miles either side of the 196° bearing from the Mount Carmel Municipal Airport, extending from the 6.5-mile radius to 7.4 miles south of the airport, and within 6.4 miles either side of the 208° bearing from the Mount Carmel NDB, extending from the 6.5-mile radius to 7.0 miles southwest of the NDB.

* * * * *

Issued in Des Plaines, Illinois on April 10, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–10801 Filed 4–22–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–007; Order No. 587–G]

Standards for Business Practices of Interstate Natural Gas Pipelines

April 16, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending § 284.10 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines. The Commission is incorporating by reference, in § 284.10(b), the most recent version (Version 1.2) of standards promulgated by the Gas Industry Standards Board (GISB). The Commission also is adopting, in new § 284.10(c), regulations, not developed by GISB, governing intra-day nominations, operational balancing agreements (OBAs), netting and trading of imbalances, standardization of communications over the public Internet, and notices of operational flow orders. These business practices and communication standards supplement standards adopted by the Commission in Order Nos. 587, 587–B, and 587–C. 61 FR 39053 (Jul. 26, 1996) 62 FR 5521 (Feb. 6, 1997), 62 FR 10684 (Mar. 10, 1997).

DATES: Effective May 26, 1998. On August 1, 1998 pipelines must implement § 284.10(b), which incorporates by reference Version 1.2 of the GISB standards, and the regulations, in §§ 284.10(c)(3)(ii) through (v), relating to the standards for information posted on pipeline web sites, the content of information provided electronically, the use of numeric designations, and retention of electronic information.

The implementation date for the regulations regarding intra-day nominations, § 284.10(c)(1)(i), operational balancing agreements, § 284.10(c)(2)(i), trading of imbalances, § 284.10(c)(2), and Internet notification of critical notices, § 284.10(c)(3)(vi), will be established when the Commission adopts standards relating to these activities.

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SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

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Standards for Business Practices of Interstate Natural Gas Pipelines

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Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

The Federal Energy Regulatory Commission (Commission) is amending § 284.10 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines. The Commission is incorporating by reference, in § 284.10(b) of its regulations, the most recent version (Version 1.2) of standards promulgated by the Gas Industry Standards Board (GISB). The Commission also is adopting regulations, in new § 284.10(c) of its regulations, governing intra-day nominations, operational balancing agreements (OBAs), netting and trading of imbalances, standardization of communications over the public Internet, and notices of operational flow orders.

I. Background

In Order Nos. 587, 587–B, and 587–C[1] the Commission adopted regulations

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations

to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry. The standards established uniform requirements for conducting critical industry business practices—Nominations, Flowing Gas, Invoicing, and Capacity Release. The standards also required pipelines to use the Internet as the means of conducting business transactions electronically as well as for providing customers with general information.

In Order No. 587–C, however, the Commission did not adopt standards approved by GISB concerning intra-day nominations, operational balancing agreements, and imbalances. The Commission found that those standards did not clearly outline the pipelines' obligations. The Commission gave GISB and the industry until September 1, 1997 to propose additional standards in these areas.

In addition, throughout its deliberations in 1996, GISB had been unable to reach consensus on whether standards are needed in several areas—title transfer tracking, ranking of gas packages, treatment of compressor fuel, operational balancing agreements, imbalance resolution, operational flow orders, multi-tiered allocations, and additional pooling standards. The Commission staff held a technical conference on December 12–13, 1996, to consider these issues.

Subsequently, on September 2, 1997, GISB filed with the Commission its latest revisions to the consensus standards, Version 1.2. It also filed a report on its progress in attempting to resolve the issues reserved for further consideration by Order No. 587–C and some of the disputed issues considered at the technical conference.

In the Notice of Proposed Rulemaking (NOPR) issued on November 12, 1997,[2] the Commission proposed to adopt Version 1.2 of the GISB standards. The Commission also considered the issues left unresolved by GISB and proposed regulations that would require pipelines to:

- Give firm intra-day nominations priority over already nominated and scheduled interruptible transportation (thus permitting firm shippers to change their nomination quantities during the day and bump scheduled interruptible service);
- Enter into operational balancing agreements at all pipeline to pipeline interconnects;
- Permit shippers to offset imbalances across contracts and trade imbalances amongst themselves when such imbalances have similar operational impact on the pipeline's systems;
- Post all information and conduct all business transactions using the public Internet and internet protocols by June 1, 1999 and comply with other standards regarding communication over the Internet.

Comments on the NOPR were due by December 18, 1997. Fifty-five comments were filed.[3]

In addition, in several areas where the Commission did not propose regulations, the Commission provided guidance in the NOPR on its policies to aid GISB's development of standards in these areas. The Commission asked for comment from GISB and the industry on the development of standards in these areas by March 31, 1998. On March 23, 1998, GISB filed with the Commission a report containing its approved intra-day nomination standards and a progress report on its process for developing standards in the other areas discussed in the NOPR.

II. Discussion

A. Introduction

Through GISB's consensus process, the gas industry has been able to work together to pass a set of mutually-agreed upon standards that have greatly contributed to providing a more efficient and reliable transportation and communication system. In previous orders, the Commission has recognized this contribution and incorporated the GISB standards into the Commission regulations. But it is only to be expected that a standards organization composed of representatives from every facet of the gas industry would disagree over the need for standards in certain areas, particularly when the disputes center on regulatory policy decisions. Although some commenters take issue with aspects of the regulations proposed in the NOPR, they virtually all support the Commission's determination to resolve the divisive policy disputes that are impeding GISB's standards development efforts.

In this rule, therefore, the Commission is addressing the disputed policy issues so that the industry can move forward and develop the standards needed to further integrate the pipeline grid. The Commission is adopting regulations establishing the scheduling priority of intra-day nominations for firm service and requiring pipelines to enter into operational balancing agreements (OBAs) and to permit imbalance trading. It also is standardizing communications by requiring that, by June 1, 1999, all transactions between pipelines and their customers will be transacted using the public Internet.

The business practices regulations adopted here will enable shippers to move gas more easily across multiple pipelines. Establishing one rule governing the priority of intra-day nominations will permit firm shippers to coordinate nomination changes across multiple pipelines without having a different priority regime on one pipeline break the nomination chain. The OBA and imbalance trading regulations will increase the reliability of shipments crossing multiple pipeline by reducing the business and financial risks of imbalances and the associated penalties.

The Commission's requirement that pipelines conduct all business transactions over the public Internet represents the culmination of the Commission's efforts to replace the current individual, and idiosyncratic electronic bulletin board system of each pipeline, with a standardized method of conducting business electronically across all the pipelines. Although GISB's standards have moved much information and many electronic transactions to the Internet, those standards are incomplete and do not eliminate the need for shippers to use the individual pipeline electronic bulletin boards. The adoption of this regulation will fulfill the original vision of creating a system in which all electronic communications and transactions will take place in a standardized format.

Creation of a standardized communication system promises to markedly increase the efficiency of transactions. As just one small example, in the past, shippers would have to log-on to each pipeline's private bulletin board seriatim to obtain information on available capacity on the pipeline. With the use of the Internet, shippers can now easily use one Internet connection to go to GISB's homepage, click on a pipeline's hypertext link, obtain the

Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997).

[2] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 62 FR 61459 (Nov. 18, 1997), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,527 (Nov. 12, 1997).

[3] The commenters, and the abbreviations used in this order, are listed in the Appendix.

information they want, and then return and find the information from another pipeline, without having to log-off or change computers or programs. Those shippers using GISB's standardized datasets can realize even more efficiency because they can download the same information from multiple pipelines in a standardized format and, if they choose, directly import that information into their gas management systems or other software programs where the information can be manipulated to show the available capacity along a proposed path.

The regulations adopted in this rule are not the final riff of the standardization set.[4] There is still much work to be done. With the policy questions resolved, the Commission is looking to GISB and the industry to develop the technical standards needed to implement these policies in the most uniform and efficient manner possible. In addition, in other areas, the Commission has outlined the need for the development of additional standards and is establishing a timetable for submission of standards in these areas.

Specifically, in this rule, the Commission is amending § 284.10(b) of its regulations to incorporate by reference the most recent version of GISB's standards, Version 1.2. Pipelines must implement the new version on the first day of the month following 90 days after the publication of this order in the **Federal Register**.

Further, the Commission is establishing its own business practices and communications standards in new § 284.10(c) of its regulations. The business practices standards will require pipelines to:

- Give firm intra-day nominations priority over already nominated and scheduled interruptible transportation service and permit firm intra-day nominations submitted on the day prior to gas flow to go into effect at the start of the gas day;
- Enter into operational balancing agreements at all interstate and intrastate pipeline to pipeline interconnects; and
- Permit shippers to offset imbalance across contracts and trade imbalances amongst themselves when such imbalances have similar operational impact on the pipeline's systems.

The electronic communication standards will require pipelines to:

- Post all information and conduct all business transactions using the public Internet and internet protocols by June 1, 1999;
- Adhere to standards governing the provision of information on pipeline web sites and retention of electronic records of transactions;
- Notify shippers of critical events affecting the system, such as operational flow orders, by posting the information on pipeline web sites and by direct notice either through Internet E-Mail or notification to the shipper's Internet address.

With respect to implementation of the requirements in § 284.10(c), the Commission is heeding the commenters who argue that the Commission should defer implementation of some of the regulations until GISB has developed the associated standards needed to implement the requirements.[5] The Commission agrees that implementation of the intra-day nomination, OBA, imbalance trading, and critical notice notification regulations would be more effective if they occurred only once, after GISB and the industry have the opportunity to develop appropriate standards. The Commission, therefore, will defer implementation of these regulations to coincide with the implementation of standards to implement these regulations.

A consensus of the industry supports GISB's Annual Plan for 1998 under which intra-day standards will be developed by the first quarter of 1998 and OBA and imbalance trading standards by the second quarter of 1998.[6] GISB has already filed its completed intra-day standards with the Commission, and the Commission will be issuing a NOPR contemporaneous with this rule proposing to adopt the intra-day standards. The Commission will establish a timetable for the filing of proposed standards for OBA and imbalance trading that follows the industry consensus in GISB's Annual Plan, with standards in these areas due by June 30, 1998. Since GISB has not established a schedule for developing standards for critical notices, the Commission is setting a deadline of December 31, 1998, for submission of such standards. While some commenters suggest that implementation of Internet communications be delayed to coincide with GISB's development of standards,[7] the June 1, 1999 deadline already seems to build in sufficient time for GISB and the industry to develop the necessary standards, and the Commission will not change this date.

In addition, in the November 12, 1997 NOPR, the Commission found no need to propose regulations in other disputed areas—title transfer tracking, cross-contract ranking, multi-tiered allocations, fuel reimbursement, and penalty calculations. The Commission, however, did provide guidance on its policy in these areas to remove obstacles to the development of standards. The Commission requested comments from GISB and the industry by March 31, 1998, proposing standards based on the Commission guidance with respect to title transfer tracking and cross-contract ranking.

A consensus of the industry, as reflected in the GISB 1998 Annual Plan, has recommended that due to resource commitments and the difficulty of developing standards for title transfer tracking and cross-contract ranking, the schedule for development of final standards in these areas should be postponed until the fourth quarter of 1998. The Commission will accept the industry consensus and delay the deadline for submission of standards for title transfer tracking and cross-contract ranking.

The Commission will first address the regulations adopted by this rule. The Commission will then discuss those areas in which it is not adopting regulations requested by commenters, but instead is providing policy guidance as to the direction of future standardization efforts.

B. Regulations Adopted by This Rule

1. Version 1.2 of the Standards

a. Adoption of version 1.2. The Commission is adopting Version 1.2 of the GISB standards. Version 1.2 principally revises the datasets used to conduct business transactions with the pipelines.[8] Version 1.2 also contains interpretations of the standards. The Commission proposed to adopt the interpretations, because, although they would not be determinative, they would help to provide reliable guides to the industry's understanding of the standards in the event disputes arise.

No commenter has objected to adoption of Version 1.2 of the GISB

[4] *See* Order No. 587, 61 FR at 39057, III FERC Stats. & Regs. Regulations Preambles, at 30,060 (standards development is like a jazz musician who takes a theme and constantly revises, enhances, and reworks it).

[5] *See* comments by ANR/CIG, Enron, INGAA, NGPL, NGC, NWIGU, (intra-day standards), Altra (OBA and imbalance trading), TransCapacity (imbalance trading), ECT, NGC, NGSA (critical notices).

[6] December 18, 1997 letter from INGAA, AGA, and NGSA to James J. Hoecker (filed in Docket No. RM96–1–007).

[7] Comments by ANR/CIG, Columbia Gas/Columbia Gulf, Enron, Koch, NGPL, NGSA, Southern.

[8] The datasets are essentially a uniform template that shippers can use to conduct business with multiple pipelines.

standards. TransCapacity and El Paso contend the Commission should give great weight to the interpretations. Koch, SGPC, and ANR/CIG, while not objecting to the adoption of the interpretations, maintain that pipelines should not be required to modify their tariffs to incorporate them. ANR/CIG also contend there is no need for pipelines to modify their tariffs to incorporate the Version 1.2 standards by reference unless their tariffs are inconsistent with the new standards.

Version 1.2 improves the datasets to better reflect pipeline business practices. The Commission will adopt Version 1.2 to be implemented on the first day of the month following 90 days after the publication of this order in the **Federal Register**. Pipelines need not modify their tariffs to incorporate the interpretations, just as they did not have to incorporate the GISB principles in their tariffs.[9] Pipelines, however, will need to make compliance filings to adopt Version 1.2 of the standards into their tariffs since their tariffs reflect an older version number.[10] Pipelines also will need to make any other tariff changes to conform their tariffs to the new standards.[11] The tariff changes must be filed not less than 30 days prior to the date for implementing Version 1.2 of the standards.[12]

b. Hiatus in implementing new versions and waivers. The NOPR also requested comment on two issues: Whether the Commission should refrain from adopting further dataset changes for a period of a year or more and whether the Commission should continue to grant pipelines waivers that permit them to deviate from the standardized datasets. Many commenters support the concept of a hiatus of about a year in order to give pipelines and shippers a chance to implement the standards.[13] But even some of those supporting a hiatus contend the hiatus could not be absolute, because there will be a need to adjust the standards to clean-up errors [14] or to address other compliance issues.[15] Others urge that the current schedule of issuing standards every six months or so is appropriate for the start-up phase of software development in which errors need to be corrected.[16] Some also point out that new standards need to be developed for new needs.[17] In its March 23, 1998 filing, GISB anticipates completion of Version 1.3 of the standards by July 1998. It then projects updates of various portions of the standards occurring on an annual basis, with Version 2 (update of Flowing Gas and Invoicing) by July 1999 and Version 2 (update of Nominations and Capacity Release) by July 2000.

Because the regulations adopted in this proceeding require changes to the existing standards, granting a significant hiatus on adoption of revised datasets at this time is inappropriate. To ensure that shippers can fully take advantage of the benefits from the regulations, the appropriate standards need to be implemented as soon as feasible. As reflected in GISB's projected schedule, a longer time period between adoption of revised versions may be more appropriate once the initial phase of standardization is complete and the focus turns to maintenance and improvement of the datasets.

In implementing Order No. 587, the Commission granted pipelines two types of waivers. It granted some, generally smaller, pipelines, whose computer systems were not yet ready to implement the standards, extensions of time to comply with the electronic communication requirements.[18] It also granted waivers permitting some major pipelines to use non-standardized data elements to accommodate specific business practices while their requests for changes to the datasets were pending at GISB.[19]

In the NOPR, the Commission asked whether the time for permitting these waivers had ended and whether all pipelines should be required to adhere to the Version 1.2 standards. The pipelines contend the Commission should continue to grant waivers on a case-by-case basis if a need is shown, although the comments did not differentiate between the extensions of time for small pipelines to implement the standards and the waivers for larger pipelines of dataset compliance.[20] Koch claims that Version 1.2 may still contain errors that need to be corrected. Other commenters contend the need for waivers has ended, and pipelines now need to conform to the standardized data elements.[21]

The Commission will examine requests for extensions of waivers on a case-by-case basis. However, because waivers are antithetical to the concept of standardization, such extensions will be disfavored. Non-uniform implementation of the datasets on major pipeline systems, in particular, creates burdens for shippers because they have to maintain unique sets of data elements to conduct business solely on those pipelines with waivers. Pipelines, therefore, will have a heavy burden of justifying any request for a waiver of the data elements.

2. Regulations Establishing Priority of Intra-Day Nominations

The Commission is adopting regulations in § 284.10(c)(1)(i) establishing the scheduling priority for intra-day nominations. The regulations require pipelines to accord an intra-day nomination submitted by a firm shipper scheduling priority over nominated and scheduled volumes for interruptible shippers. Pipelines are to provide an interruptible shipper with advance notice that its scheduled volumes are to be reduced as well as notice of whether penalties will apply on the day its scheduled volumes are reduced. In addition, the regulation requires that an intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day at 9 a.m. CCT.

a. Background. (1) Commission policy on service priority. Under the GISB standards, shippers submit initial nominations at 11:30 a.m. for gas to flow on the next gas day (starting at 9 a.m.).[22] An intra-day nomination is any nomination submitted after the initial nomination.[23] An intra-day nomination can be made either on the day prior to gas flow (after 11:30 a.m.) or on the day of gas flow.[24] The current standards require a pipeline to permit one intra-

[9] Order No. 587 at 61 FR 39060, III FERC Stats. & Regs. Regulations Preambles at 30,066.

[10] *See* Texas Eastern Transmission Corporation, 77 FERC ¶ 61,175, at 61,646 (1996) (pipelines incorporating standards by reference in their tariffs must include number and version).

[11] In filing to implement Version 1.2, pipelines need to change all references to GISB standards in their tariffs to Version 1.2. The version number applies to all standards contained in GISB's Version 1.2 Standards Manuals, including standards that have not changed from prior versions.

[12] 18 CFR 154.207.

[13] Comments by Columbia Gas/Columbia Gulf (one year), Duke Energy Interstate Pipelines, Engage, Koch, Latitude (every two years) MGE, NGC, NGSA, Nicor Gas, PG&E, ProEnergy, Williston Basin.

[14] *See* comments by Duke Energy Interstate Pipelines and Koch.

[15] *See* comment by NGSA and PG&E.

[16] Comments by Altra, ECT, Enron, INGAA, SoCal Gas/SDG&E, TransCapacity.

[17] *See* comment by SoCal Gas/SDG&E.

[18] *See* Gulf States Transmission Corporation, 79 FERC ¶ 61,102 (1997).

[19] *See* Texas Eastern Transmission Corporation, 79 FERC ¶ 61,223 (1997).

[20] *See* Comments of Duke Energy Interstate Pipelines, INGAA, Koch, NGPL, Williston Basin.

[21] *See* Comments of Altra, ECT, Engage, MGE, NGC, NGSA, PG&E, SoCal Gas/SDG&E, TransCapacity.

[22] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.1 and 1.3.2.

[23] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.2.4.

[24] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.2.7.

day nomination four hours prior to gas flow.[25]

The Commission's policy since Order No. 636 has been that firm shippers, who pay reservation charges, are entitled to service superior to that of interruptible shippers. Interruptible shippers, by definition, take the risk that their service will be interrupted if firm shippers choose to use their capacity.

In Order No. 636, the Commission did not require pipelines to provide intra-day nomination opportunities and, therefore, did not address the intra-day priority issue in that rule. In the Order No. 636 restructuring proceedings, some pipelines were continuing or proposing to add intra-day nomination opportunities. The Commission allowed them to do so and also permitted those pipelines to continue tariff provisions under which scheduled interruptible nominations would not be bumped by firm intra-day nominations.

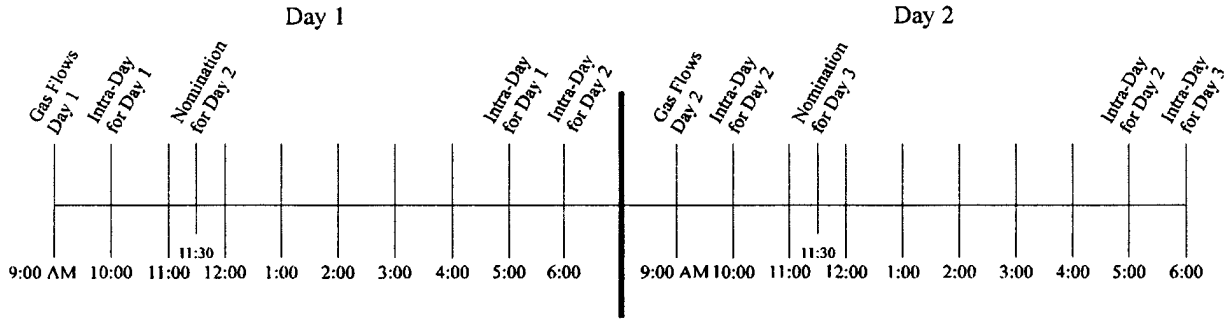
However, as intra-day nominations became more prevalent, the Commission's policy changed and it began to require that intra-day nominations conform to its general policy giving firm service priority over interruptible service.[26] Thus, the Commission found that firm service intra-day nominations should be entitled to bump scheduled interruptible service. The Commission, however, concluded that interruptible shippers should receive notice of their rescheduled quantities and an opportunity to renominate.[27] The Commission also determined that bumped interruptible shippers should not be subject to penalties directly related to the bump on the day on which the bump takes place.[28]

When Order No. 587 required all pipelines to implement at least one intra-day nomination, the Commission determined that those pipelines filing to institute intra-day nominations on their systems had to follow the general policy on service priority and permit firm intra-day nominations to bump scheduled interruptible service upon reasonable notice.[29] On those pipelines with pre-Order No. 587 tariff provisions that prohibited bumping of interruptible service, the Commission permitted the no-bump provisions to stand, because the pipeline filings were strictly compliance filings, and the Order No. 587 standards did not address the priority issue for intra-day nominations.[30]

(2) GISB deliberations on intra-day nominations. In Order No. 587–C, the Commission recognized that the divergent ways in which pipelines had implemented the intra-day nomination requirements prevented shippers from coordinating their intra-day nominations across interconnecting pipelines. The Commission requested that GISB provide recommendations as to standards for coordinating intra-day nominations by September 1, 1997.

In its September 2, 1997 filing, GISB reported that it had been able to reach certain agreements on intra-day issues; for example, it submitted a proposed schedule establishing three synchronization times when shippers could coordinate their intra-day nominations: 6 p.m. (to take effect on the next gas day), and 10 a.m. and 5 p.m. to take effect on the same gas day.

The GISBTask Force's Model Intra-day Nomination Timeline



GISB reported, however, that it had been unable to resolve certain policy issues, principally whether, and under what circumstances, intra-day nominations by firm shippers could bump or displace previously scheduled interruptible service. Interruptible shippers did not want their service to be disrupted, while firm shippers argued that their payment of reservation charges entitled them to nomination priority over interruptible service.

According to GISB's March 23, 1998 filing, it has approved the intra-day synchronization schedule and, in addition, has passed 18 new or revised intra-day nomination standards. The approved standards, however, do not resolve the bumping question. If the Commission determines to require bumping in this rule, the standards do not resolve the question of when a firm intra-day nomination submitted on the day prior to gas flow (6 p.m.) and which bumps interruptible service would take effect. The standards leave that date to be determined by the Commission in this rule.

(3) NOPR proposals. In the November 12, 1997 NOPR, the Commission agreed

[25] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.10.

[26] *See* Tennessee Gas Pipeline Company, 73 FERC ¶ 61,158, at 61,456 (1995).

[27] *Id.*

[28] *Id.* (daily variance charge waived, but only for the day on which the bump takes place).

[29] *See* El Paso Natural Gas Company, 77 FERC ¶ 61,176 (1996); Alabama-Tennessee Natural Gas Company, 79 FERC ¶ 61,117 (1997); Algonquin Gas Transmission Company, 78 FERC ¶ 61,281 (1997); ANR Pipeline Company, 78 FERC ¶ 61,142 (1997); Arkansas-Western Pipeline Company, 78 FERC ¶ 61,250 (1997); Canyon Creek Compression Company, 78 FERC ¶ 61,003 (1997); CNG Transmission Corporation, 78 FERC ¶ 61,131 (1997); Great Lakes Gas Transmission Limited Partnership, 79 FERC ¶ 61,194 (1997); Iroquois Gas Transmission System, L.P., 79 FERC ¶ 61,196 (1997); K N Interstate Gas Transmission Company, 79 FERC ¶ 61,208 (1997); Mojave Pipeline Company, 78 FERC ¶ 61,153 (1997); National Fuel Gas Supply Corporation, 78 FERC ¶ 61,332 (1997); NorAm Gas Transmission Company, 79 FERC ¶ 61,069 (1997); Overthrust Pipeline Company, 78 FERC ¶ 61,285 (1997); Questar Pipeline Company, 78 FERC ¶ 61,305 (1997); Southern Natural Gas Company, 78 FERC ¶ 61,125 (1997); Texas Gas Transmission Corporation, 79 FERC ¶ 61,175 (1997); Trailblazer Pipeline Company, 77 FERC ¶ 61,328 (1996); Viking Gas Transmission Company, 78 FERC ¶ 61,243 (1997); Young Gas Storage Company, Ltd., 79 FERC ¶ 61,030 (1997).

[30] *See* Transwestern Pipeline Company, 78 FERC ¶ 61,146 (1997); Florida Gas Transmission Company, 77 FERC ¶ 61,177 (1996).

that the three intra-day nomination times established by GISB would significantly improve shippers' ability to coordinate intra-day nominations. The Commission sought to achieve greater coordination in intra-day scheduling by resolving the dispute within GISB over bumping of interruptible service. The Commission proposed to follow its current policy and require pipelines to provide for firm intra-day nominations to bump scheduled interruptible service. The Commission also required that an interruptible shipper be given notice that its scheduled volumes would be reduced.

While not proposing a regulation, the Commission sought to resolve the dispute at GISB over the time at which an intra-day nomination submitted at 6 p.m. (on the day prior to gas flow) which bumps an interruptible shipper can take effect. The Commission concluded that the firm intra-day nomination should take effect at the start of gas flow at 9 a.m., rather than at 5 p.m. the next day, as suggested by interruptible shippers. The Commission reasoned that firm shippers pay for their service priority and have the right for their intra-day nomination to take effect as soon as possible. In addition, in accordance with the report from the GISB intra-day nomination task force, the Commission stated that those pipelines permitting three intra-day nomination opportunities could submit a request to exempt the last intra-day nomination opportunity from the bumping rule. Providing a final no-bump opportunity, the Commission reasoned, would provide stability to the nomination process.

The Commission will first address the comments on its proposal to permit firm intra-day nominations to bump scheduled interruptible service. The Commission will then address several related issues: the imposition of penalties on bumped interruptible shippers, the provision of an overnight rescheduling opportunity, the relative priority of firm primary and firm secondary service, and the effect of its intra-day standards on pipelines employing a rolling or continuous intra-day process.

b. Bumping. (1) Comments. Most commenters agree with the Commission that industry-wide coordination of intra-day nominations is needed,[31] although a few contend that issue should be addressed on a pipeline specific basis.[32] And, a large majority of the commenters support the Commission's decision that firm intra-day nominations should bump interruptible, at least under some circumstances.[33]

The major area of disagreement is how to implement the bumping requirement given the intra-day schedule proposed by GISB. NGC, NGSA, ProEnergy, Columbia Gas/Columbia Gulf take issue with the Commission's determination that a firm shipper should be permitted to submit a nomination at 6 p.m. (on the day prior to gas flow) to become effective at 9 a.m. (the beginning of gas flow). They contend that permitting the 6 p.m. bump would decrease the value and certainty of interruptible service. Since the interruptible shipper will not be notified of the bump until after normal working hours, they assert, the shipper will not know it has been bumped until the next morning and will have no opportunity to renominate. NGSA is concerned that bumping at 9 a.m., without a renomination opportunity before the bump takes effect, could result in an unplanned shut-in of gas.[34] Rather than a 9 a.m. effective time, these four parties contend the Commission should establish that the 6 p.m. intra-day nomination becomes effective at 5 p.m. the next day so that interruptible shippers will have an opportunity to renominate.

Taking a different tack, PGT and Pan Alberta do not object to the timing of the 6 p.m. nomination, but contend that no bumping should be permitted after gas starts to flow. They argue that permitting bumping of flowing gas will devalue interruptible service and create logistical difficulties for market participants by complicating the balancing process and requiring last minute adjustments to marketing plans. They further contend that permitting bumping after gas flows is inconsistent with the Canadian practice, which will cause interconnection problems.

Firm shippers, on the other hand, support the Commission's proposal that firm intra-day nominations should bump interruptible service both on the day prior to the gas day and on the gas day itself. They particularly support the Commission's proposal that a firm intra-day nomination at 6 p.m. will take effect at 9 a.m.[35] They contend that their payment of reservation charges entitles them to such priority and that, if they nominate on the day prior to gas flow, that nomination should be effective at the start of gas flow, rather than eight hours later. Indicated End Users argue that delaying the bump from 9 a.m. until 5 p.m. essentially provides interruptible shippers with eight hours of firm service while degrading the value of firm service. Such a result, it asserts, is particularly inappropriate since bumping occurs only on pipelines with no excess capacity, where firm service is accordingly extremely valuable.

(2) Commission determination. The Commission has determined that intra-day nominations for firm capacity should be given scheduling priority over scheduled and flowing interruptible service. The vast majority of the comments support this regulation, and the regulation is consistent with the priority rights to which firm shippers are legitimately entitled. This issue cannot be left to individual determinations on a pipeline specific basis, as suggested by Koch, NWIGU, Viking, and Williston Basin. Continuation of the current bifurcated system is inconsistent with the creation of an integrated pipeline grid and would effectively reduce the effectiveness of firm shippers' intra-day nominations on the majority of pipelines that permit bumping. A firm shipper nominating gas across multiple pipelines needs to be able to coordinate its intra-day nominations. Under the present system, if even one pipeline in its nomination chain has a no-bump rule, the shipper may be unable to have its entire chain of intra-day nominations confirmed. Thus, a single approach to bumping is necessary to integrate the pipeline grid.

With respect to the principal disputed issue—the effective time of an intra-day nomination submitted on the day prior to gas flow (the 6 p.m. intra-day nomination under the GISB schedule)—the Commission finds that the intra-day nomination should become effective at the start of the gas day at 9 a.m., and will amend its regulations to make clear that an intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day.

Firm shippers are paying reservation charges for priority rights and those

[31] Comments by AGA, Altra, Burlington, Centra Manitoba, Columbia Gas/Columbia Gulf, ECT, Indicated End Users, K N Interstate Group, National Fuel Distribution, NGC, NGSA, Nicor Gas, Pan Alberta, Peoples/North Shore, PG&E, Piedmont.

[32] Comments by Koch, NWIGU, Viking, Williston Basin.

[33] Comments by Burlington, Cascade, Centra Manitoba, Columbia Gas/Columbia Gulf, ECT, Engage, Florida Cities, FPL, Indicated End Users, INGAA, MCV, Minnegasco, Mississippi Distributors, MoPSC, MLGW, National Fuel Distribution, NGC, NGSA, NGPL, Pan Alberta, PGC, *et al.*, PGT, Peoples/North Shore, PG&E, Piedmont, ProEnergy, ProLiance, SGPC, SoCal Gas/SDG&E, TVA. *But see* comments by Enron, K N Interstate Group, Koch, Viking, Williston Basin (opposing bumping).

[34] These parties also note that firm shippers wanting greater flexibility in nominations can subscribe to no-notice service.

[35] Comments by Indicated End Users, Mississippi Distributors, National Fuel Distribution, PGC, *et al.*, SoCal Gas/SDG&E, TVA.

rights should include the right to have a nomination become effective as early as possible on the gas day following the nomination. Interruptible shippers voluntarily take the risk that their service will be interrupted and while they are entitled to advance notice of such interruption, they should not be able to prevent firm shippers from having their nominations take effect at the earliest possible time. Gas flows on the interstate grid 24-hours a day, and is consumed throughout the day, so interruptible shippers need to be prepared to adjust gas volumes even during non-business hours. The interruptible shippers will receive sufficient advance notice (approximately 11 hours) to reduce flows if necessary. They will still have the two additional intra-day opportunities during the gas day (the 10 a.m. and 5 p.m. intra-day opportunities) to reschedule their gas. And, interruptible shippers have the tools, such as pooling, gas package identifiers, and ranking, that they can use to manage their gas supplies in the event of bump.[36] If interruptible shippers still find the bumping risk unacceptable, they have the opportunity to obtain firm capacity either from the pipeline or through the capacity release system.

While the commenters contend that bumping creates the risk that gas will be shut-in without an opportunity to reschedule, that could occur under the existing system as well. During the regular scheduling process, an interruptible shipper takes a risk that a firm nomination may result in a reduction in or termination of its flow from one day to the next, a change that must take effect at 9 a.m. in the morning. Prior to Order No. 587, many pipelines provided no opportunity for the interruptible shipper to reschedule that gas prior to having to implement the reduced flow. Even after Order No. 587, many pipelines do not provide an intra-day scheduling opportunity prior to the start of the gas day in which case the interruptible shippers are unable to reschedule gas prior to the beginning of gas flow. Indeed, interruptible shippers are better off in many ways under the new regulation, than they were prior to the expansion of the intra-day nomination process. Before adoption of multiple intra-day nominations, interruptible shippers could have their volumes reduced with no opportunity to renominate that gas, while under the multiple intra-day nomination schedule, interruptible shippers bumped by a 6 p.m. intra-day nomination will still have two opportunities to reschedule gas on an industry-wide basis (the 10 a.m. and 5 p.m. intra-day opportunities).

The Commission will follow the GISB consensus and permit pipelines with three intra-day nomination opportunities to exempt the last intra-day opportunity from bumping. Both firm and interruptible shippers support GISB's and the Commission's proposal that no bumping should take place at the third intra-day nomination opportunity.[37] Local distribution companies (LDCs) contend that allowing bumping at the third opportunity would interfere with their efforts to manage their own systems. A few commenters contend that making the third intra-day opportunity non-bumping is inconsistent with the priority to which firm service is entitled.[38] The Commission, however, agrees with the consensus of the GISB members that making the third intra-day nomination non-bumping creates a fair balance between firm shippers, who will have had two opportunities to reschedule their gas, and interruptible shippers and will provide some necessary stability in the nomination system, so that shippers can be confident by mid-afternoon that they will receive their scheduled flows.

c. Penalties for bumped interruptible shippers. In *Tennessee Gas Pipeline Company*,[39] the Commission permitted the pipeline to implement a tariff provision under which firm intra-day nominations bumped scheduled interruptible gas, but waived the pipeline's daily variance penalty for bumped interruptible shippers on the day of the bump. Referring to this decision, the Commission, in the NOPR, stated that pipelines filing to implement the regulation giving firm intra-day nominations priority over scheduled interruptible gas should consider whether bumped interruptible shippers should be exempt from certain penalties on the day of the bump.

Pipelines as well as some shippers contend that the pipelines must be able to assess penalties against interruptible shippers or else shippers will have no incentive to comply with the bump and the pipelines' management of their system will be jeopardized.[40] Columbia Gas/Columbia Gulf maintain that penalties should be waived only if the interruptible shipper conforms its flow to the rescheduled volumes. The pipelines contend that they do not have the system flexibility to permit overuse of capacity even on a single day.[41]

Shippers maintain that penalties should be waived for bumped interruptible shippers.[42] They contend that interruptible shippers should not be subject to penalties when the shipper is unable to reschedule gas and may not be able to get a point operator to change physical volumes. NGC maintains the Commission should not just consider waiving penalties, but affirmatively adopt a rule that no penalties can be assessed on bumped shippers.

Given the variety of penalty provisions in pipeline tariffs, the waiver of penalties for bumped shippers will have to be considered when pipelines make compliance filings. The Commission will set forth below some general principles for assessing when pipelines should waive penalties for bumped interruptible shippers. No penalties should be imposed on bumped shippers if the pipeline fails to provide appropriate notice of a bump. Once notified, shippers are expected to make a good faith effort to adjust their flows to conform to revised scheduling volumes. But the Commission recognizes that in some cases the shortened notice period for intra-day nominations (three hours under the GISB timeline) may make such adjustments difficult. As in *Tennessee*, therefore, pipelines should waive non-critical penalties, such as daily scheduling or variance penalties, for the day of the bump. But these penalties would be waived only for the day of the bump; interruptible shippers should remain responsible for the excess gas put on the system and would be subject to all penalties in subsequent days resulting from the excess gas.

The Commission also recognizes the pipelines' need to maintain control of their systems in critical situations, when they invoke operational flow orders. In these cases, bumped interruptible shippers may not be entitled to special treatment on penalties, because, when OFOs are in effect, the pipelines are less likely to be able to absorb extra gas on their systems and all shippers may have difficulty adjusting to the OFO. Waiving penalties for bumped interruptible

[36] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.18, 1.3.23, 1.3.24. *See* text accompanying notes 100 and 93, *infra*. Pooling together with ranking permit shippers to designate which supplies or markets should be cut first in the event scheduled volumes are reduced. Thus, producers can rank those supply sources where volumes can be changed most easily as the first to be cut in the event of a bump.

[37] Comments by Burlington, Engage, INGAA, NGSA, Nicor Gas Peoples/North Shore.

[38] Comments by Cascade, TVA.

[39] 73 FERC ¶ 61,158, at 61,456 (1995).

[40] Comments by Enron, INGAA, NGPL, Nicor Gas, NGT/MRT, Southern, TransCapacity, Cascade.

[41] *See* comments by INGAA, Enron, NGPL, Southern.

[42] Comments by ECT, FPL, National Fuel Distribution, NGC, NGSA, PGC, *et al.*

shippers in critical situations, therefore, could come at the expense of reduced service or increased penalties on other shippers. The Commission, however, expects pipelines to comply with the principle embodied in standard 1.1.14 which provides:

> where a nomination is required by the service provider to make an effective physical change necessary to comply with an Operational Flow Order, unless critical circumstances dictate otherwise, an Operational Flow Order penalty should not be assessed unless the shipper is given the opportunity to correct the circumstance giving rise to the Operational Flow Order and fails to do so or the action(s) taken fails to do so. The opportunity to correct the critical circumstance should include the opportunity to:
>
> (a) Make a nomination, which, once confirmed and scheduled would cure the circumstance giving rise to the Operational Flow Order, or
>
> (b) Take other appropriate action which cures the circumstance giving rise to the Operational Flow Order.[43]

For instance, under this principle, where an OFO would require an interruptible shipper (which is bumped by a firm service intra-day nomination at 6 p.m. the day prior to gas flow) to make a nomination to effect a physical change to comply with the OFO, the pipeline should afford the interruptible shipper the opportunity to make a new intra-day nomination at the next intra-day nomination opportunity (10 a.m.) to cure the circumstance giving rise to the OFO. If the interruptible shipper can make such a change, no OFO penalties should be charged for the period between 9 a.m. and 5 p.m. when the interruptible shipper's 10 a.m. intra-day nomination would take effect. However, if the interruptible shipper is unable to cure the OFO at the 10 a.m. intra-day nomination opportunity all applicable OFO penalties would apply. These principles appear to strike a fair balance between the operational needs of the pipelines and the protection of shippers.

When pipelines file to implement the regulations, the Commission will consider whether pipelines should waive specific penalties for bumped interruptible shippers. Section 284.10(c)(1)(i)(A) also requires pipelines to notify bumped interruptible shippers if penalties for overrunning their scheduled quantities will apply on the day of the bump.

d. Other Issues. (1) Overnight rescheduling opportunity. In the NOPR, the Commission decided not to propose a regulation requiring pipelines to provide an overnight rescheduling opportunity for interruptible shippers which are bumped. PGC, *et al.*, contend that the Commission should require pipelines to permit interruptible shippers to renominate bumped supply overnight. NGPL, on the other hand, contends that pipelines cannot provide overnight renominations, because confirmation of these nominations could not take place in the evening and early morning.

Pipelines wishing to provide greater certainty to interruptible shippers may provide an overnight opportunity for interruptible shippers to reschedule bumped gas. However, the Commission agrees with NGPL that given the confirmation difficulties occasioned by overnight rescheduling, pipelines should not be required to provide such a service. The 11 hour advance notice to interruptible shippers and the interruptible shippers' ability to renominate at the 10 a.m. intra-day opportunity provides sufficient protection to interruptible shippers.

(2) Priority of firm capacity to primary and secondary points. In the NOPR, the Commission restated its policy that, once scheduled, intra-day nominations for firm service to primary receipt or delivery points do not bump previously scheduled firm capacity to secondary points. ECT, K N Interstate Group, and NWIGU support the current policy that intra-day nominations to firm primary points do not bump already scheduled gas at secondary points. ECT and NWIGU maintain that giving firm primary and secondary points firm priority is necessary for the capacity release process to work efficiently. On the other hand, MGE and NGT/MRT contend the Commission should change the policy to give intra-day nominations to firm primary points priority over previously scheduled firm capacity at secondary points. They assert that firm shippers pay for such primary point rights. Cascade maintains that Commission policies permitting exceptions to priority rules need to be reconsidered as the industry moves to a more continuous and contiguous scheduling system under which the pipelines may reschedule the entire system more frequently than once a day. Koch, PG&E, and SoCal Gas/SDG&E request clarification that the Commission's statements of priority regarding the impact of intra-day nominations on scheduled service to firm secondary points do not affect specific resolution of priority issues with respect to the Koch and El Paso pipelines.

At this time, the Commission will not adopt a regulation requiring pipelines to revise existing tariff priorities relative to the rights of intra-day nominations to firm primary points to affect scheduled volumes to firm secondary points. Given the potential effects of changing the priority rules relating to intra-day nominations to secondary points, such as potentially reducing the ability of shippers to obtain released capacity and to use that capacity at secondary points, changes in priority rules require additional consideration by the Commission and the industry.

(3) Pipelines processing intra-day nominations on a continuous or rolling basis. Some pipelines currently process intra-day nominations on a continuous or rolling basis permitting the shipper to choose when to submit its intra-day nomination. Others use a batch process in which all intra-day nominations are processed at the same time.

CNG, Enron, Nicor Gas, Peoples/North Shore, Southern, and TransCapacity contend that pipelines should be able to revise their prior continuous intra-day nomination procedures to conform to the GISB batch schedule. CNG maintains that pipelines should not be held to prior intra-day schedules based on different operating assumptions. CNG and Enron maintain that changing to a batch process should not be deemed a degradation of service. Peoples/North Shore and Nicor Gas maintain that continuous processing complicates LDCs' supply planning because they have to make operational changes throughout the gas day.

AGA, on the other hand, is concerned that pipelines currently offering continuous service should not be able to unnecessarily degrade their services by changing to the batch process. While Peoples/North Shore support the batch process, they argue that pipelines offering special services with more than the required number of intra-day opportunities should not be able to reduce those to the standard three.

Adoption of the three synchronization times is not necessarily inconsistent with continuous intra-day processing, since the shipper can simply choose whether to time its nominations to achieve synchrony with other pipelines. However, if a pipeline finds that continuation of the continuous process will disrupt its system, it should be able to change its procedures to conform to the industry standards. The efficiency gained by the entire industry in being able to coordinate nominations across the pipeline grid outweighs any potential diminution of service resulting solely from the change in the method of processing the nominations. Pipelines, however, should not use the change to batch processing to reduce the number of intra-day opportunities to which

[43] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.1.14.

shippers are entitled. Although these additional intra-day opportunities are not coordinated across pipelines, they still provide shippers with benefits, particularly to those shippers revising storage or other nominations that do not need to be coordinated with nominations on other pipelines.

3. Regulation Requiring Pipelines To Enter Into Operational Balancing Agreements

In § 284.10(c)(2)(i), the Commission is adopting a regulation requiring each interstate pipeline to enter into an Operational Balancing Agreements at all points of interconnection between its system and the system of another interstate or intrastate pipeline.

a. Background. An operational balancing agreement (OBA) is a contract between two physically interconnected parties specifying the procedures to be used in processing imbalances or differences in hourly flows between the parties. GISB passed a standard requiring pipelines to enter into OBAs at all interstate and intrastate pipeline interconnects where economically and operationally feasible. In Order No. 587–C, the Commission declined to adopt this standard, finding the phrase economically and operationally feasible too vague to define pipeline obligations. In the NOPR, the Commission proposed to require interstate pipelines to enter into OBAs with all interconnecting interstate and intrastate pipelines.

b. Adoption of the regulation. Almost all the commenters either support the regulation or do not oppose it. INGAA and some of the pipelines suggest the regulation is not needed since OBAs already exist at over 91% of interconnects between interstate pipelines. Enron contends that, instead of mandating that pipelines enter into OBAs, the Commission should adopt a regulation prohibiting pipelines from enacting tariff provisions that inhibit the use of OBAs at interconnect points.

The Commission concludes the regulation is needed. As the commenters point out, OBAs have increased the efficiency and reliability of the pipeline grid. An OBA ensures that a shipper, once it has properly nominated and had its gas confirmed, will not be subjected to imbalance penalties resulting from the transfer of gas between the pipelines. Enron's suggestion that the Commission limit the regulation to one that merely prohibits pipelines from adopting tariff provisions inhibiting the development of OBAs does not go far enough, because it imposes no affirmative obligation on the pipelines to enter into OBAs.

Other issues raised by the comments will be discussed below.

c. Definition of intrastate pipeline. Section 284.10(c)(2)(i) requires interstate pipelines to enter into OBAs at all interstate and intrastate pipeline interconnects. The comments principally concern the scope of the term intrastate pipeline. The pipelines contend it should be limited to intrastate pipelines only (defined by Koch as those with transmission facilities that do not cross state lines) and should not include gatherers and LDCs.[44] ANR/CIG contend it should include only intrastate pipelines regulated by the Commission which would obviate the possibility that interstate pipelines would have to file for waivers if they cannot negotiate an acceptable OBA with an unregulated entity. The pipelines argue that expanding the requirement to gatherers and LDCs would be too burdensome, particularly if they had to file for a waiver every time they could not negotiate an acceptable agreement.

TransCapacity and PGC, *et al.*, assert the requirement should extend to all interconnect points where nominations need to be confirmed with multiple parties behind the point, specifically including interconnects with LDCs and gatherers. TransCapacity contends that the burden of including these points is minimal if GISB develops a model OBA.

The proposed regulation uses the term intrastate pipeline, as contained in the original GISB formulation. The term intrastate pipeline should apply to pipelines providing transmission services, as opposed to gathering or local distribution functions. To aid in identifying those pipelines to which the regulation applies, the term will apply to all pipelines performing interstate transportation that are subject to the Commission's regulations under Subparts C and G of Part 284.[45] As National Fuel Distribution suggests, this constitutes a good beginning, but, after experience is gained, consideration should be given to expanding the definition so that interstate pipelines will be expected to negotiate OBAS with all those transporting gas for others, such as gatherers and LDCs.

As ANR/CIG suggest, since the requirement applies only to OBAs between interstate pipelines and intrastate pipelines regulated by the Commission, pipelines have no need to file for waivers. While the Commission expects that interconnecting parties will be able to negotiate acceptable OBA conditions, if an intractable dispute should arise, they can submit the dispute to the Commission for resolution.

d. Date by which pipelines must execute OBAs. Enron questions whether pipelines can be expected to enter into an OBA by a date certain, while NGC contends the Commission needs to set an outside date by which the OBA process must be completed. The Commission recognizes that pipelines must be given some time to negotiate and enter into OBAs and, therefore, would expect that pipelines should be able to complete the OBA process within three months after the Commission adopts final regulations governing OBAs.

e. Requirement to make OBA contracts available. NGPL objects to the requirement that pipelines maintain OBAs and provide them to requesting parties, asserting the Commission has offered no justification for the requirement. NGPL would not object to posting the OBA operator and the points covered by the OBA. PG&E contends OBAs are proprietary contracts and should be filed under seal. SoCal Gas/SDG&E and TransCapacity maintain OBAs must be publicly available.

Section 4 of the Natural Gas Act requires that pipelines:

> file * * * and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale * * * and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

Since OBAs are contracts relating to the provision of transportation service, they are jurisdictional. The Commission, however, has not required pipelines to file OBAs with the Commission.[46] Instead, pipelines must make them available, along with all relevant records of volumes and amounts paid under OBAS, to the Commission and any person requesting copies.

f. Development of a standard OBA and other issues relating to negotiation and implementation of OBAs. Several commenters contend that GISB should develop a standard OBA and pipelines should be required to accept the standard OBA.[47] A standard OBA, they assert, will reduce the burden of having to individually negotiate OBA terms in

[44] Comments by ANR/CIG, Enron, INGAA, Koch, National Fuel Distribution, SGPC, Williston Basin.

[45] 18 CFR 284.121–126; 18 CFR 284.224.

[46] *See* Transcontinental Gas Pipe Line Corporation, 65 FERC ¶ 61,315, at 62,437 (1994) (although OBAs are jurisdictional, filing is unnecessary if copies are made available by the pipeline).

[47] Comments by NGC, SoCal Gas/SDG&E, TransCapacity.

every instance. The pipelines oppose a requirement that they adhere to a standard OBA, because, they assert, an OBA needs to deal with issues specific to the interconnected parties.[48]

Development of a standard OBA would be of significant value in setting forth terms that are reasonably fair to both parties, and GISB should work on developing such a contract. Pipelines, however, would not have to agree to the standard OBA if its terms are inapplicable in a particular situation.

Pipelines raise questions about negotiation and implementation of OBAs. El Paso seeks clarification that it can insist on inclusion of certain necessary terms, such as creditworthiness guarantees and other assurances of performance. K N Interstate Group, Koch, and NGPL ask if pipelines can terminate OBAs for non-performance. NGT/MRT ask whether pipelines can reject OBAs, without filing for a waiver, where the OBA would inhibit pipeline operations. SGPC raises concerns about having to enter into unreasonable terms and conditions with unregulated entities, such as gatherers.

Pipelines can insist that OBAs contain reasonable terms that are standard in the industry. Development of a standard OBA would provide a benchmark for comparison. Based on the history of OBAs, the Commission does not expect numerous cases in which parties fail to perform. However, pipelines would have a right to terminate an OBA for substantial, consistent non-performance, but must do so in a non-discriminatory fashion and should make every effort to work out any difficulties with the other contracting party.

Pipelines cannot unilaterally decide not to enter into an OBA with an interconnecting pipeline. As discussed previously, interstate pipelines must enter into OBAs only with intrastate pipelines regulated by the Commission. Any disputes over OBA terms and conditions between interconnected parties can be submitted to the Commission for resolution.

NGSA argues the OBA regulation should be expanded to require the downstream party to adhere to the pre-determined allocations of the upstream party. Without such a requirement, it claims the OBA cannot properly allocate volumes to the appropriate downstream customer when capacity is scarce.

The Commission, at this time, does not have sufficient information to impose this as a requirement for all OBAs. As NGSA recognizes, this issue is related to the question of how to handle multi-tiered allocations on which GISB will be developing standards by the fourth quarter of 1998. GISB should consider how to handle upstream and downstream pre-determined allocations when it considers the issues relating to a standard OBA and multi-tiered allocations.

4. Regulation Requiring Pipelines To Net Imbalances and Permit Imbalance Trading

In § 284.10(c)(2)(ii), the Commission is requiring pipelines to permit shippers (including agents) to offset imbalances on different contracts held by the shipper and to trade imbalances with other shippers so long as the imbalances have similar operational impact on the pipeline. In their filings to comply with this regulation, each pipeline must delineate the largest operational area in which imbalances can be traded without affecting system operations. Pipelines also will be expected to propose procedures governing the method by which they will post and process imbalance trades provided to them by shippers or shippers' agents, including third-party firms that would conduct imbalance trading for shippers. GISB is examining standards to make the posting and processing of imbalance trades more uniform and efficient, and the Commission will defer implementation of the imbalance trading requirement until after approval of standards governing imbalance trading, which are due to be filed on June 30, 1998 according to GISB's 1998 Annual Plan.

Under the regulation, pipelines are not required to establish a computerized system on which trading would take place, although they would be free to establish such a system and to assess a separate fee for using that system. If a pipeline does establish its own trading system, it must provide equal and non-discriminatory access for shippers trading their own imbalances or those using third-party services.

The Commission will address below the comments dealing with the adoption of the requirement itself and the operational details.

a. Adoption of imbalance trading. Most of the comments favor or do not oppose the imposition of imbalance trading.[49] Those supporting imbalance trading contend that it is needed to offset the tightened balancing tolerances, increased penalties, and gas forfeiture provisions implemented by pipelines.

WGP and SGPC oppose the requirement, contending that permitting imbalance trading could reduce financial incentives for shippers to stay in balance. WGP also argues that if a pipeline accounts for operational imbalances at the end of the month, a severe imbalance in one direction at the beginning of the month would not be operationally offset by a corresponding imbalance running the other way at the end of the month.

Permitting shippers to trade imbalances in the same operational area enables shippers to avoid imbalance charges without jeopardizing system reliability. When individual shipper imbalances offset each other, the pipeline as a whole is in balance. The Commission does not agree with WGP and SGPC that imbalance trading will significantly weaken shippers' incentives to stay in balance. As NGSA points out, shippers are unlikely to allow large imbalances to accumulate, because they run the risk that they will be subject to penalties if they are unable to find a shipper with an offsetting imbalance with whom to trade. For example, if one shipper has a financial incentive to underdeliver gas, other shippers likely will have the same incentive and all the imbalances will run in the same direction and be untradable. Thus, imbalance trading will ensure that imbalance penalties are linked more closely to operational integrity, so that shippers are not penalized for imbalances that do not affect pipeline operations.

WGP's example of imbalances occurring at different times of the month appears to have little to do with imbalance trading. Currently, a single shipper may run positive imbalances early in the month and negative ones at the end of the month. Despite WGP's concern about potential adverse operational affects on a daily basis, the shipper's imbalances will offset each other by the end of the month, resulting in no imbalance penalties. Thus, establishing imbalance trading on a monthly basis will not change the relative operational impacts of imbalances on a daily basis.

b. Operational details. Most of the commenters address operational aspects of imbalance trading, such as whether imbalances can be traded across rate schedules, the role of agents, and what services pipelines are required to provide.

[48] Comments by CNG, INGAA, K N Interstate Group.

[49] Comments by Altra, Burlington, ECT, Engage, INGAA, K N Interstate Group (pipelines account for imbalances differently and pipelines should define operational impact), MoPSC, MGE, NGPL, NGC, NGSA, Nicor Gas, Peoples/North Shore, PGC, *et al.*, PG&E, ProEnergy, ProLiance, SoCal Gas/SDG&E, TransCapacity.

(1) Accommodating imbalance trading to system requirements. INGAA argues that each pipeline should be able to accommodate imbalance trading to the requirements of its system. The regulation does permit each pipeline to structure imbalance trading to its system, because pipelines need only permit imbalance trading in areas where the imbalances have similar operational effect. When pipelines file to comply with this requirement, they must define the largest possible areas on their systems in which imbalances have similar operational effect and explain why imbalances crossing those lines are not sufficiently similar in operational effect.

(2) Trading across rate schedules or rate zones. Section 284.10(c)(2)(ii) requires pipelines to permit imbalance trades as long as they have similar operational impact on the pipeline. Some of the pipelines contend that further restrictions are appropriate. ANR/CIG, El Paso, and NGPL contend imbalance trading should be limited to trades within rates zones.

Whether imbalance trading should be permitted across rate zones depends on the operational characteristics of the pipeline.[50] As stated earlier, each pipeline must delineate in its compliance filing, the largest operational area in which imbalances can be traded without affecting system operations.

Other pipelines contend they should not have to permit imbalance trades that affect transportation charges.[51] El Paso maintains a pipeline may lose revenue if imbalances on discounted contracts are traded with those on full price contracts. Williston Basin argues that imbalances should not be traded across different contract classes, providing the following example. If a shipper has a positive imbalance of 1,000 Dth under an interruptible contract [52] and trades that imbalance with a shipper that has a 1,000 Dth negative imbalance on a firm contract,[53] Williston Basin claims it would have received revenues only on 100 Dth at the higher interruptible rate and revenues based on 1,100 Dth at the lower firm commodity rate. Williston Basin contends that if the trade was between interruptible contracts alone, it would receive revenues on 1,200 Dth at the higher interruptible rate. (100 Dth for the shipper with the positive imbalance and 1,100 Dth for the shipper with the negative imbalance).

Permitting pipelines to limit imbalance trading to contracts within the same rate schedule would significantly reduce the efficacy of the imbalance trading program and is unrelated to operational needs of the pipeline. Trading would be restricted because shippers would not only have to search out offsetting imbalances in the same operational area, they would have to find offsetting imbalances under the same rate schedule. Such a restriction on trading is unrelated to pipeline operations since, regardless of the rate schedule under which the gas is shipped, the pipeline is physically in balance so long as imbalances net out.

The pipelines have not made clear how they lose transportation revenue from imbalance trading across firm and interruptible or maximum rate and discounted contracts.[54] The Commission's policy is to require pipelines to permit shippers to offset imbalances across contracts under different rate schedules.[55] If a pipeline can document that such trading will cause a loss of transportation revenue, the solution is not to restrict imbalance trading, but for the pipeline to devise an appropriate mechanism to ensure that it is made whole for all appropriate transportation charges.[56]

(3) Pipeline fees for providing imbalance trading services. Commenters raise questions about the pipelines' ability to charge fees for imbalance trading services. NGPL is uncertain which services pipelines must provide and for which a fee can be charged. NGC contends that pipelines with current imbalance trading programs should not be able to charge a fee and that no fee should be charged for shippers trading amongst themselves. CNG and Columbia Gas/Columbia Gulf contend the pipelines should not post imbalances, but provide a space on their EBB or web site for shippers to post imbalances. Altra is concerned that pipelines may abuse the imbalance trading process by establishing affiliates with preferential access to pipeline delivery and receipt information. Altra further maintains pipelines should be precluded from hosting the trading process, because it fears that allowing the pipelines to participate in a rate-based environment would preclude competitive markets from working most efficiently.

To clarify, pipelines will be required, without charging a separate fee, to notify shippers of their imbalances and post imbalances automatically if shippers provide pipelines with standing authority for posting. Pipelines also should permit shippers the opportunity to post their own imbalances in the same location. Pipelines also must process, without charging a separate fee, imbalance trades submitted by shippers or third-parties acting to facilitate imbalance trading.

The posting of imbalances will permit shippers to negotiate their own trades. Pipelines also can set up an imbalance trading or auction process by which shippers can arrange to trade imbalances and charge a separate fee for this service. The Commission will not forbid pipelines from hosting such an imbalance trading service, as Altra suggests, since such a prohibition would limit potential competition. If pipelines charge a separate fee for such a service, third-parties providing a similar service should not be unduly disadvantaged. Pipelines establishing such a system or dealing with an affiliate, however, must act non-discriminatorily in processing imbalance trades submitted by shippers or third-parties and comply with the Commission's standards of conduct with respect to sharing of relevant information.

(4) Standards and procedures for trading imbalances. Commenters raise questions about the procedures that pipelines should adopt to facilitate netting of imbalances and imbalance trading.[57] PG&E argues pipelines should file tariff changes to establish the protocols for imbalance trading so shippers can comment.

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[50] Trunkline Gas Company, 64 FERC ¶ 61,141, at 62,134 (1993) (denying request for netting of imbalances across rate zones where the imbalance within each zone may have operational impact on system operations).

[51] Comments by Columbia Gas/Columbia Gulf, Enron, El Paso, Williston Basin.

[52] The shipper delivers 1,100 Dth into the system of which the pipeline delivers only 100 Dth off the system.

[53] The shipper delivers 100 Dth into the system and the pipeline delivers 1,100 Dth off the system.

[54] In the example given by Williston Basin, the pipeline's transportation revenues for the quantity of gas delivered for each shipper appears the same with or without imbalance trading. The pipeline delivers only 100 units of interruptible volume and charges for the amount delivered. The only potential loss of revenue would be from resolution of the imbalance through cash-out. Under Commission policy, however, pipelines are not entitled to such penalty revenue; such charges are imposed only to discourage conduct inimical to the operations of the system.

[55] *See* Panhandle Eastern Pipeline Company, 64 FERC ¶ 61,009, at 61,066 (1993); Trunkline Gas Company, 64 FERC ¶ 61,141, at 62,133 (1993); Algonquin Gas Transmission Company, 63 FERC ¶ 61,188, at 62,373 (1993).

[56] *See* Panhandle Eastern Pipeline Company, 64 FERC ¶ 61,009, at 61,066 (1993).

[57] ECT argues pipelines should automatically offset imbalances across a shipper's contracts. Enron argues that pipelines need to establish practical parameters for trading such as setting a fixed time frame for shippers to trade imbalances, keeping the pipeline out of shipper trading negotiations and agreements, except to process the resulting adjustments to the parties, and limiting trading activity to the immediately preceding production month's activity to avoid cross-month price arbitrage.

As discussed earlier, the development of standards for processing imbalance trading would make the process more efficient, and the Commission, therefore, is deferring implementation of the imbalance netting and trading requirement until after approval of standards governing imbalance trading, which are due to be filed on June 30, 1998 according to GISB's 1998 Annual Plan. Pipelines will have to make tariff filings to establish the parameters of their trading areas as well as other aspects of their programs, if not covered by the standards. At that time, shippers will have an opportunity to comment on these provisions.

Enron and Koch raise questions about a statement in the NOPR that shippers may be willing to put gas on a pipeline system for a fee in order to resolve another shipper's imbalance. Koch maintains that shippers should not be physically permitted to add or take away gas to resolve historic imbalances. Enron requests clarification that imbalance trading should reflect end of the month imbalances and not daily incremental needs.

The Commission will clarify that the regulation relates to the pipelines' current methods for accounting for imbalances and does not require pipelines to institute daily imbalance procedures, if they are not already present on the system. However, if a pipeline presently imposes daily imbalance penalties, it should establish a means of permitting shippers to trade those imbalances before assessing penalties. The regulation also does not require pipelines to permit shippers to add gas to the system at other than the normal scheduling opportunities.

(5) Agents. The Commission has proposed to allow agents for shippers to offset imbalances across contracts and to trade imbalances. National Fuel Distribution contends that permitting agents to provide an imbalance netting service will diminish pipelines' control of their systems. Columbia Gas/ Columbia Gulf contend that offset and trade options should not be extended to shippers' agents unless they are acting for the shipper. They contend agents do not have title to the gas, but act only as a surrogate for nominating supplies and some contracting activity. ProLiance argues that there is no reason to exclude agents from imbalance netting or trading.

National Fuel Distribution does not explain why permitting agents to participate in netting imbalances or trading imbalances will affect pipelines' control of their systems. As long as imbalances offset each other within the relevant operational area, there should be no negative operational effects on the pipeline. In fact, since all shippers will be able to trade imbalances, there is no reason why agents should not be able to offset imbalances on the contracts they manage. Columbia Gas/Columbia Gulf's concern with agents is similarly unclear. For imbalance trading to work efficiently, pipelines must process imbalance trades by those acting on behalf of shippers. A third-party, for example, may establish a computerized service to facilitate imbalance trades for shippers, and the pipeline will need to process the results of those trades. Any issues with establishing the proper scope of agency should be worked out between the pipeline, the third-party, and the parties involved.

5. Electronic Communication Using the Internet

a. Background. For many years, pipelines have communicated with their customers using direct dial up connections to pipeline Electronic Bulletin Boards (EBBs). Each pipeline EBB is a proprietary system, with unique software, log-on, and other procedures. The uniqueness of each pipeline's EBB raises costs to those who ship across multiple pipelines, since shippers must maintain redundant computers and communication software and train their staff in the idiosyncracies of each pipeline's system.

Creating greater standardization in electronic communication was one of the first standardization tasks the Commission and GISB undertook. The current communication system reflects a tripartite approach. First, shippers can still use EBBs to conduct interactive transactions with the pipelines and obtain information from the pipelines.

Second, pipelines must permit shippers to conduct many of the important business transactions in the industry, such as nominations, flowing gas, invoicing, and capacity release, using datasets in ASC X12 electronic data interchange (EDI) format [58] transmitted over the Internet. An EDI dataset is a highly structured or formatted method of conducting computer-to-computer communication.[59] To make use of EDI over the Internet, the user must have its own Universal Resource Locator (URL) address [60] and be able to translate the formatted information into the report or display it desires. For instance, a user could, if it wanted, translate the EDI information into the same display it now receives from an EBB. Or, it could use the EDI data to feed a more sophisticated gas management computer system.

Third, some information, such as pipeline tariffs, affiliate information, and available capacity, that is posted on EBBs also is posted on pipeline web sites.[61] This information, however, is not transactional, like a nomination, in which the shipper needs to communicate with the pipeline; the information is posted on web sites for shippers to read or to download.

Although GISB's standards state that all current EBB transactions should be achieved through one mode of communication,[62] the standards developed by GISB do not cover all transactions now conducted electronically over EBBs. Pipelines are continuing to post information and conduct many transactions on their proprietary EBBs.

In § 284.10(c)(3), the Commission is adopting a series of regulations to standardize electronic communication, specifically requiring pipelines to: post all information and conduct all business transactions using the public Internet and internet protocols by June 1, 1999; adhere to specific standards in posting information on pipeline web sites and in maintaining electronic records; and provide shippers with notice of critical system events by using the Internet. The Commission will discuss these requirements below.

b. Regulation requiring pipelines to conduct all transactions over the Internet. In § 284.10(c)(3)(i), the Commission is requiring pipelines to provide all electronic information and conduct all electronic transactions over the public Internet. The Commission further is requiring pipelines to provide private networks with non-discriminatory connections using internet tools, internet directory services, and internet communication protocols upon payment of a reasonable fee to recover the costs of providing such an interconnection. The comments address both the Commission's proposed use of the Internet to conduct all transactions and various aspects of

[58] ASC X12 is a standardized format for electronic transmission of documents. Standards for the use of such documents are promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC).

[59] An EDI dataset is analogous to a spread-sheet with each block or location containing specific information that is then processed by a computer. A computer program can translate from the raw EDI data to whatever format or display the user wants.

[60] To maintain a URL address, the user has to have its own Internet server and establish a connection to the Internet.

[61] 18 CFR 284.10(b)(i)(iv) (1997), Electronic Delivery Mechanism Related Standards 4.3.6.

[62] 18 CFR 284.10(b)(1)(iv) 1997), Electronic Delivery Mechanism Related Standards 4.3.6.

its implementation, which are discussed below.

(1) The requirement to use the internet to conduct transactions. The commenters generally support the requirement to move transactions to the Internet to establish a single, efficient mode of conducting business with all pipelines.[63] Only two commenters oppose requiring pipelines to move all electronic communication to the Internet. Koch argues that, rather than requiring that all transactions be conducted over the Internet, the Commission should require pipelines to conduct only basic, minimum transactions over the Internet, such as the EDI transactions contained in Version 1.2 of the datasets. Wisconsin Distributors contend that the Internet may not be reliable enough and that pipelines must have back-up systems, such as EBBs, available to avoid degradation of reliability.

The Commission is adopting the requirement that all transactions and information be conducted using the Internet, because, as the majority of the comments recognize, moving to a single, standardized mode of communication is necessary to achieve an efficient communication system. GISB has considered the reliability and security issues relating to the use of the Internet for conducting transactions and concluded that these concerns can be met.[64] Indeed, as Wisconsin Distributors note, the Internet backbone itself is reliable; most of the difficulties with Internet connections are the result of problems with the Internet servers of the parties and not the Internet itself, problems that can also affect pipeline EBBs.[65] Pipelines, therefore, must make sure that they test their Internet systems prior to implementation. Since problems with Internet communications generally will result from problems with pipeline servers or with the Internet Service Provider (ISP) used to connect the pipeline's server to the Internet, GISB and the pipelines should consider measures to ensure communication reliability, such as mirrored (duplicate) servers and the use of a back-up ISP. Pipelines also may keep their EBBs functional for one year after implementation of the Internet system, solely as a back-up.

Moving to the Internet is intended to eliminate the idiosyncracies resulting from the EBB system. Thus, the goal of the regulation would be defeated if, as Koch suggests, only some functions were moved to the Internet, since shippers still would be forced to use the EBBs for other transactions.

(2) Implementation of the regulation. (a) EDI v. interactive web sites and the future of EBBs. The principal division between the comments is over how the proposal is to be implemented and what will happen to EBBs. Several commenters envision a system where the current interactive EBBs will become interactive web sites.[66] This would mean that shippers would be able to conduct transactions in much the same way they do today, by having a person type information on the computer screen. NGSA argues that the standards should include both EDI and an interactive web site.

TransCapacity and Gaslantic contend that requiring pipelines to provide interactive web sites fails to achieve the necessary standardization. They contend that except for the few informational components already required to be posted on web pages,[67] all transactions should be conducted through EDI dataset transactions. TransCapacity asserts that an EDI solution would be far less expensive for the pipelines to implement than an interactive web approach. It maintains that GISB need only create a few more datasets to transfer all EBB functions to EDI and that implementation of these datasets will be relatively simple, since the infrastructure for transferring EDI data already exists. Koch similarly urges that the requirement only apply to EDI transactions. Requiring a dual EDI and interactive web-based system, it asserts, is just as inefficient as the current dual EDI and EBB system and pipelines would have to make substantial investments to create an interactive web-based system.

TransCapacity further asserts that if pipelines are able to recover their interactive web site costs through their cost-of-service, the less efficient interactive web-based system will receive an unfair subsidy relative to shippers implementing EDI on their own or by using third-parties. The shippers using the interactive web site will incur no incremental charge,[68] while those using EDI will incur costs for implementing this solution. It argues that if pipelines want to provide an interactive web based or EBB approach they should do so only if they impose a separate charges for this service. Other commenters similarly contend that once the Internet solution is implemented, pipeline recovery of dial-up EBB costs through cost-of-service should be discontinued.[69]

According to GISB's 1998 Annual Plan, it is convening an Internet transition task force to consider how to effectuate the transition to full Internet communications. However, according to the minutes of the GISB Executive Committee Meeting of February 12, 1998, GISB also appears divided over which model of Internet communication should be adopted.[70]

To guide the industry's deliberations, the Commission will explain below the general outline of how the standardized communications policy should be implemented.

First, pipelines conducting business transactions electronically must conduct all such transactions using EDI format. The industry, and the Commission, chose EDI as the standardized method for conducting transactions with all pipelines using a single uniform methodology. Many of the efficiency benefits from establishing the infrastructure to process EDI transactions would be lost unless shippers can use EDI for conducting all business transactions with the pipelines. Thus, the pipelines and GISB need to create EDI datasets for all transactions not yet standardized.

Second, pipelines may, but will not be required to, provide interactive web sites. Pipelines will be permitted cost-of-service recovery in subsequent section 4 rate cases for the costs of the interactive web site only if the pipelines together with GISB create standards governing the access to, presentation,

[63] *See* comments by Altra, CNG, Duke Energy Interstate Pipelines, ECT, Engage, Enron, Gaslantic, INGAA, K N Interstate Group, Latitude, MGE, NGSA, Nicor Gas, PGC, *et al.*, PG&E, Piedmont, ProEnergy, SoCal Gas/SDG&E, Southern, TransCapacity.

[64] K N Interstate Group states that no pipelines have experienced difficulties with the Internet and that stocks and bonds are traded over the Internet, reflecting the financial industry's confidence in the security of the Internet.

[65] The Internet is designed to maintain communication even if portions of the network go down. What is now termed the Internet initially was conceived during the cold war as a communication method to maintain continuing transmission capability in the event of nuclear war. The concept was to replace the point-to-point networks, where each site on the network was dependent on the link before it, with a web network, where information could find its own path even if a section was destroyed. *See e.g.*, Bruce Sterling, Short History of the Internet, http://www.forthnet. gr/forthnet/isoc/short.history.of.internet (Feb. 27, 1997). The more likely eventuality, therefore, is an individual problem such as a pipeline or customer's Internet service provider going down, just as in the current EBB system a pipeline or customer's EBB computer can malfunction.

[66] Comments by Duke Energy Interstate Pipelines (migrate EBBs to the Internet), NGSA (should require interactive web sites), Southern (not sacrifice the ease of use of EBBs).

[67] 18 CFR 284.10(b)(1)(iv) (1997), Electronic Delivery Mechanism Related Standards 4.3.6.

[68] Shippers not paying demand rates, in effect, would receive the interactive EBB solution for free.

[69] Comments by Altra, NGC, NGSA.

[70] *See* GISB's March 23, 1998 filing (Volume I, Appendix 9).

and format (''look and feel'') of the sites. This approach will enable the pipelines to respond to shippers' needs while still providing a reasonably standardized method of communication. As NGC notes, many electric utilities collaborated on developing a common Internet site that not only provided shippers with a standardized format, but significantly reduced the utilities' development costs as well. The pipelines and GISB should give serious consideration to pursuing a similar course.

Third, the pipelines must assure a level playing field for shippers using EDI and the interactive web site. Regardless of which system is used, the shipper must obtain the same service and same information handling and response priority from the pipeline. All transactions available on the interactive web site also must be available through standardized EDI communications.

Fourth, by the June 1, 1999 conversion to Internet communications, communications using EBBs should cease. Continued use of EBBs past June 1, 1999 would only delay the move to a standardized communication system. Pipelines, however, may maintain EBBs solely as a back-up system for a period of one year after the June 1, 1999 date for implementing Internet communication. Pipelines must remove EBB costs from cost-of-service in any general section 4 rate case effective after June 1, 2000. Pipelines also may request recovery of any stranded costs resulting from discontinuation of EBBs that are incurred during the test period of a general section 4 rate case that removes EBB costs from cost-of-service.[71] New investments in EBB technology will not be recoverable.

TransCapacity suggests that permitting pipelines cost-of-service recovery for standardized interactive web sites provides a subsidy to the users of the interactive web site. But the Commission does not find an undue preference. The costs of implementing the EDI standards currently are included in pipeline cost-of-service even though not all shippers may use this approach. While, in theory, pipelines could impose separate charges for EDI and interactive web sites, allocating costs between the services could prove difficult, given the integrated nature of communication systems. Thus, including all standardized approaches in the pipelines' cost-of-service will permit shippers to choose the communication approach that best fits their business needs.

[71] 18 CFR Part 154, subpart D.

(b) Third-party networks. In a related issue, several commenters oppose the proposal that pipelines provide connections to third-party networks. Enron argues that pipelines should not have to support value-added-networks (VANs) that charge for connections. The K N Interstate Group maintains that maintenance of third-party connections is inconsistent with a commitment to standardization, would be expensive, and is not needed for security concerns. NGPL asks for clarification of the requirement, contending that issues need to be resolved such as standards governing these networks, network obligations for interfacing with pipelines, and network responsibility for failure to perform all necessary tasks in a timely manner. TransCapacity and Altra support the requirement, contending that third-party networks should be accommodated as long as they are willing to pay all costs of the interconnection. Altra contends that such connections can be made at relatively low cost by means of a simple router where both the Internet and third-party transactions go through the same system with the same priority.

The Commission will require pipelines to provide third-party connections as long as the third-party pays a reasonable fee, to be included in the pipeline's tariff, reflecting the costs to the pipeline of providing the connection.[72] Third-parties would have to use the same datasets and internet protocols as the EDI services. The pipelines also must provide the same information handling and response priority for those using the standard Internet services and third-party networks. GISB should consider whether any additional standards are necessary to ensure that third-party and Internet connections receive equal priority.

Pipelines will not have to pay VAN charges, as raised by Enron; those charges would have to be paid by the third-party. Moreover, there should be no added costs or burdens on the pipelines since under the regulation, the third-party networks would have to communicate using the same internet tools, protocols, and directory services as would be used for the pipelines' Internet service.

(c) Transactions covered. Enron, while not disagreeing with the regulation, maintains it is too broad. Enron argues that the use of Internet communications should be limited to those functions now conducted over EBBs, and not other electronic transactions, such as funds transfers. All transactions provided on EBBs are covered by the regulation. GISB should consider how to handle other electronic transactions, such as funds transfers, in the most standardized fashion possible.

(3) Implementation date. The final rule requires pipelines to implement the requirement to move all communications to the Internet by June 1, 1999. In the NOPR, the Commission stated that while the June 1, 1999 deadline should give GISB sufficient time to develop any needed standards, the pipelines should be prepared to move to the Internet by the June 1, 1999 deadline regardless of whether standards are developed.

Several commenters argue that implementation should not precede the development of standards even if implementation is delayed.[73] They contend that pipeline implementation prior to standardization would be wasteful, since pipelines would have to revise their systems after the standards are developed.

The pipelines[74] and Latitude contend that June 1, 1999 is too aggressive a timetable for implementation. In particular, the pipelines object to the deadline because such an effort would drain resources from pipeline efforts to ensure that their computer systems are not subject to the Year 2000 problem (the use of only two digits, *e.g.* 98, to represent the year, causing problems if 00 is interpreted as 1900 rather than 2000). Duke Energy Interstate Pipelines contend that the June 1, 1999 deadline should require pipelines to do nothing more than move their EBBs to the Internet. Any further standardization, it recommends, should take place after 2000.

NGC and TransCapacity argue that the June 1, 1999 deadline is achievable and should not be changed. TransCapacity maintains the pipelines are using the Year 2000 issue as a pretext for delay and there is no reason why pipelines could not implement additional EDI standards by June 1, 1999. Other commenters argue the Commission should require the pipelines to begin testing their Internet solutions at least three months before the deadline and that GISB should be given an interim

[72] The Commission similarly has required electric utilities to provide connections to third-party networks using the same protocols as the connections to the Internet. Open Access Same-Time Information System, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 31,035, at 31,619 (Apr. 24, 1996).

[73] Comments by ANR/CIG, Columbia Gas/Columbia Gulf, Enron, Koch, NGPL, NGSA, Southern.

[74] Comments by CNG, Columbia Gas/Columbia Gulf, Duke Energy Interstate Pipelines, INGAA, Latitude, NGPL, Southern, WGP.

deadline of June 1, 1998 to develop standards.[75]

The Commission agrees that the development of standards for moving to the Internet is necessary and is encouraged by GISB's development of task forces to begin this process. The June 1, 1999 implementation date, however, should provide the industry with sufficient time to develop appropriate standards prior to implementation and also permit inauguration of the new system during the summer months, when pipelines are not running at peak. With the widespread availability of commercial Internet solutions, it does not appear developing a standardized Internet communication system should represent a major technological challenge. Maintaining the June 1, 1999 deadline will give all parties an incentive to reach agreement on standards and proceed with implementation expeditiously.

While the general issue of computer readiness for the Year 2000 has received much publicity, the pipelines have not shown that this problem is of such magnitude for them that implementation of the regulation should be delayed across the board. The pipelines refer generally to the problem, but do not provide any details about the scope of their difficulties, such as by showing how many pipelines even have a problem, how many systems are affected, or the extent of the resources needed to address the problem. Moreover, the regulation adopted here requires only that pipelines conduct transactions using EDI, and the pipelines do not contend that implementing that requirement by June 1, 1999 creates a technological problem.

As discussed earlier, pipelines may not continue to use their EBBs past the June 1, 1999 implementation deadline.[76] For those pipelines that choose to replace their EBBs with interactive web sites, the ready availability of commercial Internet solutions suggests the development of an interactive web site is not such a daunting technological feat that it would unduly interfere with correcting a particular pipeline's problem in accommodating the transition to the Year 2000. In addition, as discussed earlier, pipelines can save significant monetary and personnel resources as well as provide a more standardized product if, instead of each pipeline developing a proprietary solution, they collaborated on development of a standardized Internet communication system, as was done in the electric industry.

c. Regulations for posting information on web sites. In Order No. 587–C, the Commission adopted GISB standard 4.3.6 requiring pipelines to post information relating to pipeline tariffs, affiliate transactions, operationally available capacity, system notices, and an Index of Customers for viewing in HTML format on pipeline Internet web sites. The Commission is incorporating by reference standards 4.3.5 and 4.3.16 of GISB's Version 1.2, which will require that pipelines provide for downloads of the posted documents either in hyper-text mark-up language (HTML) or rich-text-format (RTF). Additionally, in § 284.10(c)(3)(ii), the Commission is adopting regulations requiring pipelines to adhere to the following standards with respect to the posted information: the documents must be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement; users must be able to search an entire document online for selected words and users must be able to copy selected portions of the documents; and documents on the Web site should be directly downloadable without the need for users to first view the documents on the web site.

ECT contends more standards are necessary, for example, to establish common methods of doing text searches. It also contends that HTML should not be used for downloads as provided in GISB standard 4.3.16 because the printed version of HTML documents may lose formatting features and because of the difficulty in printing entire HTML documents if the documents are broken into separate linked chapters or pages. It recommends that all downloads be provided solely in RTF format. Altra contends that there should be a common URL or Internet name for all standardized documents. Latitude contends the Commission needs to protect against web sites that are specifically tailored to a particular proprietary Internet browser. SGPC argues pipelines should be able to rely upon the most recent software.

The Commission will adopt the proposed regulations as providing a basic foundation for posting upon which GISB can improve. GISB has established its own ''Look and Feel'' task force to develop a consistent and uniform presentation for information posted on pipeline web sites.

With respect to Latitude's concern, § 284.10(c)(3)(ii)(A) provides that web sites must be viewable using commercially available browsers, which protects against a pipeline making its site accessible to only one browser. In response to SGPC's comment about current software versions, standards 4.3.6 and 4.3.16 require that all information be posted in HTML and downloadable in HTML or RTF format. Therefore, pipelines should not be requiring the use of other software to view information on or download information from web sites. While pipelines should accommodate reasonably current versions of web browsers, they should not be required to accommodate browsers that have been out-of-date for several years. GISB should consider the development of standards reflecting the level of HTML coding that should be supported. At this point, the Commission sees no reason to depart from the industry consensus permitting pipelines to download documents in HTML, as ECT suggests. That, along with other standardization issues, such as the use of a common URL designation for documents, should be examined by GISB as it continues its deliberations.

d. Regulations requiring that pipelines provide a cross-reference table for numeric designations. In many places in the standardized datasets, GISB has used a common code to represent the shipper's name. GISB has chosen to use the numeric designation provided by Dun & Bradstreet (DUNS) as the means of identifying shippers. But there is no requirement in the standards to provide a table cross-referencing the numeric designation with the shipper's name. In § 284.10(c)(3)(iii), the Commission, therefore, is requiring pipelines to provide a table cross-referencing any numeric designation with the applicable name or other information being represented.

No party objects to this regulation. NGC asks the Commission to clarify that the numeric representation is for the EDI datasets, used for computer-to-computer interaction only. It maintains that numeric designations are not useful for information provided on web sites for human to computer interaction. NGSA maintains that a standardized cross-reference table needs to be developed so that shippers can use the format across all pipelines.

The regulation requiring that pipelines provide a cross-reference table when using numeric designations is needed to ensure that the Commission and shippers can identify parties to a transaction. For instance, without a cross-reference table, neither the Commission nor other shippers can identify what shipper is receiving capacity on a capacity release

[75] Comments by NGC, NGSA, ProEnergy, SoCal Gas/SDG&E.

[76] EBBs may be maintained only as back-up systems.

transaction, information which Commission regulations require to be publicly available. When the Commission previously required pipelines to use a common code to identify pipeline transaction points, it similarly required the pipelines to provide a cross-reference table at a cost not to exceed the expenses of shipping and handling.[77]

The GISB standards require the use of numeric representations only for EDI, computer-to-computer communication. The Commission agrees with NGC that numeric designations should not be used for information posted on web sites for computer-to-human interaction. The Commission also agrees with NGSA that GISB either should develop a single, central cross-reference table or else establish standards governing the cross-reference tables provided by the pipelines.

Altra contends that, rather than using DUNS numbers, GISB should develop its own cross-reference table. Altra maintains that Dun & Bradstreet will not agree to permit pipelines to provide a cross-reference table and that, even if it did, the DUNS number is not a precise enough designation, because the number is not distinctly assignable to a particular party.

The Commission will continue to accept the industry consensus to use DUNS numbers. However, if DUNS will not permit the development of a cross-reference table, the industry either needs to develop its own cross-reference table or cease using numeric designations and return to using names.

e. Requirement that information be the same regardless of the format in which it is provided. Under the Commission regulations adopted here, pipeline customers can (or will be able to) obtain information and transact business using a number of formats, EBBs (until implementation of the Internet communication methods), EDI datasets, or interactive web sites. In § 284.10(c)(3)(iv), the Commission is adopting a regulation requiring that the informational content must be the same regardless of the format in which it is provided.

Altra strongly supports this regulation to ensure that all functions achievable on one format can be achieved through the other formats, and no commenter has opposed it. Given the different methods that pipelines can use to provide information, it is crucial that the content be the same regardless of the format. For instance, information about operationally available capacity is available currently on EBBs, pipeline web sites, and EDI downloads. The information obtained using each of these methods needs to be the same.

f. Regulation regarding the retention period for electronic information. In the NOPR, the Commission had proposed to expand the current three-year requirement for retention of electronic EBB data to a five year period for retention of all electronically conducted transactions. The pipelines oppose the extension as being unwarranted, unjustified, and burdensome.[78] ANR/CIG point out that they conduct more than 6,000 nominations and confirmations each day and that, on an industry-wide basis, this would amount to tens of thousands of nominations and confirmations, figures which do not include the requirement to maintain records of other transactions. ANR/CIG suggest adoption of the GISB two-year requirement for maintenance of electronic data.

MGE, NGSA, and ProEnergy support the five year requirement. TransCapacity contends there is no need to retain every electronic transaction record for five years. It suggests the pipelines be required to maintain only summary electronic records, such as the end of day scheduled quantities dataset which summarizes the nomination activity for the day.

After reviewing its need for information, the Commission has determined not to change its current three year retention period for electronic information. The current requirement to retain electronic information in section 284.10(a) applies only to information maintained on EBBs. This requirement, therefore, needs to be updated to encompass all information and transactions conducted electronically regardless of form, such as EDI or other Internet-based communication. In section 284.10(c)(3)(v), the Commission is adopting a regulation requiring that pipelines retain for a period of three years records of all information displayed and transactions conducted electronically and be able to recover and regenerate all such electronic information and documents.[79]

Koch maintains that the data archived under this section should not be maintained on-line, but should be provided on disk or through other electronic means. Section 284.10(c)(3)(v) requires pipelines to make the information available in electronic form for a reasonable fee. Pipelines, therefore, need not maintain the information on line, but may make archived information available on disk or CD ROM.

g. Regulation requiring Internet notice for operational flow orders and other critical notices. In § 284.10(c)(3)(vi), the Commission is adopting a regulation requiring pipelines to provide notice of operational flow orders and other critical notices by posting the notice on their web sites and by notifying the affected customers directly either by Internet E-mail or notification to the customer's URL or Internet address. The Commission will address below the comments on the regulation as well as issues concerning the method of implementing the requirement.

(1) The use of Internet notification. Three commenters oppose the requirement to use Internet notification, contending that notice should be made by telephone or facsimile, at the customer's choice.[80] Their concern is that customers may not be available to check the Internet or read the notice.

The Commission concludes that, on balance, posting on the web site together with Internet E-mail or direct notice to an Internet address effects a reasonable balance between the shippers' need for notice and the pipelines' need to create an efficient automated system for communicating with all of their shippers. By permitting automated notice to all shippers simultaneously, Internet notification speeds up the notification process and removes any potential for disparate treatment between shippers as to the time at which they receive notice.[81] The commenters preferred solution, notification by telephone or fax, is not necessarily any more reliable than Internet notification since telephones or fax machines also may not be monitored and there would be no record that a notice was sent by the pipeline.

Even for after hours notice, Internet postings provide shippers with a

[77] *See* Standards For Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations, Order No. 563–A, 59 FR 23624 (May 9, 1994), III FERC Stats. & Regs. Regulations Preambles ¶ 30,994, at 31,044–45 (May 2, 1994).

[78] Comments by ANR/CIG, Columbia Gas/Columbia Gulf, Enron (5 years unwarranted), INGAA, K N Interstate Group, Koch, NGPL (no justification), NGT/MRT.

[79] GISB standard 4.3.4 provides for two year retention of transactional data, but states that this requirement does not otherwise modify statutory, regulatory, or contractual record retention requirements. Because the Commission is continuing its current three year requirement for retention of electronic information, it will not adopt GISB standard 4.3.4.

[80] Comments by Florida Cities (costs too much for shippers to monitor Internet connections on a 24 hour basis), MGE (until Internet is tested, facsimile and telephone should be used), NGSA (mode of notification at shipper's choice).

[81] For example, one pipeline representative at the technical conference stated that even calling in all available personnel, about 24 people, it took them six hours to contact all affected parties using telephonic communication. Transcript of December 13, 1996 technical conference at 37.

significant amount of flexibility. Employees can check for critical notices on the Internet at home. In addition, the requirement for direct notice to E-mail and Internet addresses will enable those shippers who want telephonic or pager notification to receive such notice by purchasing software that automatically triggers telephones or pagers when an Internet message is received.

(2) Implementation after development of standards. ECT, NGC, and NGSA urge that prior to implementation of the Internet notice requirement, standardization of definitions and format is needed to differentiate types of notices so the notification software can properly determine whether to trigger the phone or pager.

The Commission agrees that standards are needed for this notification process to operate efficiently. In particular, a dataset will be needed for those customers relying upon EDI communication with the pipelines. Therefore, the Commission will defer implementation of this requirement until the necessary standards are developed by GISB. According to GISB's 1998 Annual Plan, no schedule has been set for development of standards for OFO notification. However, during the December 12–13, 1996 technical conference, members of the GISB Future Technology Task Force stated that, if needed, such standards could be developed and others pointed out that a similar dataset already exists for general, as opposed to customer specific, notices.[82] Modification of this dataset should not prove particularly difficult and GISB should be able to add this to its agenda for 1998. The Commission will expect GISB and others in the industry to propose such standards by December 31, 1998. Until that time, pipelines should continue to provide notice according to the provisions of their tariffs.

(3) Penalties and other implementation details. NGC, NGSA, and Nicor Gas argue that penalties should not be imposed for E-mail failures or if actual notice is not received. SoCal Gas/SDG&E contend that the pipelines should seek to notify the shipper using an alternative method if the pipeline is notified that the E-Mail was not delivered. On the other hand, INGAA, K N Interstate Group, and NGPL contend that E-mail should be the shippers' responsibility and not the pipelines.

The Commission finds no reason for pipelines to waive penalties except when the pipelines' notification system fails. Shippers are responsible for maintaining a current E-Mail or Internet address, and they should bear responsibility for failures by their chosen Internet provider. Pipelines, however, have little reason to leave shippers without notice in critical operational situations, since that could lead to adverse consequences for the system. Thus, the Commission fully expects the pipelines to try alternative methods in the event they have specific notice that electronic notice has not been received.

INGAA maintains the pipelines should be responsible for notifying only one E-Mail address. The Commission will not impose such an absolute requirement. Given the ease of automatic notification, shippers should be able to choose a reasonable number of addresses for notification, for example, if they want a different notification address for after-business-hours notification.

Columbia Gas/Columbia Gulf argue that pipelines should be able to conform their current procedures to the regulation without concern about shippers' arguments that a change constitutes a degradation of service. Florida Cities, however, maintains that the new regulation should not overturn a settlement on this issue on Florida Gas.

As a general matter, pipelines should be able to revise their notification procedures to conform to the regulation. However, while pipelines must comply with the regulation, they may also agree with their shippers to provide additional methods of notification. If a pipeline chooses to make a filing under section 4 of Natural Gas Act to eliminate or revise their current procedures, the Commission will be able to consider specific circumstances, such as settlements or rate issues, bearing upon the proposed change.[83]

C. Issues on Which the Commission Determined Not to Adopt Requested Regulations

In the NOPR, the Commission did not propose regulations as requested by some industry members in other areas in which GISB could not reach consensus—title transfer tracking, cross-contract ranking, multi-tiered allocations, fuel reimbursement, and penalty determinations. The Commission, however, did provide the industry with guidance as to its general policies in these areas to help facilitate GISB's consideration of standards in these areas.

1. Title Transfer Tracking

Title transfer tracking refers to the accounting for transfers of title to gas at a nomination point when no transportation is involved. Under Commission policy, shippers must have title to gas in order to transport the gas on a pipeline. Pipelines, therefore, have always had to perform some title transfer tracking to ensure that shippers have title to gas.[84]

However, with unbundling and the development of a more fluid gas market, gas purchase and sale transactions at nomination points are increasing dramatically. Thus, at an interconnect point, there may be multiple transfers of title before the gas is nominated on the downstream pipeline. In order for pipelines to confirm the gas nominated on the upstream and downstream pipelines, they need to know which upstream shipper(s) are delivering the gas to the shipper on the downstream pipeline.

GISB had begun the process of trying to create standards for title transfer tracking, but the industry segments differed over whether the pipelines should be required to establish a computerized title transfer tracking service. In the NOPR, the Commission stated that its policy was not to require pipelines to establish a service to account for the purchase and sale of gas between shippers independent of transportation. The Commission found it should be the shipper's responsibility to furnish sufficient information to the pipeline to establish its title to the gas and its right to nominate on the pipeline. The Commission noted that third-parties are now providing title transfer tracking services and concluded that pipelines must be willing to accept title transfer information from these third parties. The Commission requested GISB to submit standards, by March 31, 1998, governing pipeline obligations to accept confirmations by third-party title transfer trackers.

The Commission will address below comments on the Commission's determination not to propose a regulation requiring pipelines to provide title transfer tracking service and on several issues relating to the pipelines' processing of information

[82] Transcript of December 13, technical conference, at 32–31.

[83] A filing to change current procedures cannot be made as part of a filing to comply with the requirements of this rule. Any filing to change current procedures must be made as a separate section 4 filing.

[84] For example, if shipper A on an upstream pipeline transports gas to an interconnect with a downstream pipeline and transfers the gas to shipper B on the downstream pipeline, the pipelines would have to match those transactions as part of the process of confirming the nominations.

from third-party title transfer tracking service providers.

a. Pipeline obligations to provide title transfer tracking services. The pipelines and LDCs generally agree with the Commission's decision not to require pipelines to provide a title transfer tracking service.[85] NGC, NGSA, and ProEnergy oppose the decision. They contend that due to the nature of title transfer tracking service, it can be performed by only one party and that the pipelines are the best positioned to perform the service. They contend that third-parties have not emerged to provide this service.

NGC contends that having multiple parties provide title transfer tracking is inefficient, because the pipeline would still have to track title transfers running between the trackers. It suggests that the Commission's approach may open the door to a plethora of title transfer trackers each of which the pipeline would have to support. NGSA, while recognizing that title transfer tracking is not an integral requirement of natural gas transportation, contends the pipelines are the only parties capable of providing the service. It states GISB is considering an option under which pipelines would provide title transfer tracking services and asks the Commission to defer a final ruling on this issue until GISB has finished its considerations.

Altra agrees that only one party can efficiently perform the service, but it argues that, rather than having the pipelines perform the service, each pipeline should be required to choose the third-party provider for its system. TransCapacity, on the other hand, contends that monopoly provision of title transfer tracking service is not necessary. TransCapacity argues that pipelines can implement several provisions in their tariffs to ensure that they will deal with only *bona fide* title transfer tracking services.

GISB should not necessarily short-circuit on-going discussions over options for conducting title transfer tracking. If GISB reaches consensus that pipelines should be required to provide this service, the Commission will give that agreement great weight in later considerations of the issue.

Absent a consensus position from GISB, however, the Commission finds insufficient justification for proposing a regulation requiring pipelines to perform title transfer tracking services. It should be the shipper's responsibility to furnish the transporter with sufficient information to establish its title to gas and its right to nominate that gas on the pipeline. NGSA itself concedes that title transfer tracking is not an integral part of providing transportation of natural gas. While pipelines may wish to offer title transfer tracking as an added service option to their shippers, the Commission is not convinced at this juncture that the pipelines are the only possible or the best provider of the service and, therefore, should be required to provide it.

Rather than mandating that pipelines be the sole provider of title transfer tracking service, the Commission is opening the market to the force of competition from third-party service providers. The competition between providers, including those pipelines that wish to compete, should provide the proper incentive for firms to provide the level of title transfer tracking services that customers desire and for which they are willing to pay.[86]

It is incorrect to assume, as do the commenters, that the absence of third-party title transfer tracking services today means such services will not develop in the future. Hub and storage operators currently provide title transfer tracking services, and the pipelines accept their confirmations.[87] While independent third party title transfer trackers do not exist currently, that is not surprising since, as TransCapacity notes, until the NOPR, pipelines did not recognize an obligation to support confirmations from independent third-party title transfer tracking services. The provision of title transfer tracking services by storage and hub operators suggests that a market for this service exists and that parties other than pipelines can provide the service. Once GISB develops the standards and pipelines are required to support third-party title transfer trackers, firms will have incentives to enter this market, particularly if the demand for the service is as great as the commenters contend.

It also is not clear that pipelines must provide this service because a monopoly provider of title transfer tracking services is needed at each point or on each pipeline. The competitive market may develop naturally so that only one or a few title transfer tracking service exists at each point. The pipelines can propose tariff provisions, if it becomes necessary, to protect against NGC's concern that every shipper will designate itself as a title transfer tracking service provider.[88] Moreover, even if multiple title transfer trackers do prove to be inefficient, there are competitive solutions which would not require the Commission to mandate that pipelines provide the service. Shippers, either alone or together with pipelines, could solicit competitive bids for title transfer tracking services on each pipeline and choose the firm offering the best bid.[89]

In the NOPR, the Commission requested that GISB and others in the industry submit, by March 31, 1998, business practices and electronic communication standards for dealing with title transfer tracking. A consensus of the industry supports the GISB 1998 Annual Plan which provides for the development of such standards by the fourth quarter of 1998, and the Commission will therefore expect the submission of standards by December 31, 1998.

b. Timing of pipeline processing of title transfer tracking information. In the NOPR, the Commission stated that pipelines should accept title transfer tracking information as part of its process for confirming nominations. The pipelines point out that the GISB task force has not completed work on title transfer tracking standards, and the pipelines are not yet convinced title transfer tracking can be accomplished through the confirmation process.[90] Their principal concern is that, if title transfer tracking can be performed by any firm, multiple title transfer tracking services may develop and that processing all those transactions during the confirmation process would be burdensome. Most pipelines suggest title transfer tracking should be part of the nomination process.[91]

On the other hand, Columbia Gas/Columbia Gulf and TransCapacity maintain that title transfer tracking should be a part of the confirmation, rather than the nomination process. They also agree that title transfer tracking should take place earlier in the confirmation cycle than the 3:30 p.m. confirmation from point operators.

While GISB should seek to work out the details for conducting title transfer

[85] Comments by El Paso, Enron, INGAA, Koch, NGPL, Nicor Gas, Peoples/North Shore, SoCal Gas/SDG&E, TransCapacity.

[86] When pipelines are the sole provider of title transfer tracking, disputes have arisen as to the level of the service which should be provided. *See* El Paso Natural Gas Company, 81 FERC ¶ 61,174 (1997) (complaints about the extent of title transfer activity the pipeline should be required to process).

[87] *See* Moss Bluff Hub Partners, L.P., 80 FERC ¶ 61,181, at 61,475 (1997).

[88] For instance, TransCapacity notes pipelines could require that title transfer tracking services provide non-discriminatory service to anyone requesting the service and that they adhere to the GISB standards.

[89] Pipelines could even propose tariff provisions setting out the requirements for submitting bids to provide the service.

[90] Comments by Columbia Gas/Columbia Gulf, Enron, INGAA, NGPL, Williston Basin.

[91] Comments by Enron, NGPL.

tracking, the Commission does not want the timing of title transfer tracking processing to inhibit standards development. To forestall possible later disputes over this issue, the Commission generally agrees with Columbia Gas/Columbia Gulf and TransCapacity that title transfer tracking properly should be part of the confirmation process. First, the purpose of title transfer tracking is to confirm that gas nominated by a shipper will be at the nominated point. Physical point operators provide title transfer tracking services and their information generally is processed during the confirmation process. To ensure non-discriminatory treatment, the same rules should apply to independent third-party operators. Second, placing title transfer tracking in the nomination cycle could reduce market liquidity and comparability between physical and title transfer transactions. For instance, a shipper may arrange for physical flows up until the 11:30 a.m. nomination deadline. But those who wish to arrange for paper transactions would have to make earlier arrangements in order to permit the title transfer tracker sufficient time to process the paper transactions in time to meet the 11:30 a.m. deadline. Third, there is no reason now to suspect that multiple independent title transfer tracking services will arise or that the pipelines will be unable to develop reasonable measures to ensure that title transfer tracking does not unduly burden the confirmation process.

The compromise solution proposed by Columbia Gas/Columbia Gulf and TransCapacity would seem to satisfy the need to include title transfer tracking as part of the confirmation process while at the same time providing pipelines with time to process the title transfer tracking information and coordinate that information with the physical point operators. GISB should further explore this potential solution in its deliberations.

c. Other issues. In the NOPR, the Commission stated that pipelines could, if they chose, provide a title transfer tracking service and charge a fee for the service. TransCapacity requests clarification that such fees cannot be charged for processing title transfer tracking information from third-party service providers. The Commission agrees with TransCapacity. Pipelines may not charge a fee for processing nomination or confirmation information from point operators, other pipelines, or third-party title transfer tracking service providers. Pipelines may charge a separate fee only for tracking title transfers between parties that are independent of transportation.

NGC maintains that pipelines providing a title transfer tracking service should not be able to charge a separate fee, but should include the costs in their reservation charges. The Commission's policy has been to permit pipelines to charge a separate fee for title transfer tracking.[92] Charging a separate fee ensures that those using the service are not subsidized by the firm shippers paying reservation charges and can help to ensure that shippers will use the service only to the point at which the shippers' value from the service equals or exceeds the price charged.

ECT contends that, if pipelines do provide a title transfer tracking service, they should be able to require that all shippers submit their title transfer tracking information to the pipeline. Shippers should not have to use a pipeline's title transfer tracking service. If title transfer tracking is to develop as a competitive service, shippers should be able to choose whether to use the pipelines' title transfer tracking service or one provided by a third-party. Pipelines providing their own title transfer tracking service should enjoy no special advantages over third-party providers and must process all title transfer tracking information in a comparable manner.

Koch maintains that pipelines should not bear liability for title transfer tracking information provided by third-parties. The Commission finds no reason to distinguish between pipeline responsibilities to process title transfer tracking information and their responsibilities and liabilities with respect to processing a confirmation from a point operator or other connecting party.

K N Interstate Group maintains that pipelines should be able to require agency agreements with title transfer tracking service providers and shippers. As stated above, pipelines should be able to impose reasonable tariff requirements for dealing with third-party title transfer tracking services. GISB also can consider standards delineating the type of agency or other business agreements that are needed to facilitate the provision of title transfer tracking service.

2. Cross-contract ranking. Gas package ranking refers to the designation by a shipper of the amount of gas that will be allocated to particular markets or customers in the event the shipper's full nomination is not accepted. The standards adopted by the Commission already require pipelines to honor shipper ''rankings when making reductions during the scheduling process when this does not conflict with tariff-based rules.'' [93] For example, if a shipper nominates 1,000 MMBtus under one contract for several markets, it can specify how to divide gas between markets if the full 1,000 MMBtus is not confirmed.

Shippers had complained that, under this standard, pipelines were not permitting them to rank gas supplies across contracts. In the NOPR, the Commission concluded that pipelines should permit cross-contract ranking so long as it does not affect the operational integrity of the pipeline's system. The Commission asked GISB and the industry to submit any additional standards necessary to facilitate cross-contract ranking by March 31, 1998.

Shippers and NGPL support cross-contract ranking.[94] TransCapacity, while supporting the requirement, suggests that implementation may require some pipelines that handle nominations on a contract basis to change systems so that they become point based. It suggests that either the Commission provide further guidance on this point or allow GISB to try to develop a way for pipelines to implement the requirement without changing their systems. Most pipelines, with the exception of NGPL, oppose cross-contract ranking, contending that it adds too much complexity to the nominations process.[95]

The Commission's policy is to provide shippers with the tools to enable them most effectively to manage their capacity. Shippers today may be shipping under a variety of contracts, including their own firm and interruptible contracts as well as capacity release contracts which have their own specific terms and conditions. Some pipelines permit cross-contract ranking or have structured their pooling to permit such ranking. The ability to allocate gas among these contracts gives shippers additional flexibility. As with title transfer tracking, a consensus of the industry supports the GISB 1998

[92] Trunkline Gas Company, 75 FERC ¶ 61,003 (1996) (approving a separate flat charge for title tracking service). *But see* Williams Natural Gas Company, 79 FERC ¶ 61,096 (1997) (permitting a separate fee, but rejecting a volumetric fee unrelated to costs of providing the service).

[93] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.23.

[94] Comments by Altra, MGE, NGC, NGSA, Nicor Gas, PG&E, Piedmont, ProEnergy, SoCal Gas/SDG&E, TransCapacity.

[95] Comments by K N Interstate Group (adds too much complexity on web based systems), NGT/MRT (make pipeline allocations unmanageable), SGPC (affects transportation priority rules and adds complexity), Viking (requires computer system upgrades and dataset revisions), Williston Basin (cause too many problems), WGP (should only be permitted between contracts or family of contracts of like priority and rate).

Annual Plan in which cross-contract ranking standards will be developed by the fourth quarter of 1998, and the Commission, therefore, will expect the submission of such standards by GISB and others by December 31, 1998.

Several shippers and pipelines raise concerns about one aspect of the NOPR dealing with whether shipper rankings across contracts should apply when transportation constraints require pipelines to restrict transportation based on tariff-based service priorities.[96] For example, if a shipper has nominated 100 units of gas under an interruptible contract and a 100 units under a firm contract, and the pipeline can schedule only the 100 units of firm transportation, which has a higher transportation priority, should the shipper be able to allocate the 100 units to the interruptible contract.[97]

Those opposing cross-contract ranking in this situation contend that permitting ranking in this case goes beyond what shippers were seeking in GISB and would improperly override scheduling priorities in pipeline tariffs. While the commenters recognize that permitting ranking would not completely obviate contractual priorities, they maintain it fudges the distinctions and priorities between contract types. NGC, one of the original and strongest proponents of cross-contract ranking, argues that ranking should not override transportation priorities. It argues that permitting such ranking could lead to gaming in which a shipper gains priority to a constrained point under a firm contract and then changes to an interruptible contract, thereby freeing up its firm capacity to gain access to another point, perhaps using an intra-day nomination. El Paso contends that permitting ranking to take precedence over scheduling allocations would cause confusion over which service should be billed as well as create confusion and problems during the confirmation process. On the other side, Altra, although its comment is not altogether clear, appears to contend that even when a cut occurs on the market side of the equation, shippers should be able to rank all contracts flowing into the market regardless of the contractual priority of the contract.

GISB should strive to develop mechanisms that provide shippers with the maximum flexibility to rank contracts for both supply and market cuts. GISB, however, should strive to develop a method for handling ranking that will not compromise the transportation priorities associated with firm and interruptible contracts.

3. Multi-Tiered Allocations

A pre-determined allocation is a set of instructions by owners of gas as to how gas should be allocated amongst them when the actual volumes do not match the scheduled volumes. The standards currently require pipelines to accept one tier of allocations from the upstream or downstream custody transfer party.[98] Some shippers requested the Commission to issue a regulation requiring pipelines to support multi-tiered allocations from all owners of gas, including the wellhead operator and each producer owner.

In the NOPR, the Commission found, as it did for title transfer tracking, that there was no basis for requiring pipelines to maintain the accounting for allocations occurring at the wellhead or at interconnections not affecting the pipeline. Since GISB had recognized that tracking multi-tiered allocations was another aspect of title transfer tracking, the Commission suggested that GISB work on standards to permit third-parties to track multi-tiered allocations.

Pipelines generally support the Commission's determination.[99] Columbia Gas/Columbia Gulf agree that pipelines should not be required to provide multi-tiered allocations, but they point out the current standards are not usable for pipelines or others who may wish to track multi-tiered allocations. They urge the Commission to ensure that GISB follow through and develop datasets appropriate for tracking multi-tiered allocations.

NGC, NGSA, and ProEnergy contend multi-tiered allocations are needed for producers to accurately account for their transactions. Pipelines should be required to perform the service, they assert, because pipelines have traditionally been the clearinghouse for all information related to gas transactions and are in a unique position to track multi-tiered allocations. TransCapacity argues that GISB currently is working on multi-tiered allocations and may have devised a solution in which all allocations can be made through a single or a series of levels.

The current regulations give those parties connecting with a pipeline the right to determine how gas is to be allocated at the interconnection with the pipeline system. The Commission fails to see why this right needs to be extended so that pipelines become responsible for maintaining the accounting records for allocations occurring at the wellhead or at interconnections not affecting the pipeline. The tracking of multi-tiered allocations should be no different than the tracking of title transfers, and third-parties tracking title transfers should also be able to account for allocations back to the wellhead. GISB's Annual Plan recognizes the interrelation between standards for title transfer tracking and multi-tiered allocations and targets the development of standards for both by the fourth quarter of 1998.

NGPL requests clarification about whether pipelines can charge a separate fee for tracking multi-tiered allocations. Pipelines choosing to provide a service tracking multi-tiered allocations may charge a separate fee, as they are permitted to do for title transfer tracking. Pipelines, however, cannot charge a separate fee for processing the single tier of allocations required by the current regulations.

4. Paper Pooling

Pooling refers to the aggregation of gas from multiple physical or logical points to a single physical or logical point.[100] The current standards provide shippers with the ability to both deliver gas from receipt points into at least one pool and receive quantities at a delivery point from at least one pool.[101] Some pipelines provide paper pools while others use physical pools in which shippers have to pay transportation charges to move gas into the pools. GISB could not reach a consensus on whether paper pooling should be mandated, and shippers asked the Commission for a regulation requiring that all pipelines establish paper pools into which shippers could deliver gas without any additional transportation charge. In the NOPR, the Commission declined to require pipelines to provide paper pooling, finding that those advocating paper pools had not provided a sufficient rationale for requiring the use of paper pools in all situations.

NGSA and ProEnergy maintain the Commission should require pipelines to provide paper pooling. They assert that pooling is a critical aspect of a competitive marketplace, because the

[96] Comments by ECT, El Paso, Enron, NGPL, NGC, TransCapacity.

[97] Even if the shipper in the example allocated the 100 units to the interruptible contract, it still could not receive more than the 100 units represented by its firm capacity contract. If the shipper had nominated no firm service, it would be unable to allocate any gas to the interruptible contract.

[98] 18 CFR 284.10(b)(1)(ii) (1997), Flowing Gas Related Standards 2.3.19.

[99] Comments by Columbia Gas/Columbia Gulf, K N Interstate Group, NGPl, Williston Basin.

[100] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.2.3.

[101] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.17 and 1.3.18.

aggregation of gas volumes eliminates the need to link each gas volume to a specific source and destination. They contend that no transportation charge should be charged since no transportation is provided.

The Commission agrees that pooling is an important aspect of the marketplace and its regulations require pipelines to offer pooling. The Commission, however, does not agree that for pooling to operate efficiently each pipeline must offer paper pooling in which those delivering gas into the pool are assessed no transportation charges. Those requesting mandatory paper pooling have not demonstrated why transportation charges must be assessed only on the outbound (out of the pool) transportation component. When a pool exists in a rate zone, a charge for transportation must be assessed either for gas coming into the zone or for gas leaving the zone. In appropriate circumstances, the Commission has recognized that pipelines may charge for transportation into pools.[102]

NGSA and NGC further contend that even if the Commission does not mandate paper pooling, it should enact into regulation its current policy that transportation into a pool is afforded the same transportation priority as the transportation out of the pool. This policy, however, is not sufficiently generic to be established through regulation. In the circumstances of some cases, for instance, the Commission has found that capacity should be allocated based on the priority of the transportation into the pool, rather than the transportation out of the pool.[103]

5. Reimbursement for Compressor Fuel

When shippers nominate gas on pipelines, they need to reimburse the pipelines for the gas needed to run compressors. The typical form of reimbursement is in-kind fuel reimbursement, where the shipper includes additional gas to cover the needs for compressor fuel. Typically, pipelines include the applicable percentages for fuel reimbursement in their tariffs. The Commission has adopted GISB standards that simplify the process of in-kind fuel reimbursement.[104] Some pipelines also have established tariff provisions under which the pipeline provides the fuel and receives reimbursement from the shipper for the cost, usually through a fuel cashout at an indexed price.

In the NOPR, the Commission found no need to adopt additional standards regarding in-kind or alternative fuel reimbursement mechanisms. The Commission, however, did find that pipelines should permit shippers, which do not want to calculate their own fuel charges, to contract with third-parties to provide the required fuel.

a. In-kind fuel reimbursement. Several commenters suggest that the existing in-kind fuel reimbursement standards should be strengthened. ECT maintains that the Commission often does not act on tariff filings to revise fuel changes until the end of the month, which does not provide sufficient time for shippers to reprogram their computers to accommodate the change. ECT recognizes section 4 of the Natural Gas Act (NGA) provides for 30-day notice prior to implementation of proposed changes, but it, nevertheless, asks for a requirement that fuel rates be made and accepted no later than the close of NYMEX trading, three days before the end of the month. NGSA requests the adoption of a regulation requiring fuel reimbursement to be calculated prospectively. ProEnergy maintains that monthly fuel rate changes do not provide sufficient predictability for parties to construct competitive gas transactions. It argues that to improve the certainty of the process, fuel changes should be made only once a year, with a mechanism to true-up actual with projected fuel use.

The existing fuel standards represent a consensus agreement of the industry, and the Commission does not find sufficient justification for imposing the disputed standards suggested by the shippers. Given the other risks that go into gas transactions, the change in cost represented by a fuel change is not such a significant component of the overall deal that it should dramatically affect shipper planning. Pipelines may need to file for fuel rate changes under section 4 of the NGA more frequently than the once a year recommended by the commenters. For example, a yearly true-up would not deal with a continued undercollection of fuel in individual months, which might require the pipeline to purchase fuel, rather than relying on in-kind reimbursement. The Commission also declines to restrict pipeline tariff filings for changes in fuel rates so that the effective date is three days prior to the end of the month, as ECT suggests. Even in those cases where the filing happens to put the Commission's order on the last day of the month, the shippers still have thirty days notice that the fuel rates may change and can have their computer changes ready to implement if the Commission approves the change.

b. *Fuel nominations from agents.* Most of the comments address the Commission's policy that pipelines should accept fuel nominations from shippers' agents. The pipelines maintain the requirement is too burdensome, because it introduces a second nomination that must be coordinated with the shipper's nomination, requires changes in fuel nominations with each intra-day nomination change, as well as creates other complexities such as establishing priorities for fuel nominations and determining which gas should be first through the meter.[105] The pipelines contend shippers already have sufficient flexibility for supplying fuel, since they can nominate fuel gas from a pool and can use a marketer or agent to provide all of their gas requirements. Nicor Gas agrees that permitting separate fuel nominations would create unnecessary burdens.

Several shippers,[106] and Tennessee Pipelines, support giving shippers the ability to buy fuel from a third-party, but some of the commenters raise issues that, they assert, should be considered by GISB in devising standards covering fuel nominations. PG&E contends the Commission should not require pipelines to support third-party fuel nominations now, but should defer decision until GISB works on appropriate standards. TransCapacity outlines a series of timing and other issues that need to be considered, such as what fuel gas to cut in the case of an unscheduled or bumped nomination, the need for standards regarding the simultaneity of fuel receipts to transportation, and the timing of fuel and related transportation nominations.

Throughout this proceeding, shippers have sought standards that would obviate the need, and the risk, of having to calculate fuel reimbursement across multiple pipelines. If a shipper wants 100 MMBtus delivered, it may want the flexibility to arrange for 100 MMBtus to

[102] *See* Northwest Pipeline Company, 80 FERC ¶ 61,361, at 62,240–41 (1997); Panhandle Eastern Pipeline Company, 78 FERC ¶ 61,283, at 62,215 (1997).

[103] *See* Northwest Pipeline Company, 79 FERC ¶ 61,259, at 62,119–20 (1997) (where shipper pays for transportation into a pool, the priority does not depend on the priority of the take-away contract).

[104] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.16, 13.3.28 through 1.3.30. The standards provide, in part, that pipelines must adhere to a standard method for calculating fuel, make fuel reimbursement percentages effective only at the beginning of the month, not reject nominations due to fuel differences of less than 5 Dth, and provide a fuel matrix for receipt and delivery point combinations.

[105] Comments by CNG, Enron, INGAA, K N Interstate Group, Koch, NGPL, NGT/MRT, Southern, Williston Basin, WGP.

[106] Comments by NGC, NGSA, PG&E, SoCal Gas/SDG&E, TransCapacity.

be injected into the system without having to worry about accurately calculating how much extra gas is needed to meet multiple pipeline fuel percentages. While the Commission is not requiring pipelines to provide an alternative to in-kind fuel reimbursement, the pipelines need to provide shippers with the option of contracting with a third-party who would be responsible for calculating and injecting the required amount of fuel. The option, suggested by the pipelines, of shippers using a marketer to purchase all their gas supplies is not a substitute for being able to use a marketer or third-party to provide fuel only. Shippers may want to use their own contracts to buy and transport their own gas, but use a third-party to avoid the difficulties of attempting to calculate accurately the extra fuel reimbursement across numerous pipelines.

Indeed, some pipelines have recognized shippers' demand for an alternative to in-kind fuel reimbursement and have included tariff provisions allowing shippers to buy their fuel from the pipeline.[107] To create a more competitive market, the Commission concludes that all pipelines should provide shippers the option of nominating their fuel requirements from an agent separately from their nomination of the gas used for transportation.

The Commission, however, will not require pipelines to honor fuel nominations from third-parties until GISB has an opportunity to consider the development of standards. The issues raised by third-party fuel reimbursement do not seem so intractable that a reasonable set of standards cannot be developed to cover this transaction. GISB has not established a schedule for development of such standards. But these issues seem related to the other issues relating to third-parties, such as title transfer tracking and multi-tiered allocations, and adding fuel standards to GISB's schedule for the fourth quarter of 1998 should not appreciably complicate the issues being considered by GISB. The Commission will, therefore, expect that proposed standards dealing with third-party fuel reimbursement will be filed on December 31, 1998, along with standards in these other areas.

6. Penalty Determinations

In the NOPR, the Commission declined to require pipelines to adopt a disputed standard that would have required pipelines to determine penalties on the basis of operational or actual data, whichever is less. NGSA contends the Commission should adopt a standard basing penalties on operational data. TransCapacity supports the Commission's current policy of making individual determinations on this issue. For example, it asserts that basing penalties on actual data is appropriate when pipelines have small wells for which installing telemetering is prohibitively expensive.

Going beyond the issue in dispute at GISB, NGC asks the Commission to impose a requirement that pipelines cash out imbalances at the price in effect in the month the imbalance occurred, rather than in the month when a prior period adjustment is made.

The Commission finds no compelling justification for requiring uniformity at this time on the limited issue of whether to base penalties on operational or actual data. While the Commission's general policy is that penalty categories should be determined based on the data provided by the pipeline to the shipper,[108] there may be instances, as TransCapacity points out, in which this policy should not be applied. Moreover, the issues raised by NGSA and NGC are only small pieces of the penalty puzzle. Rather than attempting to resolve these issues on a piecemeal basis, the Commission, and the industry, needs to consider penalty issues on a more comprehensive basis.

D. Market-Based Rates for Pipeline Services

In several places in this preamble, the Commission has indicated that pipelines may provide certain services—computerized imbalance trading, title transfer tracking, and tracking of multi-tiered allocations—and charge a separate fee for such services. WGP and Koch contend that pipelines should be able to charge market-based rates for such services, because they will be competing with third-party firms providing comparable services. Under the Commission's Alternative Rate Design Policy Statement,[109] pipelines providing such services may file a request for a Declaratory Order for market-based rates if they can demonstrate that effective competition for the service exists.

E. Implementation Schedule and Schedule for Submission of Additional Standards

To summarize, pipelines must comply with the following regulations August 1, 1998: (1) adoption of Version 1.2 of the GISB standards in section 284.10(b);[110] and (2) compliance with the requirements in § 284.10(c)(3)(ii) through (v) setting standards for posting information on pipeline web sites, requiring that content be the same regardless of the method of communication, requiring a cross-reference table for numeric designations, and establishing a retention policy for electronic information.

Implementation of the regulations regarding intra-day nominations, § 284.10(c)(1)(i), operational balancing agreements, § 284.10(c)(2)(i), trading of imbalances, § 284.10(c)(2)(ii), and Internet notification of critical notices, § 284.10(c)(3)(vi), will take place on a date to be set in the order adopting standards relating to these activities.

Pipelines must implement the regulation requiring the use of the Internet for conducting transactions, § 284.10(c)(3)(i), by June 1, 1999.

The Commission expects the submission of proposed standards in the following areas by the dates specified:

June 30, 1998

Operational Balancing Agreements and Imbalance Trading

December 31, 1998

Title Transfer Tracking, Cross-Contract Ranking, Fuel Reimbursement, and Critical Notice Notification

III. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to

[107] *See* Koch Gateway Pipeline Company, 73 FERC ¶ 61,375 (1995), *reh'g denied*, 74 FERC ¶ 61,212 (1996), *reh'g denied*, 75 FERC ¶ 61,096 (1996), *aff'd*, 108 F.2d 397 (D.C. Cir. 1997); Natural Gas Pipeline Company of America, 64 FERC ¶ 61,295, at 63,072 (1993).

[108] See Algonquin Gas Transmission Company, 63 FERC ¶ 61,188, at 62,374 (1993); Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,486 (1993); Transcontinental Gas Pipe Line Corporation, 55 FERC ¶ 61,446, at 62,369 (1991). Under the Commission's policy, a shipper would be responsible only for the penalty category it reasonably could have anticipated based on the information provided by the pipeline. The cash out price, however, should be based on the actual imbalance incurred.

[109] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines (Request for Comments), 74 FERC 61,076 (1996).

[110] In filing to implement Version 1.2, pipelines need to change all references to GISB standards in their tariffs to Version 1.2. The version number applies to all standards contained in GISB's Version 1.2 Standards Manuals, including standards that have not changed from prior versions.

the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collections of information related to the subject Final Rule fall under the existing reporting requirements of FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902–0154) and FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines (OMB Control No. 1902–0174). The following estimates of reporting burden are related only to this Rule and include the costs for pipelines to comply with Version 1.2 of the GISB standards and the Commission's regulations regarding intra-day nominations, the use of OBAs at pipeline interconnects, the trading of imbalances, and communications using the Internet. The burden estimates are primarily related to start-up and will not be on-going costs except for the recordkeeping requirement.

Public Reporting Burden: (Estimated Annual Burden).

Affected data collection	Number of respondents	Total responses (annual)	Estimated hours per response	Estimated total hours (annual)
FERC–545	93	93	58	5,394
FERC–549C	93	93	4,483	416,919
Total	93	93	4,541	422,313

The total annual hours for collection (including recordkeeping) is estimated to be 422,313. The average annualized cost for all 93 respondents is projected to be the following:

Affected data collection	Annualized capital/startup costs	Annualized costs (operations and maintenance)	Total annualized costs
FERC–545	$284,303	$0	$284,303
FERC–549C	21,641,327	333,321	21,974,648
Total	21,925,630	333,321	22,258,951

Koch questions the Commission's estimate of about $240,000 per respondent, contending, in particular, that it underestimates the costs of complying with the Internet requirements. Although Koch recognizes the difficulty of estimating costs for services not yet offered, it anticipates approximately $2 million in start-up costs for Internet compliance alone.

Koch is the only commenter raising questions about the Commission's cost estimates. From the context of Koch's comment, it appears to be questioning the costs of establishing an interactive web site. But, as discussed earlier, this rule does not require pipelines to establish an interactive web site; they are required only to conduct Internet communications using EDI files, which Koch itself claims are less expensive. Moreover, from the Commission's experience, the costs for pipelines to create standardized interactive web sites should not be inordinate. The Commission strongly encourages pipelines to jointly develop a standardized interactive web site, which should significantly reduce the costs for developing such systems. As NGC points out, electric utilities saved substantial sums by jointly developing their standardized Internet communication system. In any event, even if Koch's estimate were accurate, the cost would be a one-time expenditure and the benefits to the entire industry from creating a standardized communication system would be worth the cost.

The GISB standards and Commission regulations adopted in this Rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communications of interstate pipelines. Requiring interstate pipelines to comply with these standards and regulations will reduce the variations in pipeline business and communication practices and will permit pipelines and their customers to more efficiently obtain information from and transact business across multiple pipelines.

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. This information also will be retained for a three year period. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, 202–208–1415] or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, 202–395–3087].

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[111] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[112] The actions taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that

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

[112] 18 CFR 380.4.

requires no construction of facilities.[113] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[114] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted in this rule impose requirements only on interstate pipelines, which are not small businesses, and these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. No comments were submitted to the Commission alleging any significant economic effect on small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VI. Effective Date

These regulations will become effective May 26, 1998. The Commission has concluded, 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 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

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

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

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

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In section 284.10, paragraph (a)(6) is added, paragraph (b)(1) is revised, and paragraph (c) is added to read as follows:

§ 284.10 Standards for pipeline business operations and communications.

(a) * * *

(6) A pipeline's obligation to provide information pursuant to this paragraph will terminate when all relevant information is provided pursuant to paragraph (c)(3)(i) of this section.

(b) *Incorporation by reference of GISB standards.* (1) An interstate pipeline that transports gas under subparts B or G of this part must comply with the following business practice and electronic communication standards promulgated by the Gas Industry Standards Board, which are incorporated herein by reference:

(i) Nominations Related Standards (Version 1.2, July 31, 1997), with the exception of Standard 1.3.32;

(ii) Flowing Gas Related Standards (Version 1.2, July 31, 1997), with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.2, July 31, 1997);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.2, July 31, 1997), with the exception of 4.3.4; and

(v) Capacity Release Related Standards (Version 1.2, July 31, 1997).

* * * * *

(c) *Business practices and electronic communication requirements.* An interstate pipeline that transports gas under subparts B or G of this part must comply with the following requirements. The regulations in this paragraph adopt the abbreviations and definitions contained in the Gas Industry Standards Board standards incorporated by reference in paragraph (b)(1) of this section.

(1) Nominations.

(i) Intra-day nominations.

(A) A pipeline must give scheduling priority to an intra-day nomination submitted by a firm shipper over nominated and scheduled volumes for interruptible shippers. When an interruptible shipper's scheduled volumes are to be reduced as a result of an intra-day nomination by a firm shipper, the interruptible shipper must be provided with advance notice of such reduction and must be notified whether penalties will apply on the day its volumes are reduced.

(B) An intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day at 9 a.m. CCT.

(2) Flowing gas.

(i) Operational balancing agreements. A pipeline must enter into Operational Balancing Agreements at all points of interconnection between its system and the system of another interstate or intrastate pipeline.

(ii) Netting and trading of imbalances. A pipeline must establish provisions permitting shippers and their agents to offset imbalances accruing on different contracts held by the shipper with the pipeline and to trade imbalances with other shippers where such imbalances have similar operational impact on the pipeline's system.

(3) Communication protocols.

(i)(A) All electronic information provided and electronic transactions conducted by a pipeline must be provided on the public Internet. A pipeline must provide, upon request, private network connections using internet tools, internet directory services, and internet communication protocols and must provide these networks with non-discriminatory access to all electronic information. A pipeline may charge a reasonable fee to recover the costs of providing such an interconnection.

(B) A pipeline must implement this requirement no later than June 1, 1999.

(ii) A pipeline must comply with the following requirements for documents constituting public information posted on the pipeline web site:

(A) The documents must be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement;

(B) Users must be able to search an entire document online for selected words, and must be able to copy selected portions of the documents; and

(C) Documents on the web site should be directly downloadable without the need for users to first view the documents on the web site.

(iii) If a pipeline uses a numeric or other designation to represent information, an electronic cross-reference table between the numeric or other designation and the information represented must be available to users, at a cost not to exceed reasonable shipping and handling.

(iv) A pipeline must provide the same content for all information regardless of the electronic format in which it is provided.

(v) A pipeline must maintain, for a period of three years, all information displayed and transactions conducted electronically under this section and be able to recover and regenerate all such electronic information and documents. The pipeline must make this archived information available in electronic form for a reasonable fee.

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

[114] 5 U.S.C. 601–612.

(vi) A pipeline must post notices of operational flow orders, critical periods, and other critical notices on its Internet web site and must notify affected parties of such notices in either of the following ways to be chosen by the affected party: Internet E-Mail or direct notification to the party's Internet URL address.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 95C–0399]

Listing of Color Additives for Coloring Sutures; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 as a color additive in glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for general surgery. This action responds to a petition filed by United States Surgical Corp.

DATES: This regulation is effective May 27, 1998; except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by May 26, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of October 23, 1995 (60 FR 54379), FDA announced that a color additive petition (CAP 5C0248) had been filed by United States Surgical Corp., 150 Glover Ave., Norwalk, CT 06856. The petition proposed to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 as a color additive in glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for general surgery. The petition was filed under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(d)(1)).

II. Regulatory History

The regulatory history of D&C Violet No. 2 was summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). Since the publication of the May 7, 1990, final rule, other uses of D&C Violet No. 2 have been approved by the agency. For example, in a final rule published in the **Federal Register** on March 14, 1994 (59 FR 11718), FDA amended § 74.3602 to list D&C Violet No. 2 for use to color poly(ε-caprolactone) absorbable sutures for use in general surgery.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (section 721(a) of the act). D&C Violet No. 2 is added to glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures in such a way that at least some of the color additive will come into contact with the body when the sutures are in place. In addition, the sutures are intended to be absorbed by the body, and during the absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the petitioned use of the color additive is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81–48–1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al., have demonstrated that *p*-toluidine is a carcinogen in the mouse (Ref. 1).

Residual amounts of reactants, such as *p*-toluidine, and manufacturing aids are commonly found as impurities in chemical products, including color additives.

V. Determination of Safety

Under the general safety clause of the act (section 721(b)(4) of the act) for color additives, a color additive cannot be listed for a particular use unless a fair evaluation of the data available to FDA establishes that the color additive is safe for that use. FDA's color additive regulations (21 CFR 70.3(i)) define ''safe'' as ''reasonable certainty that no harm will result from the intended use of the color additive.''

The color additives anticancer, or Delaney, clause of the color additive amendments (section 721(b)(5)(B) of the act) provides that no noningested color additive shall be deemed safe and shall be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the proposed use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

VI. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, D&C Violet No. 2, will result in exposure to no greater than 3.8 milligrams per person over a 70-year lifetime or an estimated daily intake (EDI) of 0.15 microgram per person per day (/p/d) (Ref. 2).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 3), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small daily intake resulting from the proposed use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by *p*-toluidine, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of *p*-toluidine has two aspects: (1) Assessment of exposure to the impurity from the proposed use of the additive,