authorized gas supply cost recovery mechanism which fully recovers both gas commodity and transportation capacity costs and is afforded regulatory asset accounting treatment in accordance with GAAP or equivalent;
n. Such other information as may be mutually agreed to by the parties;
o. Such other information as the pipeline may receive approval to include in its tariff or general terms and conditions.

16. After reviewing this proposed standard, the Commission considers that, with the exception of item "o", this is a uniform list of reasonable information, which should provide pipelines with sufficient data to make creditworthiness evaluations. However, item "o" would permit pipelines to require non-uniform information and defeat the goal of standardization. In order to ensure that the same information can be used to establish credit across the pipeline grid, the Commission is proposing to require that this list, without item "o", constitute the complete list of information that pipelines can require shippers to provide.[14]

17. Process Gas Consumers Group and the American Forest & Paper Association filed comments included with NAESB's report stating that while they support a standard list of creditworthiness information, their support is conditioned on the premise that shippers will not be required to unnecessarily provide all the information included on the list. The Commission recognizes that not all items on the list are applicable to all shippers and is proposing that the pipelines can require shippers to provide information from the list only where applicable to that shipper.

18. With respect to the criteria to be used to evaluate a shipper's status, the Commission is proposing to require that each pipeline's tariff disclose the objective criteria to be used in evaluating a shipper's creditworthiness. Requiring the disclosure of the criteria in the tariff is necessary to ensure that shippers will know the basic standards that a pipeline will apply in determining its creditworthiness status. The Commission is also proposing to require a pipeline to provide the shipper within five days of a determination that a shipper is not creditworthy, upon request, a written explanation of such determination.[15]

19. Encana Marketing (USA) Inc. submits that rigid creditworthiness criteria and "hard triggers" should not be included in pipeline tariffs because the inclusion of such provisions may prevent the pipeline from considering all factors that may be relevant when evaluating a shipper's creditworthiness. The Commission is not proposing a defined set of criteria for evaluating creditworthiness. There may not be a defined set of criteria for evaluating each shipper, and the pipelines need to take into account the individual circumstances of a shipper in making

[11] Pub L. 104–113, sec. 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[12] *See* Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 41, *order on rehearing,* 103 FERC ¶ 61,275 at P 40–41 (2003), PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 67 (2003).

[13] The vote on this proposed standard was 15 Yes, 3 No, and 3 Abstentions. To pass, a standard must secure a super-majority of 17 votes, with at least two votes from each segment. Three members of the Producers segment were not present at the meeting. While the "Yes" votes were two votes short of the required 17, the Committee did not poll the missing members, because the proposal failed to secure the requisite two votes from the Distribution segment.

[14] Several members of the Distribution segment (the segment failing to receive two positive votes), objected to the proposed standard because item "o" would have permitted pipelines to include different requirements in their tariffs. *See* comments by KeySpan Energy and other members of the Distribution segment. The Commission's proposal addresses this concern by removing item "o" from the list of information pipelines may require.

[15] *See* Tennessee Gas Pipeline Co., 102 FERC ¶61,075 at P 46, *order on rehearing* 105 FERC ¶61,120 at P 28 (2003) (explanation need be provided only upon a shipper's request); Gulf South Pipeline Co., LP, 103 FERC ¶61,129 at P 21 (2003); Northern Natural Gas Co., 103 FERC ¶61,276 at P 43 (2003).

their determinations. The proposed requirement to set forth objective criteria in the pipeline's tariff along with the requirement to inform the shipper in writing of any adverse determination should permit the shipper to protest any such decision to the Commission. The Commission, however, seeks comment on whether it should adopt a defined set of criteria for determining creditworthiness. Those supporting the development of such criteria should include in their comments proposals as to the criteria that they believe should be used.

C. Collateral Requirements for Non-Creditworthy Shippers

20. Since Order Nos. 436 and 636, the Commission's general policy has been to permit pipelines to require shippers that fail to meet the pipeline's creditworthiness requirements for pipeline service to put up collateral equal to three months' worth of reservation charges.[16] The Commission also recognized that in cases of new construction, particularly project-financed pipelines,[17] pipelines and their lenders could require larger collateral requirements from initial shippers before committing funds to the construction project.[18] However, in approving these larger collateral requirements the Commission would often permit the pipeline to include these collateral requirements in the pipeline's tariff so that even after the lending or other agreement had expired, the larger collateral requirements would continue for shippers taking service on the pipeline. Indeed, in one case, the Commission approved a tariff provision which provided for "security acceptable to [the pipeline's] lenders."[19] This tariff provision then continued even after the pipeline had refinanced the original lending agreement (requiring such collateral), and the succeeding lending agreements contained no such provision. As a result of these and possibly other determinations (such as acceptance of uncontested tariff filings), there appears significant variance in pipeline tariff provisions establishing collateral for non-creditworthy shippers.[20]

21. The Commission is proposing here to standardize the collateral requirements applicable to shippers who fail to meet the creditworthiness standards of the pipeline's tariff.[21] This proposal is intended to ensure that shippers using multiple pipelines will not be exposed to disparate collateral requirements depending on which pipelines they choose to use.

1. Collateral for Service on Existing Facilities

22. For shippers seeking service on existing pipeline facilities, the Commission proposes to continue its traditional policy of requiring no more than the equivalent of three months' worth of reservation charges. The three months of reservation charges reasonably balances the risks to the pipeline from potential contract default against the need under open access service to ensure that existing pipeline services are reasonably available to all shippers. The three months corresponds to the length of time it takes a pipeline to terminate a shipper in default and be in a position to remarket the capacity.[22] Three months' worth of collateral therefore protects the pipeline against revenue loss while it completes the termination process and puts the pipeline in a position to remarket the capacity. The Commission views the risk of remarketing capacity as a business risk of the pipeline which is reflected in its rate of return on equity.[23]

23. The Commission requests comment on whether, as a variant of this approach, pipelines should be permitted to require a non-creditworthy shipper to provide an advance payment for one month of service.[24] The pipeline could then require the shipper to post collateral to cover the additional two months necessary to terminate the shipper's contract. Such an approach would recognize that non-creditworthy customers in other industries are frequently required to provide advance payment for services.

24. The Commission also requests comment on whether it should permit pipelines to take a shipper's creditworthiness and the extent of its collateral into account when the pipeline is allocating available firm capacity among various bidders. The Commission has allowed pipelines to allocate available capacity based on the highest valued bid for the capacity, without distinction as to customer class.[25] A bid by a creditworthy customer, or one that is willing to put up a larger amount of collateral, would ordinarily appear to be of more value than a bid by a non-creditworthy customer, or one willing to put up only the required three months' worth of collateral. For instance, a 10-year bid by a creditworthy customer could well be considered more valuable than a 25-year bid by a non-creditworthy customer. The Commission, therefore, requests

[16] See Florida Gas Transmission Co., 66 FERC ¶61,140 at 61,261 n.5&6, *order vacating prior order,* 66 FERC ¶ 61,376 at 62,257 (1994); Southern Natural Gas Co., 62 FERC ¶ 61,136 at 61,954 (1993); Valero Interstate Transmission Co., 62 FERC ¶ 61,197 at 62,397 (1993); Texas Eastern Transmission Corp., 41 FERC ¶ 61,373 at 62,017 (1987); Williams Natural Gas Co., 43 FERC ¶ 61,227 at 61,596 (1988); Pacific Gas Transmission Co., 40 FERC ¶ 61,193 at 61,622 (1987); Tennessee Gas Pipeline Co., 40 FERC ¶ 61,194 at 61,636 (1987); Natural Gas Pipeline Co. of America, 41 FERC ¶ 61,164 at 61,409, n.4 (1987); Northern Natural Gas Co., 37 FERC ¶ 61,272 at 61,822 (1986).

[17] Project-financed pipelines are projects in which the lender secures its loans to the pipeline by the service agreements negotiated with the contract shippers. *See* Kern River Gas Transmission Co., 50 FERC ¶ 61,069 at 61,145 (1990).

[18] *Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 103 FERC ¶ 61,273, *reh'g denied,* 105 FERC ¶ 61,033 (2003) (30 months' worth of reservation charges found to be reasonable for an expansion project); North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 15 (2003) (approving 12 months' worth of reservation charges as collateral for initial shippers on new pipeline); Maritimes & Northeast Pipeline, L.L.C., 87 FERC ¶ 61,061 at 61,263 (1999) (12 months prepayment); Alliance Pipeline L.P., 84 FERC ¶ 61,239 at 62,214 (1998); Kern River Gas Transmission Co., 64 FERC ¶ 61,049 at 61,428 (1993) (stringent creditworthiness requirements required by lenders); Mojave Pipeline Co., 58 FERC ¶ 61,097 at 61,352 (1992) (creditworthiness provisions required by lender); Northern Border Pipeline Co., 51 FERC ¶ 61,261 at 61,769 (1990) (12 months' worth of collateral for new project).

[19] *E Prime, Inc.* v. *PG&E Gas Transmission,* 102 FERC ¶ 61,062 at P 26, *order on rehearing and compliance,* 102 FERC ¶ 61,289 (2003).

[20] *See* Northwest Pipeline Corp., FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 212 (proof of ability to pay, satisfactory to Transporter, including advance deposits); Questar Pipeline Co., First Revised Volume No. 1, Second Revised Sheet No. 70 (payment for six months' service); Centerpoint Energy Gas Transmission Co., Sixth Volume No 1, Original Sheet No. 475 (six months' contract demand).

[21] The Commission is not proposing any changes in alternative methods of satisfying creditworthiness standards, such as parental or third-party guarantees of payment.

[22] The three months for termination are as follows. The first month's collateral reflects the practice of billing shippers after the close of the prior month. *See* 18 CFR 284.12 (a)(1)(iiii), Standard 3.3.14 (billing by the 9th business day after the end of the production month). The second month accounts for the time period given the shipper to pay, and an opportunity to cure a default. The third month reflects the requirement that the pipeline provide 30 days notice prior to termination. *See* Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 49, n.10; 18 CFR 154.602 (2003).

[23] *See* Ozark Gas Transmission Co., 68 FERC ¶ 61,032 at 61,107–108 (1994) (business and financial risk determine where the pipeline should be placed within the zone of reasonableness); Williston Basin Interstate Pipeline Co., 67 FERC ¶ 61,137 at 61,360 (1994) ("Bad debts are a risk of doing business that is compensated through the pipeline's rate of return").

[24] *See* Trailblazer Pipeline Co., 103 FERC ¶ 61,225 at P 42 (2003).

[25] *See* Tennessee Gas Pipeline Co., 76 FERC ¶ 61,101 at 61,518 (1996) (accepting NPV formula for allocating capacity, *aff'd, Process Gas Consumers Group* v. *FERC,* 292 F.3d 831 (D.C. Cir. 2002) (affirming no length of contract cap for NPV bids); Texas Eastern Transmission Corp., 79 FERC ¶ 61,258 (1997), *aff'd on rehearing,* 80 FERC ¶ 61,270 (1997) (use of net present value to allocate capacity), *aff'd, Municipal Defense Group* v. *FERC,* 170 F.3d 197 (D.C. Cir. 1999) (finding use of NPV allocation method not unduly discriminatory when applied to small customers seeking to expand service).

comment on whether it should permit the pipelines to implement a non-discriminatory method of considering credit status as part of a bidding mechanism. Under such an approach, there would be two standards for collateral: (1) The traditional three-month collateral requirement for interruptible service and for an existing shipper to retain service after a change in credit status; and (2) a potentially larger collateral requirement that can be applied when there are bids for new service.[26]

25. The comments on this issue should address whether such a proposal is consistent with open access service and practical methods by which pipelines could apply non-discriminatory criteria in seeking to value a shipper's credit position, including whether pipelines should be permitted to require bidders to increase their collateral offerings when competing for available capacity with creditworthy shippers and what outside limits (*e.g.*, six months or one year of reservation charges) should be placed on collateral requirements before considering bids equal in value.

2. Collateral for Construction Projects

26. For construction projects, the Commission proposes to continue its policy of permitting larger collateral requirements. Section 7 of the Natural Gas Act does not obligate pipelines to build new facilities for shippers.[27] If pipelines are prevented from requiring collateral from initial subscribers sufficient to protect their investments in new capacity requested by shippers, the result may be that pipelines would decide not to construct needed facilities, or that the cost of capital for the pipeline itself would increase, raising rates to other shippers. Pipelines, as well as their lenders, therefore have a legitimate interest in ensuring a reasonable amount of collateral from the initial shippers supporting the project to ensure, prior to the investment of significant resources in the project, that they can protect that investment in the event of a potential shipper default.[28] Construction projects can be of two types, mainline construction, and lateral line construction, and different collateral requirements are proposed for each type.

a. Mainline Construction

27. The Commission has found that pipelines and their shippers should negotiate appropriate risk sharing agreements with respect to collateral requirements for mainline construction projects in their precedent agreements, so that any disputes over the collateral requirements can be resolved in the pipeline's certificate proceeding, rather than after the pipeline has committed the funds and the project is built.[29] For mainline construction, the Commission is proposing that the pipeline's collateral requirement must reasonably reflect the reasonable risk of the project, particularly the risk to the pipeline of remarketing the capacity should the initial shipper default.[30] However, under no circumstance, should the collateral exceed the shipper's proportionate share of the project's cost.

28. The collateral requirements would apply only to the initial shippers on the project, because it is their contracts that support the construction. The collateral requirements would continue to apply to these initial shippers even after the project goes into service, since the collateral is designed to ensure payment of their reservation charges. The specifics of the pipeline's and shipper's risk sharing agreement are more appropriately negotiated and agreed to in the context of precedent agreements that may be reviewed in a certificate proceeding. The Commission is therefore proposing to require that all collateral agreements for construction be determined before the project is started. Requiring advance agreement as to the collateral for construction projects ensures that if there are disputes over the extent of collateral, they can be brought to the Commission's attention before the pipeline invests the funds to initiate construction.[31] In the absence of any specified collateral requirement, the pipeline's standard creditworthiness provisions would apply once the facilities go into service.

29. The pipeline would also be required to reduce the amount of collateral it holds as the shipper's contract term is reduced.[32] Once the contractual obligation is retired, the standard creditworthiness provisions of the pipeline's tariff would apply. In addition, in the event of a default by an initial shipper, the pipeline will be required to reduce the collateral it retains by mitigating damages.[33]

30. Further, since the collateral requirements for mainline construction relate to the collateral from the initial subscribers to a project, the Commission will no longer permit pipelines to place these requirements in the pipeline's tariff to be applied generally to shippers seeking service.[34] Once the facilities go into service, any subsequent shippers seeking service using these facilities will have the standard three-month collateral requirement applied to their request for service. For example, if an initial shipper on a project defaults, the pipeline faces its usual risk of remarketing that capacity. The subsequent shippers seeking to buy the now-available capacity should, therefore, be treated no differently than shippers seeking to purchase available, non-expansion capacity.

b. Lateral Line Construction

31. For lateral line construction,[35] the Commission proposes, consistent with its current policy, to allow pipelines to require collateral up to the full cost of the project.[36] Unlike mainline expansions, lateral lines are built to connect one or perhaps a few shippers, and the facilities will not be of significant use to other potential shippers. The likelihood of the pipeline remarketing that capacity in the event of a default by the shipper, therefore, is far less than for mainline construction. Because lateral line construction policies are part of a pipeline's tariff, collateral requirements for such projects

[26] Different standards for retention and acquisition of capacity may well be justified given the statutory protections against abandonment of service, and the lack of already established, entrenched interests when shippers are in competition for available service. *See Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 838 (D.C. Cir. 2002), (*affirming;* Tennessee Gas Pipeline Co., 94 FERC ¶ 61,097 at 61,400 (2001)).

[27] *Panhandle Eastern Pipe Line Co.* v. *FERC,* 204 F.2d 675 (3rd Cir. 1953); Panhandle Eastern Pipe Line Co., 91 FERC ¶ 61,037 at 61,141–42 (2000).

[28] *See* PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 33 (2003).

[29] *See Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 103 FERC ¶ 61,273 at P 30–34 and n.21 (2003).

[30] *See Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 103 FERC ¶ 61,273 at P 31 (2003) (approving 30 month collateral requirement based on the risks faced by the pipeline).

[31] *See Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 105 FERC ¶ 61,033 at P 24 (changes in collateral requirements need to be known prior to the start of the construction project).

[32] *See* Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 80–85; PG&E Northwest Corp., 103 FERC ¶ 61,137 at P 33, n.18, *order on rehearing,* 105 FERC ¶ 61,382 at P 64 (2003).

[33] One method of mitigation would be for the pipeline to determine its damages by taking the difference between the highest net present value bid for the capacity and the net present value of the remaining terms of the shipper's contract. The pipeline could then retain as much of the collateral as necessary to cover the damages. Pipelines could also develop alternative measures for determining mitigation.

[34] *See* North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 15 (2003).

[35] A lateral line includes facilities as defined in 18 CFR 154.109(b) and 18 CFR 157.202 (2003).

[36] *See* Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 80–85 (2003) (allowing pipeline to request security in an amount up to the cost of the new facilities from its customers prior to commencing construction of new interconnecting facilities). See also Panhandle Eastern Pipe Line Co., 91 FERC ¶ 61,037 at 61,141 (2000).

should be included in the pipeline's tariff.

3. Collateral for Loaned Gas

32. In three recent orders, the Commission permitted pipelines to impose collateral requirements with respect to gas that shippers borrow from the pipeline, either through imbalances [37] or the use of lending services such as park and loan services,[38] to protect itself from the risk that the loaned gas might not be returned. Including the value of loaned gas in the collateral protects pipelines and their customers against the risk of a shipper withdrawing gas from the system without replacing or paying for it, and the Commission has found that a pipeline's desire to cover the value of its gas is reasonable. The Commission requests comment on whether it should adopt standards governing collateral for loaned gas with respect to imbalances as well as with respect to services permitting the borrowing of gas, such as park and loan services.

a. Imbalances

33. In *Gulf South* the Commission allowed the pipeline to use a non-creditworthy shipper's highest monthly imbalance over the most recent 12-month period on which to base the amount of collateral it could require for gas that is loaned to the shipper through imbalances. For new shippers, the valuation would be based on ten percent of a shipper's estimated monthly usage multiplied by the estimated imbalance rate. Gulf South explained that it proposed 10 percent of a projected month's volume as an imbalance surrogate for new shippers because its customers can incur up to a 10 percent imbalance without incurring imbalance penalties.[39]

34. The Commission requests comment on whether to adopt as a general standard the one-month collateral requirement for imbalances by non-creditworthy shippers, or whether, due to variations in imbalance provisions, such determinations should be made on a case-by-case basis. Comments should address the method of calculating the imbalance (*e.g.*, the highest monthly imbalance over the last 12 months), and how collateral should be determined for new shippers without an imbalance history. For instance, should imbalances for new shippers be based on estimates of usage and tolerance levels, as in *Gulf South,* or an amount that may vary as the shipper accumulates imbalances? For example, a shipper could be required to provide no collateral for the first month, and then be required to provide collateral based on its first month's imbalance in the second month. After that, the amount of collateral could be updated as a track record is developed. Comments also should address the gas or index price that would be used to determine the collateral and how frequently collateral should change as a result of changes in the gas or index price.

b. Lending Services

35. With regard to park and loan (PAL) service, the Commission's decisions in *North Baja* and *GTN* permitted these pipelines to require collateral for any gas it loans to shippers under its PAL service. In these cases, the Commission allowed the pipelines to require collateral up to the shipper's maximum contract quantity multiplied by a reported per unit price. The Commission noted, however, that these PAL services may be different from PAL services offered by other pipelines in that they specify a total contract quantity rather than a maximum daily quantity.[40]

36. The Commission requests comments on how to establish collateral requirements for PAL and other lending services. In particular, comments should address whether non-creditworthy shippers should be permitted to provide a certain amount of collateral and be able to borrow gas only up to the amount of the collateral. This is similar to a provision that was adopted in *PJM,* whereby PJM would be permitted to limit a market participant's ability to submit a bid that exceeds that participant's credit exposure.[41] Similarly, the Commission accepted a proposal from PG&E allowing its interruptible transportation shippers to place a cash deposit with the pipeline and then have service up to the exhaustion of the defined balance account. Under this provision, unless the account is replenished by the shipper, service terminates when the balance becomes zero.[42] In this regard, comments should address, as discussed above, the gas index price that would be used to determine the collateral and how frequently collateral should change as a result of changes in the gas or index price, as well as the issue of when collateral should be returned to a non-creditworthy shipper that no longer borrows gas.

37. The Commission also requests comment on whether there may be other lending services for which collateral could be appropriate and whether, given the distinctions among PAL services, collateral determinations would be better addressed in individual cases where the Commission can consider the nature of the service being provided.

4. Interest on Collateral

38. The Commission proposes to require pipelines to offer shippers the opportunity to earn interest on collateral payments. Pipelines could satisfy this requirement either by holding the collateral itself or allowing the shipper to establish an interest-bearing escrow account where the principal can be accessed by the pipeline, but from which interest is paid to the shipper.[43] If the pipeline holds the collateral, it would pay interest based on the Commission's interest rate.[44]

D. Timeline for Suspension and Termination of Service

39. Since the advent of open-access service with pre-granted abandonment, the Commission has permitted pipelines to suspend and terminate service when shippers default on contractual obligations. Although pipeline tariffs are not always clear on this point, suspension of service refers to the stoppage of transportation service, while termination of service reflects the pipeline's ability to cancel the contractual obligation with the shipper.[45] In some cases, for instance, the Commission has required pipelines to provide 30 days notice prior to suspension of service.[46]

40. In the recent orders on creditworthiness, the Commission has sought to revise its policies and the timeline applicable to termination and suspension of service to take into account both the needs of the pipelines to be able to avoid future losses from

[37] *See* Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 45–46 (2003) (*Gulf South*).

[38] *See* North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 11, *order on reh'g,* 105 FERC ¶ 61,374 at P 36–37 (2003) (*North Baja*); and PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 42–44, *order on reh'g,* 105 FERC ¶ 61,382 at P 65–70 (2003) (*GTN*).

[39] *Gulf South* at P 44.

[40] *North Baja,* 105 FERC ¶ 61,374 at P 37.

[41] PJM Interconnection, L.L.C., 104 FERC ¶ 61,309 (2003) (*PJM*) (permitting PJM to require sufficient collateral to cover the level of financial risk that may be incurred when a market participant places a virtual bid in PJM's day-ahead energy market.)

[42] *See GTN,* 105 FERC ¶ 61,382 at P 14.

[43] *See* Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 38–39, *order on compliance and rehearing,* 103 FERC ¶ 61,276 at P 46–47 (2003).

[44] 18 CFR 154.501(d). *See* Tennessee Gas Pipeline Co., 103 FERC ¶ 61,275 at P 21 (2003).

[45] *See* Northern Natural Gas Co., 103 FERC ¶ 61,276 at P 51–56 (2003); Kinder Morgan Interstate Gas Transmission LLC, 102 FERC ¶ 61,230 at P 8 (2003); Columbia Gulf Transmission Corp., 79 FERC ¶ 61,087 at 61,408 (1997).

[46] *See* Columbia Gas Transmission Corp., 64 FERC ¶ 61,060 at 61,556 (1993); Panhandle Eastern Pipe Line Co., 61 FERC ¶ 61,076 (1992).

defaulting or non-creditworthy shippers as well as the needs of the shippers to be able to have a reasonable time period in which to obtain the needed collateral.[47] The Commission, for instance, accepted tariff provisions that would permit pipelines to suspend or terminate service for failure to post required collateral.[48]

41. Under the proposed regulation, a pipeline may suspend the provision of service upon a shipper's default on its obligations or upon a finding that a shipper is no longer creditworthy. When a shipper is no longer creditworthy, the pipeline may not terminate or suspend the shipper's service without providing the shipper with an opportunity to satisfy the collateral requirements. In this circumstance, the shipper must be given at least five business days within which to provide advance payment for one month's service, and must satisfy the collateral requirements within 30 days. Upon default, where the shipper is permitted under the pipeline's tariff to continue service if it posts the required collateral,[49] the same timetable must be applied (a minimum of five business days to provide one month's advance payment, and 30 days to satisfy the creditworthiness requirements). If the shipper fails to satisfy these requirements, service may be suspended immediately.

42. Under the proposed regulation, after a shipper either defaults or fails to provide the required collateral, pipelines would need to provide the shipper and the Commission with 30 days notice prior to terminating the shipper's contract.[50] This approach provides an appropriate balance between the shipper's ability to obtain required collateral and the pipeline's need for protection against the possibility of default by a non-creditworthy shipper.

43. Consistent with its recent orders, the Commission's policy will not allow a pipeline to bill a firm shipper for transportation charges while service is suspended.[51] As the Commission explained in these cases, the non-breaching party to a contract must elect whether to continue the contract or suspend the contract, but it cannot suspend its performance while requiring performance by the other party. The pipelines retain full control of the shipper's obligation to pay. The pipeline can elect to suspend service or continue to provide service and sue the shipper for consequential, unmitigated damages caused by its contractual breach. When pipelines terminate service, they no longer can bill monthly reservation charges, and there appears no reason to treat suspension of service differently.

44. The Commission is proposing here to permit pipelines the added remedy of suspension of service on shorter notice than termination of service. But the provision of such added protection does not warrant providing the pipeline with the right to charge for service during suspension when it would not have that right if service is terminated. For instance, a shipper's contractual breach may consist only of failing to post required collateral due to a change in its creditworthiness evaluation. In this situation, the pipeline may deem the loss of creditworthiness sufficient to suspend service on short notice in order to protect against the incurrence of additional obligations. But the pipeline should not be given added incentive to suspend service by being protected against financial loss in the meantime. It must decide which remedy to elect: suspension of service or continuation of the contract and the shipper's obligation to pay.

E. Capacity Release

45. Since Order No. 636, the Commission has held that in capacity release situations, both the releasing and replacement shippers must satisfy a pipeline's creditworthiness requirements.[52] The Commission further found that releasing shippers could not establish creditworthiness provisions for released capacity different from those in the pipeline's tariff.[53] As the Commission explained, the same criteria should be applied to released capacity and pipeline capacity in order to ensure that all capacity, including released capacity, is available on an open access, non-discriminatory basis to all shippers.[54] However, these requirements were not included in the capacity release regulations.

46. In the recent creditworthiness cases, and in the WGQ discussion, additional issues regarding creditworthiness conditions with respect to capacity release have been raised. These issues have included: (1) The effect on replacement shippers of a termination of a releasing shipper's contract;[55] (2) the provision of notice to releasing shippers of a change in the creditworthiness status of the replacement shipper;[56] (3) the timing of a non-creditworthy replacement shipper's obligation to provide collateral in order to bid on pipeline capacity;[57] (4) the timing of notice provided to releasing shippers of changes to a replacement shipper's credit status; and (5) creditworthiness standards for replacement shippers under permanent capacity releases. In order to assure uniformity across pipelines, the Commission proposes to amend its capacity release regulations in each of the first three areas. The Commission, however, will not propose a regulation

[47] Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 18 (2003), Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 43–50 (2003), Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 52 (2003), Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 49–52 (2003).

[48] Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 43 (2003) (permitting pipeline to add provision for suspension or termination for failure to provide collateral); Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 16–19 (2003) (permitting provision for suspension or termination for failure to provide collateral).

[49] *See, e.g.*, Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 36–40 (2003) (Providing that pipeline may determine to suspend service to a defaulting shipper upon providing 15 days of notice. If defaulting shipper commits a subsequent default within six months after the initial default, pipeline may suspend service upon a shorter notice period.)

[50] *See* 18 CFR 154.602 (2003) (requiring 30 days of advance notice to the customer and the Commission prior to contract termination).

[51] Tennessee Gas Pipeline Co., 105 FERC ¶ 61,120 at P 10–14 (2003).

[52] *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636–A, FERC Statutes and Regulations, Regulations Preambles, January 1991-June 1996 ¶ 30,950 at 30,588 (1992). Under the capacity release regulations, 18 CFR 284.8(f) (2003), the releasing shipper remains obligated under its contract to the pipeline, and must, therefore, satisfy the creditworthiness and other obligations associated with that contract, regardless of how many subordinate releases take place. For example, even if a replacement shipper is creditworthy, it may default and the releasing shipper would be responsible for payment. Moreover, given the ability of releasing shippers to recall and segment releases, both the releasing and replacement shippers need to be creditworthy to ensure their respective obligations.

[53] *See* El Paso Natural Gas Co., 61 FERC ¶ 61,333 at 62,299 (1992); Panhandle Eastern Pipe Line Co., 61 FERC ¶ 61,357 at 62,417 (1992); Texas Eastern Transmission Corp., 62 FERC ¶ 61,015 at 61,098 (1993); and CNG Transmission Corp., 64 FERC ¶ 61,303 at 63,225 (1993).

[54] *See* Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 62 (2003) (a releasing shipper cannot impose creditworthiness conditions on a replacement shipper that are different from the creditworthiness conditions imposed by the pipeline.)

[55] *Tenaska Marketing Ventures* v. *Northern Border Pipeline Co.,* 99 FERC ¶ 61,182 (2002). *See* Texas Eastern Transmission, L.P., 101 FERC ¶ 61,071 at P 6 (2002); Trailblazer Pipeline Co., 101 FERC ¶ 61,405 at P 32 (2002); Northern Border Pipeline Co., 100 FERC ¶ 61,125 (2002); Natural Gas Pipeline Co. of America, 100 FERC ¶ 61,269 at P 7–19 (2002); Canyon Creek Compression Co., 100 FERC ¶ 61,283 (2002); Kinder Morgan Interstate Gas Transmission LLC, 100 FERC ¶ 61,366 (2002).

[56] Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 78 (2003).

[57] Dominion Cove Point LNG, LP, 104 FERC ¶ 61,184 at P 7–8, *order on compliance,* 105 FERC ¶ 61,225 (2003).

to specify the timing of notice to releasing shippers of changes in a replacement shipper's credit status since an adequate consensus standard was passed by the WGQ. Additionally, the Commission is not proposing to amend its regulations regarding creditworthiness standards applicable to permanent capacity releases.

1. Creditworthiness Requirements for Replacement Shippers

47. The Commission is proposing to include a regulation establishing its existing policy that a pipeline must apply the same creditworthiness requirements to a replacement shipper as it would if that shipper were applying for comparable capacity with the pipeline outside of the capacity release process. This regulation would ensure that a releasing shipper could not impose creditworthiness standards on a replacement shipper that are different from the creditworthiness standards imposed by the pipeline. Since the replacement shipper has obligations to the pipeline (usage charges, penalties, imbalance cashouts, etc.) that are not covered by the releasing shipper's underlying contract, the pipeline does have a legitimate interest in assuring sufficient creditworthiness (or collateral) to cover the replacement shipper's obligations. In addition, the application of creditworthiness requirements to replacement shippers protects releasing shippers, since it provides them with some assurance of payment for the release in the event the replacement shipper defaults.[58]

2. Rights of Replacement Shipper on Termination of Releasing Shipper's Contract

48. The Commission proposes to permit a pipeline to terminate a release of capacity to the replacement shipper if the releasing shipper's service agreement is terminated, provided that the pipeline provides the replacement shipper with an opportunity to continue receiving service if it agrees to pay, for the remaining term of the replacement shipper's contract, the lesser of: (1) The releasing shipper's contract rate; (2) the maximum tariff rate applicable to the releasing shipper's capacity; or (3) some other rate that is acceptable to the pipeline.

49. This provision establishes a reasonable balance between the pipeline and replacement shippers in the event a releasing shipper's contract is terminated. Although the replacement shipper has a contract with the pipeline, the releasing shipper, not the pipeline, has established the rate for the release. Under a release transaction, the contract of the releasing shipper serves to guarantee that the pipeline receives the original contract price for the capacity. Once the releasing shipper's contract has been terminated, the pipeline may no longer wish to continue service to the replacement shipper at a lower rate, and should have the opportunity to remarket the capacity to obtain a higher rate.[59] On the other hand, the replacement shipper also has an investment in the use of the capacity, and should, therefore, have first call on retaining the capacity if it is willing to provide the pipeline with the same revenue as the releasing shipper. Under this proposal, therefore, the replacement shipper is given the opportunity to retain the capacity by paying the releasing shipper's contract rate or the maximum rate for the remaining term of the contract.

50. With respect to segmented releases, the Commission proposes to apply the same general policy. A replacement shipper would have the right to continue service if it agreed to take the full contract path of the releasing shipper at the rate paid by the releasing shipper. As the Commission found in National Fuel:

> [W]e do not agree with DETM that the replacement shipper holding a geographically-segmented portion of the defaulted releasing shipper's capacity should be able to retain that geographic segment of capacity. The pipeline did not negotiate the release of the segment and should not be held to that segmented release agreement once the releasing shipper's contract terminates. The replacement shipper in that instance should be required to pay for the full capacity path of the defaulted shipper at the lower of the rate the defaulted shipper paid or the maximum rate applicable to the defaulted shipper's full capacity path.[60]

In the case of multiple replacement shippers with geographically segmented releases, a pipeline would have to propose a reasonable method of allocating capacity among them if they each matched the releasing shipper's rate for the full rate.[61]

3. Time for Proffering Collateral for Biddable Releases

51. The Commission proposes to require pipelines to establish procedures that allow releasing shippers to require potential replacement shippers to post any necessary collateral prior to the awarding of capacity. In Order No. 637, the Commission required pipelines to provide for scheduling equality between released capacity and pipeline capacity. [62] As part of establishing such equality, the Commission encouraged pipelines to establish procedures by which replacement shippers could obtain pre-approval of creditworthiness.[63] The Commission found that the releasing shipper should have the option whether to: (1) require bidders for its released capacity to pre-qualify under the pipeline's creditworthiness standards, or (2) waive the prequalification requirement and post a bond or assume liability for the usage charge in the event of the replacement shipper's default.[64]

52. But the Commission did not address how a non-creditworthy replacement shipper could pre-qualify to bid on releases in the event it would have to post collateral in order to satisfy the pipeline's creditworthiness standards. Although shippers easily can pre-qualify by meeting the pipeline's creditworthiness requirements, providing collateral on an ongoing basis is more difficult. For example, the amount of capacity posted for bid on each pipeline will change over time,

[58] In the event of a default by a replacement shipper, pipelines would be required to credit to a releasing shipper any collateral from the replacement shipper that is not used to defray the replacement shipper's obligation to the pipeline.

[59] The pipeline is not required to terminate the replacement shipper's contract. It could decide to continue to provide service under that contract at the rate prescribed in the release. In that event, the replacement shipper would not have the right to terminate its contractual obligation since it is receiving the full service for which it contracted. *See Tenaska Marketing Ventures* v. *Northern Border Pipeline Co.*, 99 FERC ¶ 61,182 (2002) (replacement shipper could not cancel release contract upon bankruptcy of releasing shipper).

[60] National Fuel Gas Supply Corp., 101 FERC ¶ 61,063 at P12 (2002).

[61] In the event of such multiple bids by replacement shippers, regardless of the allocation method used by the pipeline, the shippers should be able to replicate their geographically segmented capacity by releasing segments of capacity to each other.

[62] 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 at 31,297 (Feb. 9, 2000); *order on rehearing*, Order No. 637–A, FERC Stats. & Regs., Regulations Preambles (July 1996–December 2000) ¶ 31,099 (May 19, 2000); *order on rehearing*, Order No. 637–B, 92 FERC ¶ 61,062 (July 26, 2000); *aff'd in part and remanded in part, Interstate Natural Gas Ass'n of America* v. *FERC*, 285 F.3d 18, (D.C. Cir. Apr. 5, 2002); *order on remand*, 101 FERC ¶ 61,127 (2002).

[63] In order to be ''pre-qualified'' the pipeline would have determined that the shipper bidding on the release offer is either: (1) Creditworthy as defined in the pipeline's tariff; or (2) sufficiently collateralized (*i.e.*, the shipper has posted a level of collateral, at the time it submits its bid, that would cover the amount of capacity on which it is bidding, up to a maximum of three months' worth of reservation charges.)

[64] *See* Dominion Cove Point LNG, LP, 104 FERC ¶ 61,184 at P 7–8 (2003).

and the replacement shipper, therefore, would not be able to determine how much collateral to maintain on an ongoing basis on any pipeline. Moreover, if the replacement shipper seeks to obtain capacity on multiple pipelines, maintaining collateral on each pipeline on an ongoing basis to cover any potential bids could be financially impractical.

53. By the same token, the Commission did not address when non-creditworthy shippers should be required to post collateral and how capacity would be allocated in a bidding situation when the replacement shipper is not creditworthy. Allowing the replacement shipper winning the bid to post collateral after the award of capacity could compromise the speed and certainty of capacity release transactions the Commission sought to achieve in Order No. 637. Under the capacity release standards of the WGQ, releases of less than one year, subject to bid, are only posted once a day, at 12 p.m. CCT[65], with the award of capacity communicated by 2 p.m., unless there is a match involved, in which case the award is posted by 3 p.m.[66] If the replacement shipper were permitted to post collateral after the final award, and it was unable to do so quickly, the capacity release would not take place, because the releasing shipper would be unable to repost the capacity until the next day. Thus, other shippers would lose the ability to obtain that capacity and the releasing shipper would lose at least one day of release revenues. In some cases, however, the releasing shipper might decide to waive the prequalification requirement, for example, if it thought that doing so would enlarge the number of potential bidders.[67]

54. Among the NAESB standards that were passed, Standard 5.3zD provides that a pipeline should not award a release to a replacement shipper until and unless that shipper meets the pipeline's creditworthiness requirements. While this standard comports with basic Commission policy, it does not appear sufficient to resolve the issue of non-creditworthy bidders. The standard does not specify when a non-creditworthy shipper must post collateral to have its bid considered, nor does it address what happens to the allocation of capacity in a bidding situation where the winning bidder is non-creditworthy, but other bidders are creditworthy.

55. The Commission, therefore, proposes to supplement the WGQ standard by allowing the releasing shipper to determine whether it wants all bidders to be qualified prior to having their bids considered.[68] If the releasing shipper insists on pre-qualification, all potential non-creditworthy replacement shippers would be required to post collateral prior to the award of capacity at 2 p.m. This approach ensures that a potential non-creditworthy replacement shipper will not be required to maintain collateral on an ongoing basis with multiple pipelines.[69] Although the Commission recognizes that this approach does not provide potential non-creditworthy replacement shippers with a surfeit of time to obtain collateral, it appears as the only workable method of ensuring that capacity release transactions can be consummated quickly, as required by Order No. 637, while protecting the releasing shipper against losing its release revenue in the event the replacement shipper fails to post collateral. The Commission is also proposing to require pipelines to return any collateral or security posted by potential replacement shippers prior to the next nomination opportunity.[70] This will ensure that the replacement shipper has the collateral or security available to acquire released capacity through a pre-arranged deal on the same or another pipeline.

56. There also appear to be ways a potential non-creditworthy replacement shipper can avoid the need to obtain collateral quickly. For instance, the potential non-creditworthy replacement shipper could obtain a standing letter of credit from a financial institution that it could apply to any pipeline as it bids on releases. If its bid did not prevail, the letter of credit would then be available for use on subsequent bids.

57. In its comments, Reliant Energy Services, Inc. (Reliant) states there is much confusion among the pipelines as to when a non-creditworthy shipper must provide collateral in connection with a bid. Some pipelines, it asserts, want the shipper to maintain collateral prior to making a bid, while others require that collateral be posted at the time of the bid, or even at the time of the award. Instead, Reliant submits that it would not be unreasonable to permit a winning bidder with some amount of time, after notification of an award, to arrange for the necessary collateral. Reliant contends that providing a substantial amount of collateral at the time of the award (or earlier) can be problematic, especially if the shipper is making bids over multiple pipelines. Moreover, Reliant argues that a shipper should not have to provide collateral prior to being awarded the capacity since no service had yet been rendered.

58. Reliant's proposal, however, would not ensure that capacity releases can take place quickly, as required by Order No. 637, nor does it address the potential revenue loss to the releasing shipper. The Commission's proposal appears to better meet the scheduling requirements of Order No. 637 and protect releasing shippers against a potential loss of revenue, while also providing a means by which non-creditworthy shippers can arrange for collateral prior to the award of capacity.

4. Notice to Releasing Shippers

59. In several of the creditworthiness orders, the Commission required pipelines to provide simultaneous notice to a releasing shipper and a replacement shipper upon determining that a replacement shipper is not creditworthy.[71] The Commission, however, finds no need to propose such a regulation since the membership of NAESB's WGQ passed a consensus standard (Standard 5.3.zF) that appears to adequately address this issue. Standard 5.3.zF, which we propose to incorporate by reference into the Commission's regulations, provides that a pipeline should provide notice to the original releasing shipper reasonably proximate in time to when it gives notice to the releasing shipper's replacement shipper(s) of an event pertaining to the replacement shipper(s) creditworthiness. Such events include when a replacement shipper is: (1) Past due or in default of the pipeline's tariff; (2) having its service suspended or its contract terminated for cause; and (3) no longer creditworthy and has not provided credit alternative(s) pursuant to the pipeline's tariff.

[65] CCT refers to central clock time (which takes daylight savings into account).

[66] 18 CFR 284.12(a)(1)(v), Capacity Release Related Standards 5.3.2 (Version 1.6).

[67] If the releasing shipper waived the prequalification requirement, the pipeline would not have to flow gas for the replacement shipper until the replacement shipper satisfied the creditworthiness requirement.

[68] Pipelines could insert a default provision in their tariffs, but would have to provide the releasing shipper an option to waive that provision. *See* Dominion Cove Point LNG, LP, 105 FERC ¶ 61,225.

[69] *See* Dominion Cove Point LNG, LP, 105 FERC ¶ 61,225 at P 18 (rejecting a pipeline's tariff requiring the replacement shipper to maintain collateral on a ''continuing basis.'')

[70] Under the WGQ nomination timeline, the collateral or security would have to be returned prior to the Evening Nomination cycle at 6 p.m. CCT.

[71] *See, e.g.*, Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 78 (2003), Northern Natural Gas Co., 103 FERC ¶ 61,276 at P 43 (2003).

5. Creditworthiness Requirements for Permanent Releases

60. The WGQ EC considered a proposed standard (5.3.zE) that would have required pipelines to relieve releasing shippers from any liability arising from their transportation contracts if they permanently released capacity to a replacement shipper that meets the pipeline's creditworthiness provisions. This proposed standard failed as a result of the Pipelines segment's opposition to the language.

61. Many parties filed comments in support of or opposition to the proposed standard. However, some of the comments appear to confuse the basic definition of a "permanent release."[72] Under the Commission's policy, a permanent release occurs when a pipeline relieves a releasing shipper from all of its obligations to the pipeline under its service agreement upon the assignment of such obligations to a replacement shipper on a permanent basis (*i.e.*, for the remainder of the contract term).[73]

62. The Pipelines segment contends that the proposed standard would require pipelines to relieve shippers of their obligations, even when the creditworthiness of the replacement shipper does not warrant such relief. Similarly, the Interstate Natural Gas Association of America (INGAA) fears such a standard would strip the pipeline of the ability to employ reasonable business judgment in assessing whether a shipper that releases its capacity should be relieved of its contractual liability once the capacity is assigned. INGAA states that the capacity release program was never intended to be an easy loophole whereby an existing shipper can terminate contractual obligations by assigning its contract to a replacement shipper that meets only the minimum criteria set forth in the pipeline's tariff.

63. American Gas Association (AGA), however, argues that the proposed standard is consistent with the Commission's permanent release policy in *El Paso,* and as such AGA requests that the Commission clarify that permanent releases must be made to creditworthy shippers that otherwise meet pipeline tariff requirements. Similarly, National Fuel Distribution and KeySpan Delivery Companies (KeySpan) state that pipelines must be prevented from unreasonably holding the releasing shipper liable under an otherwise reasonable, full-term release of its capacity at the pipeline's maximum rate. KeySpan contends that in determining whether to allow a permanent release, pipelines must apply the same creditworthiness criteria as they would in a situation involving an equivalent request for new service, as any other result would be unduly discriminatory and unlawful.

64. The Commission is not proposing a standard for creditworthiness for permanent releases. The Commission's policy with respect to permanent releases is that a "pipeline may not unreasonably refuse to relieve a releasing shipper of liability under the contract where there is a permanent release of capacity."[74] If there is a dispute regarding the reasonableness of the pipeline's decision in allowing a permanent release, that dispute must be judged by the Commission on a case-by-case basis.[75] Because disputes as to permanent releases must be adjudged on a case-by-case basis, a regulation establishing a standard creditworthiness criteria does not appear appropriate.

III. Notice of Use of Voluntary Consensus Standards

65. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that Federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by NAESB, in addition to proposing new regulations in areas where standards were not passed.

IV. Information Collection Statement

66. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits 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 following burden estimates include the costs to implement the WGQ's creditworthiness standards and the Commission's proposed creditworthiness regulations. The burden estimates are primarily related to start-up to implement these standards and regulations and will not result in on-going costs.

Data collection	Number of responses	Number of responses per respondent	Hours per response	Total number of hours
FERC–545	93	1	38	3,534
FERC–549C	93	1	924	85,932

Total Annual Hours for Collection: (Reporting and Recordkeeping, (if appropriate)) = 89,466

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

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$182,111	$4,428,183

[72] The Pipelines segment appears to argue that a permanent release means only the ability to release capacity for the full remaining term of the contract, with the releasing shipper remaining liable for the reservation charges. National Fuel Gas Distribution Corp. (National Fuel Distribution) maintains that a permanent release means that the releasing shipper's obligation under the contract is terminated.

[73] *See* El Paso Natural Gas Co., 61 FERC ¶ 61,333 at 62,312 (1992) (*El Paso*).

[74] *Id.*

[75] *See Texas Eastern Transmission Corp.* 83 FERC ¶ 61,092 at 61,446 (1998) (permitting pipeline to refuse to permit a permanent release when the pipeline has a reasonable basis to conclude that it will not be financially indifferent to the release.)

	FERC–545	FERC–549C
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	182,111	4,428,183

67. OMB regulations [76] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control No.: 1902–0154, 1902–0174.

Respondents: Business or other for profit (interstate natural gas pipelines (not applicable to small business)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to include the latest creditworthiness standards approved by the WGQ as well as promulgate Commission regulations governing creditworthiness. The implementation of these standards and regulations is necessary to increase the efficiency of the pipeline grid.

68. The information collection requirements of this proposed rule will be included in pipeline tariffs or reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

69. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

70. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426. Tel: (202) 502–8415/fax: (202) 273–0873; e-mail: *michael.miller@ferc.gov.*

71. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent 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) 395–7856, fax: (202) 395–7285).

V. Environmental Analysis

72. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[77] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[78] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[79] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

VI. Regulatory Flexibility Act Certification

73. The Regulatory Flexibility Act of 1980 (RFA)[80] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VII. Comment Procedures

74. The Commission invites interested persons to submit 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. Comments are due March 26, 2004. Comments must refer to Docket No. RM04–4–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

75. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

76. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to

[76] 5 CFR 1320.11.

[77] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles, 1986–1990 ¶ 30,783 (1987).

[78] 18 CFR 380.4 (2003).

[79] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2003).

[80] 5 U.S.C. 601–612.

serve copies of their comments on other commenters.

VIII. Document Availability

77. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

78. From FERC's home page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

79. User assistance is available for eLibrary and the FERC's Web site during our normal business hours. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Linda Mitry,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.8 is amended by revising paragraph (i) to read as follows:

§ 284.8 Release of firm capacity on interstate pipelines.

* * * * *

(i) In effectuating capacity releases, pipelines must adhere to the following requirements applicable to creditworthiness and default:

(1) The pipeline must apply to replacement shippers the same creditworthiness criteria applied to shippers holding or obtaining capacity from the pipeline.

(2) The pipeline is permitted to terminate the contract of a replacement shipper upon the termination of the releasing shipper's contract, provided that the pipeline provides the replacement shipper with the opportunity to continue receiving service if it agrees to pay, for the remaining term of the replacement shipper's contract, the lesser of:

(i) The releasing shipper's contract rate;

(ii) The maximum tariff rate applicable to the releasing shipper's capacity; or

(iii) Some other rate that is acceptable to the pipeline.

(3) The pipeline must include procedures in its tariff under which a releasing shipper may require potential replacement shippers to establish creditworthiness prior to the award of capacity in order for the replacement shipper's bid to be considered in making the award. If a potential replacement shipper's bid is not accepted, collateral or other security posted by potential replacement shippers for bidding must be returned to the bidder prior to the next nomination cycle.

3. Section 284.12 is amended as follows:

a. Redesignate paragraphs (a)(1)(i) through (a)(1)(v) as paragraphs (a)(1)(ii) through (a)(1)(vi).

b. In paragraph (a)(1), revise the reference to ''North American Energy Standards Board'' to read ''Wholesale Gas Quadrant of the North American Energy Standards Board;''

c. In paragraph (a)(2), revise the reference to ''1100 Louisiana, Suite 3625'' to read ''1301 Fannin, Suite 2350''.

d. In paragraph (b), revise the reference to ''Gas Industry Standards Board standards incorporated by reference in paragraph (b)(1) of this section'' to read ''standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board incorporated by reference in paragraph (a)(1) of this section.''

e. Newly designated paragraph (a)(1)(vi) is revised, and paragraphs (a)(1)(i) and (b)(4) are added to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) General Standards 0.3.zB, 0.3.zC, 0.3.zD, 0.3.zE, 0.3.zF, 0.3.zK, 0.3.zL, 0.3.zQ (Request No.: 2003 Annual Plan Item 6, July 28, 2003);

* * * * *

(vi) Capacity Release Related Standards (Version 1.6, July 31, 2002), with the exception of Standards 5.3.6 and 5.3.7, and including the standards contained in Recommendations R02002 and R02002–2 (October 31, 2002) and Standards 5.3.zD, 5.3.zF (Request No.: 2003 Annual Plan Item 6, July 28, 2003).

* * * * *

(b) * * *

(4) Creditworthiness standards—(i) *Criteria applied in determining creditworthiness.* (A) In determining a shipper's, or potential shipper's, credit status, pipelines can require no more than the following information, where such information is applicable to the shipper, and must maintain any non-public information included in such information on a confidential basis:

(1) Audited financial statements;

(2) Annual report;

(3) List of affiliates, parent companies, and subsidiaries;

(4) Publicly available information from credit reports of credit and bond rating agencies;

(5) Private credit ratings, if obtained by the shipper;

(6) Bank references;

(7) Trade references;

(8) Statement of legal composition;

(9) Statement of length of time business has been in operation;

(10) Most recent filed statements with the Securities and Exchange Commission (or an equivalent authority) or such other publicly available information;

(11) For public entities, the most recent publicly available interim financial statements, with an attestation by its Chief Financial Officer, Controller, or equivalent (CFO) that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with Generally Accepted Accounting Principles (GAAP) or equivalent;

(12) For non-public entities, including those that are State-regulated utilities:

(i) The most recent available interim financial statements, with an attestation by its CFO that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with GAAP or equivalent;

(ii) An existing sworn filing, including the most recent available interim financial statements and annual financial reports filed with the respective regulatory authority, showing the shipper's current financial condition;

(13) For State-regulated utility local distribution companies, documentation from their respective state regulatory commission (or an equivalent authority) of an authorized gas supply cost recovery mechanism which fully recovers both gas commodity and transportation capacity costs and is afforded regulatory asset accounting treatment in accordance with GAAP or equivalent;

(14) Such other information as may be mutually agreed to by the parties.

(B) Each pipeline must set forth in its tariff objective criteria for evaluating creditworthiness.

(C) Upon a determination that a shipper or potential shipper is non-creditworthy, the pipeline must provide, within five days of the request of the shipper, a written explanation of the basis for its determination.

(ii) *Collateral requirements.* Upon a pipeline's determination that a shipper or potential shipper is non-creditworthy, the shipper must be given the option to provide the pipeline with collateral in order to receive or retain service.

(A) *Service on existing facilities.* Collateral for service on existing facilities may not exceed three months' worth of charges for the service.

(B) *Construction of new facilities. (1)* Collateral for construction of mainline facilities, as defined in § 157.202 (b)(5) of this chapter, must be reasonable in light of the risks of the project, provided that the amount of collateral cannot exceed the shipper's proportionate share of the cost of the facilities.

(2) Collateral for construction of lateral line facilities, as defined in § 154.109(b) of this chapter, must not exceed the shipper's proportionate share of the cost of the facilities.

(3) Collateral for construction of facilities must be determined prior to the initiation of construction.

(4) The outstanding amount of collateral for construction of facilities must be reduced as the shipper pays off the obligation.

(C) *Interest on collateral.* Pipelines must provide shippers with an opportunity to earn interest on collateral. On collateral held by the pipeline, interest will be calculated using the interest rate required to be used in calculating refunds, as defined in § 154.501(d) of this chapter.

(iii) *Suspension and termination of service.*

(A) Pipelines may not terminate a shipper's service without providing 30 days notice to the shipper and to the Commission.

(B) Pipelines may suspend the provision of service upon a shipper's default or a finding that the shipper is no longer creditworthy. Pipelines may not charge a shipper for service during suspension.

(C) When a shipper loses its creditworthiness status, the pipeline cannot suspend or terminate service without permitting the shipper to continue service as provided in paragraph (b)(4)(iii)(D) of this section.

(D) When a non-creditworthy shipper, or defaulting shipper is permitted to continue service by providing collateral, the shipper may continue service by providing an advance payment of an amount equal to one month's charges for service, and satisfying the requisite creditworthiness requirements within 30 days of the date of the notice.

[FR Doc. 04–4095 Filed 2–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 870 and 882

[Docket No. 2003N–0567]

Cardiovascular and Neurological Devices; Reclassification of Two Embolization Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify two embolization devices to change the names of the devices, revise the identification of the devices, and reclassify the two devices from class III (premarket approval) into class II (special controls). The vascular embolization device (previously the arterial embolization device) is intended to control hemorrhaging due to aneurysms, certain tumors, and arteriovenous malformations. The neurovascular embolization device (previously the artificial embolization device) is intended to permanently occlude blood flow to cerebral aneurysms and cerebral arteriovenous malformations. These reclassifications are being proposed under the agency's own initiative under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) based on new information. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft guidance document that the agency proposes to use as a special control for these devices.

DATES: Submit written or electronic comments on the proposed rule by May 25, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Peter L. Hudson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act, as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), the FDAMA (Public Law 105–115), and MDUFMA (Public Law 107–250) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Postamendments devices require premarket approval, unless FDA issues an order finding the device to be