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(e) This amendment becomes effective on June 19, 1997.

Issued in Renton, Washington, on May 27, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–14285 Filed 6–3–97; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 153

**[Docket No. RM97–1–000; Order No. 595]**

## Applications for Authorization To Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas

Issued May 28, 1997.

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

**ACTION:** Final rule.

**SUMMARY:** The Commission is reorganizing, rewriting, and updating its regulations governing the filing of applications under section 3 of the Natural Gas Act governing the filing of applications for the siting, construction, and operation of facilities for the import or export of natural gas and the issuance and amendment of Presidential Permits for the construction and operation of border facilities. The rule is part of the Commission's ongoing program to review its filing and reporting requirements and reduce unnecessary burdens by eliminating the collection of data that is not necessary to the performance of the Commission's regulatory responsibilities. The rule is necessary to conform the Commission's regulations to the Commission's current responsibilities, as delegated by the Secretary of Energy.

**EFFECTIVE DATE:** This Final Rule is effective August 4, 1997.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426.

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Finally, the complete text on diskette in Word Perfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

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## I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending part 153 of its regulations governing the siting, construction, and operation of facilities for the import and export of natural gas between the United States and a foreign country. Part 153 has not been significantly revised since the Commission's predecessor, the Federal Power Commission (FPC), recodified its regulations in 1947.[1]

The rule conforms the Commission's filing requirements in part 153 to the Commission's current responsibilities as changed by intervening legislation and Department of Energy (DOE) delegation orders. The DOE delegation orders divide jurisdiction and authority over natural gas import and export issues arising under section 3 of the Natural Gas Act (NGA)[2] between the Commission and DOE.[3] The revisions to part 153 implement the Commission's currently delegated responsibilities under NGA section 3 and Executive Order 10485, as amended, regarding the construction and operation of facilities

[1] Order No. 141, 12 FR 8596 (December 19, 1947). The part 153 regulations originally became effective on July 11, 1938, in FPC Order Nos. 52 (section 3 authorizations) and 66 (Presidential Permits).

[2] 15 U.S.C. 717b.

[3] DOE previously issued regulations implementing its delegated authorities under NGA section 3 for the import/export of natural gas. *See* 10 CFR 590.100, *et seq.*

for the import and export of natural gas.[4]

The Final Rule redefines and clarifies the Commission's role with respect to granting the authorizations necessary to construct and operate facilities for the import and export of natural gas between a foreign country and the United States. The regulations codify existing practice which requires the applicant proposing to construct or modify LNG facilities to file exhibits concerning the environmental and safety features of those facilities.

Over the last 11 years (1986–1996), there has been a dramatic increase in the volume of natural gas import and export activity involving the United States.[5] In 1996 alone, United States firms imported 2,883.3 Bcf of natural gas from Canada, while exporting 61.4 Bcf to Canada. In the same year, United States firms imported 13.9 Bcf from Mexico and exported 33.8 Bcf of natural gas to Mexico. The issuance of the Final Rule coincides with proposals recently filed by pipelines for substantial new construction to bring even more Canadian natural gas into the United States.[6] The Final Rule will improve Commission monitoring of all facilities authorized under part 153.

The changes to the Commission's regulations are effective August 4, 1997.

## II. Background

On February 3, 1997, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing a major overhaul of its regulations governing applications for the construction of facilities for the import/export of natural gas.[7] The Commission is determined to issue sensible regulations that impose the least burden without sacrificing rational and necessary protections.[8] The Commission is bringing its filing requirements and procedures up to date to match its current substantive policies and authority and is not significantly changing its procedures for processing applications filed under part 153. The revised regulations are designed to provide the Commission and interested parties with the information generally required to process an application under part 153. Where more information is needed, it may be collected on a case-by-case basis.

The Commission received six comments on the NOPR.[9] The commenters suggested various clarifications and modifications some of which are incorporated into the Final Rule with appropriate revisions. The Final Rule:

- Clarifies that § 153.5 does not require the holder of a Commission section 3 authorization to file an amendment with the Commission upon DOE/FE's extension of import/export authority;
- Clarifies that § 153.5 requires the holder of an existing section 3 authorization for LNG facilities to file for additional section 3 authorization to modify existing LNG facilities with facilities to be used for the import/export of natural gas, but no amendment would be required if the holder seeks to modify facilities at the LNG plant site that are not used to import/export LNG;
- Requires in § 153.6 an applicant to state for the first time whether an application for DOE/FE authorization is required or has been obtained at the time of filing a section 3 application with the Commission;
- Clarifies that the list in § 153.7(c)(1) of public interest criteria is illustrative and adds as a factor for consideration the enhancement of competition within the United States for natural gas transportation or supply;
- Clarifies that § 153.9 permits the transfer or assignment of section 3 authorizations and related facilities upon prior Commission approval, and;
- Exempts applicants that do not possess pipeline transportation capacity (such as LNG terminals) from the new requirement in § 153.23 to report annually estimated peak day capacity and actual peak day usage of the import/export facility.

## III. Discussion

### *A. Background and Statutory Authority*

Section 3 of the NGA requires prior authorization before exporting or importing natural gas from or to the United States.[10] Section 3 authorizes the Commission to grant an application, in whole or in part, with modifications and upon terms and conditions as the Commission may find necessary or appropriate. Section 3 also authorizes the Commission to make ''such supplemental order in the premises as it may find necessary or appropriate.''

Currently, responsibilities under section 3 are divided between DOE/FE and the Commission. The Commission's responsibilities under section 3, as under the other provisions of the Natural Gas Act, are to be administered ''to protect consumers against exploitation at the hands of natural gas companies.'' [11]

Initially, the FPC was vested with exclusive jurisdiction under section 3 to decide all natural gas import and export issues, including the authorization to import and export natural gas and to construct and operate necessary facilities. The FPC also had the authority, pursuant to Executive Order 10485, as amended, to issue or modify a Presidential Permit for the construction and operation of border facilities at the international boundary between the United States and Canada or Mexico.

The Department of Energy Organization Act (DOE Act), enacted in 1977, transferred all the FPC's authority over natural gas imports and exports to the Secretary of Energy ''unless the Secretary assigns such a function to the (Federal Energy Regulatory) Commission.'' [12] Between October 1, 1977, and February, 1984, DOE and the Commission shared responsibility over natural gas import and export issues pursuant to DOE delegation orders (which have since been rescinded). The Secretary of Energy administered his authority over natural gas import and export issues pursuant to FPC rules in place on September 30, 1977, until DOE issued its own final regulations.[13]

The Secretary issued new delegation orders 0204–111 and 0204–112, discussed below, in February 1984, to minimize problems of coordination on certain import/export issues.[14] These delegation orders allocated regulatory functions concerning the import and

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[4] Executive Order 10485, 3 CFR, 2949–1953 Comp., p. 970, as amended by Executive Order 12038, 3 CFR 1978 Comp., p. 136.

[5] DOE/FE, Natural Gas Imports and Exports, Fourth Quarter Report (1996) at p. ii.

[6] The Final Rule will apply to all part 153 applications filed after the effective date of the Final Rule.

[7] Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas, 62 FR 5940 (February 10, 1997), IV FERC Stats. & Regs. ¶ 32,523 (1997).

[8] The President's memorandum, dated March 4, 1995, concerning the National Performance Review, requires agencies, among other things, to eliminate or revise outdated regulations and to move from a process that creates large numbers of regulations to issuing ''sensible regulations that impose the least burden without sacrificing rational and necessary protections.''

[9] The commenters were the Canadian Association of Petroleum Producers, Coastal Companies, Great Lakes Gas Transmission Limited Partnership, PanEnergy Pipelines, Phillips Petroleum Company, and Yukon Pacific Company L.P. While PanEnergy Pipelines' comments were filed three days late, the Commission will consider them in order to address all issues raised in this proceeding.

[10] 15 U.S.C. 717b.

[11] FPC v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944).

[12] *See* sections 301(b), 402(a) and 402(f) of the Department of Energy Organization Act, 42 U.S.C. 7151(b), 7172(a) and 7172(f).

[13] DOE's final rules establishing procedures for processing applications for the import and export of natural gas and revised *ex parte* rules became effective on September 6, 1984. 49 FR 35302 (September 6, 1984).

[14] Both delegation orders were published at 49 FR 6684 (February 22, 1984).

export of natural gas to the Commission and DOE/Economic Regulatory Administration (ERA).[15] DOE and the Commission continue to share responsibility for determining natural gas import/export issues under these currently applicable delegation orders.

Under DOE Delegation Order 0204–111, effective February 22, 1984, the Secretary of Energy delegated to the Administrator of ERA authority under section 3 of the NGA to regulate the import (including the place of entry) and the export (including the place of exit) of natural gas. On the same date, the Secretary of Energy issued Delegation Order 0204–112 which delegated to the Commission exclusive authority over specific import/export matters.

The responsibilities delegated to the Commission include the authority to approve or disapprove proposals for the construction, operation, and siting of facilities, and when the construction of new domestic facilities is involved, the place of entry for imports or place of exit for exports. The Commission's delegated authority is subject to DOE's right of disapproval if the Administrator finds disapproval to be appropriate ''in the circumstances of a particular case.'' Thus, under the most recent and presently applicable delegation orders, the facility and siting aspects of natural gas import and export are delegated and assigned to the Commission for determination of the public interest.

Section 3 of the NGA provides that the Commission ''shall issue an order upon application, unless * * * it finds that the proposed exportation or importation will not be consistent with the public interest.'' The Commission determines the public interest in particular proceedings upon consideration of all relevant factors. For example, the Commission has authorized the construction and operation of import/export facilities under NGA section 3 based upon substantial evidence that the proposal is necessary to access gas supplies, deliver imported gas to an industrial user,[16] provide a more economic source of natural gas,[17] or enhance competition, system reliability, flexibility, or the dependability of international energy trade, and will not adversely affect the service or rates of existing customers.[18] The Commission's current practice in implementing NGA section 3 does not require that an applicant include in its application evidence of specific market support for its project (such as precedent agreements between the applicant and shippers), although construction authorized under section 3 must be associated with the import/export of natural gas.[19]

A person applying to the Commission for authority under section 3 must also apply to the Commission, pursuant to DOE Delegation Order No. 0204–112, for the issuance of a Presidential Permit or an amendment to an existing Presidential Permit if the proposed facilities are to be located at the borders of the United States and either Canada or Mexico.[20] A Presidential Permit authorizes the applicant to construct, operate, maintain, or connect natural gas pipeline facilities at the international borders.

The Commission has the jurisdiction, pursuant to Executive Order 10485, as amended, to condition a Presidential Permit ''as the public interest may in its judgment require.'' [21] In addition, Executive Order 10485, as amended, requires the Commission to obtain the concurrence of the Secretary of State and the Secretary of Defense who will consider foreign policy and national security aspects of the application.

An applicant proposing to alter a term of an existing Presidential Permit that does not also necessitate new construction, *e.g.*, a revision to the authorized operating or design capacity of an existing import/export facility, must file to amend its Presidential Permit.[22] That applicant, however, does not also require section 3 authorization when existing facilities are unchanged. On the other hand, the applicant granted authorization under NGA section 3 does not require a Presidential Permit for the construction of natural gas import/export facilities located at tidewater or on the border of the United States and international waters because, as the Commission interprets and applies Executive Order 10485, as amended, there would be no physical connection of border facilities at the boundary between the United States and a foreign country.[23]

The holder of a Presidential Permit may file to terminate, revoke, or surrender its Presidential Permit which had been activated by the construction of authorized facilities. Pursuant to uniform article 9 of a Presidential Permit, the holder of a surrendered Presidential Permit must remove the authorized import/export facilities as prescribed by Commission order. The holder of a surrendered Presidential Permit may not transfer the related section 3 authorization and facilities to another owner/operator without prior Commission authorization. [24]

The holder of a Presidential Permit also may file a request to surrender its Presidential Permit if the Presidential Permit was never activated and no facilities were constructed. [25] Upon receipt of an application to surrender a Presidential Permit, the Commission's practice is to provide public notice of the application to determine whether its surrender would be disputed. [26]

### *B. Objectives of the Final Rule*

Part 153 currently imposes specific filing requirements on applicants for authorization under section 3 and Executive Order 10485, as amended, to site, construct, and operate facilities for

[15] Effective on February 7, 1989, the Assistant Secretary for Fossil Energy (DOE/FE) assumed the delegated responsibilities of the Administrator of ERA. *See* DOE Delegation Order No. 0204–127. 54 11436 (March 20, 1989).

[16] *See* National Steel Corp., 45 FERC ¶ 61,100 (1988).

[17] *See* Atlantic Richfield Co. and Intalco Aluminum Corp., 49 FERC ¶ 61,294 (1989), *reh'g denied in part,* 50 FERC ¶ 61,210 (1990).

[18] Great Lakes Transmission Limited Partnership, 76 FERC ¶ 61,148 (1996).

[19] Unlike precedent under section 3, Commission precedent under NGA section 7 requires an applicant to file executed precedent or service agreements to demonstrate sufficient demand for proposed capacity. *See,* e.g., El Paso Natural Gas Co., 65 FERC ¶ 61,276 (1993).

[20] Pursuant to an opinion rendered by the Office of the Legal Counsel of the Department of Justice, the FPC determined that Executive Order No. 10485 does not apply to gas facilities on the border of the United States and international waters because there would be no border facilities involving any physical connection between the facilities involving any physical connection between the United States and a foreign country. *See* Phillips Petroleum Co., *et al.*, 37 FPC 777 (1967).

[21] These conditions are stated as ''articles'' in the body of a Presidential Permit. The articles describe the facilities, design capacity, nature of the service and include various uniform provisions concerning transferability of the Presidential Permit or facilities, inspection and access to the facilities, liability for damages, filing of information, removal of facilities upon surrender/revocation of the Presidential Permit, possession by the United States, and control by a foreign government.

[22] *See* Panhandle Eastern Pipe Line Co., 62 FERC ¶ 61,190 (1993).

[23] *See* EcoElectrica, L.P., 75 FERC ¶ 61,157 (1996), Yukon Pacific Corp., 39 FERC ¶ 61,216 (1987), and Phillips Petroleum Co., 37 FPC 777 (1967).

[24] *See* Western Gas Interstate Co., 74 FERC ¶ 61,347 (1996) and Northern Natural Gas Co., et al., 71 FERC ¶ 61,292 (1995).

[25] Application pending Commission review in Western Gas Interstate Co.'s Docket No. CP69–169–000 to discontinue a Presidential Permit authorized by prior FPC order (41 FPC 385 (1969)) because certain border facilities were never constructed.

[26] The Commission's review of the annual report for non-natural gas company applicants required by § 153.23 of the Final Rule and Form No. 2 and other reports for natural gas companies will enable the Commission to determine the current status of import/export facilities authorized under section 3 and a Presidential Permit.

the import or export of natural gas. [27] The Final Rule incorporates basic housekeeping changes to eliminate obsolete and redundant language and sections concerning filing fees, bundled sales service, and the filing of import/export contracts and rate schedules. The Final Rule also makes conforming changes to the current regulations to reflect the Commission's diminished responsibilities in the regulation of natural gas imports and exports under DOE's currently effective delegation orders.

The Final Rule also updates the type of information and exhibits that an applicant must include in its application. The Commission is revising its filing requirements to match its current responsibilities and does not propose to change its substantive policies.

Other changes to part 153 reflect the separate but related nature of the Commission's and DOE's responsibilities concerning natural gas import and export issues. The Commission's revisions will make clear that the part 153 regulations apply only to the siting, construction, operation, or modification of facilities for the import or export of natural gas. On the other hand, DOE's responsibility is the authorization of requests to import/export natural gas.[28]

Section 153.6 of the Final Rule requires the FERC applicant, for the first time, to include in its application a statement indicating whether a related application with DOE/FE (or an amendment to an existing blanket authorization) is required, and if so, whether that application or amendment has been granted by DOE/FE.[29] Section 153.6 of the Final Rule also requires the FERC applicant to file a statement before it commences construction that DOE/FE has granted any required, related import/export authority. Based on comments received, the Final Rule deletes § 153.6 of the NOPR which provided for the simultaneous or prior filing of a related application with DOE/FE.

Section 153.7 of the Final Rule codifies Commission practice concerning evidentiary support for an application for authorization for the construction of facilities under section 3 or an amendment to an existing authorization. Section 153.7(c)(1) permits an applicant to support its statement that its application is not inconsistent with the public interest by including evidence that its proposal or proposed construction is beneficial (with examples stated in the Final Rule), that there will be no impairment of service at reasonable rates, and that no anti-competitive agreements are involved. In addition, the applicant must submit, pursuant to § 153.7(c)(2), a statement describing the nature of the transportation service that the applicant will provide using the import/export facilities. This statement will assist the Commission in determining the extent to which a pipeline applicant will use its import/export capacity for all shippers.

Subpart D of the Final Rule provides for the rejection of incomplete applications and for amendments and withdrawals of pending applications consistent with the Commission's practice in part 157. Certain section 3 applicants are not natural gas companies, and, thus, are not currently required to notify the Commission of basic operational data (such as the completion of construction or start-up of service through authorized facilities). The Final Rule requires those applicants to report such information to the Commission.

*C. Electronic Filing*

The Commission is not modifying part 153 at this time to require an applicant to file its applications on electronic media. The Commission will review in a future proceeding the electronic filing requirements for the entire certificate application process, including existing electronic filing requirements for part 157 applications and appropriate electronic filing procedures to adopt for part 153 applications. The Commission will determine where changes are necessary to reflect current policies and will modify existing electronic filing requirements as necessary to streamline and update the filing process.

As was done in proceedings in Docket Nos. RM95–3–000 [30] and RM95–4–000, [31] the Commission will solicit participation of the industry and other users of filed information in formulating final electronic filing instructions.

*D. The Revised Regulations*

The revised part 153 has a new organization, different from that in the current regulations, and virtually every section has been changed in some way. The text has been revised to remove outdated references to the import/export of natural gas and fees and rewritten to be more concise with separate subparts A through D. Part 153 starts with a new heading and updated legal authorities. The final regulations are discussed below.

1. Subpart A—General Provisions

a. Section 153.1 Purpose

The Commission has included in § 153.1 a statement of the purpose of its part 153 regulations—to implement the Commission's authorities delegated under section 3 of the Natural Gas Act and Executive Order 10485, as amended. Part 153 revamps the Commission's procedures and evidentiary requirements for applying for section 3 authorization and for a Presidential Permit.

b. Section 153.2 Definitions

The Final Rule includes a section defining key terms used in part 153—''DOE/FE'' (Department of Energy/Office of Fossil Energy), ''NBSIR'' (National Bureau of Standards Information Report), and ''person'' for purposes of part 153 (''person'' is currently undefined in part 153). The Commission's definition of person is identical with and cross-references DOE's definition of ''person'' stated at 10 CFR 590.102(m), which DOE uses for purposes of considering applications for import/export authorization.[32] The Commission's definition will by its own terms automatically incorporate any future changes in DOE's definition of ''person.'' The Commission's definition would not change current Commission practice in processing applications under section 3 or Executive Order 10485, as amended.

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[27] Thus, neither the current regulations nor the Final Rule address filing requirements applicable to the construction of any connecting facilities transporting natural gas in interstate commerce. Such facilities would be within the scope of section 7 and the Commission's part 157 regulations. *See* Williston Basin Interstate Pipeline Co., 63 FERC ¶ 61,179 (1993) and Panhandle Eastern Pipe Line Co., 5 FPC 476 (1946).

[28] Under DOE regulations, applications must be filed at least 90 days prior to the proposed import or export, unless a later date is permitted for good cause shown. *See* 10 CFR 590.201. DOE processes applications for import/export authority where a free trade agreement applies on an expedited basis. NGA section 3(c), added by the Energy Policy Act of 1992, provides that ''applications for such importation or exportation shall be granted without modification or delay.'' 15 U.S.C. 717b(c).

[29] The person filing with DOE/FE for import/export authorization may be a shipper on the facilities of the FERC applicant and need not be the FERC applicant.

[30] Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, 60 FR 3111 (January 13, 1995).

[31] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 3141 (January 13, 1995).

[32] 10 CFR 590.102(m).

2. Subpart B—Application Under Section 3

a. Section 153.5 Who Shall Apply

Section 153.5(a) of the Final Rule retains the requirement in current § 153.1 that a person file an application to seek authorization under section 3 and adds a new provision, codifying current practice, requiring the filing of an application in order to amend an existing authorization under section 3, including the modification of existing import/export facilities.

Phillips Petroleum Company (Phillips) asks the Commission to clarify that the proposed § 153.5(a) does not require it to file an application with the Commission under section 3 to amend its existing Commission authorization, if DOE/FE authorizes an extension of its existing LNG export agreement.[33]

If an entity seeks to modify its facilities authorized under section 3, that entity must file an application with the Commission under section 3 in order to amend its existing authorization. A grant by DOE/FE of an extension of an existing contract to export LNG would not by itself require a Commission-authorized entity to file an application to modify its facilities, and no amendment to its section 3 authorization would be required. Accordingly, the requested clarification is granted. Proposed § 153.5(a) is revised to eliminate duplicative language concerning the necessity to file an amendment to an existing Commission authorization in order to modify facilities authorized under section 3.

Phillips also asks the Commission to clarify that proposed § 153.5(a) would not require it to file an application with the Commission under section 3 in order to modify facilities at its LNG plant site which are not used for the export of natural gas.

The holder of a section 3 authorization is required to obtain prior Commission authorization under section 3 to amend that current section 3 authorization if the applicant proposes to implement changes in its import/export facilities or operations.[34] Thus, if Phillips seeks to modify facilities which serve its LNG function at the Cook Inlet area in order to provide incidental activities, such as intrastate sales of LNG or regassified natural gas to industrials, Phillips must file an amendment to its existing section 3 authorization to undertake that construction.[35] This is so because Phillips would be modifying existing export facilities that would continue to serve its LNG export function while providing non-export service. The additional service could not occur without the underlying LNG facilities for storage, gasification, or transportation.

If Phillips seeks to modify facilities at its LNG plant site which are not currently used to export LNG in order to sell natural gas or natural gas products within the state of Alaska, Phillips would not need to make a Commission filing to implement that construction which would facilitate intrastate transactions. If Phillips is unclear about whether proposed modifications involve dual-purpose facilities providing LNG-export and non-LNG export service, it may also file a request for a declaratory order with the Commission to resolve the uncertainty.

PanEnergy asks the Commission to clarify § 153.5(a) to provide that a pipeline does not have to file an amendment to its existing section 3 authorization if it proposes to change the valves, meters, piping, or other minor construction associated with import/export facilities. [36] PanEnergy's request for an exemption for minor facilities, if granted, would be inconsistent with the public interest. That construction could affect the reliability of service through the import/export facility, and may require the modification of facilities in Canada or Mexico. The Commission might not become aware of self-implemented construction until years after the facilities are altered as in the case of *Panhandle Eastern Pipeline Co.*(*Panhandle*).[37] While *Panhandle* involved a certificated export delivery point and not the modification of border-crossing facilities, the same result should apply in the case of modifications of border-crossing facilities authorized under section 3 or a Presidential Permit. The request for rule clarification is rejected.

Section 153.5(b) of the Final Rule cross-references subpart C (applications for a Presidential Permit). Section 153.5(b) establishes a requirement that an applicant must also simultaneously apply under subpart C for a Presidential Permit for the construction of border facilities at the international boundary between the United States and Canada or Mexico.

b. Section 153.6 Time of Filing

Filing requirements prescribing the number of copies and form of applications for section 3 authorizations (and for Presidential Permits) are moved from current § 153.2 to § 153.20(a) of subpart D of the Final Rule. This change avoids duplication of regulatory text.

The current part 153 regulations do not require a pipeline to file an FERC application under section 3 under any particular timetable in relation to its shippers' filing of a related, required application for import/export authorization with DOE/FE. That is so because the current regulations became effective when the FPC had exclusive jurisdiction over all natural gas import/export issues. The NOPR recognized that under current delegation orders separate applications would be filed with the Commission and DOE/FE. Proposed § 153.6 recognized the related nature of those applications before the Commission and DOE/FE on import/export issues by requiring the pipeline's shipper to make prior or simultaneous filings with DOE/FE for import/export authority.[38]

The Coastal Companies and Great Lakes Gas Transmission Limited Partnership (Great Lakes) assert that proposed § 153.6 would establish a new

[33] *See* Phillips Petroleum Co., *et al.*, 37 FPC 777 (1967). The Commission authorized, pursuant to NGA section 3, the export of LNG and the construction of facilities currently known as the Kenai LNG plant in the Cook Inlet area of Alaska for the liquefaction and storage of natural gas and the loading of LNG onto ships for export and delivery to Japan. From time to time, Phillips has filed with DOE/FE requests to extend the term of its export authorization.

[34] A pipeline may not construct or modify an existing LNG facility, whether an import facility authorized under section 3 or not, under its part 157 blanket (subpart F) certificate pursuant to 18 CFR 157.202(b)(2)(ii)(D), which excludes such construction from the scope of a part 157 blanket (subpart F) certificate. *See* Algonquin LNG, Inc., 79 FERC ¶ 61,139 (1997).

[35] Ordering Paragraph (d) of the FPC's 1967 order provides that Phillips and Marathon Oil Co., joint applicants, ''shall not * * * materially change or alter their export operations without first obtaining the permission and approval of the Commission.'' 37 FPC at 778.

[36] PanEnergy's motion questions the need to file an amendment to its ''import/export license'' for such minor construction. We construe PanEnergy's request as referring to the need to file to amend the Commission's section 3/Presidential Permit authorization. There would not necessarily be a need to amend a DOE/FE import/export authorization because of Commission-authorized section 3 construction.

[37] 65 FERC ¶ 61,169 (1993). In Panhandle, the Commission found that the pipeline had abandoned an existing certificated delivery point and constructed a new delivery point at the United States-Canada border without prior Commission authorization under section 7(b) and without following the prior notice procedures of its part 157 (subpart) F) certificate. The Commission granted retroactive abandonment authorization as well as the authority to operate the new delivery point under the pipeline's part 157 (subpart F) certificate.

[38] *See* Atlantic Richfield Co., *et al.*, 49 FERC ¶ 61.294 (1989), *reh'g denied*, 50 FERC ¶ 61,210 (1990) and National Steel Corp., 45 FERC ¶ 61,100 (1988). In both cases, DOE issued import authorizations before the Commission issued an order approving the place of import under section 3.

requirement which is not workable. Both assert that DOE/FE filings are likely to be made after the filing of border-crossing applications with the Commission. According to Great Lakes, a potential FERC applicant should not be required to coordinate its filing with third parties and to wait to file with the Commission until its shippers have filed their applications before DOE/FE. Great Lakes argues that an applicant should file with the Commission under section 3 before filing an application with DOE because Commission proceedings, with environmental reviews, may continue longer than the minimum 90-day period of review under DOE's regulations for applications to import/export natural gas.[39] Great Lakes asks the Commission to revise its proposed regulations to require an applicant to state whether an application for DOE/FE authorization will be required and, if so, to agree to a condition that ''all necessary DOE authorizations have been or will be obtained prior to the operation of import/export facilities.''

The Commission's purpose in the NOPR was two-fold. First, the Commission was proposing to amend its filing requirements to reflect the division of authority between the Commission and DOE on import/export issues. Second, the proposed regulation was based on the assumption that an application for new or changed import/export authority is a step which would precede an application before the Commission for necessary, related import/export facilities.

Great Lakes proposes substitute language in proposed § 153.6 that would require a pipeline to state whether an application for DOE/FE authorization is also required, and, if so, to represent that DOE/FE will grant that application prior to the *operation* of the border facilities.

The Commission recognizes that not all applications filed with the Commission under NGA section 3 require modification to an existing import/export authorization. For example, some construction may be undertaken to enhance system reliability and flexibility, which does not necessitate a change in an existing import/export authorization. Other construction may be used to transport volumes previously authorized under an existing DOE/FE blanket certificate. Moreover, it may be difficult for a pipeline to control the timing of its shippers' filing of required, related applications for import/export authorization.

Accordingly, we will delete proposed § 153.6 and, in its place, add a new paragraph (a) to § 153.6 requiring an applicant to state whether DOE/FE authorization is required[40] and, if so, whether all required DOE/FE authorizations have been granted prior to *filing* a section 3 application with the Commission.

Great Lakes also suggests that the Commission could require the FERC applicant, as a condition of its authorization, to file a statement that DOE/FE authorizations ''will be obtained prior to the *operation* of the border facilities.'' This recommendation is not workable because if the applicant's representation of DOE/FE approval does not materialize, the Commission would be in the undesirable position of having authorized the construction of facilities which may never become operational. The pipelines' customers would derive no benefits from unused construction, and the environment would have been needlessly disturbed.

Accordingly, the Commission will also revise proposed § 153.6 to condition its grant of section 3 authorization on the applicant's filing a subsequent statement, before the applicant may commence construction, that its shippers have applied for and obtained all required DOE/FE authorizations for the import/export of natural gas. We will adopt Great Lakes' proposed condition, as revised, in § 153.6(b) of the Final Rule. The Commission intends to apply the Final Rule to all future section 3 applications that also require an application for DOE/FE authorization or an amendment to an existing authorization for the import/export of natural gas.

c. Section 153.7 Contents of Application

i. Information Regarding Applicant

The requirements in §§ 153.7 and 153.8 (exhibits) of the Final Rule apply to applications under subpart B for authorization under NGA section 3 and under subpart C for Presidential Permits for the construction of import/export facilities at the border. Informational requirements in current §§ 153.3(a) through 153.3(c), identifying the applicant, its authorized agent, legal status, and address, are revised and retained in proposed § 153.7(a)(1) through (a)(3) of the Final Rule with a paragraph heading added. The informational requirements in current §§ 153.3(d) through 153.3(f) are deleted because they require information no longer essential to the Commission's delegated responsibilities—the name and location of gas production fields and reserves as well as the name of the seller and producer of gas to be imported and the proposed rates to the paid by the applicant. For the same reason, current § 153.8, requiring the filing of import/export contracts and rate schedules, is deleted.

Section 153.7(a)(3) of the Final Rule reflects a merging of application requirements for section 3 authorizations and Presidential Permits which are separately stated in current regulations. The Final Rule relocates in § 153.7(a)(3) the current requirement in § 153.11(a)(4) that applications for Presidential Permits identify foreign ownership or subsidy of the applicant.

The Canadian Producers ask the Commission to clarify why it is necessary for an applicant to indicate whether the applicant is owned or subsidized by a foreign government. As noted, the current regulations applicable to Presidential Permits require a section 3 applicant to supply information about foreign government ownership/subsidy. This information assists the Commission's implementation of its delegated authorities under Executive Order No. 10485, as amended, which derives from the constitutional authority vested in the President of the United States over foreign relations and as Commander-in-Chief.[41] This informational requirement enables the Commission and the Secretaries of State and Defense, upon their review of a Commission request for concurrence, to consider all relevant factors in determining whether an application for a Presidential Permit for the construction of border facilities is in the public interest. Foreign ownership or subsidy of an applicant is one such material factor.

ii. Summary

The requirement in current § 153.3(g) to describe proposed facilities is retained, expanded, and redesignated as § 153.7(b) of the Final Rule with a ''summary'' paragraph heading added. The Final Rule requires the applicant to summarize its proposal and to file a description of the proposed facilities and a description of state, foreign, or other Federal licenses or permits for the construction or operation of facilities (revising a similar requirement in

[39] Under DOE's regulations, applications to import/export natural gas must be filed at least 90 days prior to the proposed import/export date, unless a later date is permitted for good cause shown. 10 CFR 590.201.

[40] A shipper's blanket import/export authorization from DOE/FE satisfies the Final Rule, and no further DOE/FE authorization would be ''required.''

[41] *See* Yukon Pacific Corp., 39 FERC ¶ 61,216 at pp. 61,759–60 (1987).

current § 153.11(d) applicable to Presidential Permits). In addition, § 153.7(b) of the Final Rule adds a new requirement that the applicant must also state the status of any non-FERC regulatory proceedings (United States or foreign) related to the proposal.

iii. Statements

Section 153.7(c) of the Final Rule requires the applicant to file two statements with its application. The first statement demonstrates the public interest. It consists of three elements (§ 153.7(c)(1) (i) through (iii))—demonstrating, respectively, benefits from the proposal, whether existing service at reasonable rates would be impaired, and whether there are any applicable anti-competitive agreements. Section 153.7(c)(1)(i) of the Final Rule is new, while the requirements in §§ 153.7(c)(1)(ii) and (iii) are in the current regulations and have been continued with revisions. The second statement (§ 153.7(c)(2)) requires, for the first time, a description of the nature of the transportation service offered through the authorized border-crossing facilities.

With respect to the first element of the public interest statement, § 153.7(c)(1)(i) of the NOPR identified illustrative elements of the public interest, including a demonstration that the proposal will access new foreign supplies of natural gas and new markets, or enhance system reliability and/or flexibility. Section 153.7(c)1)(ii) and (iii) required representations that the proposal would not impair service to existing customers at reasonable rates or involve anti-competitive agreements that may prevent other United States companies from competing in the same general area.

Great Lakes and PanEnergy Pipelines (PanEnergy) ask the Commission to clarify that the criteria relating to the public interest in § 153.7(c)(1)(i) are illustrative only and, because the listing is not all-inclusive, that an applicant should not be required to make a showing of ''any of those specific criteria * * * since there are other criteria that can also demonstrate that the proposed siting and construction are not inconsistent with the public interest.''[42] These parties assert that an applicant should be allowed to raise any factor showing that its project is not inconsistent with the public interest. In particular, Great Lakes points out certain situations, not enumerated in the NOPR, which it believes would not be inconsistent with the public interest. These situations include border facilities required by an existing market to provide an alternative less costly transportation path to import gas from existing foreign supply sources, or border facilities to reach new markets in the United States or to allow existing markets to access new foreign supply sources.

Great Lakes offers substitute regulatory text which would revise proposed § 153.7(c)(1), assign separate paragraphs to the items listed in proposed § 153.7(c)(1)(i) with the addition of an item for the enhancement of competition, and renumber proposed §§ 153.7(c)(1) (ii) and (iii) as §§ 153.7(c)(1) (vi) and (vii), respectively.

Section 153.7(c)(1)(i) of the Final Rule does not change the statutory standard under NGA section 3 that the Commission ''shall issue such order upon application, unless * * * it finds that the proposed exportation or importation will not be consistent with the public interest.'' In Commission orders issued under section 3, the Commission determines the public interest on the basis of all relevant factors of record.

As Great Lakes and PanEnergy state, the list in § 153.7(c)(1)(i) illustrates particular factors which may be relevant in a specific proceeding as evidence that the proposal or proposed construction is not inconsistent with the public interest. An applicant does not have to make a showing with respect to each of the factors listed in paragraph (i) unless each applies to the applicant's project. Accordingly, Great Lake's and PanEnergy's requested clarification is granted.

It is unnecessary to revise proposed § 153.7(c)(1) or to designate separate paragraphs in § 153.7(c)(1)(i), as Great Lakes proposes. The last item listed in proposed § 153.7(c)(1)(i) (that an application ''will not impair transportation service to existing customers'') is deleted as duplicative of the same item separately stated in proposed § 153.7(c)(1)(ii). Proposed § 153.7(c)(1)(i) is revised to add as a factor evidencing the public interest the enhancement of competition within the United States for natural gas transportation or supply, as Great Lakes proposes.

Proposed § 153.7(c)(1)(i) permitted the applicant to indicate in its application whether its proposal will access ''new foreign supplies of natural gas and service new market demand.'' PanEnergy asks the Commission to clarify that the proposed regulation covers both ''new and additional'' supplies without reference to foreign or domestic sources. Great Lakes states that import/export facilities may be warranted to provide a cheaper transportation path between existing supplies and existing markets.

Since the Final Rule is intended to apply to export facilities which transport domestic gas supplies (as well as to import facilities), the reference to ''foreign'' gas supplies is deleted from § 153.7(c)(1)(i). Moreover, the reference in § 153.7(c)(1)(i) to ''new'' gas supplies is deleted because it excludes the construction of facilities used to transport existing supplies to existing or new markets.

Proposed § 153.7(c)(1)(ii) required the pipeline applicant to show that the proposal ''will not impair the ability of the applicant to render transportation service at reasonable rates to customers in the United States.'' Thus, proposed paragraph (ii) would require the pipeline applicant to make a showing both that its proposal will not interfere with its ability to continue to provide transportation service and that its proposal would not cause the pipeline's systemwide rates to become unreasonable.

The Canadian Association of Petroleum Producers (Canadian Producers) contends that temporary operational restrictions could constitute a service impairment to the applicant's existing United States customers that could require rejection of a section 3 application. The NOPR, however, continued the same service continuation obligation in current § 153.3(h)—to avoid the impairment of service (at reasonable rates) to existing customers. The construction of a new import point would make more gas available for delivery to the pipeline's customers and could result in capacity constraints downstream. Likewise, a new export point could cause constraints on the capacity of non-export customers. The required statement puts the burden on the pipeline applicant to review the service consequences of its application before proposing an import or export project.[43] The Canadian Producers' concern appears unwarranted.

The Canadian Producers ask the Commission to clarify that the Commission intends to apply the 1995 pricing policy statement to new import/export facilities (without an additional reasonableness analysis).[44] PanEnergy asks the Commission to clarify that the Commission does not intend in

[42] Comments at p. 5 (filed April 11, 1997).

[43] Pipelines may avoid possible constraints by simultaneously proposing the construction of necessary facilities under NGA section 7. *See, e.g.*, Williston Basin Interstate Pipeline Co., 63 FERC ¶ 61,179 (1993).

[44] Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 (1995).

proposed § 153.7(c)(1)(ii) to require the pipeline applicant to make any additional showing about the justness and reasonableness of its rates beyond that established under NGA sections 4, 5, and 7.

The Commission's practice is to apply its 1995 facilities pricing policy statement to determine the reasonableness of a pipeline's rates resulting from the construction of import/export facilities by interstate pipelines in the same fashion as the Commission applies that policy statement to interstate facilities under section 7 in certificate proceedings.[45] We do not regard the application of the policy statement to a section 3 proceeding as requiring an additional showing by the pipeline. There is no basis for exempting facilities authorized under section 3 from the pricing policy statement which applies to all other construction by interstate pipelines.

PanEnergy also asks the Commission to clarify that the reasonable rate standard of proposed § 153.7(c)(1)(ii) is satisfied if the pipeline represents that it can continue to ''render transportation service at the rates approved by the Commission and contained in applicant's tariff.'' [46] In light of our application of the pricing policy statement to an interstate pipeline's facilities authorized under section 3, PanEnergy's proposed clarification is granted.

The Canadian Producers ask the Commission to revise proposed § 157.7(c)(1)(ii) to state that there should be no impairment of service at reasonable rates to *applicant's* existing customers in the North American market (instead of the NOPR's impairment of service ''to customers in the United States.'') The Canadian Producers read the NOPR as applying to service rendered to all United States customers of all pipelines. We clarify the Final Rule to track the current regulation, which requires the pipeline's demonstration to relate to the pipeline-applicant's customers. The Final Rule also relocates the reference ''in the United States'' in the current regulation and the NOPR to modify ''transportation service'' instead of ''customers.'' This revision makes it clear that the facilities and transportation service that the Commission authorizes are located in the United States (or its possessions) and that a pipeline's Canadian or Mexican customers may receive transportation service through the pipeline's import/export facilities.

Section 153.7(c)(1)(iii) of the NOPR revised the requirement in current § 153.11(c) to file a statement describing certain contracts applicable to Presidential Permits. Proposed § 153.7(c)(1)(iii) required the applicant for section 3 authorization to file a statement describing any existing contracts involving the control of operations at import/export facilities or transportation rates that could prevent competing United States companies from extending their activities in the same general area.

The Canadian Producers ask the Commission to clarify why the Commission established the new requirement in § 153.7(c)(1)(iii) to file certain agreements and whether such agreements could impact free trade. First, § 153.7(c)(1)(iii) does not establish a new requirement. A similar provision in § 153.11(c) currently applies to the filing of applications for Presidential Permits. Second, there could be exclusivity or market allocation agreements between the applicant-transporter and its shipper or the applicant and a foreign government that could prevent other transporters from competing for the same customers in the same general area. If they existed, such agreements could be anti-competitive and could interfere with free trade. The parties to a section 3 proceeding should have the opportunity to comment on the acceptability of those contracts. Thus, it is appropriate to require their disclosure at the time of filing.

With respect to the second statement an applicant for section 3 authorization must file, the NOPR established a new requirement in § 153.7(c)(2) requiring the applicant's demonstration that the proposed import/export facilities will be used: (1) To render transportation services under part 284, (2) to provide private transportation, or (3) to provide service that is exempt from the provisions of the NGA pursuant to sections 1(b) or 1(c) thereof.[47] This requirement was intended to enable the Commission to determine whether the applicant's operations are consistent with the Commission's open access transportation policies.

PanEnergy asserts that the NOPR failed to refer to the continued existence of individually certificated part 157 transportation service, which section 3 facilities could enhance. Under Commission policy after Order No. 436, transportation service through available capacity on a pipeline's facilities, including import/export facilities, must be offered on an open access and non-discriminatory basis. The Commission almost always rejects applications for service under new part 157 certificates, extensions to existing part 157 certificates, or amendments to part 157 certificates that seek to provide some of the benefits of part 284 status without the affected customer's converting to service under part 284.[48]

We will amend proposed § 153.7(c)(2) to recognize that some pipelines, operating as open access transporters, currently provide individually certificated transportation services under part 157. The Commission will revise proposed § 153.7(c)(2) to require the pipeline-applicant to represent that: (1) The pipeline's proposed increases in capacity at existing import/export points is not exclusively reserved for part 157 users and (2) all services made available as a result of new or modified import/export facilities will be under part 284.

The Canadian Producers ask the Commission to clarify what ''private transportation'' means in proposed § 153.7(c)(2). We intend private transportation to mean transportation service provided through facilities owned by the same person that uses the natural gas transported. Private transportation typically arises in the case of transportation through a pipeline constructed and owned by an industrial user to transport natural gas only to its industrial facility.[49]

d. Section 153.8 Required Exhibits.

The Commission in the Final Rule is redesignating current § 153.4 as § 153.8, which retains the requirement to file current Exhibits A through C in new paragraphs (a)(1), (a)(2), and (a)(3), respectively, with editorial revisions. Current Exhibit A is revised to incorporate the requirement of current § 153.11(a)(3) that an applicant for a Presidential Permit describe the amount and classes of capital stock issued by a corporate applicant and the nationality

[45] *See, e.g.,* Great Lakes Transmission Limited Partnership, 76 FERC ¶ 61,148 (1996), in which the Commission applied the pricing policy statement to the construction of import/export facilities.

[46] Comments of PanEnergy at 5 (filed April 14, 1997).

[47] Section 1(b) states that the provisions of the NGA apply, *inter alia,* to the transportation of natural gas in interstate commerce but not to ''any other transporation,'' the local distribution of natural gas, or the production or gathering of natural gas. Section 1(c) exempts a Hinshaw pipeline from the provisions of the NGA. The Commission, however, regulates the activities of these exempt entities in foreign commerce under section 3. *See, e.g.,* Interenergy Sheffield Processing, 78 FERC ¶ 61,085 (1997) (gathering); Havre Pipeline Co., *et al.,* 71 FERC ¶ 61,292 (1995) (intrastate pipeline/gatherer engaging in foreign commerce); and Vermont Gas System, Inc., 24 FERC ¶ 61,366 (1983) (local gas distribution company).

[48] *See* Algonquin LNG, Inc. 79 FERC ¶ 61,139 (1997) and Tennessee Gas Pipeline Co., 78 FERC ¶ 61,340 (1997).

[49] *See, e.g.,* Sumas Energy Inc., 55 FERC ¶ 61,163 (1991) and National Steel Corp., 45 FERC ¶ 61,100 (1988).

of officers, directors, and stockholders, and the amount and class of stock held by each. The Commission is eliminating obsolete exhibits D and E (contracts for the export or import of natural gas) because DOE/FE oversees those activities.

Section 153.8(a) of the Final Rule requires an applicant to file new exhibits D (copy of any construction and operation agreements), E (LNG-related engineering data), E–1 (LNG-related seismic information for certain facilities), and F (an environmental report required by part 380 for LNG and non-LNG related facilities). Applicants may refer to the ''Guidance Manual for Environmental Report Preparation'' to assist in the preparation of these exhibits.

In the NOPR, the Commission proposed to require the applicant to file a new Exhibit D consisting of copies of construction and operation agreements between the applicant and the operator of border facilities in the United States and Canada or Mexico. The NOPR stated that Exhibit D would enable the Commission to verify the business feasibility of the import/export project and would show how the applicant and its Canadian or Mexican counterpart intend to jointly construct and operate the border-crossing facilities.

Coastal asks the Commission to eliminate proposed Exhibit D as a filing requirement because construction/operation agreements may not be available at the time application is filed. As a general observation, the Commission can not process an incomplete application because it would not contain the material elements of information required by our regulations. We regard a construction and operation agreement as a material element of an application because it would show the business feasibility of the import/export project. If the executed agreement is not available when the potential applicant wishes to file its application, the Commission expects the applicant to wait to file its application until after the agreement is available. At a minimum, the applicant must seek to obtain waiver of § 153.8 (Exhibit D) of the Final Rule which may be granted upon the pipeline's filing of an agreement in principle that shows the roles and responsibilities of the parties. The Final Rule is clarified accordingly.

Great Lakes would exempt from filing construction and operation agreements involving facilities constructed or operated by a single entity on the United States or Canadian border. Great Lakes, however, takes an unduly narrow view of the variety of possible operational agreements for border-crossing facilities in the United States or Canada and Mexico that could affect the public interest. Most of the United States facilities may be operated only by United States entities, and operating agreements with respect to these facilities are no less relevant to the public interest than United States facilities which may be jointly operated by United States and Canadian entities. The Commission intends the Final Rule to require the applicant to file as part of its application copies of all agreements between the applicant and the facility operator(s) for the construction and operation of border facilities.

New Exhibits E, E–1, and F in the NOPR codified existing practice which requires an applicant for the construction of LNG facilities to provide sufficient information that will enable the Commission to determine whether the new facilities will be constructed and operated safely, reliably, and with minimal adverse environmental impact. These exhibits are retained in the Final Rule and are justified by the significant safety and environmental implications of LNG terminal facilities. The requirement to file a map is revised as Exhibit G to require a map of suitable scale.

Phillips asks the Commission to clarify that its safety and environmental review of Exhibits E, E–1, and F relating to any proposed modification of LNG facilities will be limited to the proposed new facilities and will exclude existing facilities. The primary focus of Exhibits E, E–1, and F of the Final Rule is to demonstrate that the safety and environmental consequences of the proposed facilities (*i.e.*, a new LNG facility or modification of an existing LNG facility) are within acceptable limits and that the plant design provides a reliable natural gas service. Thus, the Commission will not impose revised environmental/safety conditions or scrutinize again the operation of a previously authorized LNG import/export facility unless there has been a material change in circumstances.

The Commission's staff conducts cryogenic design and facility reviews of LNG facilities on a two-year basis. While the Commission will not reopen its previous environmental/safety review of Phillips' LNG facility, which has been operational since November 1969, a modification of existing LNG facilities is related to the function, operation, and environmental/safety integrity of the existing facilities. Accordingly, the applicant proposing to modify an existing LNG facility with new LNG facilities must describe the environmental/safety aspects of the proposed facilities and how the proposed facilities integrate with the existing facilities. The Commission must determine that the proposed modification will not materially alter the safe and environmentally sound operation of the integrated facility. Section 153.8 (Exhibits E, E–1, and F) of the Final Rule are clarified accordingly.

e. Section 153.9 Transferability.

The NOPR continued in § 153.9(a) the provision in the current regulations (§ 153.6(a) (transferability)) that authorizations under subpart B are not transferable or assignable except temporarily in the case of involuntary transfer of facilities to receivers, trustees, or purchasers under foreclosure or judicial sale. Section 153.9(b) in the NOPR continued current § 153.6(b) to permit the Commission to make supplemental orders as it may find necessary or appropriate.

Yukon Pacific Company L.P. (Yukon Pacific) states that it is unclear whether the proposed (or current) regulations would allow Yukon Pacific to transfer or assign its existing section 3 authorization except in the limited case of involuntary transfer.[50] Yukon Pacific asks the Commission to amend proposed § 153.9 to clarify that the holder of a section 3 authorization can transfer or assign that authorization for ''good commercial or other reasons'' subject to prior Commission approval. In the alternative, Yukon Pacific asks the Commission to state in the preamble of the Final Rule that proposed § 153.9(b), permitting supplemental orders, authorizes the Commission to permit the transfer of section 3 authorizations in the same fashion that DOE/FE currently permits the transfer of its authorizations upon prior DOE approval.[51]

Under the Commission's current practice, the holder of a section 3 authorization (and a Presidential Permit) may not transfer those authorizations or related facilities without prior Commission authorization.[52] For example, the

[50] On May 22, 1995, the Commission issued an order granting Yukon Pacific auhtorization under section 3 for the siting, construction, and operation of an LNG export facility at Port Valdez, Alaska. 71 FERC ¶ 61,197 (1995), *reh'g denied*, 72 FERC ¶ 61,226 (1995), *affirming* 39 FERC ¶ 61,216 (1987). Yukon Pacific's proposed LNG export facility is not yet constructed.

[51] Under DOE regulations, import/export authorizations are not transferable or assignable ''unless specifically authorized by the Assistant Secretary.'' 10 CFR 590.405.

[52] The Commission similarly reviews and approves under section 7 of the NGA the proposed abandonment of interstate facilities and services

Continued

Commission implements a transfer of section 3 authorization and/or facilities by approving the amendment of an existing authorization [53] or granting a new authorization to the acquiring entity.[54] The Final Rule continues this practice and revises proposed § 153.9(a) to deny transfer or assignment of a section 3 authorization (absent an involuntary transfer) without prior Commission authorization.[55] Thus, Yukon Pacific's request for clarification is granted. The Final Rule relocates as substitute text in § 153.9(b) the NOPR's provision (based on current § 153.6) permitting the temporary transfer of facilities in the event of an involuntary transfer.

Section 3(a) of the NGA gives the Commission the authority, after hearing, for good cause shown, to make ''such supplemental order in the premises as it may find necessary or appropriate.'' Section 153.9(b) of the NOPR, following NGA section 3(a) and current regulations, gave the Commission the discretion to issue supplemental orders in the case of a transfer of a section 3 authorization or facilities depending on the public interest considerations in particular proceedings. Since the Commission's authority under section 3 to issue supplemental orders applies to all aspects of the Commission's implementation of section 3, the Commission is relocating § 153.9(b) of the NOPR to § 153.11 (supplemental orders) in subpart B of part 153.

PanEnergy asserts that proposed § 153.9(b)(supplemental orders) is ambiguous and, in the alternative, asks the Commission to clarify that proposed § 153.9(b) may not be applied to impose retroactive requirements that would change the economics of border construction.

PanEnergy's dispute is with NGA section 3 itself, which authorizes the Commission for good cause after hearing to issue necessary or appropriate supplemental orders. In *Distrigas Corporation* v. *FPC*, the Court observed that section 3 (now section 3(a)) authorizes the Commission to reexamine its decisions authorizing imports/exports based on its view of the public interest.[56] The Commission, however, would be limited by ''principles of fairness implicit in all standards governing exercise of regulatory power.'' [57] There is no justification to eliminate the provision permitting supplemental orders (relocated to § 153.11) from the Final Rule, as PanEnergy implies, or to clarify the Final Rule as requested.

f. Section 153.10 Authorization Not Exclusive

The Commission is redesignating current § 153.7 as § 153.10 and is revising the current regulation to eliminate references to authorizations for the import/export of natural gas, replacing them with references to authorizations for construction and operation under section 3 of the NGA. Under § 153.10, which codifies current Commission practice, if the Commission authorizes the construction of facilities pursuant to section 3, the Commission is not prevented from granting authorization to another applicant under section 3 at the same general location.[58]

g. Supplemental Orders

The Final Rule removes proposed § 153.9(b)(supplemental orders) and relocates it as new § 153.11. The provision concerning supplemental orders would apply to each section in subpart B of the Final Rule instead of only to § 153.9 concerning transferability of section 3 authorizations.

3. Subpart C—Application for a Presidential Permit

a. Section 153.15 Who Shall Apply

The existing heading prefacing current §§ 153.10 through 153.12 is deleted and replaced with a more concise heading (Application for a Presidential Permit) substituted under a new subpart C of part 153. The Final Rule redesignates current § 153.10 as § 153.15 and divides proposed § 153.15 into paragraphs (a) and (b) with individual headings.

The Commission is using the same definition of person in subpart C of the Final Rule as is used in subpart B. It is appropriate in the Final Rule to use the same definition because the same entity that applies under subpart C to construct and operate border facilities would need to apply for authorization under subpart B. Section 153.15(b) of the Final Rule cross-references the requirement to file simultaneously an application under subpart B for the siting or construction of facilities, deleting the current cross-reference to applications for authorization to import or export natural gas. Since the NOPR required the filing of an application to amend an existing Presidential Permit, it is appropriate to delete from proposed § 153.15(a) the duplicative requirement to file an application ''to change the operation or maintenance of facilities.''

b. Section 153.16 Contents of Application

The Final Rule redesignates current § 153.11 as § 153.16, with a revised heading. Filing requirements prescribing the number of copies for Presidential Permit applications stated in the first sentence of current § 153.11 are deleted and relocated to new subpart D of part 153.

The Final Rule merges the informational requirements for filing an application for a Presidential Permit and for an application under NGA section 3. Thus, § 153.16(a) states that an applicant for a Presidential Permit that complies with the informational filing requirements under subpart B is not required to satisfy separate filing requirements under subpart C.

Accordingly, current §§ 153.11 (a)(1) and (a)(2) and the first part of paragraph (a)(3) are deleted as they duplicate the same provisions in § 153.7(a) of the Final Rule. The remainder of current § 153.11(a)(3) is redesignated in § 153.8 (Exhibit A). Current § 153.11(a)(4) is revised to update references to applicants ''subventioned'' (subsidized) by a foreign government and is relocated to § 153.7(a)(3). Current § 153.11(b), requiring an applicant to file a map, is deleted because it duplicates the same requirement in § 153.8(a)(8) (Exhibit G) of the Final Rule.

Current § 153.11(c), concerning anti-competitive agreements, and current § 153.11(d), concerning permits granted by a foreign government, are revised to eliminate out-dated references to bundled gas service, ''landing licenses,'' and import/export permits. These sections are redesignated as §§ 153.7(c)(1)(iii) and 153.7(b), respectively, of the Final Rule.

For amendments to an existing Presidential Permit that do not involve related section 3 applications or amendments, § 153.16(b) of the Final Rule requires that applicant to provide information identifying itself pursuant to § 153.7(a) and to fully explain and

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and the acquisition of those facilities by natural gas companies.

[53] The Commission may approve an amendment to an existing Presidential Permit in order to change the legal status of the Permittee from corporation to limited partnership pursuant to a reorganization or to change its name. *See, e.g.*, PNM Gas Services, Secretary's notice in Docket No. CP93–98–002 of redesignation of name, January 17, 1997 (unreported) and Great Lakes Gas Transmission Limited Partnership, 53 FERC ¶ 61,264 (1990).

[54] Western Gas Interstate Co., *et al.*, 74 FERC ¶61,347 (1996) (issuance of a new section 3 authorization and Presidential Permit to entity acquiring facilities incident to reorganization).

[55] Similarly, uniform article 8 of a Presidential Permit prohibits the voluntary transfer of a Presidential Permit or related facilities.

[56] 495 F.2d 1057, 1065–66 (D.C. Cir. 1974).

[57] 495 F.2d 1065.

[58] *See, e.g.*, Tenneco Baja California Corp., 75 FERC ¶ 61,192 (1996) and Pacific Interstate Offshore Co., 74 FERC ¶ 61,350 (1996).

justify its proposed amendment. This applicant would not be required to provide the remainder of information required by §§ 153.7 and 153.8 of the Final Rule, applicable to the construction of facilities.

Current § 153.12, authorizing the Commission to request such other information in connection with an application as it may deem pertinent, is deleted. In its place, § 153.21(b), in subpart D of the Final Rule, authorizes the Commission to direct the applicant to file such information as may be necessary to cure a deficient application.

c. Section 153.17 Effectiveness of Presidential Permit

Section 153.17 of the Final Rule codifies the Commission's existing practice of requiring a Permittee to accept an issued Presidential Permit by executing, with proof of proper authorization, the Testimony of Acceptance of the Presidential Permit. The Permittee is required to file a copy of the executed Testimony of Acceptance with the Secretary prior to the start of construction.[59]

4. Subpart D—Paper Media and Other Requirements

a. Section 153.20 General Rule

The Commission is relocating its current filing requirements for paper media in subpart D.

b. Section 153.21 Conformity with Requirements

Section 153.21 of the Final Rule states the requirement that an application must conform to the requirements of part 153 or be rejected. The Commission will reject and wishes to discourage undocumented applications for section 3 authorization.[60]

c. Section 153.22 Amendments and Withdrawals

Section 153.22 of the Final Rule applies the Commission's Rules of Practice and Procedure applicable to amending or withdrawing pleadings to amending or withdrawing an application under subpart B or subpart C of part 153.

d. Section 153.23 Reporting Requirement

Interstate pipelines are currently required to file operational information about facilities authorized under section 3 in their FERC Form No. 2 (annual report), FERC Format No. 567 (annual system flow diagram), and annual report of estimated peak capacity pursuant to 18 CFR 284.12. Commission regulations do not require applicants which are not natural gas companies to file operational information with the Commission concerning facilities authorized under section 3.[61] Uniform article 7 of a Presidential Permit requires the Permittee to file with the Commission requested statements or reports concerning the natural gas exported/imported and the facilities described in the Presidential Permit.

Proposed § 153.23 required applicants which are not otherwise required to file operating information concerning facilities authorized under section 3 with the Commission to report the completion of construction or modification, and the date service commenced through the authorized facilities.[62] The NOPR also required each applicant to report annually by March 1 the estimated peak day capacity and actual peak day usage of its import/export facilities.

Phillips asks the Commission to exempt the owners/operators of LNG facilities that are not used as peak shaving facilities or pipelines from the requirement to file peak day capacity and actual peak day usage information. The Commission is aware that the capacity and usage of non-pipeline facilities are subject to many variables not applicable to pipeline operations. Thus, we agree with Phillips that peak day capacity and actual peak day usage information is irrelevant in the case of entities that do not own or operate pipeline capacity. The proposed regulation is revised to exempt applicants that do not own or operate pipeline capacity, including the owners/operators of LNG facilities, from the requirement to file annually peak day capacity/usage information. The Commission, however, retains the right to seek capacity/usage information from non-pipeline operators should such information be needed for the performance of its duties on a case-by-case basis. Phillips' requested clarification is granted.

## IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[63] The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule would have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.[64] Further, the filing requirements of small entities are reduced by the rule. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

## V. Information Collection Statement

The OMB regulations require OMB to approve certain reporting and recordkeeping (collections of information) imposed by agency rule.[65] OMB has approved the NOPR without comment. The Final Rule will affect one existing data collection, FERC–539. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

*Title:* FERC–539, Gas Pipeline Certificate: Import/Export.

*Action:* Proposed Data Collection.

*OMB Control No.:* 1902–0062.

*Respondents:* Interstate natural gas pipelines (Business or other for-profit, including small businesses).

*Frequency of Responses:* On occasion.

*Necessity of the Information:* The Final Rule revises the filing requirements contained in 18 CFR part 153 for the siting, construction, and operation of facilities for the import or export of natural gas under NGA section

[59] *See* MidCon Texas Pipeline Corp., 77 FERC ¶ 61,205 (1996).

[60] In the past, the Commission has rejected applications for import/export facilities that were not properly supported by required documentation. *See* SouthCoast Transmission Corp., 49 FERC ¶ 61,161 (1989) and Flormax Energy Corp., 21 FERC ¶ 61,319 (1982).

[61] The Commission has imposed such reporting as a condition in individual section 3 proceedings. *See, e.g.,* Yukon Pacific Co., L.P., 71 FERC ¶ 61,197 (1995) and EcoElectrica, L.P., 75 FERC ¶ 61,157 (1996).

[62] Effective November 13, 1995, the Commission eliminated its annual report of import/export volumes in FPC Form 14. *See* Final rule, Revisions to Uniform System of Accounts, Forms, Statements and Reporting Requirements for Natural Gas Companies, 60 FE 53019 (October 11, 1995). The Commission eliminated FPC Form 14 because importers/exporters currently file quarterly reports with DOE/FE including the same volume and price information.

[63] 5 U.S.C. 601–612.

[64] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[65] 5 CFR 1320.11.

3 and for Presidential Permits that have been issued and modified for the construction and operation of border facilities. These filing requirements are being updated to conform to the Commission's current responsibilities as changed by intervening legislation and DOE delegation orders.

The Commission received six comments on its NOPR but none on its reporting burden or cost estimates. The Commission's responses to the comments are addressed in the Discussion portion (Part III) of this Final Rule. The Commission is submitting a copy of this Final Rule to OMB for information purposes because the Final Rule is not significantly different from the NOPR and OMB has not provided any comments on the NOPR.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Services Division, (202) 208–1415) or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087, fax: 395–728). You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

## VI. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[66] No environmental consideration is raised by the promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended.[67] The instant rule updates the part 153 regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

## VII. Effective Date and Congressional Notification

The regulations are effective August 4, 1997. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[68] That reporting requirement applies to this Final Rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

[66] 18 CFR 380.4.

[67] 18 CFR 380.4(a)(2)(ii).

[68] Pub. L. No. 104–121, 110 Stat. 847 (1996).

### List of Subjects in 18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

For the reasons set out in the preamble, the Commission is revising 18 CFR part 153 to read as follows:

# PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

### Subpart A—General Provisions

Sec.
153.1 Purpose and scope.
153.2 Definitions.

### Subpart B—Application Under Section 3

Sec.
153.5 Who shall apply.
153.6 Time of filing.
153.7 Contents of application.
153.8 Required exhibits.
153.9 Transferability.
153.10 Authorization not exclusive.
153.11 Supplemental orders.

### Subpart C—Application for a Presidential Permit

153.15 Who shall apply.
153.16 Contents of application.
153.17 Effectiveness of Presidential Permit.

### Subpart D—Paper Media and Other Requirements

153.20 General rule.
153.21 Conformity with requirements.
153.22 Amendments and withdrawals.
153.23 Reporting Requirements.

**Authority:** 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

## Subpart A—General Provisions

### § 153.1 Purpose and scope.

The purpose of this part is to implement the Commission's delegated authorities under section 3 of the Natural Gas Act and Executive Order 10485, as amended by Executive Order 12038. Subpart B of this part establishes filing requirements an applicant must follow to obtain authorization under section 3 of the Natural Gas Act for the siting, construction, operation, place of entry for imports or place of exit for exports. Subpart C of this part establishes filing requirements an applicant must follow to apply for a Presidential Permit, or an amendment to an existing Presidential Permit, for border facilities at the international boundary between the United States and Canada or Mexico.

### § 153.2 Definitions.

(a) *DOE/FE* means the Department of Energy/Office of Fossil Energy or its successor office.

(b) *NBSIR* means the National Bureau of Standards Information Report.

(c) *Person* means an individual or entity as defined in 10 CFR 590.102(m).

## Subpart B—Application Under Section 3

### § 153.5 Who shall apply.

(a) *Applicant.* Any person proposing to site, construct, or operate facilities which are to be used for the export of natural gas from the United States to a foreign country or for the import of natural gas from a foreign country or to amend an existing Commission authorization, including the modification of existing authorized facilities, shall file with the Commission an application for authorization therefor under subpart B of this part and section 3 of the Natural Gas Act.

(b) *Cross-reference.* Any person applying under paragraph (a) of this section to construct facilities at the borders of the United States and Canada or Mexico must also simultaneously apply for a Presidential Permit under subpart C of this part.

### § 153.6 Time of filing.

(a) An application filed pursuant to § 153.5(a) shall state whether DOE/FE authorization for the import/export of natural gas is required and whether DOE/FE has granted all required authorizations for the import/export of natural gas.

(b) If all required DOE/FE authorizations have not been obtained prior to filing an application with the Commission, the applicant agrees, as a condition of its authorization, to file a statement that all required DOE/FE authorizations have been obtained prior to applicant's construction of border facilities.

### § 153.7 Contents of application.

Every application under subpart B of this part shall include, in the order indicated, the following:

(a) *Information regarding applicant.* (1) The exact legal name of applicant;

(2) The name, title, and post office address, telephone and facsimile numbers of the person to whom correspondence in regard to the application shall be addressed;

(3) If a corporation, the state or territory under the laws of which the applicant was organized, and the town or city where applicant's principal office is located. If applicant is incorporated under the laws of, or authorized to operate in, more than one state, all pertinent facts should be stated. If applicant company is owned wholly or in part by any foreign government entity, or directly or indirectly subsidized by any foreign government entity; or, if applicant company has any agreement for such ownership or subsidization from any foreign government, provide full details of ownership and/or subsidies.

(b) *Summary.* A detailed summary of the proposal, including descriptions of the facilities utilized in the proposed export or import of natural gas; state, foreign, or other Federal governmental licenses or permits for the construction, operation, or modification of facilities in the United States, Canada, or Mexico; and the status of any state, foreign, or other Federal regulatory proceedings which are related to the proposal.

(c) *Statements.* (1) A statement demonstrating that the proposal or proposed construction is not inconsistent with the public interest, including, where applicable to the applicant's operations and proposal, a demonstration that the proposal:

(i) Will improve access to supplies of natural gas, serve new market demand, enhance the reliability, security, and/or flexibility of the applicant's pipeline system, improve the dependability of international energy trade, or enhance competition within the United States for natural gas transportation or supply;

(ii) Will not impair the ability of the applicant to render transportation service in the United States at reasonable rates to its existing customers; and,

(iii) Will not involve any existing contract(s) between the applicant and a foreign government or person concerning the control of operations or rates for the delivery or receipt of natural gas which may restrict or prevent other United States companies from extending their activities in the same general area, with copies of such contracts; and,

(2) A statement representing that the proposal will be used to render transportation services under Parts 157 or 284 of this chapter, private transportation, or service that is exempt from the provisions of the Natural Gas Act pursuant to sections 1(b) or 1(c) thereof. The applicant providing transportation service under part 157 of this chapter must represent that the pipeline's proposed increase in capacity at an existing import/export point is not exclusively reserved for Part 157 users and that all new service made available as a result of a new or modified import/export facility will be under part 284 of this chapter.

### § 153.8 Required exhibits.

(a) An application must include the following exhibits:

(1) *Exhibit A.* A certified copy of articles of incorporation, partnership or joint venture agreements, and by-laws of applicant; the amount and classes of capital stock; nationality of officers, directors, and stockholders, and the amount and class of stock held by each;

(2) *Exhibit B.* A detailed statement of the financial and corporate relationship existing between applicant and any other person or corporation;

(3) *Exhibit C.* A statement, including signed opinion of counsel, showing that the construction, operation, or modification of facilities for the export or the import of natural gas is within the authorized powers of applicant, that applicant has complied with laws and regulations of the state or states in which applicant operates;

(4) *Exhibit D.* If the proposal is for a pipeline interconnection to import or export natural gas, a copy of any construction and operation agreement between the applicant and the operator(s) of border facilities in the United States and Canada or Mexico;

(5) *Exhibit E.* If the proposal is to import or export LNG, evidence that an appropriate and qualified concern will properly and safely receive or deliver such LNG, including a report containing detailed engineering and design information. The Commission staff's ''Guidance Manual for Environmental Report Preparation'' may be obtained from the Commission's Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426;

(6) *Exhibit E–1.* If the LNG import/export facility is to be located at a site in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map of the United States, or where there is a risk of surface faulting or ground liquefaction, a report on earthquake hazards and engineering. Guidelines are contained in ''Data Requirements for the Seismic Review of LNG Facilities,'' NBSIR 84–2833. This document may be obtained from the National Technical Information Service or the Commission's Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426;

(7) *Exhibit F.* An environmental report as specified in § 380.3 of this chapter. Refer to Commission staff's ''Guidance Manual for Environmental Report Preparation;'' and

(8) *Exhibit G.* A geographical map of a suitable scale and detail showing the physical location of the facilities to be utilized for the applicant's proposed export or import operations The map should indicate with particularity the ownership of such facilities at or on each side of the border between the United States and Canada or Mexico, if applicable.

(b) The applicant may incorporate by reference any Exhibit required by paragraph (a) of this section already on file with the Commission.

### § 153.9 Transferability.

(a) *Non-transferable.* Authorizations under subpart B of this part and section 3 of the Natural Gas Act and related facilities shall not be transferable or assignable without prior Commission authorization.

(b) *Involuntary transfer.* A Commission order granting such authorization shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of facilities used thereunder by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to operations of the facilities remain substantially the same as before the transfer and as stated in the initial application for such authorization.

### § 153.10 Authorization not exclusive.

No authorization granted pursuant to subpart B of this part and section 3 of the Natural Gas Act shall be deemed to prevent the Commission from granting authorization under subpart B to any other person at the same general location, or to prevent any other person from making application for such authorization.

### § 153.11 Supplemental Orders.

The Commission also may make, at any time subsequent to the original order of authorization, after opportunity for hearing, such supplemental orders implementing its authority under section 3 of the Natural Gas Act as it may find necessary or appropriate.

## Subpart C—Application for a Presidential Permit

### § 153.15 Who shall apply.

(a) *Applicant.* Any person proposing to construct, operate, maintain, or connect facilities at the borders of the United States and Canada or Mexico, for the export or import of natural gas to or from those countries, or to amend an existing Presidential Permit, shall file with the Commission an application for a Presidential Permit under subpart C of this part and Executive Order 10485, as amended by Executive Order 12038.

(b) *Cross-reference.* Any person applying under paragraph (a) of this section for a Presidential Permit for the construction and operation of border facilities must also simultaneously apply for authorization under subpart B of this part.

### § 153.16 Contents of application.

(a) *Cross-reference.* The submission of information under §§ 153.7 and 153.8 of subpart B of this part shall be deemed sufficient for purposes of applying for a Presidential Permit or an amendment to an existing Presidential Permit under subpart C of this part for the construction and operation of border facilities.

(b) *Amendment not proposing construction.* An applicant proposing to amend the article(s) of an existing Presidential Permit (other than facilities aspects) must file information pursuant to § 153.7(a) and a summary and justification of its proposal.

### § 153.17 Effectiveness of Presidential Permit.

A Presidential Permit, once issued by the Commission, shall not be effective until it has been accepted by the highest authority of the Permittee, as indicated by Permittee's execution of a Testimony of Acceptance, and a certified copy of the accepted Presidential Permit and the executed Testimony of Acceptance has been filed with the Commission.

## Subpart D—Paper Media and Other Requirements

### § 153.20 General rule.

(a) *Number of copies.* Applications under subpart B of this part must be submitted to the Commission in an original and 7 conformed paper copies. Applications under subpart C of this part must be submitted to the Commission in an original and 9 conformed paper copies.

(b) *Certification.* All applications must be signed in compliance with § 385.2005 of this chapter.

(1) The signature on an application constitutes a certification that: The signer has read the filing signed and knows the contents of the paper copies; and, the signer possesses the full power and authority to sign the filing.

(2) An application must be signed by one of the following:

(i) The person on behalf of whom the application is made;

(ii) An officer, agent, or employee of the governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(c) *Where to file.* The paper copies and an accompanying transmittal letter must be submitted in one package to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

### § 153.21 Conformity with requirements.

(a) *General Rule.* Applications under subparts B and C of this part must conform with the requirements of this part.

(b) *Rejection of applications.* If an application does not conform to the requirements of this part, the Director of the Office of Pipeline Regulation will notify the applicant of all deficiencies. Deficient applications not amended within 20 days of the notice of deficiency, or such longer period as may be specified in the notice of deficiency, will be rejected by the Director of the Office of Pipeline Regulation as provided by § 385.2001(b) of this chapter. Copies of a rejected application will be returned. An application which relates to an operation, service, or construction concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

### § 153.22 Amendments and withdrawals.

Amendments to or withdrawals of applications must conform to the requirements of §§ 385.215 and 385.216 of this chapter.

### § 153.23 Reporting requirements.

Each person authorized under this part 153 that is not otherwise required to file information concerning the start of construction or modification of import/export facilities, the completion of construction or modification, and the commencement of service must file such information with the Commission within 10 days after such event. Each person, other than entities without pipeline capacity, must also report by March 1 of each year the estimated peak day capacity and actual peak day usage of its import/export facilities.

[FR Doc. 97–14418 Filed 6–3–97; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 24

**[T.D. 97–45]**

**RIN 1515–AA57**

## Update of Ports Subject to the Harbor Maintenance Fee

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Interim regulation; solicitation of comments.

**SUMMARY:** Commercial vessels transporting cargo at certain ports are subject to a harbor maintenance fee pursuant to the Water Resources Development Act of 1986 and interim Customs Regulations regarding the harbor maintenance fee. This document amends the list of ports subject to the fee. This amendment is made to further clarify the port descriptions and to update the list as to locations which are exempt from the fee.

**DATES:** Effective June 4, 1997. Written comments must be received by July 7, 1997.

**ADDRESSES:** Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW, Washington, DC 20229, and may be inspected at Franklin Court, 1099 14th Street, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Patricia Barbare, Office of Finance, U.S. Customs Service, 202–927–0034.

**SUPPLEMENTARY INFORMATION:**

### Background

The Water Resources Development Act of 1986 (Pub. L. 99–662) established a Harbor Maintenance Trust Fund to be used for improving and maintaining ports and harbors in the U.S. Pursuant to the Act, this fund is supported by a harbor maintenance fee assessed on port use by vessels carrying waterborne commercial cargo. By assessing a charge for port use, the Act causes those shippers, exporters and importers who benefit from the maintenance of a Federal port or harbor to share in the cost of that maintenance.

The Act defines port generally as any channel or harbor or component thereof