

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS,

ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

\* \* \* *Effective Upon Publication*

FDC date	State	City	Airport	FDC number	Subject
10/05/06	IN	Indianapolis	Indianapolis Intl	6/2576	ILS or LOC Rwy 14 Amdt 5.
10/07/06	WY	Big Piney	Big Piney-Marbleton	6/2781	VOR Rwy 31, Amdt 3B.
10/11/06	AL	Mobile	Mobile Downtown	6/3096	RNAV (GPS) Rwy 18, Orig.
10/11/06	AR	Pine Bluff	Grider Field	6/3054	RNAV (GPS) Rwy 18 Orig.
10/11/06	FL	Boca Raton	Boca Raton	6/3070	RNAV (GPS) Rwy 5, Orig.
10/11/06	IN	Evansville	Evansville Regional	6/3059	ILS or LOC Rwy 4, Amdt 1A.
10/11/06	NY	White Plains	Westchester County	6/3148	This Notam Replaces FDC 6/2223 Published in TL06–23. ILS Rwy 34, Amdt 3B.
10/11/06	OH	Lorain/Elyria	Lorain County Regional	6/3162	ILS Rwy 7, Amdt 6A.
10/11/06	PA	Meadville	Port Meadville	6/3157	LOC Rwy 25, Amdt 5.
10/11/06	WV	Huntington	Tri-State/Milton J. Ferguson	6/3071	ILS or LOC Rwy 12, Amdt 11A.
10/12/06	WA	Spokane	Spokane Intl	6/3220	ILS or LOC Rwy 21, Amdt 20.
10/12/06	WA	Spokane	Spokane Intl	6/3222	ILS Rwy 21 (Cat III), Amdt 20.
10/12/06	WA	Spokane	Spokane Intl	6/3224	ILS Rwy 21(Cat II), Amdt 20.
10/13/06	FM	Kosrae Island	Kosrae	6/3242	RNAV (GPS) Rwy 5, Orig.
10/13/06	FM	Kosrae Island	Kosrae	6/3241	RNAV (GPS) Rwy 23, Orig.
10/13/06	TN	Somerville	Fayette Co	6/3413	NDB Rwy 19, Amdt 1.
10/16/06	CA	Los Angeles	Los Angeles Intl	6/3645	ILS Rwy 6L, Amdt 11.
10/16/06	CA	Los Angeles	Los Angeles Intl	6/3646	ILS or LOC Rwy 24R, Amdt 23.
10/16/06	CA	Los Angeles	Los Angeles Intl	6/3647	ILS or LOC Rwy 25R, Amdt 15.
10/16/06	CA	Los Angeles	Los Angeles Intl	6/3648	ILS or LOC Rwy 24L, Amdt 24.
10/17/06	NV	Reno	Reno/Tahoe Intl	6/3720	ILS Rwy 16R, Amdt 10A.
10/17/06	NV	Reno	Reno/Tahoe Intl	6/3721	LOC 2 Rwy 16R, Amdt 6B.
10/17/06	NV	Reno	Reno/Tahoe Intl	6/3722	VOR or GPS–D, Amdt 6.
10/17/06	NV	Reno	Reno/Tahoe Intl	6/3723	LOC/DME BC Rwy 34L, Amdt 1B.
10/18/06	FL	Marathon	The Florida Keys Marathon	6/3849	NDB or GPS Rwy 7, Amdt 3A.
10/18/06	NY	Elmira/Corning Regional	Elmira	6/3847	ILS Rwy 24, Amdt 18A.

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 157**

[Docket No. RM06–7–000; Order No. 686]

**Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates**

October 19, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its blanket certification regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket certificate authority. The Commission is expanding the types of natural gas

projects permitted under blanket certificate authority and increasing the cost limits that apply to blanket projects. In addition, the Commission clarifies that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service. Rather than rely on the more demanding process of submitting an application under section 7(c) of the Natural Gas Act for certificate authorization for every project, the revised regulations will allow interstate natural gas pipelines to employ the streamlined blanket certificate procedures for larger projects and for a wider variety of types of projects, thereby increasing efficiencies, and decreasing time and costs, associated with the construction and maintenance of the nation’s natural gas infrastructure.

**DATES:** The rule will become effective January 2, 2007.

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**SUPPLEMENTARY INFORMATION:**

*Before Commissioners:* Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. On June 16, 2006, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.<sup>1</sup> In the NOPR, the Commission proposed to amend its Part 157, Subpart F, regulations to expand the scope and scale of activities that

<sup>1</sup> 71 FR 36276 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 (2006); 115 FERC ¶ 61,338 (2006).

may be undertaken pursuant to blanket certificate authority and clarified that existing Commission policies permit natural gas companies to charge different rates to different classes of customers. This Final Rule considers comments submitted in response to the NOPR, and as a result, makes certain relatively minor modifications to the regulatory revisions described in the NOPR, and affirms the clarification regarding rate treatment described in the NOPR.

### I. Background

2. A natural gas company must obtain a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act (NGA) to construct, acquire, alter, abandon, or operate jurisdictional gas facilities or to provide jurisdictional gas services. Once issued a case-specific NGA section 7(c) certificate, a gas company may also obtain a blanket certificate under NGA section 7(c) and Part 157, Subpart F, of the Commission's regulations to construct, acquire, alter, or abandon certain types of facilities without the need for further case-by-case certificate authorization for each particular project.<sup>2</sup> Currently, blanket activities are limited to a maximum cost of \$8,200,000 per project undertaken without prior notice (also referred to as self-implementing or automatic authorization projects) and \$22,700,000 per project undertaken subject to prior notice.<sup>3</sup> Blanket certificate authority only applies to a restricted set of facilities and services, and currently does not extend to mainlines, storage field facilities, and facilities receiving gas from a liquefied natural gas (LNG) plant or a synthetic gas plant.

3. This Final Rule expands the scope of activities that can be undertaken

<sup>2</sup> Certain activities are exempted from the certificate requirements of NGA section 7(c). For example, 18 CFR 2.55 in the Commission's regulations exempts auxiliary installations and the replacement of physically deteriorated or obsolete facilities, and Part 284, Subpart I, of the regulations provides for the construction and operation of facilities needed to alleviate a gas emergency.

<sup>3</sup> These are the current cost limits for calendar year 2006. Cost limits are adjusted annually. See 18 CFR 157.208(d), Table I (2006), as updated. As noted in the NOPR, in response to the impacts of hurricanes Katrina and Rita, these cost limits have been temporarily doubled for blanket projects that are built and placed into service between November 2005 and February 2007 to increase access to gas supplies. In addition, blanket certificate authority has been temporarily extended to cover facilities that would otherwise require case-specific authorization, namely, an extension of a mainline; a facility, including compression and looping, that alters the capacity of a mainline; and temporary compression that raises the capacity of a mainline. See *Expediting Infrastructure Construction To Speed Hurricane Recovery*, 113 FERC ¶ 61,179 (2005) and 114 FERC ¶ 61,186 (2006).

pursuant to blanket authority by (1) increasing the project cost limit to \$9,600,000 for an automatic authorization project and \$27,400,000 for a prior notice project<sup>4</sup> and (2) expanding the types of facilities that may be acquired, constructed, modified, replaced, abandoned, and operated under blanket certificate authority to include mainline facilities, certain LNG and synthetic gas facilities, and certain storage facilities. In addition, the Commission clarifies that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service.

### II. Notice and Comment

#### A. *Petition To Expand the Blanket Certificate Program and Clarify Criteria Defining Just and Reasonable Rates*

4. On November 22, 2005, the Interstate Natural Gas Association of America (INGAA) and the Natural Gas Supply Association (NGSA) jointly filed a petition under § 385.207(a) of the Commission's regulations proposing that the blanket certificate provisions be expanded to include mainline facilities, LNG takeaway facilities, and certain underground storage field facilities which are currently excluded from the blanket certificate program, and that the cost limits for all categories of blanket projects be raised. Petitioners also argue in favor of preferential rate treatment for "foundation shippers," *i.e.*, customers that sign up early for firm service and thereby establish the financial foundation for a new project, and seek assurance that providing customers that commit early to a proposed project a more favorable rate than customers that seek service later will not be viewed as unduly discriminatory.

5. Notice of the INGAA/NGSA petition was published in the **Federal Register** on December 9, 2005,<sup>5</sup> and comments on the petition were filed by the American Gas Association (AGA); American Public Gas Association (APGA); Anadarko Petroleum Corporation (Anadarko); Devon Energy Corporation (Devon); Duke Energy Gas Transmission Corporation (Duke); Enstor Operating Company, LLC (Enstor); Honeoye Storage Corporation (Honeoye Storage); Illinois Municipal Gas Agency (Illinois Municipal);

<sup>4</sup> Upon the effective date of this Final Rule, these higher project cost limits will be substituted for the amounts that now appear for the current calendar year in 18 CFR 157.208(d), Table I, with these higher amounts then subject to the annual inflation adjustment.

<sup>5</sup> 70 FR 73232 (Dec. 9, 2005).

Independent Petroleum Association of America (IPAA); Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan); NiSource Inc. (NiSource); Process Gas Consumers Group (Process Gas Consumers); Public Service Commission of New York (PSCNY); and Sempra Global (Sempra).

#### B. *Notice of Proposed Rulemaking*

6. After consideration of the petition and comments thereto, the Commission issued a NOPR that (1) proposed adopting the petitioners' requested regulatory revisions, with relatively minor modifications, and (2) clarified that the petitioners' hypothetical tiered rate structure for a new project could be accepted under the Commission's current policies. Notice of the NOPR was published in the **Federal Register** on June 29, 2006.<sup>6</sup> Comments on the NOPR were filed by the AGA; APGA; Boardwalk Pipeline Partners, LP (Boardwalk); Consolidated Edison Company of New York, Inc. (Con Ed) jointly with Orange and Rockland Utilities, Inc. (Orange and Rockland); Dominion Transmission, Inc., Dominion Cove Point LNG, LP, and Dominion South Pipeline Company, LP (Dominion); Duke; HFP Acoustical Consultants Inc. (HFP Acoustical); INGAA; IPAA; NGSA; Process Gas Consumers; Sempra; and Williston Basin Interstate Pipeline Company (Williston). Further comments were filed by INGAA jointly with NGSA, and by AGA.

### III. Discussion

7. The blanket certificate program was designed to provide an administratively efficient means to authorize a generic class of routine activities, without subjecting each minor project to a full, case-specific NGA section 7 certificate proceeding. In 1982, in instituting the blanket certificate program, the Commission explained the new program as follows:

[T]he final regulations divide the various actions that the Commission certifies into several categories. The first category applies to certain activities performed by interstate pipelines that either have relatively little impact on ratepayers, or little effect on pipeline operations. This first category also includes minor investments in facilities which are so well understood as an established industry practice that little scrutiny is required to determine their compatibility with the public convenience and necessity. The second category of activities provides for a notice and protest procedure and comprises certain activities in which various interested parties might have a concern. In such cases there is a need to

<sup>6</sup> 71 FR 36276 (June 26, 2006).

provide an opportunity for a greater degree of review and to provide for possible adjudication of controversial aspects. Activities not authorized under the blanket certificate are those activities which may have a major potential impact on ratepayers, or which propose such important considerations that close scrutiny and case-specific deliberation by the Commission is warranted prior to the issuance of a certificate.<sup>7</sup>

8. The Commission continues to apply the above criteria in an effort to distinguish those types of activities that may appropriately be constructed under blanket certificate authority from those projects that merit closer, case-specific scrutiny due to their potentially significant impact on rates, services, safety, security, competing natural gas companies or their customers, or on the environment. The Commission believes the regulatory revisions put in place by this Final Rule are consistent with the above-described rationale for and constraints on the blanket certificate program.

9. In addition, “[u]nder section 7 of the NGA, pursuant to which the blanket certificate rule is promulgated,” the Commission has “an obligation to issue certificates only where they are required by the public convenience and necessity. The blanket certificate rules set out a class of transactions, subject to specific conditions, that the Commission has determined to be in the public convenience and necessity.”<sup>8</sup> As discussed in the NOPR, and as further explained below, the Commission believes that the class of blanket-eligible transactions can be enlarged consistent with its statutory obligation to affirm that each new project or service is required by the public convenience and necessity.

#### A. Proposed Regulatory Revisions, Comments, and Commission Response

10. The Commission proposes to expand the scope of blanket certificate activities to include facilities and services that have heretofore been excluded from the blanket program and

to expand the scale of blanket certificate activities by raising the current project cost limits.

#### B. Expanding Blanket Authority to Cover Currently Excluded Facilities

11. The Final Rule adds §§ 157.210, .212, and .213 to include, respectively, certain mainline, LNG and synthetic gas, and storage facilities within the blanket certificate program. As discussed in the NOPR, these facilities were initially barred from the blanket program out of concern that their cost and operation could adversely impact existing customers’ rates and services. These concerns remain valid, and in addition, there has been increased attention to the environmental, safety, and security implications of all natural gas facilities. To ensure these matters receive appropriate review, all projects involving the additional types of facilities now permitted under the expanded blanket certificate program (with the exception of the remediation and maintenance of underground storage field facilities) will be subject to the prior notice provisions of the regulations regardless of their estimated costs. As explained in the NOPR, the Commission expects that by requiring prior public notice for blanket projects involving these previously excluded facilities, and by providing for more information to be included in notices to affected landowners and the public, and by providing additional time to assess proposed blanket projects, the Commission, affected landowners, and others will be afforded a reasonable opportunity to review the potential impacts of proposed projects prior to construction.

12. APGA asks that the Commission affirm these measures will ensure adequate staff review of prior notice submissions. The Commission expects that the revised regulations will enable staff to make a meaningful assessment of proposed blanket projects—and as appropriate, protest pursuant to § 157.205(e) of the Commission’s regulations—prior to a project going forward.

#### 1. Section 157.210, Mainline Natural Gas Facilities

13. The Final Rule adds § 157.210 to allow blanket certificate holders to acquire, construct, modify, replace, and operate mainline gas facilities. The Final Rule makes the following modifications. At the end of the first sentence of this section, the phrase “natural gas mainline facilities,” is qualified by adding “including compression and looping, that are not eligible facilities under

§ 157.202(b)(2)(i).” This clarifies that blanket certificate authority can be employed for mainline projects that include compression and loop line facilities, and also clarifies, in response to INGAA’s request, that this new section does not displace, but is in addition to, the existing provisions which state that certain mainline facilities are eligible to be replaced or rearranged under blanket authority. In addition, the reference in the NOPR to the authority to “abandon” is removed, since as Williston observes, blanket abandonment provisions are described in § 157.216 of the Commission’s regulations. Instead, a cross-reference to § 157.210 will be added to § 157.216, so that the blanket abandonment authority and procedure now in place will be extended to new mainline facilities and services.

14. INGAA, Duke, and Dominion insist there is no need for prior notice for mainline projects that come under the automatic authorization cost limit, asserting that the Commission already has the capability to monitor mainline projects for adverse impacts, abuses, and segmenting by means of a review of annual reports and post-construction audits. On the other hand, APGA and IPAA argue in favor of prior notice for all § 157.210 mainline activity, regardless of cost.

15. Although the Commission is comfortable with its capability to assess and monitor the variety of activities currently included within the blanket certificate program, this Final Rule draws into the blanket program facilities which heretofore have been deliberately excluded due to the expectation that the limited regulatory oversight provided under the blanket program would be inadequate to properly review such facilities. Oversight via review of annual reports and post-construction audits, as suggested in comments, would only identify transgressions after the fact, whereas prior notice functions as a preventive measure. Given the Commission’s lack of experience under the blanket program in supervising mainline, LNG and synthetic gas, and storage facility projects, the NOPR reasoned it would be prudent to provide prior notice for all projects involving these newly blanket-enfranchised facilities. The Commission affirms that reasoning here, with an exception described below for certain storage facilities.

16. In the NOPR, in response to a query by Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan), the Commission stated its expectation that the proposed regulatory revisions would provide certificate holders with the

<sup>7</sup> 47 FR 24254 (June 4, 1982).

<sup>8</sup> *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. ¶ 30,665 at 31,554 (1985), vacated and remanded, *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988), readopted on an interim basis, Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. & Regs. ¶ 30,761 (1987), remanded, *American Gas Association v. FERC*, 888 F.2d 136 (D.C. Cir. 1989), readopted, Order No. 500-H, 54 FR 52344 (Dec. 21, 1989), FERC Stats. & Regs. ¶ 30,867 (1989), reh’g granted in part and denied in part, Order No. 500-I, 55 FR 6605 (Feb. 26, 1990), FERC Stats. & Regs. ¶ 30,880 (1990), aff’d in part and remanded in part, *American Gas Association v. FERC*, 912 F.2d 1496 (D.C. Cir. 1990), cert. denied, 111 S.Ct. 957 (1991).

option to construct mainline facilities under blanket certificate authority. This Final Rule does so. Accordingly, this rule renders moot Kinder Morgan's and Northern Natural Gas Company's joint petition in Docket No. CP06-418-000 for a temporary waiver of the blanket certificate program's exclusion of mainline facilities pending revision of the blanket regulations to permit the construction of mainline projects.<sup>9</sup> As of the effective date of this rule, mainline facilities may be constructed pursuant to a project sponsor's blanket certificate authority, provided the proposed facilities comply with the cost limits and other requirements of the blanket certificate program.

## 2. Section 157.212, LNG and Synthetic Natural Gas Facilities

17. The Final Rule adds § 157.212 to allow certificate holders to acquire, construct, modify, replace, and operate facilities used to transport LNG or synthetic gas. The Final Rule removes the reference in the NOPR to the authority to "abandon," and instead adds a cross-reference to the blanket abandonment authority described in § 157.216 of the Commission's regulations. In addition, § 157.212 will be revised to clarify that it applies to facilities that transport a mix of synthetic and natural gas and to facilities that transport exclusively revaporized LNG.<sup>10</sup>

18. As was the case regarding the issue of prior notice for mainline facilities, comments both favor and oppose applying prior notice to all LNG and synthetic gas facilities that are now newly subject to authorization under the blanket program. In accord with the above discussion regarding mainline facilities, the Commission will retain the prior notice requirement. In the NOPR, the Commission added that automatic authorization was unsuited to LNG and synthetic gas facilities because these projects raised fact-specific issues of safety, security, and gas interchangeability.

19. In opting for prior notice, INGAA contends the Commission is being "unduly cautious," since "LNG supplies are not new to the natural gas industry and have been flowing into the U.S. grid for a long time now."<sup>11</sup> INGAA's observation, while not wrong, overlooks

the difficulties developers, producers, pipelines, LDCs, and gas consumers have encountered in trying to reach consensus on national natural gas quality and interchangeability standards. The concerted effort by representatives of these sectors of the gas industry to establish such standards, ongoing since 2004, was prompted by the prospect of increasing supplies of LNG, leading the industry and the Commission to consider whether revaporized LNG could contribute to the physical deterioration of existing gas lines and whether the substitution of one gaseous fuel for another in a combustion application could materially change operational safety, efficiency, performance, or air pollution emissions. In June 2006, the Commission denied an NCSA petition to establish natural gas quality and interchangeability standards<sup>12</sup> and issued a policy statement declaring its intent to address disputes over gas quality and interchangeability on a case-by-case basis.<sup>13</sup> Given the potential impact that a change in the makeup of a longstanding gas supply profile could have, the Commission believes that to the extent requiring prior notice for § 157.212 facilities may be characterized as cautious, caution is in order. Thus, the Commission will adopt the prior notice requirement for all LNG and synthetic gas facilities.<sup>14</sup>

20. The NOPR states that "blanket certificate authority will not apply to the outlet pipe of an LNG or synthetic gas plant, but only to those facilities that attach to the directly interconnected pipe."<sup>15</sup> APGA endorses this approach. INGAA, NCSA, Duke, and Dominion do not, and advocate extending blanket certificate authority to include takeaway lateral lines that connect directly to existing LNG terminals. AGA seeks clarification on this point. NCSA asserts that if a new lateral from an existing LNG terminal does not require modifying the terminal to accommodate the new lateral, the new lateral should not be subject to the mandatory pre-filing specified in § 157.21 of the Commission's regulations. Dominion goes further, and recommends enlarging the blanket certificate program to

<sup>12</sup> 115 FERC ¶ 61,327 (2006).

<sup>13</sup> 115 FERC ¶ 61,325 (2006).

<sup>14</sup> In view of the issues that have arisen in the Commission proceeding regarding gas quality and interchangeability standards, Duke is incorrect in stating that "there are no construction, environmental, operational, or safety considerations that distinguish regasified LNG pipelines from other natural gas pipelines." Duke's Comments at 9 (Aug. 25, 2006).

<sup>15</sup> 71 FR 36276 at 36279 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,876 (2006); 115 FERC ¶ 61,338 at P 28 (2006).

include improvements and modifications to existing LNG terminals and LNG storage facilities that do not alter the facility's capacity. Duke goes further still, and claims that "if the Commission continues to believe that it is necessary to evaluate an LNG terminal and take-away pipeline in tandem, there is no reason why such pipeline facilities could not be both constructed pursuant to blanket authority and evaluated in connection with the construction of a new LNG terminal or expansion of an existing LNG terminal."<sup>16</sup>

21. The Commission views Duke's suggestion as incompatible with the statutory and regulatory requirements applicable to LNG terminal facilities. In the NOPR, the Commission explained that:

LNG plant facilities are not within the class of minor, well-understood, routine activities that the blanket certificate program is intended to embrace; LNG plant facilities necessarily require a review of engineering, environmental, safety, and security issues that the Commission believes only can be properly considered on a case-by-case basis.<sup>17</sup> [Thus, b]ecause an LNG terminal and the facilities that attach directly to it are interdependent—inextricably bound in design and operation—a terminal and its takeaway facilities must be evaluated in tandem; both merit a similar degree of regulatory scrutiny."<sup>18</sup>

22. In view of the complexity of the issues raised by LNG terminals, § 157.21 requires that proposals to construct a new LNG terminal, or to make certain modifications to an existing LNG terminal, be subject to a mandatory 180-day pre-filing procedure. The 180-day pre-filing procedure conflicts with the expedited nature of the blanket certificate program. Thus, facilities subject to mandatory pre-filing cannot be authorized under the blanket certificate program.

23. For example, in the case of a planned, but not yet authorized, LNG terminal, if the facilities that attach directly to the new terminal are "related jurisdictional natural gas facilities," as defined by § 153.2(e)(1) of the Commission's regulations, they must be considered in conjunction with the LNG terminal in a 180-day mandatory pre-filing procedure. In the case of an existing LNG terminal, if the construction or modification of facilities that attach directly to the terminal will result in modifications to the terminal, and those modifications to the terminal

<sup>16</sup> Duke's Comments at 10 (Aug. 25, 2006).

<sup>17</sup> 71 FR 36276 at 36279-80 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,877 (2006); 115 FERC ¶ 61,338 at PP 29-30 (2006).

<sup>18</sup> *Id.*

<sup>9</sup> The Commission will issue a separate notice to dismiss Kinder Morgan's and Northern Natural Gas Company's petition in Docket No. CP06-418-000.

<sup>10</sup> The Commission's jurisdiction over the interstate transportation of natural gas does not extend to facilities that transport exclusively synthetic gas. See, e.g., *Henry v. FPC*, 513 F.2d 395 (D.C. Cir. 1975).

<sup>11</sup> INGAA's Comments at 9 (Aug. 25, 2006).

are subject to mandatory prefilming under § 157.21(e)(2), then the facilities that attach directly to the terminal are “related jurisdictional natural gas facilities” and must be considered along with the terminal modifications as part of a mandatory 180-day prefilming procedure. Because “related jurisdictional natural gas facilities” are to be reviewed in tandem with LNG terminals in a 180-day prefilming, these facilities are excluded from the blanket certificate program.

24. However, blanket certificate authority can be applied to facilities that attach directly to an existing LNG terminal if the construction and operation of the attached facilities will not involve any modifications to the terminal, or if there are modifications to the terminal, they are not significant modifications that trigger the 180-day mandatory prefilming process. In view of this latter category of facilities, the Commission qualifies its description in the NOPR on the applicability of the blanket program. Provided the construction and operation of facilities that attach directly to an existing LNG terminal do not involve modifications to the terminal that result in a mandatory prefilming process, blanket certificate authority extends to such facilities.

25. Sempra complains that an existing blanket certificate holder, in seeking to build a pipeline to attach to an LNG terminal, would have a competitive advantage over a new entrant compelled to seek case-specific authority. Sempra asks the Commission to preclude any project sponsor from using blanket certificate authority to gain a timing advantage over a new entrant in seeking to serve the same LNG supply source or market.

26. As discussed above, a new line to a new LNG terminal could not be built under the expanded blanket certificate authority, and depending on circumstances, neither could a new line to an existing LNG terminal. That notwithstanding, the Commission acknowledges that, to the extent proceeding under the blanket program provides an expedited authorization compared to a case-specific applicant, new entrants could be placed at a competitive disadvantage. However, the Commission notes that any timing-related advantage is diminished because a blanket-eligible line interconnecting directly with an LNG terminal will be subject to prior notice, and thus to protest, and an unresolved protest would cause the prior notice blanket application to be treated as an application for case-specific NGA

section 7(c) authorization.<sup>19</sup> Further, while this Final Rule increases cost limits under the blanket certificate regulations, the cost limits nevertheless will continue to ensure that blanket authority extends only to relatively modest projects; hence, there would not necessarily be a substantial disparity in time in building under a blanket certificate and obtaining case-specific authorization for a modest proposal. The Commission concludes that the benefit the blanket certificate program provides in terms of administrative efficiency and cost savings outweigh any accompanying market distortion. Accordingly, Sempra’s request to selectively revoke blanket certificate authority is denied.

### 3. Section 157.213, Underground Storage Field Facilities

27. The Final Rule adds § 157.213 to allow certificate holders to acquire, construct, modify, replace, and operate certain underground storage facilities. As with § 157.210 and § 157.212, § 157.213 is revised to remove the reference in the NOPR to the authority to “abandon,” and instead a cross-reference is added to the blanket abandonment authority described in § 157.216 of the Commission’s regulations. The Commission will further revise this section as described below.

28. Comments again both favor and oppose applying prior notice to all underground storage projects. However, in this instance, the Commission finds it appropriate to permit automatic authorization for certain types of storage projects. Dominion contends that automatic authorization should be allowed for storage projects limited to remediation and maintenance, on the grounds that such activities have little impact on customers or operations compared to projects to improve a storage facility. The Commission concurs and will provide for automatic authorization for storage remediation and maintenance activities under revised § 157.213(a).<sup>20</sup>

29. The NOPR states that “the proposed expanded blanket certificate authority is not intended to include storage reservoirs that are still under development or reservoirs which have yet to reach their inventory and pressure levels as determined from their original

certificated construction parameters.”<sup>21</sup> Dominion asks the Commission to extend blanket certificate authority to activities at existing storage reservoirs that are not operated at their originally certificated maximum inventory and projected performance levels. Dominion argues that unlike a new storage reservoir, reliable operational data are available for existing storage facilities, even if an existing field has yet to reach its certificated maximum capacity or original projected performance.

30. The Commission disagrees. While it may be true that reliable operational data are available for some existing fields that have yet to reach capacity, this is not always the case. Thus, the Commission does not believe that the blanket program, which permits an expedited and generic approval following a limited prior notice period, is the appropriate means to review and approve such projects. As stated in the NOPR, storage reservoirs that are still under development or reservoirs which have yet to reach their inventory:

May or may not have reliable information available on geological confinement or operational parameters via data gathered throughout the life of a storage field, whereas new storage zones lack data collected over time on physical and operational aspects of a field. Therefore, for such facilities, the Commission finds it necessary to individually examine each reservoir to determine its potential operating parameters (capacity, cushion and working gas, operational limits, well locations, etc.) and to review data essential to understand and predict how modifications might affect the integrity, safety, and certificated parameters of the facility.<sup>22</sup>

31. Dominion questions whether the Commission needs an inventory verification study, shut-in reservoir pressures, and cumulative gas-in-place data, which would be required for blanket projects under proposed §§ 157.213(b)(7) and (8), since the Commission does not currently require submission of this information in case-specific NGA section 7(c) applications for storage projects.<sup>23</sup> Dominion requests the Commission either remove these information requirements or require the data described in §§ 157.213(c)(1) through (9) only to the extent necessary to demonstrate that the proposed project will not alter a storage

<sup>21</sup> 71 FR 36276 at 362782 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,880 (2006); 115 FERC ¶ 61,338 at P 43 (2006).

<sup>22</sup> *Id.*

<sup>23</sup> Note the regulatory revisions proposed in the NOPR as 18 CFR 157.213(b)(1) through (9), are codified in this Final Rule, and referred to hereafter, as 18 CFR 157.213(c)(1) through (9).

<sup>19</sup> See 18 CFR 157.205(f) (2006).

<sup>20</sup> The Commission consequently will modify 18 CFR 157.207 to include storage remediation and maintenance as an activity subject to the annual reporting requirements applicable to blanket projects undertaken pursuant to automatic authorization.

reservoir's total inventory, maximum pressure, or buffer boundaries.

32. Dominion is correct in observing that the information specified in §§ 157.213(c)(1) through (9) is not now required to be submitted under the existing regulations for case-specific certificate applications. However, the Commission considers this information necessary to make an informed decision on storage projects. Therefore, when this information is not included in a case-specific application, Commission staff, as a matter of routine practice, will request the data from the project sponsor. Section 157.213(c)(1) through (9) merely codifies this practice. Were this information not included in a prior notice filing, in all likelihood, Commission staff would request this data from the project sponsor, and in the event the response was incomplete or staff lacked time to assess the information by the conclusion of the prior notice period, staff could be compelled to protest the filing. Thus, to ensure the timely consideration of a prior notice request for a storage project, the filing must contain the information specified in §§ 157.213(c)(1) through (9). However, the Commission acknowledges that not all the information specified in §§ 157.213(c)(1) through (9) will be relevant in all cases, and will thus adopt Dominion's suggestion and qualify § 157.213(c) to state that the information requirements apply "to the extent necessary to demonstrate that the proposed project will not alter a storage reservoir's total inventory, reservoir pressure, reservoir or buffer boundaries, or certificated capacity, including injection and withdrawal capacity."

#### 4. Blanket Project Cost Limits

33. The NOPR proposes raising the blanket certificate program's 2006 cost limits from \$8,200,000 to \$9,600,000 for each automatic authorization project and from \$22,700,000 to \$27,400,000 for each prior notice project. AGA, APGA, Con Ed, and Orange and Rockland urge the Commission not to raise the cost limits, cautioning that permitting more expensive projects would risk transforming the nature of the blanket program from one intended to cover small and routine construction activities into a program under which projects with potentially significant rate and environmental impacts could be built.<sup>24</sup>

<sup>24</sup> AGA stresses that if a certificate holder with a relatively modest rate base relies on blanket certificate authority to undertake additional construction, then even a project that falls well within the blanket cost limits has the potential to alter existing customers' rates. AGA, Con Ed, and Orange and Rockland speculate that in the case of

On the other hand, INGAA, NGSAA, and pipelines propose to raise the cost limits to \$16,000,000 for an automatic authorization project and \$50,000,000 for a prior notice project, repeating the claim that construction costs have risen faster than the overall rate of inflation, and noting that these higher cost limits have been in effect since November 2005, as a post-hurricane relief measure, with no apparent adverse impact.

34. While gas project costs, including environmental compliance and public outreach, have trended up since 1982, so have the blanket program cost limits, almost doubling since 1982.<sup>25</sup> Since 1982, the Commission has relied on the Department of Commerce's GDP implicit price deflator as a measure to make annual adjustments to the blanket cost limits. In the NOPR, the Commission applied an alternative price tracker that is focused more narrowly on gas utility construction costs,<sup>26</sup> and as a result proposed to raise the cost limits to account for the discrepancy between the two different inflation indicators. The comments do not propose any alternative criteria or methodology for affirming or altering the blanket project cost limits.

35. INGAA and NGSAA propose making permanent the doubled project

a large company, a blanket project could have a disproportionate impact if project costs are assigned to a limited number of customers, e.g., customers in a single rate zone. The Commission expects such concerns to be raised in protest to the notice of a proposed blanket project. If concerns regarding disproportionate rate impacts are not resolved, the proposed project and its rate impacts would then be treated as a case-specific NGA section 7(c) certificate proceeding. For blanket projects which qualify for automatic authorization, and as a result, do not require public notice prior to construction, concerns about rate treatment can be raised when the certificate holder seeks to roll in the cost of the automatically authorized project in a future NGA section 4 rate proceeding.

<sup>25</sup> In considering how to gauge project costs over time, the NOPR observed that recently "certain project components—notably the price of steel pipe—have risen far faster than any measure of overall inflation. However, although steel prices have run up over the past several years, in looking back to 1982, there were periods during which steel prices fell substantially. Further, changing regulatory requirements and construction techniques, to which Petitioners attribute cost increases, do not always add to project costs, and may well contribute to cost reductions and efficiencies." 71 FR 36276 at 36283 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,884 (2006); 115 FERC ¶ 61,338 at P 57 (2006).

<sup>26</sup> The Commission employed the *Handy-Whitman Index of Public Utility Construction Costs, Trends of Construction Costs*, Bulletin No. 162, 1912 to July 1, 2005. In doing so, the Commission cautioned, and reiterates here, that even if it were possible to mirror 1982 costs to costs today, the dollar amounts would not reflect proportionate impacts on pipeline customers' rates, since in 1982 the commodity cost of gas was a significant portion of pipeline customers' merchant service rate, whereas today, gas sales costs are no longer bundled with transportation service costs.

cost limits that are currently in place temporarily.<sup>27</sup> However, the currently effective cost limits for the blanket certificate program were put in place temporarily to expedite construction of projects that would increase access to gas supply to respond to the damage to gas production, processing, and transportation brought about by hurricanes Katrina and Rita. In temporarily doubling blanket project cost limits, the Commission did not assess alternative inflation trackers or the costs associated with construction. Rather, the decision to expand the blanket program was based on the Commission's assessment of the damage done by the hurricanes and the magnitude of the effort that would be required to recover. There was no expectation that the temporary expansion of the blanket certificate program might be made permanent. If the blanket certificate program were expanded by approximately doubling the project cost limits as requested, the nature of the program would be changed such that the Commission could not be confident that far more expensive and extensive projects would not have adverse impacts on existing customers, existing services, competitors, landowners, or the environment. Accordingly, the Commission adopts an increase to \$9,600,000 for each automatic authorization project and \$27,400,000 for each prior notice project, and denies requests for a further increase at this time, other than annual inflation adjustments as provided for under § 157.208(d) of the Commission's regulations.

#### 5. Rate Treatment for Blanket Project Costs

36. Blanket services are provided at a certificate holder's existing Part 284 rates, and blanket project costs are afforded the presumption that they will qualify for rolled-in rate treatment in a future NGA section 4 proceeding. Since blanket costs are presumed to be so small as to have no more than a de minimis rate impact, the proposal to increase cost limits calls this presumption into question. Therefore, the NOPR sought comment on whether to permit project sponsors the option of requesting an incremental rate for a particular blanket certificate project.

37. Commenters generally support this option, and note that applying an incremental rate to blanket projects would address the worry that existing customers might be made to subsidize new projects. INGAA argues that

<sup>27</sup> The current temporary increase in blanket cost limits expires on February 28, 2007.

because most incremental rate proposals are consensual, there is no need for the Commission to review an agreed-upon rate. To preclude existing customers from making unwarranted contributions to cover the costs of blanket projects, NGSAs suggests requiring a project sponsor to file a tariff sheet in a limited NGA section 4 filing proposing an incremental rate, which the Commission will then act on as a normal tariff matter by accepting, rejecting, or suspending the rate at the end of the 30-day tariff notice period. In considering an incremental rate for a proposed blanket project, AGA, Con Ed, and Orange and Rockland urge the Commission to verify that each project will be consistent with the Policy Statement on New Facilities.<sup>28</sup>

38. Commenters present no compelling reason to modify the current practice of presuming, initially, that blanket project costs will qualify for rolled-in rate treatment, then evaluating the validity of this presumption, subsequently, in an NGA section 4 rate proceeding. Accordingly, for the time being, the Commission will continue to apply a presumption that blanket costs will qualify for rolled-in rate treatment. However, the Commission will revisit this question if there is evidence that the enlargement of the blanket certificate program to permit additional facilities and higher cost limits materially alters the manner in which project sponsors employ their blanket certificate authority or otherwise undermines the basis for the presumption of rolled-in rate treatment. Absent any such indication, the Commission hesitates to put in place a procedure to assess and approve initial rates for proposed blanket projects, since the additional time necessary to complete such a review will inevitably stretch the span between notice of a project and commencement of construction. To the extent practicable, the Commission aims to retain the benefit of an expedited project authorization available under the current blanket certificate program.

39. Emphasizing that revised blanket certificate regulations do not require project sponsors to demonstrate that a proposal conforms to the Policy Statement on New Facilities, Con Ed and Orange and Rockland request that the Commission (1) require that the prior notice of a proposed blanket project quantify impacts on existing customers and verify that the project

will be fully functional without any additional construction; (2) allow protests to a blanket project that raise legitimate rate-related issues to be resolved in a case-specific proceeding; (3) extend the presumption of rolled-in rate treatment to a blanket project's costs only if the blanket project sponsor demonstrates the project will be fully subscribed or provide benefits to existing customers; and (4) find that the presumption favoring rolled-in rate treatment is rebutted if a blanket project is subsequently determined to be a segmented portion of a larger undertaking. *Sempra* suggests requiring project sponsors that undertake blanket storage projects and that have an existing cost-based recourse rate to discuss the rate implications of a proposed project in the prior notice of the project in order to demonstrate that existing customers will not subsidize the new facilities.

40. The Commission believes that the existing blanket certificate regulations are adequate to address the matters Con Ed, Orange and Rockland, and *Sempra* raise. The existing prohibition against segmentation is intended to preclude projects that would not be functional without additional construction. The rate impacts of a blanket project, while not now reviewed in advance, are considered in a future rate proceeding—and in the rate proceeding, the issues of subsidization and system benefits can be addressed. The regulations permit any interested person to protest a blanket project subject to the prior notice provisions; each protest, whether rate related or otherwise, will be considered on its merits on a case-by-case basis.

41. Con Ed, Orange and Rockland complain that the presumption favoring rolling in blanket costs is rarely rebutted.<sup>29</sup> APGA contends certificate

<sup>29</sup> The parties assert that the Commission is reluctant to reverse a presumption in favor of rolled-in rate treatment, citing *Transcontinental Gas Pipe Line Corp. (Transco)*, 106 FERC ¶ 61,299 (2004) and 112 FERC ¶ 61,170 (2005). *Transco* did not focus on blanket project costs, but on the impact of a change in Commission rate policy, and how the changed policy should apply in an NGA section 4 proceeding to case-specific expansion projects built under the Commission's prior rate policy regime. In *Transco*, and in its policy statements, the Commission discussed its aspiration to provide as much up-front assurance as possible of how an expansion would be priced so that the pipeline and prospective shippers could make informed investment decisions. This holds true regardless of whether a project is constructed under blanket or case-specific authority; consequently, the Commission is reluctant to reverse either a predetermination or a presumption regarding future rate treatment. Nevertheless, in a subsequent NGA section 4 rate proceeding, the Commission may determine that its initial, provisional assessment of what the appropriate rate treatment would be was

holders resist filing rate cases “due primarily to the fact that they are permitted under the current regime to over-recover their costs with impunity, [thus] by the time that most pipelines do file for increased rates, the cumulative dollar impact of the numerous no-notice and prior notice projects will be quite substantial, with no viable customer recourse.”<sup>30</sup> APGA requests the Commission compel certificate holders to file rate cases regularly, suggesting a three-year cycle.

42. The Commission acknowledges that in the vast majority of rate proceedings, the outcome affirms the presumption favoring rolling in blanket costs. The Commission notes that in rate proceedings, there is rarely any effort to rebut the presumption, which the Commission takes to be an indication of the legitimacy of the presumption. The Commission recognizes that a certificate holder is likely to weigh its own self interest when considering whether to initiate an NGA section 4 rate proceeding. However, if a company fails to initiate a rate proceeding in a timely manner, such that distortions over time have rendered its rates unjust and unreasonable, a complaint can be filed under NGA section 5.

### C. Changes in the Notice Procedures, Environmental Compliance Conditions, and Reporting Requirements

43. In initiating the blanket certificate program in 1982, the Commission explained that § 157.206(a)(1) was intended to “reserve the Commission's right to amend Subpart F so as to add, delete or modify the standard conditions and any procedural requirements \* \* \* if changing circumstances or experience so warrant.”<sup>31</sup> In this case, increasing the scope and scale of the blanket certificate program increases the odds that projects authorized under the expanded blanket certificate program could have significant adverse impacts on the quality of the human environment. In view of this, the Commission proposed in the NOPR, and is adopting in this Final Rule, additional procedures and mitigation measures to adequately ensure against the potential for adverse environmental impacts due to the enlargement of the blanket certificate program. The current environmental requirements described in § 157.206(b), and the revisions to the environmental requirements implemented by this Final

in error, and so reverse the predetermination or presumption.

<sup>30</sup> APGA's Comments at 8 (Aug. 25, 2006).

<sup>31</sup> *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234-A, 47 FR 38871 (Sept. 3 1982); FERC Stats. & Regs. ¶ 30,389 (1982).

<sup>28</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *orders clarifying statement of policy*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000), *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

Rule, apply to all projects authorized under the blanket certificate program.

## 1. Notification Requirements

### a. Content of Landowner Notification

44. The NOPR proposed revising § 157.203(d)(2)(iv) to state that in the notice to affected landowners of a proposed project, the project sponsor include the most recent edition of the Commission pamphlet titled "An Interstate Natural Gas Facility on My Land? What Do I Need to Know?" INGAA and Williston point out that the current edition of the pamphlet describes the Part 157, Subpart A, case-specific certificate process generally, but does not describe the Part 157, Subpart F, blanket program specifically, and suggest the pamphlet be revised or a separate pamphlet be prepared to cover the blanket certificate procedures. The Commission will adopt the latter approach, and to enhance administrative efficiency and ensure information remains up-to-date, rather than a pamphlet, the Commission will require that notice include blanket-specific information that will be available on the Commission's Web site. Accordingly, § 157.203(d)(2)(iv) of the Commission's regulations is revised to read as follows: "A general description of the blanket certificate program and procedures, as posted on the Commission's website at the time the landowner notification is prepared, and the link to the information on the Commission's website."

45. In response to Williston, the Commission clarifies that the information requirements stated in § 157.203(d)(1), including the additional requirements of revised § 157.203(d)(1)(iii), are applicable to landowner notification for proposed blanket certificate projects that qualify for automatic authorization. The information requirements stated in § 157.203(d)(2), including the additional requirements of revised § 157.203(d)(2)(i), (ii), (iv), (v), and (vii), are applicable to public notice for proposed blanket certificate projects that do not qualify for automatic authorization.

### Summary of Rights

46. Revised § 157.203(d)(2)(v) requires that in the notice to affected landowners of a proposed project, the project sponsor include a brief summary of the rights the landowner has in Commission proceedings and in proceedings under the eminent domain rules of the relevant state(s). INGAA contends affected landowners will perceive any discussion of eminent domain "as a

threat that their property will be condemned if they do not consent to an easement agreement," an interpretation that "could cause more harm than good,"<sup>32</sup> and comments that the description of state eminent domain rules may prove misleading if a project sponsor proceeds with condemnation actions under federal eminent domain law. Duke worries discussing landowner rights would "constitute the provision of legal advice in most jurisdictions," and because "[m]any bar associations prohibit lawyers from giving advice to unrepresented third parties," this could create a "potential legal conflict for natural gas companies."<sup>33</sup> Duke recommends the contents of the notice be limited to informing affected landowners of their right to obtain local counsel.

47. As INGAA recognizes, discussions concerning the potential to acquire property rights by means of eminent domain can be disconcerting to affected landowners. It has been the Commission's experience that such discussions are most prone to be perceived as threatening when the initial contact with landowners is made in person by a project sponsor's representative seeking physical access to the property. The Commission believes a far less provocative means to inform affected landowners is to present them with a brief, clear, and candid description of the eminent domain process in written form. Landowners cannot be expected to engage in negotiations and reach decisions regarding their property without such information. The Commission concurs with INGAA's apprehension that landowners may be confused by a description of state condemnation if federal condemnation is employed; accordingly, § 157.203(d)(2)(v) of the Commission's regulations is revised to omit the reference to state proceedings and to instead require a "brief summary of the rights the landowner has in Commission proceedings and in proceedings under the relevant eminent domain rules."

48. The Commission agrees with Duke's observation that affected landowners ought to be informed of their right to obtain counsel, and this fact should be included in the required summary of landowner rights. In response to Duke's concern that complying with § 157.203(d)(2)(v) could constitute the practice of law or place project sponsors with an ethical quandary, the Commission clarifies that the required brief summary of rights and

procedures is descriptive, not interpretative. Project sponsors are expected to summarize or recite applicable law, and no more. Not only need no advice be proffered, none should be. Finally, the Commission notes similar arguments were presented when the original landowner notification rule was instituted in 1999;<sup>34</sup> subsequently, there has been no evidence of significant difficulties in complying with the requirements of the rule.

### c. Landowner Contact

49. As proposed, § 157.203(d)(1)(B) requires that in a notice to affected landowners of a proposed project, the project sponsor include a local contact to call first with problems or concerns. INGAA points out that for certain projects, the personnel best able to respond to problems or concerns may be remotely located, e.g., at a company's central office. Therefore, INGAA asks that the "local" specification be removed, and in its place, project sponsors be required to include the toll-free telephone number of a company representative responsible for responding to affected landowners. The Commission accepts INGAA's argument that its alternative procedure will provide the same protections for landowners. Therefore, § 157.203(d)(1)(B) of the Commission's regulations is revised to read as follows: "Provide a local or toll-free phone number and a name of a specific person to be contacted by landowners and with responsibility for responding to landowner problems and concerns, and who will indicate when a landowner should expect a response."

### 2. Notification Times

50. Currently, under § 157.203(d)(1) of the Commission's regulations, before commencing construction of an automatically authorized blanket project, project sponsors are required to give affected landowners 30 days notice in advance of construction. For blanket projects that do not qualify for automatic authorization, under § 157.203(d)(2), project sponsors are required to provide a 45-day prior notice to the public, during which any person, or the Commission, can protest the proposal. The Final Rule extends each of these time frames by 15 days. INGAA, NGSAA, and pipelines object to offering additional notice time, arguing that (1) the proposed increase in project

<sup>34</sup>Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, Order No. 609, 64 FR 57374 (Oct. 25, 1999); FERC Stats. & Regs. ¶31,082 (1999).

<sup>32</sup>INGAA's Comments at 16 (Aug. 25, 2006).

<sup>33</sup>Duke's Comments at 15 (Aug. 25, 2006).

costs should not change the nature of the projects undertaken pursuant to blanket authority; (2) there is no evidence the current notice periods are too short; and (3) affected landowners and the public should be able to reach a decision on whether to protest well within the current notice periods.<sup>35</sup>

#### 51. The NOPR stated:

In view of the proposed expanded scope and scale of blanket certificate authority, which can be expected to increase the number of automatic authorization projects undertaken and the number of people impacted, an additional 15 days offers greater assurance that there will be adequate time for landowners to state their concerns and for project sponsors and the Commission to respond \* \* \* [T]he additional time will provide the Commission with a more reasonable period of time to conduct and conclude its environmental assessment (EA) of a proposal. This NOPR contemplates an increase in the number, extent, kind, and complexity of facilities subject to blanket certificate authority, yet even for the types of projects currently permitted, 45 days has proved to be, on occasion, an unrealistically short time for the consultation and analysis required to complete an EA. The additional time will ensure the Commission is not forced to protest a prior notice project merely as a means to gain time to finish an EA. The Commission does not expect the extended landowner and public notice periods to unduly delay blanket certificate projects, since natural gas companies, in large part, can dictate when a blanket certificate project may begin construction by when the company elects to initiate the notice process.

52. It is not only the increase in project costs, *i.e.*, an expansion in scale of blanket authorized activities, it is also the far wider range in the types of projects permitted under the blanket authority that warrant adding time to allow for adequate consideration of what the Commission anticipates will be blanket proposals that are both more complex and more numerous. The Commission notes that to the extent issues raised by a prior notice proposal cannot be addressed in the time provided, a protest is the probable outcome, which if not resolved, would result in the proposal being treated as a case-specific NGA section 7(c) application necessitating the preparation and issuance of a Commission order on the merits. The Commission affirms the need to add 15

<sup>35</sup> As an alternative, Williston proposes that blanket projects that qualify for automatic authorization retain a 30-day landowner notification time period, with only larger, prior notice projects subject to a 45-day notice. Williston claims its suggestion will ensure that those parties affected by major projects, which are more likely to raise landowner concerns, will be afforded additional time, while minor and routine projects will be permitted to move forward faster.

days to the notice periods, for the reasons stated in the NOPR.

### 3. Annual Report on Automatic Authorization Projects

53. Revised §§ 157.208(e)(4)(ii) and (iii) require that the annual report filed for automatic authorization projects document the progress toward restoration and discuss problems or unusual construction issues and corrective actions. INGAA, Duke, and Williston contend that providing this information will be burdensome, especially for large pipelines that might rely on automatic authorization for numerous projects each year, and may require placing additional personnel on site to monitor progress on each project.

54. The Commission has a different perspective. Certificate holders are currently required to comply with all the conditions in § 157.206(b) of the Commission's blanket certificate regulations. Section 157.206(b), in addition to setting forth specific conditions, makes blanket certificate activities subject to the conditions in § 380.15 of the Commission's regulations implementing NEPA, as well as requiring that all blanket certificate activities be consistent with all applicable law implementing the Clean Water Act, the Clean Air Act, and other statutes relating to environmental concerns. Consequently, in order to satisfy all the conditions applicable to blanket certificate activities, it is already necessary for project sponsors (1) to have plans and procedures in place to ensure compliance with environmental conditions, and (2) to have environmental inspectors in place to record a project's construction's compliance with environmental conditions. Hence, the Commission does not view the new § 157.208(e)(4)(ii) and (iii) requirements as asking companies to gather and report new information, but rather, as having companies submit information that they are already obliged to compile. Similarly, to the extent project sponsors find they have to place personnel at construction sites to monitor a project's progress, this does not constitute a new requirement, but rather, is a means to fulfill an ongoing obligation to verify that projects are built in accord with all applicable environmental conditions. Consequently, the Commission adopts the expanded annual reporting requirements.

### 4. Environmental Conditions

#### (a). Noise Levels

##### (1). Compressor Station Site Property Boundary

55. Revised § 157.206(b)(5)(i) states that noise attributable to a compressor station "must not exceed a day-night level ( $L_{dn}$ ) of 55 dBA at the site property boundary." In contrast, the current regulations specify that noise attributable to a compressor station is to be measured "at any pre-existing noise-sensitive area."

56. Duke contends this new noise criterion could compel companies to expand compressor site boundaries, which would add to the cost of new or additional compression and, potentially, an increase in environmental impacts associated with adding acreage to existing and new sites. INGAA argues that compressors were installed in anticipation of meeting noise level requirements as measured at the nearest noise sensitive area, and that it is inequitable to institute this change and compel ratepayers to bear the cost of compliance. Boardwalk objects to the revision. HFP Acoustical asks if compressor noise is to be measured as an average of noise levels at several spots on the perimeter of the property line or if every point on a site's property boundary must meet the 55 dBA standard. HFP Acoustical seeks clarification on whether there will be any acknowledgment of existing sources of noise unrelated to compressor operations.

57. The Commission clarifies that this new noise measurement criterion only applies to facilities placed in service after the effective date of this rule;<sup>36</sup> thus, existing compressor stations continue to be required to meet the 55 dBA standard as measured at pre-existing noise-sensitive areas, not at the site's property boundary. However, any increase in noise due to additions or modifications to an existing compressor station undertaken subsequent to the effective date of this rule will require that the noise attributable to additions or modifications be measured at the site's boundary. The Commission further clarifies that when measuring noise at new stations, the 55 dBA standard must be met at every point on

<sup>36</sup> In enacting the blanket certificate program, the Commission expressed its expectation that any "amendments would most likely not affect facilities constructed or service undertaken before the effective date of an amendment, but would apply prospectively." Order No. 234-A, 47 FR 38871 (Sept. 3, 1982); FERC Stats. & Regs. ¶ 30,389; 20 FERC ¶ 61,271 (1982).

a site's property boundary.<sup>37</sup> Finally, with respect to existing noise levels at the property boundary, the certificate holder will only be responsible for taking measures to reduce noise in excess of the 55 dBA standard that is attributable to the operation of the compressor station.

58. Although existing compressor stations are grandfathered, the Commission concurs with comments that anticipate the new standard may compel companies to extend existing compressor station boundaries if additions or modifications are made that increase noise at the site boundary. However, while this may entail additional costs, the Commission does not view it as adding to adverse environmental impacts. Indeed, overall environmental impacts may diminish, since land within a station boundary is frequently set aside for benign environmental use. Further, the Commission does not accept the contention that this revision will induce the development of new compressor stations, since the cost to mitigate noise attributable to adding compression at an existing site is likely to be less than acquiring a new site.

#### (2). Noise Attributable to Drilling

59. In § 157.206(5)(ii), the Commission establishes the goal that perceived noise from drilling in between 10 p.m. and 6 a.m. be kept at or below 55dBA in any preexisting noise-sensitive area. INGAA contends adherence to this goal would be impractical and costly. In particular, INGAA contends that suspending a horizontal directional drill (HDD) at night to adhere to noise restrictions would be a poor engineering practice, creating a substantial risk of failure. INGAA asks that the Commission (1) clarify the 55 dBA standard only applies if ambient noise at night is below that level; (2) clarify that where the existing noise level is 55 dBA or more, the noise standard be that a new project produces no appreciable increase in the ambient noise; and (3) clarify that mitigation measures may be employed to meet the 55 dBA noise level, such as temporarily relocating occupants of a noise sensitive area.

60. HFP Acoustical asks the Commission to clarify (1) whether the nighttime noise constraint impacts daytime drilling noise standards; (2) whether recirculation or other stabilizing activities could proceed at

night; and (3) whether the reference to nighttime as from 10 p.m. to 6 a.m. should be changed to 10 p.m. to 7 a.m. to conform to the period during which a 10 dBA penalty currently applies. HFP Acoustical suggests that if the Commission intends to set a nighttime noise level limit, it state the limit in terms of the  $L_{eq}$  night or  $L_n$  value, rather than the  $L_{dn}$  value, which covers a 24-hour period.

61. In response to a request by Williston, the Commission clarifies that the noise standard for drilling at night is a goal, not a regulatory requirement. The Commission also clarifies that the § 157.206(5)(ii) reference to "perceived noise from the drilling" has the same meaning as the § 157.206(5)(i) reference to "noise attributable to" compression. Consequently, where the existing ambient noise level at night is below 55 dBA, and drilling activity boosts it above that threshold, the goal is to reduce the level down to 55 dBA; where the ambient noise level at night is above 55 dBA, and drilling activity causes that level to rise, the goal to take action to bring noise back to its pre-drilling level. As an alternative to reducing the noise from drilling, the Commission agrees that appropriate mitigation measures can include temporarily relocating or compensating people residing in areas affected by drilling activities.

62. The Commission acknowledges that reaching the stated goal may involve incurring additional costs, and recognizes that at times the goal may be impractical. Further, reaching the goal should not be achieved at the expense of adding to a project's risk. For example, the Commission does not necessarily expect an ongoing HDD to be suspended at night if the interruption could cause the drill to fail, but does expect project sponsors to explore mitigation measures, such as erecting barriers so that continuous drilling can meet the 55 dBA goal. In response to HFP Acoustical, the Commission clarifies that all activities associated with drilling, such as recirculation or other stabilizing activities, are subject to the noise level goal; the Commission leaves it to the project sponsor's discretion when, during a 24-hour cycle, to undertake a particular activity. The Commission will adopt HFP Acoustical's suggestion and clarify that the nighttime noise goal will apply between the hours of 10 p.m. and 7 a.m., and will be expressed as a nighttime level,  $L_n$ , of 55 dBA.

#### b. Environmental Inspector Report

63. Revised § 157.208(c)(10) requires the project sponsor to commit to have the Environmental Inspector's report

filed weekly with the Commission for prior notice projects. INGAA, Duke, and Williston maintain this is unnecessary given blanket projects' relatively short construction time, and is impractical given that inspectors may not be on site on a weekly basis. INGAA proposes compliance be ensured by having a completion report filed within 30 days of a project's in-service date. INGAA believes this is adequate since the Commission "hotline" is available during construction to resolve allegations of improprieties. Williston suggests weekly reporting only be required when the Commission determines a particular blanket project merits such scrutiny.

64. The Commission does not believe that it can judge whether a particular project merits weekly reporting before the fact, or that its hotline can serve as a means to monitor ongoing construction progress, or that an after-the-fact summary can identify, prevent, or remedy irregularities in construction. The only practical means to monitor compliance with environmental requirements is to monitor progress during construction, hence the existing requirement that an Environmental Inspector be on site during a project's construction. The Commission views revised § 157.208(c)(10) as a clarification of how certificate holders are to verify their fulfillment of this existing obligation. Neither the additional cost or inconvenience of having an inspector available to review construction at multiple small project sites, nor the length of the construction phase of a project, has any bearing on the need for the regulatory requirement that a project sponsor have an inspector present. The Commission notes that an Environmental Inspector need not be an additional individual brought in to review a construction site; this function can be performed by someone on site, provided that individual has been properly trained and charged with inspecting and reporting on compliance with environmental plans and procedures and can perform all the Environmental Inspector's responsibilities.

#### D. Different Rates for Different Customers for the Same Service

65. In the NOPR, the Commission expressed the belief that its existing policies permit a project sponsor to offer a rate incentive as an inducement to get customers to commit to a proposed project early (*i.e.*, "foundation shippers"), while offering a less favorable rate to customers that commit later. Few comments take issue with the Commission's conclusion.

<sup>37</sup> As a practical matter, the Commission expects noise readings to be taken at the boundary closest to the compressors or where noise is estimated to be loudest and at the site's ordinal points.

66. However, Process Gas Consumers stress the need for procedural fairness, *e.g.*, that all prospective customers receive the same notice of a proposal, so as to preclude parties from making private bi-lateral agreements in advance of a public offer of new capacity. Boardwalk asks that pipelines be permitted to set rules for open seasons, provided there is no discrimination in the announcement and application of the rules. The Commission affirms that there must be no discrimination in announcing an open season for new capacity and in accepting bids—all potential customers must have an equal opportunity to obtain firm capacity. Provided this condition holds, a project sponsor has the flexibility to set the parameters of the open season.

67. In the NOPR, the Commission observed that:

[u]nder the Petitioners' proposal, the rate incentives a project sponsor offers to obtain early commitments to a project will be based solely on the timing of each shipper's contractual commitment to the project. However, the Commission can envision that different project sponsors may prefer to offer rate incentives based on something other than the timing of contractual commitments. Because Commission policies permit rate differentials among customers based on a number of grounds—including differing elasticities of demand, volumes to be transported, and length of service commitments—a project sponsor might wish to offer preferential rates to shippers who contract for larger volumes of service.<sup>38</sup>

APGA challenges the Commission's conclusion that it is appropriate to permit project sponsors to offer preferential rates to customers willing to commit to greater capacity. APGA argues this is unfair because "a large LDC that gets a preferential rate can, for example, compete for new loads by offering lower delivery rates than the smaller LDC despite that fact that both entities committed for capacity at the same time."<sup>39</sup>

68. The Commission stresses that the foregoing discussion in the NOPR regarding rates constitutes a statement of the Commission's existing policies and practices and this rulemaking proceeding does not contemplate altering existing policies, practices, or regulations affecting rates. Indeed, with respect to rates, the Commission emphasized it did not intend to disturb the status quo, stating that:

[g]iven the variety of rate incentives that might be offered consistent with Commission

policy, the Commission believes it would be premature to go beyond our general finding above and seek to itemize every rate incentive that might be offered in an open season without risk of undue discrimination. Instead, the Commission prefers to review different rate incentives on a case-by-case basis.<sup>40</sup>

Thus, in the NOPR, the Commission made no determination beyond its general observation that currently there are a variety of rate incentives available to project sponsors to induce potential customers to commit to a new proposal. As one such incentive, quantity can be a legitimate basis for awarding new capacity at a lower rate during an open season. When a project sponsor is weighing market conditions in order to determine whether to invest in the construction of a new pipeline or storage field, a lower rate bid by a potential customer can nevertheless represent a significant incentive for the company to go forward with the project if the customer is willing to commit at an early stage to a large quantity.

69. Given the fact-specific circumstances associated with a particular project proposal, the Commission stated its intent to review rate incentives on a case-by-case basis. If APGA believes a project sponsor has employed an unduly discriminatory rate preference in a particular case, APGA may raise this issue in the case in question, and the Commission will address the merits of the matter in the context of that case.

70. As a general observation, a project sponsor can diminish its risk of being charged with undue discrimination if its announcement of an open season clearly specifies the parameters of the bidding provisions and the available rate options so that all potential customers have an equal opportunity to sign up for new service. For example, in their petition, INGAA and NGSA describe the eligibility standard for Group I foundation shippers variously as (1) the date established in the open season for executing contracts or (2) the date the project sponsor makes a "go/no go" decision for the project. The first date would appear to involve less risk of discrimination, since it would be announced and set at the start of the open season, whereas the second date appears to give the project sponsor considerable discretion as to when to terminate eligibility for Group I.

#### E. Additional Regulatory Revisions

71. To implement the above revisions, the Commission will make the following

minor conforming revisions: (1) § 157.203(b) of the Commission's regulations is expanded to reference automatically authorized storage remediation and maintenance projects under § 157.213(a); (2) § 157.203(c) of the Commission's regulations is expanded to reference prior notice blanket projects under §§ 157.210, .212, and 213(b);<sup>41</sup> (3) § 157.205(a) of the Commission's regulations is expanded to reference prior notice blanket projects under §§ 157.210, .212, and 213(b); (4) § 157.207 of the Commission's regulations is expanded to reference automatically authorized storage remediation and maintenance projects under § 157.213(a); and (5) § 157.216 of the Commission's regulations is expanded to provide for abandonment of facilities described by the expanded blanket certificate authority.

#### IV. Information Collection Statement

72. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.<sup>42</sup> Therefore, the Commission is providing notice of its information collections to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.<sup>43</sup> Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. The only entities affected by this rule would be the natural gas companies under the Commission's jurisdiction. The information collection requirements in this Final Rule are identified as follows:

73. FERC-537, "Gas Pipeline Certificates: Construction, Acquisition and Abandonment," identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under NGA section 7 is required, and includes all blanket certificate projects.

74. FERC-577, "Gas Pipeline Certificates: Environmental Impact Statements," identifies the Commission's information collections relating to the requirements set forth in NEPA and Parts 2, 157, 284, and 380 of the Commission's regulations. Applicants have to conduct appropriate studies which are necessary to determine the impact of the construction and operation of proposed

<sup>38</sup> 71 FR 36276 at 36289 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,894 (2006); 115 FERC 61,338 at P 101 (2006) (footnote omitted). *See, e.g., Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272 at P 69-73 (2006).

<sup>39</sup> APGA's Comments at 12 (Aug. 25, 2006).

<sup>40</sup> 71 FR 36276 at 36289 (June 26, 2006); FERC Stats. & Regs. ¶ 32,606 at 32,894 (2006); 115 FERC ¶ 61,338 at P 102 (2006).

<sup>41</sup> The revisions to 18 CFR 157.203 clarify, in response to a question raised by Dominion, that all the provisions of this section apply to projects proceeding under 18 CFR 157.210, .212, and .213.

<sup>42</sup> 5 CFR 1320.11 (2006).

<sup>43</sup> 44 U.S.C. 3507(d) (2005).

jurisdictional facilities on human and natural resources, and the measures which may be necessary to protect the values of the affected area. These information collection requirements are mandatory.

75. Because the expansion of the blanket certificate program will permit projects that are now processed under the case-specific NGA section 7(c) procedures to go forward under the streamlined blanket certificate program, although the burden under the

expanded blanket certificate program will increase, the overall burden on the industry will decrease. The Commission estimates that the total annual hours for the blanket certificate program burden will increase by 7,727, whereas the total annual hours associated with case-specific application projects will decrease by 11,997. This represents an overall reduction of 4,270 hours. The Commission did not receive specific comments concerning the burden estimates in the NOPR, and uses the

same estimates in this Final Rule. Several commenters did indicate that providing information for the Annual Report on Automatic Authorization Projects would be burdensome. However, as explained herein, the Commission believes that much of this information is already required to be compiled and therefore to report it to the Commission will not result in additional burdens to certificate holders.

Data collection	Number of respondents	Number of responses/ filings	Number of hours per response	Total annual hours
FERC-537 (Part 157) .....	76	206	- 42.02	7,727
FERC-577 (Part 380) .....	76	- 62	193.50	- 11,997

*Information Collection Costs:* The above hours reflect the total blanket certificate program reporting burden as expanded. Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical and support) the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is anticipated to be \$2,748,900, an amount that is \$640,500 less than the current estimated cost.

*Title:* FERC-537 and FERC-577.

*Action:* Proposed Data Collection.

*OMB Control Nos.:* 1902-0060 and 1902-0128.

*Respondents:* Natural gas pipeline companies.

*Frequency of Responses:* On occasion.

*Necessity of Information:* Submission of the information is necessary for the Commission to carry out its NGA statutory responsibilities and meet the Commission's objectives of expediting appropriate infrastructure development to ensure sufficient energy supplies while addressing landowner and environmental concerns fairly. The information is expected to permit the Commission to meet the request of the natural gas industry, as expressed in the INGAA and NGA petition, to improve the industry's ability to ensure adequate infrastructure is added in time to meet increased market demands. By expanding the scope and scale of the blanket certificate program, the industry is provided a streamlined means to build new and maintain existing infrastructure.

76. Interested persons may obtain information on the reporting

requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202-502-8415, or by e-mail to *michael.miller@ferc.gov*). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, by fax to 202-395-7285, or by e-mail to *oira\_submission@omb.eop.gov*.) (Re: OMB control nos. 1902-0060 and 1902-0128.)

**V. Environmental Analysis**

77. The Commission is required to prepare an environmental assessment (EA) or an environmental impact statement (EIS) for any action that may have a significant adverse effect on the human environment.<sup>44</sup> In 1982, in promulgating the blanket certificate program, the Commission prepared an EA in which it determined that, subject to compliance with the standard environmental conditions, projects under the blanket program would not have a significant environmental impact. As a result, the Commission determined that automatic authorization projects would be categorically excluded from the need for an EA or EIS under § 380.4 of the Commission's regulations. However, the Commission specified that prior notice projects should be subject an EA to ensure each individual project would be environmentally benign. For the reasons set forth below, the Commission continues to believe this would be the

case under the blanket certificate program as modified by this rule.

78. First, the monetary limits on projects are simply being adjusted to account for inflationary effects which were not completely captured under the mechanism specified in the regulations (the gross domestic product implicit price deflator as determined by the Department of Commerce). As a result, the scale of projects which will be within the new cost limits will be comparable to those projects that were allowed when the blanket program was first created. Second, but for certain storage remediation and maintenance projects, all the additional types of projects permitted under the expanded blanket program will be subject to the prior notice provisions and will be subject to an EA. Finally, this Final Rule strengthens the standard environmental conditions applicable to all blanket projects. Therefore, the rule does not constitute a major federal action that may have a significant adverse effect on the human environment.

**VI. Regulatory Flexibility Act Analysis**

79. The Regulatory Flexibility Act of 1980 (RFA)<sup>45</sup> generally requires a description and analysis of regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if regulations would not have such an effect.<sup>46</sup> Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as "a small entity" if it has annual revenues of \$6.5 million or less. Most companies regulated by the Commission do not fall

<sup>44</sup> Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>45</sup> 5 U.S.C. 601-612 (2005).

<sup>46</sup> 5 U.S.C. 605(b) (2005).

within the RFA's definition of a small entity.<sup>47</sup>

80. The procedural modifications should have no significant economic impact on those entities—be they large or small—subject to the Commission's regulatory jurisdiction under NGA section 3 or 7, and no significant economic impact on state agencies. Accordingly, the Commission certifies that the revised regulations will not have a significant economic impact on a substantial number of small entities.

VII. Document Availability

81. 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 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. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available in eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type RM06-7 in the docket number field.

82. User assistance is available for eLibrary and the Commission's Web site during normal business hours at (202) 502-8222 or the Public Reference Room at (202) 502-8371 Press 0, TTY (202) 502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov.

VIII. Effective Date and Congressional Notification

This Final Rule will take effect January 2, 2007. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>48</sup> The Commission will submit this Final Rule to both houses of Congress and the Government Accountability Office.<sup>49</sup>

<sup>47</sup> 5 U.S.C. 601(3) (2005) citing to section 3 of the Small Business Act, 15 U.S.C. 623 (2005). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

<sup>48</sup> See 5 U.S.C. 804(2) (2005).

<sup>49</sup> See 5 U.S.C. 801(a)(1)(A) (2005).

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements

By the Commission.

Magalie R. Salas, Secretary.

In consideration of the foregoing, the Commission amends part 157, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w.

2. In § 157.6, paragraph (d)(2)(i) is revised to read as follows:

§ 157.6 Applications; general requirements.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) Is directly affected (i.e., crossed or used) by the proposed activity, including all facility sites (including compressor stations, well sites, and all above-ground facilities), rights of way, access roads, pipe and contractor yards, and temporary workspace;

\* \* \* \* \*

3. In § 157.203,

a. In paragraph (b), the phrase "§ 157.213(a)," is added immediately after the phrase "§ 157.211(a)(1),";

b. In paragraph (c), the phrase "§ 157.210," is added immediately after the phrase "§ 157.208(b)," and the phrase "§ 157.212, § 157.213(b)," is added immediately after the phrase "§ 157.211(a)(2),";

c. In paragraph (d)(1) introductory text, the phrase "30 days" is removed and the phrase "45 days" is added in its place, and the phrase "30-day" is removed and the phrase "45-day" is added in its place;

d. In paragraph (d)(1)(ii), the phrase "; and" is removed and a semi-colon is added in its place;

e. Paragraph (d)(1)(iii) is redesignated as paragraph (d)(1)(iv) and a new paragraph (d)(1)(iii) is added;

f. Paragraphs (d)(2)(i) and (d)(2)(ii) are revised;

g. In paragraph (d)(2)(iii), the word "and" is removed;

h. Paragraph (d)(2)(iv) is redesignated as paragraph (d)(2)(vi), and the phrase

"45 days" is removed and the phrase "60 days" is added its place, and the final period is removed and the phrase "; and" is added in its place;

i. Paragraphs (d)(2)(iv) and (d)(2)(v) are added; and

j. A new paragraph (d)(2)(vii) is added to read as follows:

§ 157.203 Blanket certification.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) A description of the company's environmental complaint resolution procedure that must:

(A) Provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems and concerns during construction of the project and restoration of the right-of way;

(B) Provide a local or toll-free phone number and a name of a specific person to be contacted by landowners and with responsibility for responding to landowner problems and concerns, and who will indicate when a landowner should expect a response;

(C) Instruct landowners that if they are not satisfied with the response, they should call the company's Hotline; and

(D) Instruct landowners that, if they are still not satisfied with the response, they should contact the Commission's Enforcement Hotline.

\* \* \* \* \*

(2) \* \* \*

(i) A brief description of the company and the proposed project, including the facilities to be constructed or replaced and the location (including a general location map), the purpose, and the timing of the project and the effect the construction activity will have on the landowner's property;

(ii) A general description of what the company will need from the landowner if the project is approved, and how the landowner may contact the company, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;

\* \* \* \* \*

(iv) A general description of the blanket certificate program and procedures, as posted on the Commission's Web site at the time the landowner notification is prepared, and the link to the information on the Commission's Web site;

(v) A brief summary of the rights the landowner has in Commission proceedings and in proceedings under the relevant eminent domain rules; and

\* \* \* \* \*

(vii) The description of the company's environmental complaint resolution

procedure as described in paragraph (d)(1)(iii) of this section.

\* \* \* \* \*

■ 4. In § 157.205:

■ a. In paragraph (a) introductory text, the phrase “§ 157.210,” is added immediately after the phrase “§ 157.208(b),” and the phrase “§ 157.212, § 157.213(b),” is added immediately after the phrase “§ 157.211(a)(2),” and

■ b. In paragraph (d)(1), the phrase “45 days” is removed and the phrase “60 days” is added in its place.

■ 5. In § 157.206, paragraph (b)(5) is revised to read as follows:

**§ 157.206 Standard conditions.**

\* \* \* \* \*

(b) \* \* \*

(5)(i) The noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night level ( $L_{dn}$ ) of 55 dBA at the site property boundary.

(ii) Any horizontal directional drilling or drilling of wells which will occur between 10 p.m. and 7 a.m. local time must be conducted with the goal of keeping the perceived noise from the drilling at any pre-existing noise-sensitive area (such as schools, hospitals, or residences) at or below a night level ( $L_n$ ) of 55 dBA.

\* \* \* \* \*

■ 6. In § 157.207, paragraphs (c), (d), (e), (f), (g), and (h) are redesignated, respectively, as paragraphs (d), (e), (f), (g), (h), and (i), and a new paragraph (c) is added to read as follows:

**§ 157.207 General reporting requirements.**

\* \* \* \* \*

(c) For each underground natural gas storage facility remediation and maintenance activity authorized under § 157.213(a), the information required by § 157.213(d);

\* \* \* \* \*

■ 7. In § 157.208,

■ a. Paragraph (c)(9) is revised;

■ b. Paragraph (c)(10) is added;

■ c. In paragraph (d), Table I, “Year 2006,” in column 1, titled “Automatic project cost limit,” the phrase “8,200,000” is removed and the phrase “9,600,000” is added in its place, and in column 2, titled “Prior notice project cost limit,” the phrase “22,700,000” is removed and the phrase “27,400,000” is added in its place; and

■ d. Paragraph (e)(4) is redesignated as (e)(4)(i) and paragraphs (e)(4)(ii) through (e)(4)(iv) are added to read as follows:

**§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.**

\* \* \* \* \*

(c) \* \* \*

(9) A concise analysis discussing the relevant issues outlined in § 380.12 of this chapter. The analysis must identify the existing environmental conditions and the expected significant impacts that the proposed action, including proposed mitigation measures, will cause to the quality of the human environment, including impact expected to occur to sensitive environmental areas. When compressor facilities are proposed, the analysis must also describe how the proposed action will be made to comply with applicable State Implementation Plans developed under the Clean Air Act. The analysis must also include a description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, National Historic Preservation Act and the Coastal Zone Management Act. Include a copy of the agreements received for compliance with the Endangered Species Act, National Historic Preservation Act, and Coastal Zone Management Act, or if no written concurrence is issued, a description of how the agency relayed its opinion to the company. Describe how drilling for wells or horizontal direction drilling would be designed to meet the goal of limiting the perceived noise at NSAs to an  $L_{dn}$  of 55 dBA or what mitigation would be offered to landowners.

(10) A commitment to having the Environmental Inspector’s report filed every week.

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(ii) Documentation, including images, that restoration of work areas is progressing appropriately;

(iii) A discussion of problems or unusual construction issues, including those identified by affected landowners, and corrective actions taken or planned; and

(iv) For new or modified compression, a noise survey verifying compliance with § 157.206(b)(5).

\* \* \* \* \*

■ 8. Section 157.210 is added to read as follows:

**§ 157.210 Mainline natural gas facilities.**

Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, construct, modify, replace, and operate natural gas mainline facilities,

including compression and looping, that are not eligible facilities under § 157.202(b)(2)(i). The cost of a project may not exceed the cost limitation provided in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

■ 9. Sections 157.212 and 157.213 are added to read as follows:

**§ 157.212 Synthetic and liquefied natural gas facilities.**

Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, construct, modify, replace, and operate natural gas facilities that are used to transport either a mix of synthetic and natural gas or exclusively revaporized liquefied natural gas and that are not “related jurisdictional natural gas facilities” as defined in § 153.2(e) of this chapter. The cost of a project may not exceed the cost limitation provided in column 2 of Table I in § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

**§ 157.213 Underground storage field facilities.**

(a) *Automatic authorization.* If the project cost does not exceed the cost limitations provided in column 1 of Table I in § 157.208(d), the certificate holder may acquire, construct, modify, replace, and operate facilities for the remediation and maintenance of an existing underground storage facility, provided the storage facility’s certificated physical parameters—including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity remain unchanged—and provided compliance with environmental and safety provisions is not affected. The certificate holder must not alter the function of any well that is drilled into or is active in the management of the storage facility. The certificate holder must not segment projects in order to meet this cost limitation.

(b) *Prior Notice.* Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, construct, modify, replace, and operate natural gas underground storage facilities, provided the storage facility’s certificated physical parameters—including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity, including injection and withdrawal capacity, remain unchanged—and provided compliance with environmental and safety provisions is not affected unchanged.

The cost of a project may not exceed the cost limitation provided in column 2 of Table I in § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

(c) *Contents of request.* In addition to the requirements of §§ 157.206(b) and 157.208(c), requests for activities authorized under paragraph (b) of this section must contain, to the extent necessary to demonstrate that the proposed project will not alter a storage reservoir's total inventory, reservoir pressure, reservoir or buffer boundaries, or certificated capacity, including injection and withdrawal capacity:

(1) A description of the current geological interpretation of the storage reservoir, including both the storage formation and the caprock, including summary analysis of any recent cross-sections, well logs, quantitative porosity and permeability data, and any other relevant data for both the storage reservoir and caprock;

(2) The latest isopach and structural maps of the storage field, showing the storage reservoir boundary, as defined by fluid contacts or natural geological barriers; the protective buffer boundary; the surface and bottomhole locations of the existing and proposed injection/withdrawal wells and observation wells; and the lengths of open-hole sections of existing and proposed injection/withdrawal wells;

(3) Isobaric maps (data from the end of each injection and withdrawal cycle) for the last three injection/withdrawal seasons, which include all wells, both inside and outside the storage reservoir and within the buffer area;

(4) A detailed description of present storage operations and how they may change as a result of the new facilities or modifications. Include a detailed discussion of all existing operational problems for the storage field, including but not limited to gas migration and gas loss;

(5) Current and proposed working gas volume, cushion gas volume, native gas volume, deliverability (at maximum and minimum pressure), maximum and minimum storage pressures, at the present certificated maximum capacity

or pressure, with volumes and rates in MMcf and pressures in psia;

(6) The latest field injection/withdrawal capability studies including curves at present and proposed working gas capacity, including average field back pressure curves and all other related data;

(7) The latest inventory verification study for the storage field, including methodology, data, and work papers;

(8) The shut-in reservoir pressures (average) and cumulative gas-in-place (including native gas) at the beginning of each injection and withdrawal season for the last 10 years; and

(9) A detailed analysis, including data and work papers, to support the need for additional facilities (wells, gathering lines, headers, compression, dehydration, or other appurtenant facilities) for the modification of working gas/cushion gas ratio and/or to improve the capability of the storage field.

■ 10. In § 157.216:

■ a. Paragraph (a)(2) is amended by adding the phrase “or § 157.213(a)” immediately after the phrase “§ 157.211”;

■ b. Paragraph (b)(2) is amended by adding the phrase “or a facility constructed under § 157.210, § 157.212, or § 157.213(b),” immediately after the phrase “paragraph (a)(2) of this section,”; and

■ c. Paragraph (c)(5) is amended by adding, at the end, the phrase “and a concise analysis discussing the relevant issues outlined in § 380.12 of this chapter.”

[FR Doc. E6-18027 Filed 10-30-06; 8:45 am]

BILLING CODE 6717-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2005-0557e; FRL-8225-7]

**Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on February 1, 2006 and concern volatile organic compound (VOC) emissions from organic liquid storage and transfer facilities. We are approving YSAQMD Rule 2.21 that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**EFFECTIVE DATE:** This rule is effective on November 30, 2006.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2005-0557e for this action. The index to the docket is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wamsley, EPA Region IX, at either (415) 947-4111, or [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

**I. Proposed Action**

On February 1, 2006 (71 FR 5172), EPA took direct final action with a concurrent proposal to approve the following rule into the California SIP.

Local agency	Rule	Rule title	Adopted	Submitted
YSAQMD .....	2.21	Organic Liquid Storage & Transfer .....	09/14/05	10/20/05

We took direct final action to approve this rule because we determined that it complied with the relevant CAA requirements and we did not expect adverse public comment. Our direct

final action contains more information on this rule and our evaluation.

However, we did receive adverse public comments on our direct final approval action. Consequently, we withdrew our direct final action on

April 11, 2006 (see 71 FR 18219). Our February 1, 2006 concurrent proposed action (see 71 FR 5211) provides the basis for today's final action.