DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM09–2–000; Order No. 735]

Contract Reporting Requirements of Intrastate Natural Gas Companies

May 20, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Commission revises the contract reporting requirements for those natural gas pipelines that fall under the Commission’s jurisdiction pursuant to section 311 of the Natural Gas Policy Act or section 1(c) of the Natural Gas Act. The Final Rule revises § 284.126(b) and replaces Form No. 549—Intrastate Pipeline Annual Transportation Report with the new Form No. 549D—Quarterly Transportation and Storage Report for Intrastate Natural Gas and Hinshaw Pipelines. The Final Rule makes changes so as to increase the reporting frequency from annual to quarterly, include certain additional types of information and cover storage transactions as well as transportation transactions, establish a procedure for the Form No. 549D reports to be filed in a uniform electronic format and posted on the Commission’s Web site, and hold that those reports must be public and may not be filed with information redacted as privileged. The Commission is also modifying its policy concerning periodic reviews of the rates charged by section 311 and Hinshaw pipelines to extend the cycle for such reviews from 3 years to 5 years.

DATES: Effective Date: This rule will become effective April 1, 2011.

FOR FURTHER INFORMATION CONTACT:


SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Order No. 735

Final Rule

Issued May 20, 2010.

I. Introduction and Summary

1. In this Final Rule, the Commission revises the contract reporting requirements for (1) intrastate natural gas pipelines providing interstate transportation service pursuant to section 311 of the Natural Gas Policy Act or section 1(c) of the NGA. For consistency, this Final Rule also reopens until June 25, 2010.

Accordingly, the comment period is re-opened until June 25, 2010.

Issued in Washington, DC, on May 20, 2010.

Frederick E. Tilton, Federal Air Surgeon.

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Act of 1978 (NGPA)\(^2\) and (2) Hinshaw pipelines providing interstate service subject to the Commission’s Natural Gas Act (NGA) section 1(c) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission’s regulations.\(^3\) The revised reporting requirements are intended to increase market transparency, without imposing unduly burdensome requirements on the pipelines. Specifically, the Final Rule revises § 284.126(b) and replaces Form No. 549—Intrastate Pipeline Annual Transportation Report with the new Form No. 549D, so as to (1) increase the reporting frequency from annual to quarterly, (2) include certain additional types of information and cover storage transactions as well as transportation transactions,\(^4\) (3) establish a procedure for Form No. 549D to be filed in a uniform electronic format and posted on the Commission’s Web site, and (4) hold that those reports must be public and may not be filed with information redacted as privileged. The Commission is also modifying its policy concerning periodic reviews of the rates charged by section 311 and Hinshaw pipelines to extend the cycle for such reviews from 3 years to 5 years.

II. Background

A. Current Reporting Requirements

2. NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport natural gas “on behalf of” interstate pipelines or local distribution companies served by interstate pipelines “under such terms and conditions as the Commission may prescribe.”\(^5\) NGPA section 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission’s NGA jurisdiction. Congress adopted these provisions in order to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market. Such entry eliminates the need for duplication of facilities between interstate and intrastate pipelines.\(^5\) Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates, authorizing them to transport natural gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.\(^7\)

3. Subpart C of the Commission’s Part 284 open access regulations (18 CFR § 284.121–126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. Those regulations require that intrastate pipelines performing interstate service under NGPA section 311 must do so on an open access basis.\(^8\) However, consistent with the NGPA’s goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines.\(^9\) For example, when the Commission first adopted the Part 284 open access regulations in Order No. 436, the Commission exempted intrastate pipelines from the requirement that they offer open access service on a firm basis.\(^10\) The Commission found that requiring intrastate pipelines to offer firm service to out-of-state shippers could discourage them from providing any interstate service, because such a requirement could progressively turn the intrastate pipeline into an interstate pipeline against its will and against the will of the responsible state authorities. Similarly, Order No. 636–B exempted intrastate pipelines from the requirements of Order No. 636.\(^11\) Those requirements included capacity release, electronic bulletin boards (now Internet Web sites), and flexible receipt and delivery points.

4. Section 284.224 of the regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service “to the same extent that, and in the same manner” as intrastate pipelines are authorized to perform such service by Subpart C.

5. The Commission currently has less stringent transactional reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines, than for interstate pipelines. In Order No. 637,\(^12\) the Commission revised the reporting requirements for interstate pipelines in order to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination. As adopted by Order No. 637, § 284.13(b) requires interstate pipelines to post on their Internet Web sites basic information on each transportation and storage transaction with individual shippers, including revisions to a contract, no later than the first nomination under a transaction. This information includes:

- The name of the shipper.
- The contract number (for firm service).
- The rate charged.
- The maximum rate.
- The duration (for firm service).
- The receipt and delivery points and zones covered.
- The quantity of natural gas covered.
- Any special terms or details, such as any deviations from the tariff.
- Whether any affiliate relationship exists.

6. Section 284.13(c) of the Commission’s regulations also requires interstate pipelines to file with the Commission on the first business day of each calendar quarter an index of its firm transportation and storage customers and to publish the same information on their Web sites. The information required to be included in the Index of Customers does not include the rates paid by the customers. Section 284.13(c) requires interstate pipelines to file semi-annual reports of their storage injection and withdrawal activities, including the identities of the

customers, the volumes injected into and withdrawn from storage for each customer and the unit charge and total revenues received. Order No. 637 did not modify the reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines provided in § 284.126(b) and (c) of the Commission’s regulations.

7. Section 284.126(b) of the Commission’s regulations requires intrastate pipelines to file with the Commission annual reports of their transportation transactions, but not their storage transactions. Those Form No. 549 reports must include the following information:

- The name of the shipper receiving transportation service.
- The type of service performed (i.e., firm or interruptible).
- The total volumes transported for the shipper, including for firm service a separate statement of reservation and usage quantities.
- Total revenues received for the shipper, including for firm service a separate statement of reservation and usage revenues.

8. Unlike the interstate pipelines’ reporting requirement (§ 284.13(b)), the current version of § 284.126(b) does not require intrastate pipelines to include in these Form No. 549 reports the rate charged under each contract, the duration of the contract, the receipt and delivery points and zones or segments covered by each contract, whether the contract includes any special terms and conditions, and whether there is an affiliate relationship between the pipeline and the shipper.

9. Section 284.126(c) requires Section 311 intrastate pipelines and Hinshaw pipelines to file Form No. 537, a semi-annual report of their storage activity, within 30 days of the end of each complete storage and injection season. This requirement is substantially the same as the § 284.13(e) requirement that interstate pipelines file semi-annual reports of their storage activity.

B. The NOPR

10. In November 2008, the Commission issued a Notice of Inquiry (NOI), requesting comments on whether the Commission should impose additional reporting requirements on NGPA section 311 intrastate pipelines and on Hinshaw pipelines.13 The NOI stated that, in a contemporaneous order, the Commission was denying a request by interstate storage provider with market based rates for waiver of the

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14 SG Resources Mississippi, L.L.C. (SGRM).
15 SGRM, 125 FERC ¶ 61,191 (2008).
transitional reports so that shippers and others can monitor NGPA section 311 transactions for undue discrimination is well within the Commission’s broad conditioning authority under § 311(c).

B. Comments

17. TPA claims that the Commission lacks statutory authority to enact the proposed regulations, arguing that “Congressional intent was that transactions under NGPA Section 311 are to be subjected to minimal regulation.” Enexog, along with TPA, adds that the proposed reporting requirements are “in direct contravention of Section 311 of the NGA and the legislative intent,” because compliance would be “unduly burdensome,” and because disclosure would harm the pipelines’ business position.

18. Other commenters, citing the legislative history of the NGPA, argue that the proposed regulations are lawful. Clayton Williams states that “to the extent the intrastate pipeline is involved in an authorized” interstate transaction, the Commission has jurisdiction to review that transaction. Similarly, Texas Alliance argues that claims of undue burden are too conclusory, and that the NGPA’s jurisdiction is actually based on whether a given activity of a Section 311 pipeline is interstate or intrastate. Clayton Williams argues that it is the purpose of Section 311 to “help integrate gas markets,” and that “reasonable rules have always been part of the 311 world.” Further, Apache argues for even more frequent and detailed reporting, stating, “the Commission has jurisdiction and discretion to require * * * [intrastate] pipelines to report the same information during the same time frame about natural gas transactions that the interstate pipelines are required to report.” Apache reasons “that interstate pipelines and Section 311 and Hinshaw pipelines are held to the same prohibition on undue discrimination,” so the transparence regulations necessary to ensure compliance should be the same as well.

C. Commission Determination

19. The Commission’s statutory authority to impose reporting requirements on Section 311 pipelines derives from NGPA section 311(c), which states, “any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.” This blanket authority is well-established as the ground for the previous reporting requirements for Form No. 549. As the Commission reasoned in the rulemaking establishing a previous version of this reporting requirement, “section 311 tasks the Commission with the responsibility to ensure rates and charges are fair and equitable. For the Commission to carry out this responsibility, it is important for rates charged to be reported.” None of the commenters in this docket challenge the legality of the previous reporting requirements. The new reporting requirements are not so different in scope or burden as to generate serious questions about the Commission’s long-established statutory authority to require transactional reporting.

20. TPA’s characterization that the NGPA limits the Commission to “minimal regulation” is misleading and unsupported. While Congress sought to encourage intrastate pipelines to participate in the interstate transportation market by enabling them to do so without bearing the burden of full Commission regulation under the NGA, this does not mean that Commission regulation under NGPA section 311 was to be minimal. In Associated Gas Distributors v. FERC, the court affirmed the Commission’s use of its NGPA section 311(c) conditioning authority to impose conditions necessary to assure that Section 311 intrastate pipelines do not engage in undue discrimination. The court also stated that the Commission has been correct in its belief that under § 311 it should assert the traditional regulatory approach in areas where it is needed to protect the public from market dominance by natural gas companies. Requiring intrastate pipelines to file quarterly transactional reports to permit the Commission, shippers, and others to monitor for undue discrimination is fully within the scope of this conditioning authority.

21. While the Commission will consider the burden question in more detail below, commenters have provided no persuasive evidence that the Final Rule is somehow so burdensome as to be beyond Commission’s jurisdiction. As compared to the requirements for interstate pipelines, the Final Rule is limited in the scope of the reports, the burden of publishing a report, and the frequency of the reports. As discussed below, the Commission held itself to these limitations so that the § 284.126(b) requirements should remain lighter than the § 284.13(b) interstate requirements and so that the value of the increased flow of information exceeds the increased burden of reporting. Any further lightening would risk undermining the Final Rule’s ability to increase transparency and improve the functioning of the transportation market.

IV. Need for the Rule

A. NOPR

22. Upon review of the comments received in response to the NOI, the Commission held that its primary goal in revising the transactional reporting requirements for intrastate and Hinshaw pipelines would be to increase market transparency. As the Commission reasoned, “[t]ransactional information provides price transparency so shippers can make informed purchasing decisions, and also permits both shippers and the Commission to monitor actual transactions for evidence of possible abuse of market power or undue discrimination.” The Commission found that certain types of additional information should be published in order to enable shippers, other market participants, and the Commission to determine the extent to which particular transactions are comparable to one another, a prerequisite for determining the rights of similarly situated shippers and for detecting undue discrimination.

23. The Commission stated in the NOPR that it “believes that the revised reporting requirements * * * avoid[] unduly burdensome requirements that might discourage * * * participating in the interstate market.” In proposing
the frequency, content, and format of the reports, the Commission sought the best balance of minimizing the reporting burden and maximizing the competitive effects on the markets. For example, the Commission proposed to host reporting data on its own Web site, and encouraged intrastate pipelines to comment on the preferred file format, in order to help the Commission lessen the information technology burden for pipelines.36

B. Comments

24. Several intrastate pipelines argue that the Commission failed to identify sufficiently compelling reasons for revising the reporting requirements. These commenters argue that further transparency is unnecessary, or that the proposal would have little practical benefit.37 Enogex, for example, argues that “[i]n view of the minimal amount of concern expressed by interstate pipelines * * * the Commission should have terminated this proceeding.”38 AOG suggests that the Commission should, if not abandon the proposal, at least “more narrowly tailor[ it] to address a perceived problem [regarding] * * * transparency.”39 TPA claims that further transparency in the section 311 and Hinshaw transportation and storage markets is not needed because the United States’ natural gas commodity sales hubs are the most price-transparent in the world.40 TPA further complains that commenters have yet to “cite [any specific examples of adverse market impacts]” from the status quo, and “no entity has asked the Commission to expand the Section 311 reporting requirements to increase transparency,” and is therefore “not reasoned decision making.”41

25. Several pipelines argue that the new regulations place them at a competitive disadvantage compared to pipelines that only operate under the NGA or under state jurisdiction, or compared to shippers. Similarly, several pipelines complain that the current proposal could be too burdensome, potentially causing some pipelines to abandon the Section 311 or Hinshaw markets.42

26. Enogex and Enstor contend that the proposed reporting requirements would harm NGPAs section 311 storage providers with market-based rates. Enogex argues that letting competitors see its rate information would limit its own ability to “capture rates”, calling it “tantamount to rescinding market-based rate authority.”44 Enogex asserts the Commission should at least exempt storage services provided at market-based rates.

Enogex argues that sufficient public information already exists on storage services, and that the Commission has stated when it authorizes market-based rates that such providers lack market power, thus reducing the need for regulatory scrutiny.45 Enstor is also concerned that the proposed reporting requirements, particularly the requirement to report quarterly revenues received from each storage customer, would allow customers to “recreate the storage positions that resulted in another customer receiving favorable rates.”46 Shippers, Enstor argues, should not have more information about the pipeline than the pipeline has about its shippers.

27. Atmos goes further, warning “of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.”47

28. Other commenters, however, applaud the NOPR, arguing that the information sought in the reports would help enable the market to function more efficiently. Cities, Clayton Williams, and Texas Alliance ask the Commission to expand reporting requirements in order to provide greater transparency, especially in the Texas market.48 Cities and others contend that this “lack of competition in the intrastate pipeline market in Texas” could be ameliorated by “making information and records available both to the public and to shippers.”49 For example, Clayton Williams provides a detailed narrative suggesting that it could have pursued allegations that a pipeline has been engaging in unlawful business practices, if only it had more publicly available information to support its allegation.50

29. These commenters further argue that lack of transparency harms the integrity of national price indices,51 and that the Commission’s proposed new regulations will help state-level transparency, and thus state-level markets, as well.52 Apache also responds to TPA’s argument that interstate pipelines have not sought out the proposed regulation: “It can be expected that most interstate pipelines would hope to levelize the playing field by eliminating regulation for all pipelines, rather than increasing regulation for all.”53 However, Apache urges, new regulations are warranted based on the expected usefulness of improved access to market information. 30. These commenters also argue that publicly available data is vital to eliminate unfair advantages.54 For example, Apache argues that intrastate and interstate pipelines both face the same economic environment and therefore should report the same information.55 Constellation argues that existing regulations harm the market by leaving shippers without enough information to “make fully informed purchasing decisions.”56 Texas Alliance and Clayton Williams, likewise, argue that transparency helps limit the abuse of the monopoly power that some pipelines have over upstream shippers.57

31. Commenters also dismiss the notion that the current proposal could be too burdensome.58 Apache argues, “[a] Section 311 pipeline is not going to forego the opportunity to earn money merely because it must comply with a transactional posting requirement.”59 As Texas Alliance phrases it, the reason why the rulemaking “is so strongly opposed by the Texas intrastate pipelines and their association [is that it] threatens to let sunshine in where they prefer the dark.”60

C. Commission Determination

32. In this Final Rule, the Commission is adopting the proposed quarterly transactional reporting requirements for section 311 and Hinshaw pipelines, with several clarifications discussed in subsequent sections of this rule. The Commission finds that these transactional reporting requirements appropriately balance the need for increased transparency of intrastate and Hinshaw pipeline transactions, while
avoiding unduly burdensome requirements that might discourage such pipelines from participating in the interstate market.

33. Transactional information provides price transparency so shippers can make informed purchasing decisions, and also permits both shippers and the Commission to monitor actual transactions for evidence of possible abuse of market power or undue discrimination. The existing reporting requirements in §284.126 are inadequate for this purpose. For example, the annual reports of transportation transactions required by existing §284.126(b) do not include (1) the rates charged by the pipeline under each contract, (2) the receipt and delivery points and zones or segments covered by each contract, (3) the quantity of natural gas the shipper is entitled to transport, store, or deliver, (4) the duration of the contract, or (5) whether there is an affiliate relationship between the pipeline and the shipper. Similarly, the semi-annual storage reports required by existing §284.126(c) do not include the rates charged by the storage provider in each contract, the duration of each contract, or whether there is an affiliate relationship between the storage provider and its customer.

34. However, all this information is necessary to allow the Commission, shippers, and others to determine the extent to which particular transactions are comparable to one another for purposes of monitoring for undue discrimination. For example, contracts for service on different parts of a pipeline system or with different durations may not be comparable to one another. In addition, the requirement that affiliate relationships between the pipeline and its shippers be reported will allow the Commission and interested parties to monitor whether the pipeline is favoring its affiliates. The additional information required to be reported by the Final Rule is also necessary to allow shippers to make informed decisions about their capacity purchases. Shippers need to know the price paid for capacity over a particular path to enable them to decide, for instance, how much to offer for the specific capacity they seek.

35. The Commission also finds that the lack of transparency ultimately harms not only shippers, but the pipelines themselves, whose individual actions to protect market advantage work collectively to make intrastate transportation less attractive. Without transparency, trust, efficient free-market allocation of resources is not possible. As the specific example reported by Clayton Williams shows, the current market’s lack of transparency fosters, at the very least, an atmosphere of mistrust. While TPA may plausibly assert that natural gas commodity sales hubs are the most price-transparent commodity markets in the world, the same cannot be said of the market for intrastate transportation. It is the Commission’s obligation to ensure transparency at all stages of the natural gas market over which it has jurisdiction, because inefficiencies and unfair treatment in one stage of the market can lead to harm elsewhere in the market. Accordingly, we find that there is a need for revised regulations that improve market transparency.

36. Exempting storage services provided at market-based rates is also unwarranted. A Commission finding that a service provider lacks market power should not be read to mean that its shippers are at no risk of undue discrimination or other unlawful practices. Furthermore, it is still in the public interest to disseminate market information concerning the transactions of market-based storage services. As the Commission reasoned in a previous rulemaking, “[I]t is even more critical for the Commission to review pricing when the Commission is relying on competition to regulate rates, rather than scrutinizing the underlying cost of service. Thus, we will not exempt intrastate storage companies charging market-based rates from the requirement to file * * * reports.”61 Posting rates charged in previous market-based transactions leads to greater transparency and competition. As the Commission found in In Order No. 637–A, with respect to alleged competitive harm to individual firms:

While disclosure of the transactional information may cause some commercial disadvantage to individual entities, it will benefit the market as a whole, by improving efficiency and competition. Buyers of services need good information in order to make good choices among competing capacity offerings. Without the provision of such information, competition suffers.62


62 Order No. 637–A, at 31,614–615. Enstor is concerned that the requirement to include the revenues received from each interruptible storage customer during a quarter will cause competitive damage, alleging that such information will allow consumers to recreate the storage positions that resulted in another customer receiving favorable rates. However, the existing semi-annual storage reports required by §284.126(c) already require the reporting of revenues received from each customer. Increasing the frequency of such revenue reports from semi-annually to quarterly would not appear to significantly affect this concern.


64 See, e.g., Transparency Provisions of Section 23 of the Natural Gas Act, Order No. 704–A, FERC Stats. & Regs. ¶ 31,275 at P 17 (2008) (“While we acknowledge that removing purchases from volumes that must be reported on Form No. 552 would somewhat reduce the reporting burden on certain market participants, we continue to believe that the substantial benefits of having such data publicly available outweigh this burden.”), order on reh’g, Order No. 704–B, 125 FERC ¶ 61,302 (2008).
requirements aim to empower shippers “to determine the extent to which particular transactions are comparable to one another.”65 In this way, the Commission gives shippers increased ability to protect themselves from undue discrimination, and thus be less dependent on Commission investigations to protect their rights. The new reporting requirements also provide information that may assist state and local regulatory bodies, without interfering in their autonomy of action.

40. In response to the pipelines that suggest that they have an overriding confidentiality interest, or that even raise the specter that increased transparency may cause unlawful behavior, we disagree. The Commission’s decades of experience in enforcement have confirmed the wisdom of what jurists have long held in the related realm of financial disclosure: “confidentiality interest is not absolute, however, and can be overcome by a sufficiently weighty government purpose.”66 Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”66

V. Details of Pipeline Posting Requirements

A. Overview and Summary of Requirements

41. The Final Rule, in accordance with the NOPR, requires Form No. 549D transactional reports under § 284.126(b) to be filed on a quarterly basis, to include certain additional types of information and cover storage as well as transportation, and to be filed in a uniform electronic format and posted on the Commission’s Web site without redaction.

42. In addition, the Final Rule clarifies or amends the NOPR on several points elaborated below. We clarify that pipelines are to file their Form No. 549D transactional reports on a contract-by-contract basis for each shipper, rather than on a transaction-by-transaction basis. We adopt a common identification requirement for shippers. For receipt and delivery points, however, pipelines need only use an industry common code where one is already in use, and may report wells and other gathering systems in the aggregate. We clarify that pipelines should continue to only report on their jurisdictional activities. Finally, we provide several clarifications regarding the data format and technical protocols, with the result being a flexible framework similar to the “simple spreadsheet” concept proposed by some commenters.

B. Definition of Reportable Service

1. NOPR

43. The version of § 284.126(b)(1) proposed in the NOPR calls for a quarterly report that contains information on “each transportation and storage service provided.” Neither the proposed regulations nor the preamble to the NOPR directly defined the word “service.” In the preamble, in the context of rejecting daily posting, the Commission rejected the option of “daily postings of information about individual transactions.”67 However, the preamble also states that pipelines should report “additional information concerning each transaction.”68

2. Comments

44. Some commenters express concern that the NOPR’s phrasing is unclear as to whether pipelines are to make their reports on a contract-by-contract basis or a transaction-by-transaction basis.69 They point out that a shipper may report numerous transactions during a quarter under a single contract. For example, a shipper may have a single interruptible contract, but may schedule separate transactions at different rates during different receipt and delivery points on a daily basis.

AGA, for example, “urges the Commission to clarify that Hinshaw pipelines are required to report their ‘contracts’ on a quarterly basis in a manner similar to what they currently report (rather than requiring information to be reported separately for each individual transaction.”70 Other commenters are concerned that the Commission intends to require separate reports for each transaction. TPA, for example, complains that under “the onerous approach * * * proposed in the NOPR,” a pipeline with “multiple daily transactions under single contracts could [be] * * * reporting thousands of individual transportation transactions.”71

45. Apache and Jefferson take the opportunity to propose alternative approaches to the question of what should be reported. Apache argues that “[f]ull transparency regarding all natural gas transactions on a real-time basis, comparable to the reporting requirements of interstate pipelines, is the only comprehensive way to protect natural gas consumers to ensure the integrity of the market.”72 Nevertheless, Apache clarifies that it supports the NOPR as “a helpful improvement over the status quo.”73 Jefferson argues that the level of detail proposed in the NOPR for the reports is too burdensome and too far beyond what is required to address the actual disparities between interstate and intrastate reporting.74 Accordingly, Jefferson proposes limiting the report to 22 fields.75

3. Commission Determination

46. We clarify that pipelines are to report the required transactional information in Form No. 549D on a contract-by-contract basis for each shipper, rather than on a transaction-by-transaction basis. In general, a pipeline will be required to make a separate data entry for each of a shipper’s contracts under a given rate schedule. The pipeline should aggregate all nominations and shipments under each contract for the quarter. In other words, while the reports will contain information on each transaction, that information will be aggregated by contract for each shipper for each type of service provided.

47. If the pipeline charges a shipper multiple prices for different transactions or shipments under a single contract and service, the pipeline would still file a single report for that contract, with the following information. The pipeline would report the volume-weighted average rate charged under that contract for the quarter. The pipeline would also include a list of all the various rates charged during the quarter in the appropriate comment field for that contract. The pipeline would not be required to state the volumes associated with each rate or the dates each rate was charged. Similarly, the pipeline would list the receipt and delivery points used during each quarter for each contract, but is not required to separately report

See also Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Order No. 720, 73 FR 73494, FERC Stats. & Regs. 31,283, at P 56 (2008) (“We also believe that the goals of this Final Rule outweigh the burdens to be placed upon non-interstate and interstate pipelines.”); order on reh’g, Order No. 720–A, FERC Stats. & Regs. § 35,302, at P 116 (2010) (“The Commission understands commenters’ arguments that posting new points on a rolling basis would be burdensome for major non-interstate pipelines, but believes that these overstates and substantially outweighed by the transparency benefit of timely posting of newly-eligible points.”). 65 NOPR at 19.

66 Statharos v. New York City Taxi & Limousine Comm’n, 198 F.3d 317, 323 (2d Cir. N.Y. 1999) (citing Louis Brandeis, Other People’s Money and How the Bankers Use It 62 (1914)).

67 NOPR at 25.

68 NOPR at 20.

69 E.g., Jefferson at 11.

70 AGA at 2; see also AGA at 9–10.

71 TPA at 4–5.

72 Apache at 3.

73 Apache at 3.

74 Jefferson at 16.

75 Jefferson at 15–16.
the rates charged and volumes received and delivered at each point.

48. We decline the opportunity to radically alter the type of information reported, as suggested by Apache and Jefferson. Based on the comments in this docket, the Commission believes that refinements to the NOPR are more certain to ensure a fair balance of the additional transparency benefits that would accrue to the market versus the administrative costs of compliance.

C. Reporting Frequency

1. NOPR

49. In the NOPR, the Commission found that increasing the frequency of the § 284.126(b) transactional reports from annual to quarterly would provide market participants and the Commission with more timely and more useful information concerning the transactions entered into by intrastate pipelines. The Commission stated that it sought to balance the benefits of increased transactional transparency against the need to avoid creating undue burden for the responding pipelines. The Commission highlighted that “one primary difference will remain between the reporting requirements for interstate pipelines and the Section 311 and Hinshaw pipelines: Interstate Pipelines will post transactional information daily on their Web sites, while Section 311 and Hinshaw pipelines will submit this information in a quarterly report to the Commission.”79 The Commission noted alternative proposals from commenters, but found that a quarterly filing requirement would strike the appropriate balance.

2. Comments

50. Most commenters support quarterly reporting. Even some parties who urge the Commission to cancel the rulemaking docket nonetheless state that they could accept limited quarterly reporting.78 Some shippers, while generally supportive of the NOPR, state that they would prefer daily reporting is the best way to ensure transparency and competitive markets.79 The pipelines, however, consider the possibility of daily reporting to be “very costly, particularly if daily posting on a Web site was required,”79 due “to the [sheer] volume of reporting” of each day’s transactions.80

3. Commission Determination

51. The Final Rule adopts the NOPR’s proposal to require quarterly reporting by section 311 and Hinshaw pipelines. The Commission continues to find that a quarterly reporting requirement strikes the appropriate balance of increasing transparency without imposing undue burdens on section 311 and Hinshaw pipelines. One purpose of the NGPA was to induce intrastate pipelines to participate in the interstate market by ensuring that it would not be unduly burdensome to do so.81 This participation by intrastate pipelines eliminates the need for duplication of facilities between interstate and intrastate pipelines.82 Thus, as the court has stated, “Congress intended that intrastate pipelines should be able to compete in the transportation market without bearing the burden of full regulation by FERC under the Natural Gas Act.”83

52. In the NOPR, the Commission stated that a daily reporting requirement would require all intrastate and Hinshaw pipelines to maintain their own Web sites for this purpose, and such daily postings of information about individual transactions would be significantly more burdensome than a quarterly reporting requirement. As described above, several pipeline commenters have reaffirmed that a daily posting requirement would be very costly. In addition, Constellation, while stating that daily posting would provide more transparency, agrees that at this time such a requirement appears unduly burdensome.84

53. Only two commenters request that the Commission require daily reporting. They contend that real-time reporting of individual transaction data would allow more immediate monitoring of whether the pipeline is engaging in undue discrimination and provide more useful price transparency. The Commission recognizes that daily posting could enable shippers and others to observe potentially discriminatory actions more quickly. However, the quarterly reports will provide similar information, enabling shippers and others to file complaints if they believe such information suggests a pattern of discrimination by the pipeline. Given the interest in avoiding placing undue burdens on section 311 and Hinshaw pipelines, the Commission finds that the quarterly reporting requirement, together with our other changes to the reporting requirements including the requirement that all reports be public, appropriately balances the need for more transparency with the interest in encouraging section 311 and Hinshaw pipelines to participate in the interstate pipeline grid.

D. Identification of Receipt and Delivery Points and Shippers

1. NOPR

54. The NOPR proposed requiring intrastate pipelines to report several new elements of information, among them the primary receipt and delivery points covered by the contract. The NOPR proposed that the reports include the “industry common code” for each receipt and delivery point in order to minimize any ambiguity as to what receipt and delivery points are being reported and to ensure that all reporting pipelines identify such points in a consistent manner.85 Similarly, the NOPR proposed that, when reporting the identity of a given shipper, respondents should include not only the full legal name, but also an “identification number” for each shipper.86

55. However, the NOPR stated that, while the Commission was aware of some shipper identification standards and receipt and delivery point codes that are used in the natural gas industry (for example, Dun & Bradstreet, Inc.’s D–U–N–S identification numbers for shippers), the Commission was reluctant to choose any particular standard without input as to that standard’s cost-effectiveness and usefulness. Accordingly, the Commission sought comment on two related questions: (1) What sort of shipper identification numbers and receipt and delivery point common industry codes are currently used or readily available to section 311 and Hinshaw pipelines?; and (2) Which shipper identification standard or standards and receipt and delivery point codes, if any, should be used?87

2. Comments

56. Some commenters argue that using industry common codes to report receipt and delivery points would be highly burdensome, due to the cost of obtaining common code identifiers from a third-party registry. According to Jefferson, the annual charge for licensing common location codes is

76 The Commission noted
77 NOPR at P 23.
78 Apache at 2–3; Constellation at 4; Yates at
79 due
80 TPA at 20.
81 AGI, 824 F.2d at 1001–1003.
82 EPGT Texas Pipeline, L.P., 99 FERC ¶ 61,295 at 62,252.
83 Mustang Energy Corp. v. Federal Energy Regulatory Comm'n, 859 F.2d 1447, 1457 (10th Cir. 1988), cert. denied, 490 U.S. 1019 (1988); see also
84 Constellation at 4.
$1,670 for 1–20 points, $3,506 for 21–100 points, and $5,428 for 100+ points.88 Enogex protests that it does not have ‘primary’ and ‘secondary’ points on its system, but rather uses standard receipt and delivery points. As a result, Enogex does not have * * * common codes,” and urges that the Commission reject this element as “base[d] * * * on the business practices of interstate pipelines.”89 TPA voices similar concerns. Jefferson and ONEOK suggest letting respondents use their own meter codes instead. AGA suggests, as a compromise, that pipelines that do not already use common codes should be allowed “to use an interstate pipeline’s Data Reference Number (DRN) for points of interconnection with an interstate pipeline and use [their own] proprietary code where a DRN has not already been assigned.”90

57. AOG and Cranberry, whose pipelines perform gathering functions, state that they do not keep organized records of who has contract rights to which receipt or delivery points.91 AOG proposes that, instead of differentiating among receipt points that are gas wells, they “would simply identify all receipt points as ‘AOG system.’”92 Cranberry proposes that the Commission waive the requirement to report receipt and delivery points where, as with their system, all shippers have access to all or numerous points, and no common industry codes exist.93

58. The proposal to require use of standardized shipper identification numbers also raised some concerns. Jefferson estimated that “it will cost approximately $24,000 annually to utilize a third-party service to verify a unique shipper identification number.”94 TPA likewise argues that intrastate providers would have no use for D–U–N–S numbers other than filing the proposed reports. TPA proposes having the public reports only “contain coded references to individual shippers and points, with the key to the code available to the Commission” for investigation but otherwise kept confidential; in the alternative TPA suggests that the exact legal name of the shipper should be sufficient.95 Most pipelines, however, did not object to standardized shipper identification, and “AGA supports the use of the D–U–N–S® Number as a common company identifier.”96

3. Commission Determination

59. We acknowledge the concern of some pipelines that requiring all pipelines to use industry common codes for receipt and delivery points could prove to be expensive, and we have adjusted § 284.126(b)(1)(iv) of the final regulations accordingly. Where respondents already use Industry Common Codes in their existing business practices (such as wherever an intrastate system interconnects with an NGA interstate system), they must use those codes in their reports. However, where respondents do not use Industry Common Codes, they should report using the same point identification system that they use for scheduling with shippers. In addition, respondents who do not use Industry Common Codes must publish a list of all the jurisdictional receipt and delivery point codes they use for scheduling, along with the county and state of each point, and the name of the jurisdictional pipeline (if any) that interconnects at each point. This list should be filed as a separate narrative alongside the respondent’s initial report; if the list should change at any time, the respondent should include a narrative alongside its next quarterly report updating the list.

60. The Commission also acknowledges the particular challenges in reporting receipt points for systems that perform a gathering function. Accordingly, for gas received from dedicated wells or gathering lines, respondents may instead note as the receipt point the common point where the gathered gas is considered to enter the pipeline’s transmission system. Respondents who use this method in their reports must develop their list of jurisdictional receipt and delivery points accordingly.

61. In contrast with receipt and delivery points, however, standardized shipper identification is not unduly burdensome in comparison to the benefit to the Commission and market participants of being certain of the true identity of a pipeline’s shippers. As of the date that the Commission approves this Final Rule, we observe that it is possible to both create a D–U–N–S number97 and search for any company’s D–U–N–S number98 for free. Further, since standardized shipper identification numbers, by their nature, do not change with time, respondents will not need to spend time verifying each number every quarter. Accordingly, the time and expense spent on verifying the identity of one’s shippers should be reasonable.

E. Requests for Exemptions and Safe Harbor

1. NOPR

62. In the NOI, the Commission sought comment on whether any of the proposed reporting requirements should exempt certain classes of respondents, based on the type of service provided or on the respondent’s size. Having considered the comments received, the Commission did not provide for any exemptions in the NOPR. The Commission reasoned that so long as reports were hosted on the FERC Web site and no more frequent than quarterly, they would not be unduly burdensome to prepare and file.99

2. Comments

63. AOG asks the Commission to exempt companies with de minimis jurisdictional activity. In particular, AOG suggests a cut-off “somewhere between 2.2 and 50 million MMBtu,”100 or for entities with under 500 employees. ONEOK similarly argues that it should be excluded, but does not proffer a cut-off point.

64. In addition to the above exemption requests, AGA suggests two clarifications as a means of minimizing the burden for all respondents. First, AGA asks the Commission to “clearly state that Hinshaw pipelines are required to report only those contracts authorized by their limited jurisdictional certificates and are not required to report on retail or intrastate activities that are not regulated by the Commission.”101 Second, “AGA also recommends that the Commission explicitly state as part of the Final Rule in this proceeding that it will not prosecute, penalize or otherwise impose remedies on parties for inadvertent errors in reporting.”102

3. Commission Determination

65. The Commission rejects the requests for exemptions based on size or type of activity. As the Commission reasoned in the NOPR, since the reports and data are to be hosted on the FERC Web site and filed no more frequently than quarterly, they should not be
unduly burdensome to prepare and file. The Commission has not exempted any section 311 or Hinshaw pipelines from filing the existing reports required by § 284.126, using current Form No. 549. With the clarifications made to the technical protocols discussed below, the Commission is confident that, after the transition to the new reporting format, it will not be significantly more burdensome for pipelines to prepare and file each Form No. 549. The Commission stated that currently, when a report is filed subject to a request for information redacted as privileged. The Commission make the report public.

6. We grant AGA’s requested clarification that Hinshaw pipelines are required to report only those contracts authorized by their limited jurisdictional certificates and are not required to report on retail or intrastate activities that are not regulated by the Commission. Similarly section 311 pipelines are only required to report contracts for NGPA section 311 interstate service, and not contracts for non-jurisdictional intrastate service.

7. The NOPR proposed to require that the reports filed pursuant to revised § 284.126(c) be posted without any information redacted as privileged. The Commission concluded that: Although the NGA gives the Commission some discretion with respect to how to provide for the disclosure of rate schedules and contracts, clearly the public disclosure of rate schedules and related contracts, in some manner, is required.

3. Commission Determination

73. As we clarified in the preceding section, the revised reporting requirements adopted by this rule apply only to contracts for interstate service which are subject to our jurisdiction under the NGA in the case of Hinshaw pipelines or NGPA section 311 in the case of intrastate pipelines. While we regulate the interstate services of Hinshaw pipelines in a more light-handed manner than we regulate interstate pipelines, nevertheless the courts have made clear that such regulation of Hinshaw pipelines must comply with the basic requirements of the NGA, including sections 4 and 5 of the NGA. In SGRM, the Commission pointed out that NGA section 4(c) requires that “under such rules and regulations as the Commission may prescribe, every natural gas company shall * * * keep open for public inspection * * * all rates * * * together with all contracts which in any manner affect or relate to such rates.” The Commission concluded that: Although the NGA gives the Commission some discretion with respect to how to provide for the disclosure of rate schedules and contracts, clearly the public disclosure of rate schedules and related contracts, in some manner, is required.

4. Accordingly, our requirement that the quarterly reports of Hinshaw pipelines concerning their jurisdictional contracts be posted without any information redacted is simply carrying out NGA section 4(c)’s requirement for public disclosure of rate and contract information “under such regulations and rules as the Commission may prescribe.” Furthermore, NGA section 23(a)(1) directs the Commission “to

Due to the expense and delay caused by this additional step, in practice these requests have been infrequent. The Commission stated that allowing pricing information to be confidential undermines the Commission’s goals of preventing undue discrimination and promoting price transparency, while a prohibition on the confidential treatment of § 284.126(b) reports would further all of these policy goals. The Commission noted concerns about the commercial sensitivity of the information to be reported, but found, based on the comments filed, that “a quarterly reporting requirement should allay any concerns regarding the commercial sensitivity of contract data.”

69. In addition to the policy considerations, the Commission found that its governing statutes support public treatment of data reported both by Hinshaw pipelines and by NGPA Section 311 pipelines. Accordingly, the NOPR proposed that the standardized reporting form include a statement that the report will be public.

2. Comments

70. TPA and some individual pipelines argue that the Commission must retain the traditional confidentiality process in Rule 1112 and § 388.112 of the Commission’s regulations. TPA argues that a policy of public disclosure would violate both Commission precedent and § 388.112, which call for case-by-case review of requests to release information. ONEOK and TPA argue that complying with the proposed regulations could violate the confidentiality provisions of existing contracts. Enstor and ONEOK suggest that many market-oriented shippers and large industrial end-users would seek to avoid Section 311 transactions in order to protect their trading positions.

71. Enstor particularly urges the Commission to amend the proposed § 284.126(b)(1)(viii) requirement to report “Total revenues received for the shipper.” Enstor argues that, when applied to “interruptible storage services (such as parking and lending),” this requirement would compel reporting of information “that is not currently disclosed by interstate natural gas companies.” Especially if unredacted, reporting individual shipper revenues “even on a quarterly basis” would do “catastrophic” damage to a pipeline’s “business model, as well as to market liquidity.”

72. However Apache, Cities, Clayton Williams, Texas Alliance, and Yates expressly support public reporting, in order for the reports to serve the purported goal of benefitting market participants. Clayton Williams cites the specific example of Texas’s “grossly inadequate” state-level data, which it claims is responsible for rampant discriminatory behavior in Texas markets.

F. Public Status of Reports

1. NOPR

68. The NOPR proposed to require that the reports filed pursuant to revised § 284.126(c) be posted without any information redacted. The NOPR point out that NGA section 4(c) supports public treatment of data reported both by Hinshaw pipelines and by NGPA Section 311 pipelines. Accordingly, the NOPR proposed that the standardized reporting form include a statement that the report will be public.

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104 18 CFR 385.1112.

105 NOPR at P 31.

106 E.g., Enogex at 8.

107 TPA at 18.

108 TPA at 5, 16–17; ONEOK at 5.

109 Enstor at 9; ONEOK at 5.

110 Especially if

111 Enstor at 7.

112 E.g., Apache at 10–11.

113 Clayton Williams at 1.

114 Consumers Energy Co. v. FERC, 226 F.3d 777 (6th Cir. 2000), holding that the Commission must comply with the requirements of NGA section 5 in order to require a Hinshaw pipeline to modify its rates for interstate service.

115 SGRM, 125 FERC ¶ 61,191 at P 23, quoting Order No. 637–A, at 31,614.
facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce.” 116

75. While the NGPA does not contain an express public disclosure provision similar to NGA section 4(c), Section 311(c) of the NGPA authorizes the Commission to prescribe the “terms and conditions” under which intrastate pipelines perform interstate service. Requiring NGPA section 311 pipelines to publicly disclose transactional information for the purpose of allowing shippers and others to monitor NGPA Section 311 transactions for undue discrimination is well within the Commission’s broad conditioning authority under Section 311(c). 117

76. We reject TPA’s argument that the Commission procedural rules in §§ 385.1112 and 388.112 require the Commission to allow pipelines to request confidential or privileged treatment of their transactional reports. The existence of those procedural rules does not prevent the Commission from establishing making a rule proceeding after notice and comment, a category of document, i.e., the Form 549D reports required by this rule, which must be made public in order for the Commission to carry out its statutory responsibilities under the NGA and the NGPA. Such automatic disclosure requirements already apply to various other reports filed with the Commission, including for example the FERC Form Nos. 2, 2–A, and 3–Q financial reports required by §§ 260.1, 260.2, and 260.300. 118

77. As a matter of policy, we find that Hinshaw and section 311 pipelines must file their Form No. 549D reports as public in order to achieve the Final Rule’s purpose of improving transparency, monitoring discrimination, and fostering efficient markets. The Commission recognizes the concern of some pipelines that disclosure of commercially sensitive information will enable a shipper to know what the pipeline is charging other shippers and thus prevent the pipeline from being able to negotiate the best price for the services it offers. In

Order No. 637–A, the Commission exercised its discretion concerning the manner of public disclosure to delay interstate pipelines’ posting of transactional information until the first nomination of service under the contract, rather than requiring posting upon execution of the contract. The Commission stated that this would temper any potential disadvantages from the public disclosure requirement, because the first nomination could be significantly after the contract was executed. In light of our more light-handed regulation of Hinshaw and section 311 pipelines and our desire to minimize undue burdens on such pipelines, we are permitting a longer delay between contract execution, and disclosure being made of such reports to be filed quarterly. This should temper any potential adverse effects from disclosure.

78. However, public disclosure of all information in the quarterly reports is necessary to permit all market participants to monitor the market and detect undue discrimination. The Commission also expects and hopes that market participants will use the information from these reports in order to educate themselves about market conditions. Regardless of any adverse effect on individual entities, public disclosure will improve the market as a whole by improving efficiency and competition.

79. Finally, while ONEOK and TPA assert that the disclosure requirement could violate the confidentiality provisions of pipelines’ existing contracts, most jurisdictional contracts include provisions that the contract is subject to all rules adopted by the Commission. Moreover, the Commission has previously held that such confidentiality provisions violate Commission policy. For example, in Bay Gas Storage Co., 119 the Commission required a section 311 pipeline to remove from its Statement of Operating Conditions a provision that the terms of any storage or transportation service agreement must be kept confidential with certain exceptions, holding that the provision was “contrary to the Commission’s favoring public disclosure of the provisions of service contracts under NGPA section 311.” If any Hinshaw or section 311 pipeline believes that it is subject to a binding contractual obligation to keep confidential any information required to be disclosed by this rule, it must file that contract with the Commission so that it can be modified to remove any such provision.

G. Data Format and Technical Protocols

1. NOPR and Information Notice

80. The NOPR proposed that Commission Staff develop a mandatory, standardized electronic format for the Form No. 549D reports. The goals are to facilitate data submission, to provide the public timely and easy access to the information, and to avoid the costs of requiring intrastate pipelines to maintain a NAESB-compliant Web site.

81. The Commission introduced its proposed format in the Information Notice. The Information Notice provided a table showing proposed Form No. 549D data elements to be collected each quarter from each respondent. It also included an example of data entries reported by a sample pipeline for one shipper, a Proposed Form No. 549D Data Dictionary and Reporting Units, and draft Instructions for Reporting Data. The Commission also asked for comments on the technological issue of whether the proposed standardized format should be developed using XML or an ASP.NET Web-based form.

2. Comments

82. The discussion of information technology in the NOPR and Information Notice garnered widespread concern from pipelines. The chief concern of pipelines is that they may have to engage in extensive training or outsourcing in order to understand and comply with the Commission’s directive. 120 AGA reports that “one company has estimated the cost of developing an in-house solution for XML Schema reporting to be approximately $30,000.” 121 Jefferson reported its own estimate of $130,000 “to develop a quarterly report similar to the proposed Form No. 549D in the XML Schema format.” 122 Jefferson also stated, however, that it could not support ASP.NET unless the Commission could first guarantee that the format would not “require[] a filer to manually enter data,” or otherwise make the data submission and correction process laborious. 123

83. In order to reduce this compliance burden, AGA along with Duke recommend that the Commission support not only the XML and ASP.NET approaches, but also “a simple spreadsheet with the data in tabular form that the intrastate and Hinshaw


117 See, e.g., AGD, 824 F.2d at 1015–1018 (D.C. Cir. 1987) (affirming the Commission’s use of Section 311(c) to require intrastate pipelines to permit their intrastate sales customers to convert to transportation-only service).

118 See Quarterly Financial Reporting and Revisions to the Annual Reports, Order No. 646, FERC Stats. & Regs. ¶ 31.158, Appendix B at 48 (“This report is also considered to be a non-confidential public use form.”), order on reh’g, Order No. 646–A, FERC Stats. & Regs. ¶ 31.163 (2004); accord Instructions for Filing FERC Forms 2, 2–A, and 3–Q at I.

119 120 FERC ¶ 61,154 at P 17 (2005).

121 Jefferson at 9–11.

122 AGA at 7.

123 Jefferson at 14.

124 Jefferson at 10.
pipelines could complete and file with the Commission using the eFiling portal.” 124 TPA urges the Commission to not adopt a form at all, but rather allow pipelines to continue to file reports similar in format and content to what they file now. 125 In the alternative, TPA recommends making both XML and ASP.NET available. 126

84. AGA also “recommends that the Commission develop a Frequently Asked Questions Web page or other Web-based Query System to assist intrastate and Hinshaw pipelines in complying with the new standardized electronic information filing requirements.” 127 AGA, TPA, and Jefferson have several questions in this vein regarding specific elements and definitions from the Information Notice. 128

85. Cities, along with Constellation, praise the Commission’s decision “to shoulder the burden of Web site maintenance and standards compliance.” 129 Yates, while generally supporting the Commission’s proposal, argues that it would not be unduly burdensome to require pipelines to maintain their own Web sites on which they regularly publish transactional data. 130

3. Commission Determination

86. The Commission will use XML to collect and process the data required by the Form No. 549D report and present it in a timely manner on its Web site. The Commission recognizes that some respondents may prefer not to use XML. Other respondents have experience with the format or for efficiency purposes would use XML. Therefore, the Commission will allow respondents at the beginning of each quarter to select the method 131 of filing most appropriate to their circumstances as described below:

a. Fillable-PDF Form No. 549D

For respondents who prefer not to use XML, the Commission will develop an electronic form in a PDF format that can be downloaded from the FERC Web site and saved to a user’s computer desktop. The form can be viewed and updated using Adobe Acrobat Reader version 9 or higher. The fillable-PDF form will look like a standard document, so that a clerk or any other employee(s) will be able collaborate on filling it out, saving it, and submitting the fillable-PDF electronically to the Commission. 132 The data will be verified and validated before it will be officially accepted by the Commission. Each respondent’s filing would be publicly available in eLibrary within 1 day after filing. The public would also be able to download the entire Form No. 549D database for the quarter from the FERC Web site a few days after the filing deadline. Respondents would be able to correct any errors in their initial filings by filing a revised fillable PDF Form No. 549D with the Commission. 133

b. File an XML file that validates against an XML Schema for Form No. 549D

This method of filing is for those respondents who have some experience with XML or have a relatively large number of shippers and contracts to report on each quarter. The Commission would develop an XML Schema for Form No. 549D and make it available for download on the FERC Web site. Respondents would have to test and successfully validate their XML filing against the XML Schema for Form No. 549D prior to submitting it electronically to the Commission. Once the XML file is submitted, the Commission will examine it to ensure that it is formatted properly and validates against FERC’s XML Schema for Form No. 549D before it is officially accepted by the Commission.

Each respondent’s filing would be publicly available in eLibrary within 1 day after filing. The public would also be able to download the entire Form No. 549D database for the quarter from the FERC Web site a few days after the filing deadline. Respondents would be able to correct any errors in their initial filings by resubmitting another XML file.

87. An updated data dictionary, paper copy of the Fillable PDF Form No. 549D, an example of the filled out Form No. 549D, and Instructions are attached as an appendix to this order. At a date closer to the deadline for filing the first Form No. 549D, the Commission will issue a notice for a Workshop in which Commission Staff will explain the overall filing process, including the fillable-PDF Form No. 549D, data dictionary, XML Schema and will answer any technical questions. Commission Staff are also directed to set up a form549D e-mail box (form549D@ferc.gov) where respondents can send questions. Commission staff will also provide online filing guidance and technical advice to respondents who request it, in line with the Commission’s current guidelines for contact between Staff and regulated entities.

88. Finally, to the extent possible, the General Instructions for Form No. 549D developed by the Commission Staff will conform with the instructions for eTariff filing, so that pipelines shall use the same names to refer to the same objects and concepts in both their Statements of Operating Conditions and their quarterly reports. In this manner, the Commission hopes to address all of the above-noted concerns with regard to information technology for the Form No. 549D.

VI. Periodic Rate Review

A. Current Policy

89. Section 311 of the NGPA provides that the rates of intrastate pipelines performing transportation service under the NGPA shall be fair and equitable. Section 284.123 of the Commission’s regulations implements this requirement for section 311 pipelines, and § 284.224(k)(1) provides that provides that Hinshaw pipelines performing interstate service will be subject to the same rate requirements that apply to intrastate pipelines under § 284.123. As a general matter, the Commission’s review of the rates of both section 311 and Hinshaw pipelines is more light-handed than its review of the rates of interstate pipelines. For example, when intrastate and Hinshaw pipelines file a request for a rate change, the Commission does not impose the five-month suspension typically imposed on interstate pipeline rate increases, and it uses advisory, non-evidentiary proceedings to resolve the issues, rather than setting the case for an evidentiary hearing before an Administrative Law Judge, as it does for interstate pipeline rate cases. 134

90. However, as part of this overall, more light-handed regulation of intrastate and Hinshaw pipelines, the Commission has established a policy of reviewing the rates of both types of pipelines every three years in order to ensure that the rates affecting interstate services remain fair and equitable. 135

The Commission has stated that the triennial rate review of section 311

124 AGA at 14; see also Duke at 2–3, 7–9.
125 TPA at 16.
126 TPA at 20; see also ONEOK at 5.
127 AGA at 3; see also AGA at 15.
128 AGA at Appendix A; TPA at 20–25; Jefferson at 11–13.
129 Yates at 11; see also Constellation at 4.
130 Yates at 7.
131 Respondents must choose only one methodology in a given quarter to file their quarterly report. They do not have to notify Commission staff of their selection.
132 See Appendix for a paper copy of the Form No. 549D and an example of a completed copy.
133 The Form No. 549D database accessible on the FERC Web site would only show the latest filing of each Respondent.
135 See, e.g., id. at P 10 (citing Arkansas Western Gas Company, 56 FERC ¶ 61,407 (1991), reh’g denied, 58 FERC ¶ 61099 (1992)).
intrastate and Hinshaw pipelines enables the Commission to determine whether their rates have become unfair and unreasonable because the cost of service data upon which they are based have become stale.

91. The primary difference in the Commission’s regulation of section 311 and Hinshaw pipelines is the procedural vehicle through which the three-year rate review of those pipelines’ rates is performed. This difference arises from the difference in the statutes under which we regulate the two types of pipelines. For the reasons discussed in full in Green Canyon Pipe Line Co., the Commission has broad conditioning authority under NGPA section 311(c), which it has consistently exercised to require intrastate pipelines to file new petitions for rate approval every three years. However, the United States Court of Appeals for the District of Columbia Circuit has held that the Commission cannot require interstate pipelines subject to its NGA jurisdiction to make new rate filings under NGA section 4.111

92. While the triennial rate review requirement is not part of the Commission’s regulations, the Commission has consistently imposed that requirement as a condition of its approval of each rate filing by a section 311 or Hinshaw pipeline. The Commission has done this, whether the pipeline has chosen to elect a state-based rate pursuant to § 284.123(b)(1) or has proposed a rate for a Commission-approved rate pursuant to § 284.123(b)(2).

B. Comments

93. While the NOPR did not directly raise the issue of whether the Commission should modify its triennial rate review policy, Duke points out in its comments that Order No. 636 removed the requirement that interstate pipelines file new rate cases every three years. It contends that, in order to treat section 311 pipelines and Hinshaw pipelines similarly: “the Commission should either reimpose a periodic rate filing requirement on interstate pipelines or eliminate the triennial filing requirement currently imposed on intrastate and Hinshaw pipelines.”

94. Other commenters argue that the triennial rate review requirement renders any additional information collection partly or wholly unnecessary. TPA predicts that the proposed reports “would not likely yield significant transparency benefits,” because Section 311 pipelines already must file Statements of Operating Conditions with maximum rates and submit cost of service filings to the Commission and to state officials. Enogex argues that the triennial rate review offers the Commission and other interested parties sufficient opportunity to review the rates and contracts of Section 311 pipelines. Enogex further argues that most interstate pipelines are not subject to rate reviews that are as detailed or frequent, and that Section 311 pipelines would be unduly burdened if further reporting were required.

C. Commission Determination

95. As noted above, the Commission generally requires triennial rate reviews of section 311 intrastate and Hinshaw pipelines to ensure that the Commission has current information and rates have not become stale. Since these pipelines are not subject to the same reporting requirements, nor the same level of rate review, as interstate pipelines, the Commission can eliminate periodic rate review without abrogating its duty to continually assure fair and equitable rates.

96. However, the Commission is sensitive to concerns that the improved reporting requirements could prove too burdensome, when considered in aggregation with other burdens such as triennial rate review. In recent years, the Commission has found it only occasionally necessary to impose rate reductions during these periodic reviews. It is our expectation that the improved reporting requirements will instill further market discipline, thus helping to continue this favorable trend. It thus appears that requiring all section 311 and Hinshaw pipelines to make filings for a review of their rates every three years imposes an unnecessary burden on both the pipelines and the Commission, as compared to the public benefits obtained by such rate review. Accordingly, the Commission has decided to modify its triennial rate review policy in order to decrease the frequency of review from three to five years. Therefore, the Commission intends in future orders approving rates filed by section 311 and Hinshaw pipelines to include a condition requiring a review of those rates five years from the date the approved rates took effect. Any pipelines subject to a requirement to file a triennial rate review after the issuance of this Final Rule may file a request for an extension of time consistent with the revised policy announced here.

VII. Effective Date of the Final Rule and Compliance Deadlines

A. Comments

97. Several commenters expressed concern over the speed with which the Commission would adopt and implement the proposed reporting requirements. Three suggestions raised by Jefferson and others were to hold conferences or otherwise delay the issuance of the Final Rule, delay the effective date of the Final Rule, and establish a safe harbor period.

98. First, Jefferson and others seek to delay the issuance of the Final Rule. Jefferson argues that the proposed format “requires additional guidance in the form of industry conferences and workshops prior to the Commission’s issuance of a Final Rule to avoid conflicts in interpretation of each proposed data element, develop a consensus regarding proposed technical reporting formats, and to give intrastate and Hinshaw pipelines an opportunity to present information that would more accurately represent the burden of reporting.” TPA, while also requesting a conference, urges the Commission to postpone any activity in this docket until after the Commission has completed the implementation and appeals process for the rulemaking in Order No. 720, which also concerns intrastate pipeline reporting, and assesses the impact of that rule before considering any further regulations.

99. Second, Jefferson requests “an implementation period of at least 18 months from the issuance of a final rule” regardless of the technical format ultimately selected. AGA also requests a delayed effective date, without specifying a length.

100. Third, Jefferson requests a one year safe-harbor period, during which...
pipelines will not be penalized for inadvertent reporting errors.\textsuperscript{147}

\textbf{B. Commission Determination}

101. The Final Rule will become effective on April 1, 2011. Pursuant to the regulations, the Form No. 549D quarterly report for the period January 1, 2011 through March 31, 2011 must be eFiled on or before May 1, 2011. Based on the comments from all shippers, we believe that this allows a sufficient period before implementation of the revised reporting requirement to allow reporting pipelines to familiarize themselves with the new reporting format and update their internal processes, if necessary. As noted above, Commission Staff plans to hold a technical workshop on a date to be announced in the near future for the purpose of assisting reporting pipelines in this transition.

102. We will not institute a safe-harbor period. However, as stated above in this order, because this is a new information collection, the Commission will focus any enforcement efforts on instances of intentional submission of false, incomplete, or misleading information to the Commission, of failure to report in the first instance, or of failure to exercise due diligence in compiling and reporting data.\textsuperscript{148}

\textbf{VIII. Information Collection Statement}

\textbf{A. Original Statement}

103. In the NOPR, in accordance with the requirements of the Office of Management and Budget (OMB), the Commission estimated that on an annual basis the burden to comply with the rule as proposed would be as follows:

<table>
<thead>
<tr>
<th>Data collection</th>
<th>Number of respondents</th>
<th>Number of responses</th>
<th>Hours per response</th>
<th>Total hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form No. 549D</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Using an hourly rate of $150 to estimate the costs for filing and other administrative processes, the Commission estimated the total cost for all respondents to be $262,500.

\textbf{B. Comments}

104. Many pipelines strongly disagreed with the Commission’s burden estimate. Most prominently, commenters urge the Commission to consider the initial implementation burden. Atmos states that it spent five months on the first annual report required by Order No. 704.\textsuperscript{149} AGA estimates that the development of an XML Schema alone would cost $30,000 per respondent, for an initial total burden of $3.75 million.\textsuperscript{150} Enogex estimates the “major information systems upgrades to allow Enogex to track, report, and maintain the level of detailed data necessary * * * [at] $3 to $4 million.”\textsuperscript{151}

105. Commenters also disagreed with the estimated ongoing annual burden. AGA estimated annual reporting would take over 12 hours per respondent to complete, which for 125 respondents would be an annual burden of $900,000.\textsuperscript{152} TPA also believes that annual burdens will be significantly higher, especially if the Commission chooses a format that requires manual data entry.\textsuperscript{153} “[D]ue to the large number of small-volume, interruptible 311 transactions * * * the burden of additional reporting might outweigh the benefits of participating,” TPA warns.\textsuperscript{154}

Jefferson estimates 24 hours per quarter per respondent, with thousands of dollars in fees to third party information technology vendors.\textsuperscript{155} In addition, Jefferson and others provide separate estimates of the cost of using industry common codes for shippers and receipt and delivery points, as detailed above in this order.\textsuperscript{156}

\textbf{C. Revised Statement}

106. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, recordkeeping, and public disclosure requirements (collections of information) imposed by an agency.\textsuperscript{157} The Commission has submitted notification of these proposed information collection requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.\textsuperscript{158}

107. The requirement for intrastate pipelines to post additional information regarding their transactions would impose an initial burden on pipelines as they organize their corporate data to be compatible with the data elements selected by the Commission for Form No. 549D. Certain pipelines have asserted in comments that the costs could include the reconfiguring of information collection systems. However, given that this information is used in their business, the Commission still believes that the burden that would be imposed by this proposed requirement is largely for the collection of this information.\textsuperscript{159} As stated above in this Final Rule, intrastate pipelines can choose to submit their quarterly Form No. 549D using a Commission-provided Fillable PDF form.\textsuperscript{160} In this instance, intrastate pipelines would not be required to incur costs to learn XML or develop an XML Schema. Even if an intrastate pipeline chose to file an XML file, it would not incur costs to develop an XML Schema. The Schema would be developed by the Commission and provided to pipelines in order to validate their submission before eFiling it to the Commission. While the Commission erred in not including this burden in its original estimate, we nevertheless find that the burden estimates provided by commenters are far too high. These estimates were based on assumptions that the Commission would require a far more intensive volume of reports—transaction-by-transaction reports instead of contract-by-contract reports—and that the Commission would require the more technologically challenging XML data format without developing a “simple spreadsheet” form to guide respondents. 108. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission submitted notification of this rule to OMB. The Commission has developed a cost estimate of the initial implementation burden and revised the estimate of the ongoing annual burden concomitant with the decision allow multiple versions of the

\textsuperscript{147} Jefferson at 8.
\textsuperscript{148} See, e.g., Order No. 704 at P 114.
\textsuperscript{149} Atmos at 3.
\textsuperscript{150} AGA at 7.
\textsuperscript{151} Enogex at 7.
\textsuperscript{152} TPA at 15.
\textsuperscript{153} TPA at 24.
\textsuperscript{154} Jefferson at 14.
\textsuperscript{155} See 5 CFR 1320.3(b)(2) (“The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the “burden” if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.”).
\textsuperscript{156} Respondents would have to download the free version of Acrobat Reader version 9 to use the fillable PDF.
report. The analysis began with an examination of a representative sample of over one-third of the companies currently filing a Form No. 537, the semi-annual storage report, or Form No. 549, the annual transportation report. Studying the level and type of services performed for their shippers made it possible to split the industry between those that would logically file using the PDF form because of the relatively small number of shippers and services, and those that would incur the addition upfront effort associated with developing tools for filing the report using the Commission’s XML schema. This analysis estimates that the 70 percent of Respondents that average less than five shippers transacting in a given quarter would file using the PDF form. The other 30 percent would incur additional development costs associated with the XML-based report to offset the larger ongoing burden cost associated with reporting more shippers, services, and contracts. Cost estimates were developed for the initial burden and the ongoing burden for each of the permissible filing methods, using prevailing Houston labor costs and the most efficient hourly split of manpower by legal, accounting, regulatory and IT departments. The initial burden was split between effort involved in the

<table>
<thead>
<tr>
<th>Data collection filing method</th>
<th>Number of respondents</th>
<th>Average start-up burden per respondent</th>
<th>Total industry hours</th>
<th>Total industry costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using PDF Form</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Using XML Schema</td>
<td>87</td>
<td>$4,354</td>
<td>5,916</td>
<td>$378,798</td>
</tr>
<tr>
<td>Total</td>
<td>125</td>
<td></td>
<td>13,364</td>
<td>807,704</td>
</tr>
</tbody>
</table>

To estimate ongoing burden, the Commission analyzed two sets of costs: The per-report cost for the effort by the legal, accounting, IT and regulatory departments related to changes in the mix of shippers and services, and the per-contract costs related to the effort required to populate the report with the information associated with each shipper by service type and by contract. For the first set of costs, this analysis estimates the PDF form to require 11 person-hours at an estimated cost of $596 per report, and the XML Schema 10 man-hours at an estimated cost of $556 per report. For the per-contract set of costs, this analysis estimates the PDF form to require $663 per report and the XML Schema $543 per report, for the average Respondent.

<table>
<thead>
<tr>
<th>Data collection filing method</th>
<th>Number of respondents</th>
<th>Average annual ongoing burden per respondent</th>
<th>Total industry hours per year</th>
<th>Total industry costs per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using PDF Form</td>
<td>87</td>
<td>$2,650</td>
<td>4,294</td>
<td>$230,550</td>
</tr>
<tr>
<td>Using XML Schema</td>
<td>38</td>
<td>2,171</td>
<td>1,520</td>
<td>82,498</td>
</tr>
<tr>
<td>Total</td>
<td>125</td>
<td></td>
<td>5,814</td>
<td>313,048</td>
</tr>
</tbody>
</table>

**Title:** Form No. 549D.  
**Action:** Proposed Information Posting and Information Filing.  
**OMB Control No:** xxxxx-xxxx.  
**Respondents:** Business or other for profit.  
**Frequency of Responses:** Quarterly posting requirements.  
**Necessity of the Information:** The quarterly filing of additional information by intrastate pipelines is necessary to provide information regarding the price and availability of natural gas transportation services to market participants, state commissions, the Commission, and the public. The filing would contribute to market transparency by empowering market participants to determine the extent to which particular transactions are comparable to one another; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. [Attention: Data Clearance, Phone: (202) 502–8415, fax: (202) 273–0873] e-mail: DataClearance@ferc.gov or by contacting: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7345, fax: (202) 395–7285].  
**IX. Environmental Analysis**  
109. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. The actions taken here fall within categorical exclusions in the

162 18 CFR 380.4.
Commission’s regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.\textsuperscript{163} Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

**X. Regulatory Flexibility Act**

110. The Regulatory Flexibility Act of 1980 (RFA) \textsuperscript{164} generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if proposed regulations would not have such an effect.

111. Most of the natural gas companies regulated by the Commission do not fall within the RFA’s definition of a small entity.\textsuperscript{165} Approximately 125 natural gas companies are potential respondents subject to the requirements adopted by this rule. For the year 2008 (the most recent year for which information is available), 4 companies had annual revenues of less than $7 million. This represents 3.2 percent of the total universe of potential respondents or only a very few entities that may have a significant burden imposed on them. In addition, by providing entities with an option of how they file the information, the Commission has provided alternatives, thereby lessening the economic impact for smaller entities while still accomplishing the regulatory objective of increasing market transparency. In view of these considerations, the Commission certifies that this Final Rule’s amendments to the regulations will not have a significant impact on a substantial number of small entities.

**XI. Document Availability**

112. In addition to publishing the full text of this document, except for the Appendix, in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document, including the Appendix, 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.

113. From FERC’s Home Page on the Internet, this information is available on eLibrary. The full text of this document, including the Appendix, is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

114. User assistance is available for eLibrary and the FERC’s Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371. TTY (202) 502–8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

**XII. Effective Date and Congressional Notification**

115. These regulations are effective April 1, 2011. The quarterly report for transactions occurring during the period January 1, 2011 through March 31, 2011 must be filed on or before May 1, 2011. The Commission has determined that this rule is not a “major rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

**List of Subjects in 18 CFR Part 284**

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

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

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


2. In §284.126, paragraph (b) is revised to read as follows:

   **§284.126 Reporting requirements.**

   * * * * *

(b) Form No. 549D. Quarterly Transportation and Storage Report of Intrastate Natural Gas and Hinshaw Pipelines.

   (1) Each intrastate pipeline must use Form No. 549D to file a quarterly report with the Commission and the appropriate state regulatory agency that contains, for each transportation and storage service provided during the preceding calendar quarter under §284.122, the following information on each transaction, aggregated by contract:

   (i) The full legal name, and identification number, of the shipper receiving the service, including whether there is an affiliate relationship between the pipeline and the shipper;

   (ii) The type of service performed (i.e., firm or interruptible transportation, storage, or other service);

   (iii) The rate charged under each contract, specifying the rate schedule/ name of service and docket where the rates were approved. The report should separately state each rate component set forth in the contract (i.e., reservation, usage, and any other charges);

   (iv) The primary receipt and delivery points covered by the contract, identified by the list of points that the pipeline has published with the Commission, which shall include the industry common code for each point where one has already been established;

   (v) The quantity of natural gas the shipper is entitled to transport, store, or deliver under each contract;

   (vi) The duration of the contract, specifying the beginning and ending month and year of the current agreement;

   (vii) Total volumes transported, stored, injected or withdrawn for the shipper; and

   (viii) Total revenues received for the shipper. The report should separately state revenues received under each rate component;

   (2) The quarterly Form No. 549D report for the period January 1 through March 31 must be filed on or before May 1. The quarterly report for the period April 1 through June 30 must be filed on or before August 1. The quarterly report for the period July 1 through September 30 must be filed on or before November 1. The quarterly report for the period October 1 through December 31 must be filed on or before February 1.

   (3) Each Form No. 549D report must be filed as prescribed in §385.2011 of this chapter as indicated in the General Instructions and Data Dictionary set out in the quarterly reporting form. Each report must be prepared and filed in conformance with the Commission’s software or XML Schema, eTariff filing structure, and reporting guidance, so as
to be posted and available for downloading from the FERC Web site (http://www.ferc.gov). One copy of the report must be retained by the respondent in its files.

(4) Intrastate pipelines filing Form No. 549D are no longer required to file Form No. 549—Intrastate Pipeline Annual Transportation Report after their March 31, 2011 filing.

* * * * *

[FR Doc. 2010–12614 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 127
[Docket No. USCG–2007–27022]
RIN 1625–AB13

Revision of LNG and LHG Waterfront Facility General Requirements

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In this final rule, the Coast Guard revises the requirements for waterfront facilities handling liquefied natural gas (LNG) and liquefied hazardous gas (LHG). The revisions bring the regulations up to date with industry practices and Coast Guard policy implemented due to increased emphasis on security since the events of September 11, 2001. These revisions harmonize the Coast Guard’s regulations for LNG with those established by the Federal Energy Regulatory Commission (FERC), the agency with exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG facility located onshore or within State waters. This rulemaking does not affect LNG deepwater ports.

DATES: This final rule is effective June 25, 2010. To the extent this rulemaking affects the collection of information in 33 CFR 127.007, we will not enforce the revised collection requirements until the collection is approved by the Office of Management and Budget (OMB). When OMB approves, we will publish notification in the Federal Register.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–27022 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to http://www.regulations.gov, inserting USCG–2007–27022 in the “Keyword” box, and then clicking “Search.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Commander Patrick Clark, CG–5222, U.S. Coast Guard; telephone 202–372–1410, e-mail Patrick.W.Clark@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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II. Regulatory History

III. Background

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B. Discussion of FERC Regulations With Regard to LNG

IV. Discussion of Comments and Changes

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B. Comments on the Letter of Intent

C. Comments on Waterway Safety, and the Waterway Suitability Assessment

D. Comments on Frequency of Shipments

E. Comments on Evaluating the Density and Character of Marine Traffic

F. Comments on the Letter of Recommendation

G. Comments on Timely Issuance of the Letter of Recommendation

H. Comments on the Differences Between LNG and LHG

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I. Protection of Children

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I. Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port

DHS Department of Homeland Security

FERC Federal Energy Regulatory Commission

FR Federal Register

LHG Liquefied hazardous gas

LNG Liquefied natural gas

LOI Letter of Intent

LOR Letter of Recommendation

NEPA National Environmental Policy Act of 1969

NTTAA National Technology Transfer and Advancement Act

NPRM Notice of proposed rulemaking

NVIC Navigation and Vessel Inspection Circular

OMB Office of Management and Budget


WSA Waterway Suitability Assessment

II. Regulatory History

On April 28, 2009, we published in the Federal Register a notice of proposed rulemaking entitled “Revision of LNG and LHG Waterfront Facility General Requirements” (74 FR 19159). We received four letters commenting on the proposed rule, containing a total of 38 comments. No public meeting was requested and none was held.

III. Background

A. Basis and Purpose of the Final Rule

Over the last decade, the worldwide production and transportation of liquefied natural gas (LNG) has increased substantially. Currently, the United States consumes about 25 percent of the world’s annual natural gas production. Over the next 20 years, U.S. natural gas consumption is projected to increase. Should domestic gas production not meet this demand, increased marine LNG imports may be needed to help resolve this likely shortfall. Currently, there are nine waterfront LNG facilities in the United States: eight are import facilities, and one is an export facility. To meet rising demand, the energy industry has submitted dozens of proposals to build LNG import facilities along our coasts, and an unspecified number of proposals are in the early planning stages.

We have not seen, and do not expect, a similar increase in the production and transportation of liquefied hazardous gas (LHG). Although LNG and LHG facilities and the cargoes they handle are different in nature, we believe the vessels that transport these cargoes pose similar risks to the waterway environment and the area surrounding the marine transfer area of the facility when transfer operations are underway. Safety and security of our ports and waterways have become paramount concerns since the events of September 11, 2001. Currently, the owner or operator intending to construct, modify, or reactivate an LNG or LHG facility must submit a Letter of Intent (LOI) to the Coast Guard. Information obtained in the LOI enables the Coast Guard to provide specific input, in a Letter of Recommendation (LOR), to an agency having jurisdiction for siting, construction, and operation. The LOR serves as the Coast Guard’s recommendation to the jurisdictional agency as to the suitability of the waterway for LNG or LHG marine traffic on the waterway associated with the