

considers that the phrase "responsibility for recordkeeping" entails formal responsibility for the maintenance of records relating to the offshore operations. Simple data processing activities such as compiling and sorting data entries that were originated, approved and confirmed by personnel outside the United States and routing and distributing such processed data to destinations outside the United States would ordinarily not constitute "responsibility for recordkeeping." If the U.S. branch or agency, however, originates the underlying information or utilizes the information for making business decisions or for the purpose of notifying or confirming transactions with customers, such activities could no longer be considered merely data processing. In addition, the Board considers that a U.S. branch or agency would have responsibility for recordkeeping within the meaning of the rule if it is the sole full-service office at which such records are maintained. Foreign banks that maintain records in the United States but do not believe they have "responsibility for recordkeeping" may consult with Board staff for guidance in determining whether they fall within the scope of the rule.

One commenter also recommended that the Board modify the regulation to make clear that it applies to offshore shell offices rather than offshore offices generally. The Board notes that the preamble to the proposed rule stated that the restrictions in that rule generally would not apply with respect to offshore branches that are full-service facilities managed or controlled by staff located at the offshore office or at locations other than in the United States. In addition, the title of the proposed rule, which is identical to the title of the statutory provision, refers to "shell" branches. In view of the foregoing, the Board has determined that no modification to the rule is necessary.

As the Board noted in the preamble to the proposed rule, section 7(k) of the IBA does not confer upon foreign banks any right to manage activities at an offshore office from a U.S. office. The Board will continue to monitor relationships between the U.S. and offshore offices of foreign banks in the supervisory process in order to determine whether such activities are consistent with considerations relating to the safety and soundness of the U.S. operations of the foreign bank and its affiliates and compliance with law.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board certifies that the this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board of Governors amends 12 CFR Part 211 as set forth below.

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for 12 CFR Part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. Section 211.20 is amended by removing "and" at the end of paragraph (b)(8), by removing the period at the end of paragraph (b)(9) and adding "; and" in its place, and by adding a new paragraph (b)(10) to read as follows:

§ 211.20 Authority, purpose, and scope.

* * * * *

(b) * * *

(10) The management of shell branches (12 U.S.C. 3105(k)).

* * * * *

3. Section 211.24 is amended by adding a new paragraph (g) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(g) *Management of shell branches.* (1)

A state-licensed branch or agency shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such state-licensed branch or agency, any type of activity that a bank organized under the laws of the United States or any State is not

permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) For purposes of this paragraph (g), an office of a foreign bank located outside the United States is "managed or controlled" by a state-licensed branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the state-licensed branch or agency.

(3) The types of activities that a state-licensed branch or agency may manage through an office located outside the United States that it manages or controls include the types of activities authorized to a U.S. bank by state or federal charters, regulations issued by chartering or regulatory authorities, and other U.S. banking laws, including the Federal Reserve Act, and the implementing regulations, but U.S. procedural or quantitative requirements that may be applicable to the conduct of such activities by U.S. banks shall not apply.

By order of the Board of Governors of the Federal Reserve System, July 17, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–19043 Filed 7–25–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161, 250, and 284

[Docket No. RM96–1–000]

Standards for Business Practices of Interstate Natural Gas Pipelines; Order No. 587; Final Rule

Issued July 17, 1996.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is issuing a final rule revising the Commission's regulations to require interstate natural gas pipelines to follow standardized procedures for critical business practices—nominations; allocations, balancing, and measurement; invoicing; and capacity release—and standardized mechanisms for electronic communication between the pipelines

and those with whom they do business. The regulations incorporate by reference the standards issued by the Gas Industry Standards Board (GISB).

DATES: The regulations are effective August 26, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 1996.

Compliance with the rule is based on a staggered scheduling with *pro forma* tariff filings due in October through December, 1996 and corresponding implementation in April through June, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-1283.

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 Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202-208-1397 if dialing locally or 1-800-856-3920 if dialing long distance. To access CIPS, set your communications software to use 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems

Corporation, also located in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

The Commission's bulletin board system also can be accessed through the FedWorld system directly by modem or through the Internet. To access the FedWorld system by modem:

- Dial (703) 321-3339 and logon to the FedWorld system.

- After logging on, type: /go FERC
To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Or:

- Point your Web Browser to: <http://www.fedworld.gov>

- Scroll down the page to select FedWorld Telnet Site

- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its open access regulations to standardize business practices and procedures governing transactions between interstate natural gas pipelines, their customers, and others doing business with the pipelines. The standards govern several important business practices—nominations, allocations, balancing, measurement, invoicing, and capacity release. They also establish protocols and file formats for electronic communication with pipelines relating to these business practices. The regulations incorporate by reference the standards published by the Gas Industry Standards Board (GISB). The Commission also is establishing a compliance schedule requiring pipelines to make *pro forma* tariff filings in October through December 1996 and to implement the standards in April through June 1997.

II. Public Reporting Burden

The final rule will affect one existing Commission data collection, FERC-545, Gas Pipeline Rates: Rate Change (Non-formal), (OMB Control No. 1902-0154) (FERC-545), and establish a new data collection/requirement, FERC-549C, Standards for Business Practices of Interstate Natural Gas Pipelines, (OMB

Control No. to be assigned) (FERC-549C).

Under the existing data collection/requirements of FERC-545, there will be a one-time estimated annual reporting burden of 6,720 hours (80 hours per company) with the adoption of the standards/business practices as required herein. The initial implementation of the standards/business practices will require approximately 84 interstate natural gas pipelines to make tariff filings to conform their tariffs with the standards/business practices.¹ (See FERC-545 burden detail in estimated burden table below.)

Under the new data collection/requirements of FERC-549C there will be a one-time startup annual burden of 1,289,232 hours (15,348 hours per company). It is expected that any recurring annual burden will be minimal because of the operating efficiencies which will result with the adoption of the standards/business practices.

The standards/data requirements contained in this final rule have been submitted previously to the Office of Management and Budget (with the NOPR issued in the subject docket) for review under section 3507(d) of the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)). For copies of the OMB submission, contact Michael Miller at (202) 208-1415. Interested persons may send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reductions of burden, to the Desk Officer FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202-395-3087 or via the Internet at hillier_t@a1.eop.gov. Comments should be filed with the Office of Management and Budget as soon as possible. A copy of any comments filed with the Office of Management and Budget also should be sent to the following address at the Commission: Federal Energy Regulatory Commission, Information Services Division, Room 41-17, Washington, DC 20426, Attention: Michael Miller.

¹ Burden estimates in the previously issued Notice of Proposed Rulemaking (NOPR) in the subject docket were based on 80 respondents. Upon further evaluation by Commission staff prior to the issuance of the subject final rule, the estimated number of respondents was increased to 84.

ESTIMATED ANNUAL BURDEN

Affected data collection/ requirement	No. of respondents	Total No. of responses	Hours Per response	Total annual hours
FERC-549C (New Data Requirement)—Reporting/Data Requirement Burden	84	84	15,348	1,289,232
FERC-545 (1902-0154)—Reporting/Data Requirement Burden	84	84	80	6,720
Total Annual Hours (All Data Collections/ Requirements)	84	84	15,428	1,295,952

The above estimates include time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, and reviewing and completing the collection of information. Because the final rule adopts essentially the same information requirements that were contained in the proposed rule, we believe that the average filing burden is the same for the final rule.

Data Collection/Requirement Costs: The Commission expects that the costs to comply with the required standards for business practices, data sets, and internet protocol setups will consist principally of startup costs. Although GISB has reached consensus on using Internet protocols, it has not finally determined the communication modality (i.e., public Internet or private network. Adoption of the communication standards will await GISB's final recommendation. However, since the costs to implement Internet protocols will not change significantly regardless of the communication vehicle used, the burden estimates in the NOPR and in this final rule include these costs, so that the burden estimates reflect the total cost of complying with the rule. The Commission estimates that the average annualized cost per respondent for the first year will be as follows:

ANNUALIZED CAPITAL/STARTUP COSTS

FERC-549C	\$750,118
FERC-545	3,910
Total	754,028

Internal Review: The Commission has reviewed the standards/business practices and determined that they are necessary to establish a more efficient and integrated pipeline grid. Requiring such standards on an industry-wide basis will reduce the variations in pipeline business practices and will allow buyers to easily and efficiently obtain and transport gas from all potential sources of supply. The required standards/business practices conform to the Commission's plan for

efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

In response to the NOPR issued April 24, 1995, in the subject docket, Viking Gas Transmission Company filed comments on the burden estimates and the associated annualized costs for compliance in the Notice of Proposed Rulemaking. Viking states that, even if the Commission's cost estimates are correct, implementing the standards would impose significant costs on a small pipeline, like Viking. Viking also maintains that the Commission has underestimated the costs to comply with the requirements adopted by the final rule and particularly to implement an information system. Viking contends that the Commission has used an hourly rate of \$50 for computer service consultants by dividing the total estimated cost (\$754,000) by the estimated hours (15,428). Viking maintains that, based on its experience, a cost of \$100 to \$150 per hour is more representative of costs for information system programmers.

The Commission's hour and cost estimates are not appropriately used to derive an hourly rate for computer consulting services for comparison purposes, as Viking has done. The Commission's estimate of the number of hours for implementing the requirements is not limited to hours for computer specialists, but covers all employees involved in implementation. Similarly, the total cost is not solely related to consulting services, but includes other costs, such as hardware and hardware installation costs. Moreover, the vast proportion of the costs involved in complying with the regulations are one-time, start-up costs, so these are not costs pipelines will have to incur on an ongoing basis. Most important, the Commission finds that incurrence of these costs on a one-time basis is necessary to improve the efficiency with which crucial business transactions are conducted across the

natural gas industry. The increased efficiency produced by these standards should, in the long run, reduce the costs of all participants in the market.

III. Background

The process of standardizing business practices in the natural gas industry began with a Commission initiative to standardize electronic communication of capacity release transactions.² As a result of this effort, participants from all segments of the natural gas industry began the process of developing standards for other business transactions, such as nominations and flowing gas.

To formalize the process of developing industry standards, the industry formed GISB as a consensus standards organization open to all members of the gas industry.³ GISB's procedures require balanced voting representation from all five segments of the industry—pipelines, local distribution companies (LDCs), producers, end-users, and services (including marketers and third-party computer service providers).⁴ At the Executive Committee level, a consensus

² Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563-A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563-B, 68 FERC ¶ 61,002 (1994).

³ The scope of GISB's efforts initially was limited to standards for electronic communication. The industry, under the auspices of the Interstate Natural Gas Association of America (INGAA) and the Associated Gas Distributors (AGD), had begun a Grid Integration Project to consider standards for coordinating pipeline business practices to simplify the process of shipping gas across multiple pipelines. After GISB expanded its scope from electronic standards to encompass business practice standards, the Grid Integration Project was folded into GISB.

⁴ According to a March 27, 1996 letter from counsel for GISB, to the Secretary of the Commission (filed in this docket), GISB is pursuing accreditation by the American National Standards Institute (ANSI). Accreditation involves ANSI's review of the process and procedures of the standards-developer to ensure that the standards-development process is open to all materially affected parties and that standards are developed by a balanced consensus of the industry, without domination by any single interest or interest category.

of the five segments must approve each standard.⁵

Recognizing how important standards are to the development of an integrated natural gas network, the Commission encouraged the industry's efforts to develop the needed business standards.⁶ To evaluate the industry's progress, the Commission held a public conference on standardization on September 21, 1995, in Docket No. RM93-4-000.

Almost all the speakers at the conference acknowledged that the industry had not achieved the anticipated progress. Even though GISB had promulgated standards for electronic communication of nomination and confirmation information, many participants maintained that standardizing electronic communication did not go far enough to provide for efficient integration of the pipeline grid. They contended that electronic communication standards would not increase efficiency because they failed to standardize the pipelines' disparate underlying business practices, so that shippers were still faced with having to learn the idiosyncratic requirements for conducting business on each pipeline.

On October 25, 1995, the Commission issued an advance notice of proposed rulemaking (ANOPR) requesting the submission of detailed proposals from the industry, by March 15, 1996, for standards governing business processes and electronic communication for ten business practices identified by the industry as being of the highest priority—nominations, confirmations, allocated gas flows, customer and contract imbalances, gas flow at metered points, transportation invoices, pre-determined allocation methodologies, gas payment remittance statements, gas sales invoices, and uploads of capacity release prearranged deals. The Commission also requested proposals for standards needed to facilitate gas flow across interconnecting pipelines. In the ANOPR, the Commission concluded that without common business practices and a common language for communication, the speed and efficiency with which shippers can transact business across multiple pipelines would continue to be severely compromised.

On March 15, 1996, GISB filed 140 standards that its Standards Committee

had approved by a consensus vote. These standards cover five major business areas—nominations and confirmations, flowing gas, invoicing, capacity release, and the electronic mechanism for communication between industry participants (the electronic delivery mechanism (EDM)). On April 12, 1996, GISB then filed data elements approved by the Standards Committee describing the specific information that would be used by industry participants to conduct these business transactions. By letter dated May 22, 1996, in this docket, GISB informed the Commission that its membership had approved the standards and datasets by the required 67% vote.

Forty other parties also filed comments addressing the standards GISB was proposing. On the whole, the commenters found that GISB's standards would significantly improve the efficiency of the gas market, but they raised questions with respect to specific standards.

On April 24, 1996, the Commission issued the NOPR proposing to revise its regulations to incorporate the GISB standards by reference.⁷ The Commission proposed to require pipelines to comply with these standards by January 1, 1997. Fifty comments were filed on the NOPR.⁸

IV. Discussion

The Commission is requiring interstate pipelines to comply with the requirements of the GISB consensus standards by incorporating the GISB standards by reference in section 284.10 of the Commission's regulations.⁹ Standards for business practices and communication are important elements in creating an integrated gas pipeline grid to complement the deregulated market for gas. For a competitive gas market to truly develop, shippers must have access to all available supply sources. A prerequisite for access, however, is the ability to move gas efficiently across multiple pipelines to its ultimate destination. Thus, shippers and marketers in today's market must conduct business transactions with multiple pipelines. As the industry has recognized, shippers cannot conduct

multiple pipeline transactions efficiently if the business practices and communication protocols differ for each pipeline. For example, as the industry is presently structured, shippers on multiple pipelines incur added costs and delay from having to keep personnel up to date with the quirks of, and inconsistencies in operation between, individual pipeline electronic bulletin boards (EBBs). Industry-wide standards eliminate this inefficiency by enabling shippers to use the same procedures and processes to conduct business on all interstate pipelines.

When the Commission sought to restructure business practices in the industry through Order Nos. 436 and 636, the Commission set out the broad policy parameters to be accomplished by the rules, but primarily left the implementation details to individual pipeline filings. However, subsequent experience clearly has shown that relying on individual pipeline procedures and operations will not create an integrated gas pipeline grid. To achieve that goal, the pipelines' business procedures must be standardized.

The consensus standards significantly reduce the disparities and inconsistencies among pipeline business practices and communication modalities and make a meaningful contribution towards the effort to create a more unified, integrated natural gas transportation network. For example, the standards will simplify the process of nominating gas in several respects. They permit all shippers to nominate gas supplies to a pool so that gas packages can be aggregated. They provide increased flexibility by permitting shippers at least one intra-day nomination, so that they can change the amount of gas they receive during a day to better fit changing needs. Even standards as simple as establishing a convention for conversions from dekatherms to Gigajoules and rounding calculations to the nearest dekatherm or Gigajoule can provide significant integration benefits by enabling shippers and third-party service providers to deal with all pipelines, as well as to program their computers, in the same manner, without the inefficiency of having to deal with incompatible conventions used by individual pipelines.

At least as important, the standards will permit shippers to communicate with every pipeline using the same standard set of information data elements and the same information protocols. Using these standards and protocols, shippers and third-party service providers will be able to create

⁵ To pass the Executive Committee, a standard must be approved by 17 out of the 25 members, with at least two affirmative votes from each segment. These standards must then be approved by a vote of 67% of GISB's general membership to become approved standards.

⁶ Order No. 563-A, III FERC Stats. & Regs. Preambles, at 31,050.

⁷ Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 19211 (May 1, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,517 (Apr. 24, 1996).

⁸ The appendix lists those filing comments.

⁹ GISB's previously approved standards for capacity release transactions also will replace the current requirement, in section 284.8(b)(5), that pipelines comply with standardized datasets and communication protocols. In addition, the EBB requirements of sections 284.8(b)(4) and 284.9(b)(4) will be moved to section 284.10(a).

standard display formats for conducting business with all pipelines, thus reducing or eliminating the need to use the individual pipeline EBBs.

While these standards represent a broad consensus of the industry, the Commission recognizes that not every standard commands universal support. In a democratic society, unanimity on matters of common concern is neither expected nor necessary. Standardization, by definition, requires accommodation of varying interests and needs, and rarely can there be a perfect standard satisfactory to all. The Commission is satisfied that GISB's process is open and fair and that the resulting standards represent broad agreement across all segments of the industry.

Since it is the industry that must operate under these standards, deferring to the considered judgment of the consensus of the industry is both reasonable and appropriate. While the Commission legitimately has given the GISB standards great weight, it also has reviewed the standards, and the comments, and finds that the standards are reasonable and represent a considerable step towards the goal of creating a unified pipeline grid.

Both GISB and virtually all the comments recommend the Commission not require implementation on January 1, 1997, as proposed in the NOPR to reduce the possibility of disruption during the peak winter heating season. The Commission is accepting the consensus proposal by GISB for staggered filings and implementation: *pro forma* compliance filings will be due in the fall of 1996 with implementation taking place from April through June, 1997.

Although GISB has approved the data elements for the business practices and the use of Internet protocols for electronic communication, it has not yet finalized its communication standards. For instance, it has not finally determined whether to use the Public Internet or private networks as the standard communication vehicle. While GISB's Future Technology Task Force filed an interim report on June 7, 1996, recommending the use of the public Internet, with an HTTP protocol, that recommendation is still subject to a pilot test program to be completed by September 30, 1996. At that time, the Future Technology Task Force plans to issue the final communication standards and the technical implementation guide.

Until GISB finalizes its communication protocols, issuing a final order on such standards would be premature. Accordingly, the Commission will issue a final order on

communication protocols after the submission of GISB's final communication standards. By issuing the final rule on the remainder of the business practices at this time, the Commission is providing the industry with sufficient time to make the tariff changes necessary to meet the October through December compliance filings. At the same time, delaying the issuance of the final rule on communication protocols should not effect the ability of the industry to meet the April 1, 1997 start of implementation. Despite being fully aware that the communication protocols are not complete, neither GISB, the Future Technology Task Force, nor the commenters have suggested that any delay in the April implementation date is necessary.

The Commission recognizes that these standards are not a finished work. Standards development is not like a sculptor forever casting his creation in bronze, but like a jazz musician who takes a theme and constantly revises, enhances, and reworks it. A number of those commenting on GISB's March 15, 1996 filing and on the NOPR offer suggestions on additional standards that they believe are needed. Because many of the issues raised in the comments have merit, the Commission established a procedure and a schedule under which GISB and the industry are to submit detailed proposals for handling these issues by September 30, 1996.

The Commission will address below the comments received on the NOPR.

A. Implementation Date

On one point, virtually all the commenters are agreed: the standards should not be implemented on January 1, 1997, as originally proposed by the Commission.¹⁰ All segments of the industry are concerned that rapid implementation of new operating procedures and computer technologies may be prone to problems and are particularly concerned about such problems occurring during the winter heating season when the pipeline system is under the most stress. GISB states that due to the interrelation of all the standards, a phased implementation of groups of standards would be difficult to devise. Instead, it proposes, with the backing of virtually all commenters, a staggered implementation plan in which the pipelines are divided into three groups with tariff filings to comply with this rule being made in October, November, and December of 1996, and corresponding implementation of the

standards in April, May, and June of 1997.

The Commission will accept the GISB proposal for staggered filings and implementation to reduce the risk of implementation complications and resulting disruption to the industry. Because the development of an integrated pipeline grid requires uniform pipeline adoption of the standards adopted in this rule, the Commission finds that pipelines' existing tariff provisions that are inconsistent with these standards are unjust and unreasonable under section 5 of the Natural Gas Act. To determine the just and reasonable practices under section 5, the Commission is requiring pipelines to make filings to comply with the standards adopted in the regulations. Accordingly, pipelines must file *pro forma* tariff sheets according to the schedule set forth later in this order to establish their compliance with the regulations.

B. Incorporation of the GISB Standards by Reference

NGC/Conoco/Vastar take issue with the Commission's incorporation of the GISB standards by reference. They have submitted an alternative set of standards and contend the Commission has failed to render a reasoned decision on each of their proposed standards as compared with the comparable GISB standard. In particular, NGC/Conoco/Vastar contend that the Commission erred in stating, in the NOPR, that its reliance on the GISB standards was consistent with § 12(d) of the National Technology Transfer and Advancement Act (NTT&AA) of 1995¹¹ and OMB Circular A-119,¹² which require federal agencies to use private sector consensus standards.

In contrast, other commenters are supportive of the Commission's reliance on the GISB standards. Brooklyn Union best expresses these views when it states the Commission should adopt the GISB standards, without modification, because these standards "are the product of countless hours of deliberations by representatives of all segments of the natural gas industry and reflect a hard fought consensus concerning the critical business practices addressed."

¹¹ Pub L. No. 104-113, § 12(d), 110 Stat. 775 (1996).

¹² "Federal Participation in the Development and Use of Voluntary Standards" (Oct. 20, 1993) (an earlier version is available at 47 FR 49496 (Nov. 1, 1992)).

¹⁰ Only one commenter has requested an earlier implementation schedule.

1. Consistency With the National Technology Transfer and Advancement Act and OMB Circular A-119

NGC/Conoco/Vastar argue that § 12(d) of the NTT&AA does not require the Commission to adopt the GISB standards. They maintain that adoption of regulatory standards, such as the GISB business practice standards, is inconsistent with the Act's focus on adoption of technical standards.

The Commission agrees that, by its terms, § 12(d) of the NTT&AA does not require Federal agencies to adopt private sector consensus standards if the use of such standards is inconsistent with applicable law or otherwise impractical.¹³ However, the Commission finds that adoption of the GISB standards is consistent with the intent of the Act and OMB Circular A-119.

As NGC/Conoco/Vastar seem to concede, the standardized data elements and the communication protocols for delivering this information electronically fall within the Act's definition of performance-based or design-specific technical specifications.¹⁴ And, the business practice standards are directly related to the communication standards, because, as the industry concluded, standardizing the technical aspects of communication cannot achieve the required efficiency without

standardization of the underlying business practices. Even standing on their own, the business practice standards are akin to management system practices which are included as technical standards in the Act.¹⁵

Moreover, regardless whether § 12(d) of the NTT&AA specifically applies here, the Commission can rely on private sector standards when it finds that these standards further the Commission's achievement of its regulatory goals.¹⁶ In this case, GISB's consensus standards are entitled to great weight since the industry possesses specialized expertise and knowledge of the relevant business practices and electronic communication technologies and, in the final analysis, the members of the industry are the ones that have to conduct business under these standards.¹⁷

Questar suggests that to ensure clarity the Commission should not incorporate the standards by reference, but should restate in the final rule the standards it specifically adopts. The Commission sees no need for such a voluminous republication. Incorporation by reference is an accepted method of adopting private sector standards.¹⁸ The Commission can specifically state in the regulations any changes in the pipelines' obligations through deletion

of, or revisions or additions to the standards.

2. GISB's Consensus Process

NGC/Conoco/Vastar further contend that § 12(d) of the NTT&AA should not apply because GISB's procedural process was flawed and thus did not ensure consensus. They contend that the Task Force meetings (which produced the initial draft standards) were dominated by pipeline interests, that NGC/Conoco/Vastar's comments on the Task Force recommendations were shortened in the summary produced for the Executive Committee, that the Executive Committee did not have sufficient time to consider all comments, and that the Executive Committee is structured to disenfranchise independent marketers.¹⁹ AF&PA, EMA, and NWIGU, while generally supportive of the GISB standards, are concerned that the standards may not reflect true consensus because their members do not have the time and resources to participate in the GISB process. BGE also expresses concern about the lack of balance at the Task Force meetings. While BGE believes the standards filed by GISB on March 15, 1996 are not weighted towards any one segment, it suggests in the next round, GISB should use balanced subcommittees to develop its standards.

The Commission finds that GISB's process was fair and that its voting procedures ensure that a broad based consensus of all industry segments support these standards. All segments are afforded the opportunity to participate in the process of developing the standards. Each segment chooses its own representatives on the Board of Directors and Executive Committee. The requirement for consensus voting at the Executive Committee level assures that no industry segment can dominate the process and that the resulting standards do represent an agreement acceptable to all industry segments. Finally, a supermajority (67%) of the entire GISB membership approved the standards.²⁰

What is most crucial, is that the Executive Committee reviewed the recommendations of the Task Forces, thus ensuring consensus support for the

¹³ NGC/Conoco/Vastar argue that the Act does not apply to independent regulatory agencies, like the Commission, citing to a statement by Senator Rockefeller that § 12 should not apply to independent regulatory agencies. 142 Cong. Rec. S1081 (daily ed. Feb. 7, 1996). On its face, the statute specifically applies to "all Federal agencies and departments," and OMB Circular A-119, on which § 12(d) of the NTT&AA was based, defines executive agency as including any "independent commission, board, bureau, office, agency * * * including regulatory commission or board." "Federal Participation in the Development and Use of Voluntary Standards" (Oct. 20, 1993)(an earlier version is available at 47 FR 49496 (Nov. 1, 1992)). See Remarks by Congresswoman Morella and Congressman Brown (cosponsors), 142 Cong. Rec. H1264, H1226, daily ed. Feb. 27, 1996)(intent of § 12(d) of the NTT&AA to codify OMB Circular A-119). In addition, Senator Rockefeller's particular concern was possible conflicts that may result because some independent regulatory agencies, like the Consumer Product Safety Commission (CPSC), have statutory requirements regarding the use of private sector standards. In the absence of such statutory requirements, however, there seems little reason to distinguish between Federal departments, like the Food and Drug Administration, with responsibility for protecting health and safety, and independent regulatory agencies with like responsibilities. In any event, the Act does not inhibit the full exercise of agencies' regulatory authority since agencies are not required to utilize private consensus standards when the agency determines that the standards are not adequate for its purpose.

¹⁴ See 142 Cong. Rec. S1081 (daily ed. Feb. 7, 1996) (internet standards are technical standards covered by the Act) (statement of Senator Rockefeller).

¹⁵ See, e.g., 42 CFR 405.2150, 60 FR 48039 (Sept. 18, 1995) (Health Care Financing Administration incorporation of Association for the Advancement of Medical Instrumentation business process standards for reuse of hemodialyzers); 49 CFR Part 659, 60 FR 67034 (Dec. 27, 1995)(Federal Transit Administration incorporation by reference of APTA rail transit system safety plans); 49 CFR 192.11, 193.2005 (Department of Transportation incorporation by reference of practice standards relating to transportation of petroleum gas and LNG); Implementation Guide for use with 10 CFR Part 830.120, Department of Energy, #G-830.120-Rev. 0 (April 15, 1994) (incorporating management standards for quality assurance).

¹⁶ Passage of § 12(d) of the NTT&AA certainly is not necessary for the Commission to rely upon private sector standards when it deems such reliance appropriate to fulfill its regulatory mission. Even prior to the passage of the Act, the Commission relied on private standards, as did other agencies which found such reliance an important means for helping to carry out their mandates. See Northern Natural Gas Company, 53 F.P.C. 699, 702 (1975) (NPPA Standard No. 59-A); 16 CFR Material Approved for Incorporation by Reference, at 483 (1996) (listing standards incorporated by Consumer Product Safety Commission).

¹⁷ As Congressman Brown stated: It is much cheaper and more efficient for the government to rely on the hard work and experience of these committees rather than reinventing the wheel. These groups are better equipped than the Government to understand all points of view and to keep up with the state of the art in technical standards.

142 Cong. Rec. H1226 (daily ed. Feb. 27, 1996).

¹⁸ 1 CFR 51.7.

¹⁹ NGC/Conoco/Vastar maintain that the marketers on the Executive Committee are affiliated with pipelines and, thus, cannot represent the marketing interest if it conflicts with the goal of the dominant pipeline parent.

²⁰ GISB has established a Process Subcommittee to deal with recommendations regarding GISB's operating practices. NGC/Conoco/Vastar cite no complaint to the Process Subcommittee about the Task Force procedures.

standards.²¹ The record shows that, for the most part, the accepted standards received virtually unanimous support from the Executive Committee members.²² In any large proceeding, such as the GISB undertaking, comments must be summarized for the decisionmaker. While the Executive Committee acted quickly to meet the Commission's deadline, the record of the proceedings shows no evidence that its members ignored or failed to seek clarification of comments, or otherwise did not take their responsibilities seriously. The Executive Committee conducted its public meeting for two full days working late into the night and had previously conducted several preliminary sessions to discuss changes to the standards. The Executive Committee did not act as a mere rubber stamp for the recommendations made by the Task Forces. Indeed, the evidence is to the contrary. The Executive Committee reached independent decisions, making significant changes to the Task Force recommendations. For example, the Executive Committee changed a number of the Task Force recommendations, such as changing the 11:00 a.m. nomination deadline proposed by the Task Group to 11:30 a.m.²³

The Commission finds NGC/Conoco/Vastar's protestation of GISB disenfranchisement of independent marketers somewhat enigmatic, since NGC itself is a member of the GISB Board of Directors. NGC/Conoco/Vastar have shown no record of any complaint to the Process Subcommittee or the GISB Board of Directors concerning the representation of independent marketers, nor have they produced evidence showing that GISB explicitly excluded independent marketers from the Executive Committee, such as by showing that an independent marketer was passed over for a vacancy on the Executive Committee. They also have not explained why independent marketers' interests are not adequately represented on the Executive Committee

by other independent interests such as producers (who sell to marketers) or LDCs and end-users (who buy from marketers).

In a supplemental filing made on June 11, 1996, NGC/Conoco/Vastar²⁴ contend that the lack of consensus is evident from the number of parties seeking changes, revisions, or waivers to the GISB standards. In the first place, given the varied nature of the industry and the differing interests of individual parties, to expect unanimity is not realistic. The Commission's pre-GISB Working Group process for developing capacity release standards often suffered from the need to achieve virtual unanimity before making a recommendation. The GISB consensus approach is designed to permit progress, while at the same time assuring that there is reasonable, although not unanimous, agreement across the industry on the standards adopted.

Moreover, considering the diversity of interests in this industry, the level of agreement with these standards actually appears quite high. The number of parties objecting is relatively small compared to the number in the industry (most of whom did not file comments in this proceeding). Even on the issue—gas day and nomination timeline—that elicited the largest number of comments, there are only about 10 Mid-West and West Coast LDCs that object. The vast majority of LDCs apparently are satisfied with the GISB standards.²⁵

All parties must make a determination whether active participation in every aspect of the GISB process serves their corporate interests. But the benefit of the consensus process, compared with the previous Working Group process, is that parties need not be present to have their views represented. Any party can submit comments to the Task Force and the Executive Committee that these groups must consider. Each segment chooses its own representatives on the Executive Committee, and any party can communicate its concerns to its representatives. And, each segment of the industry has equal voting weight on the Executive Committee.

The Commission finds that overall the GISB process was fair and assured a broad consensus supporting the proposed standards. BGE suggests that, for the future, the Commission should endorse the use of small balanced subcommittees to better prevent domination by certain interests.

Changes to organizational structure are for GISB and its membership to determine, and the Commission, therefore, will not dictate the use of any particular process for conducting Task Force meetings in the future.

3. Commission Oversight of the GISB Process

NGC/Conoco/Vastar contend that the Commission, by relying on the GISB standards, has abdicated its responsibility to make a reasoned decision on each of the proposed standards. They suggest that, upon review, implementation of some of these standards will put at risk some of the progress already achieved over the last decade in creating competitive markets. They cite to the following statement from the Commission's OASIS rule dealing with communication protocols for the electric industry:

However, we reject entirely the notion that the Commission need not approve the *Standards and Protocols* and that these matters can be left to the industry for implementation and self-policing. Although we continue to seek industry consensus, the Commission must reserve final decisions to itself. We cannot turn over the process of approving and enforcing OASIS requirements to the industry. The Commission does not believe that resolution of the outstanding issues or future changes will occur more quickly without Commission oversight. Nor do we believe that merely by announcing broad policy guidelines we would be creating a mechanism that would be sufficient to allow the Commission to revise regulations quickly. Accordingly, we will not abdicate our responsibility to decide these issues ourselves; nor shall we delegate responsibility for making these decisions to anyone else.²⁶

NGC/Conoco/Vastar further cite to Justice Department statements that improperly conducted standards activities may inhibit, rather than facilitate competition, in arguing that the Commission should not abdicate its responsibility to review each of the proposed standards.

The Commission's action here is entirely consistent with its approach in the OASIS rule as well as the Commission's former rule establishing capacity release standards. In the portion of the OASIS rule cited by NGC/Conoco/Vastar, the Commission was responding to a request that the Commission abandon its intention to approve standards and, instead, authorize an industry group to set and enforce detailed standards under broad

²¹ ANSI, for example, does not impose a balance requirement on subgroups when their role is to assist the standards committee by, for instance, drafting all or a portion of a standard. American National Standards Institute, *Procedures for the Development and Coordination of American National Standards*, 18 (§ A.6(b)) (March 22, 1995).

²² See Volume III of GISB's March 15, 1996 filing, Voting Workpapers.

²³ Compare Volume II of GISB's March 15, 1996 filing, Tab 2, proposed Standard 1.3 with the final approved standard 1.3.2. See also Volume III of GISB's March 15, 1996 filing, Voting Workpapers (showing that the Executive Committee frequently voted to omit Task Force proposed standards, change the standards to principles, defer consideration of standards, and move standards to other sections).

²⁴ This time joined by Tejas Power Corporation.

²⁵ Indeed, all five LDC representatives on the Executive Committee voted to approve these standards. See Volume III of GISB's March 15, 1996 filing, Voting Workpapers, Standards 1.3 and 1.10.

²⁶ Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), III FERC Stats. and Regs. Preambles ¶131,035, at 31,591 (Apr. 24, 1996).

policy guidelines. The Commission rejected this request in the OASIS rule and is not delegating comparable authority to GISB in this proceeding. The Commission has noticed the GISB standards and is explicitly adopting those standards into its regulations. While GISB can modify or add to its standards if it chooses, those changes are not automatically incorporated into the Commission's regulations. The Commission is adopting a specific version of the GISB standards; pipelines will not be required to abide by subsequent versions of the standards issued by GISB unless and until the Commission incorporates the new version into the regulations.

Just as in OASIS and the capacity release proceedings, the Commission here determined that standardization of certain practices is required and detailed the areas in which such standards are needed. In each of the proceedings, the Commission then sought a consensus from the industry as to the technical standards needed, which, after review, the Commission adopted.

Indeed, NGC/Conoco/Vastar, for the most part, do not take issue with the GISB standards themselves; rather, they contend the Commission has not addressed their concerns that some of GISB's standards do not go far enough or that additional standards are necessary. They suggest, for instance, that GISB's requirement that pipelines establish at least one pooling point needs to be enhanced by additional standards, such as requirements for pipelines to offer firm pools and to provide the same priority to pool volumes as the take-away transportation agreement to which they are nominated.

The Commission has not ignored NGC/Conoco/Vastar's suggestions for additional standards. NGC/Conoco/Vastar do not contend that the GISB standards cannot be implemented in their present form, only that these standards can be improved. Many of NGC/Conoco/Vastar's points may have merit.²⁷ However, the Commission finds no reason to delay the significant benefits that can be achieved from implementation of the current standards while these issues are resolved. The Commission has established a schedule

which will permit GISB and the industry to devise the appropriate means of handling these issues. Establishing procedures that give the industry the first opportunity to solve these problems is far preferable to the Commission's attempting to decide at this stage what changes are needed.

The Commission is fully aware of the potential for private sector standards committees to inhibit competition, particularly if one interest can block the adoption of a necessary standard.²⁸ GISB's rules provide that at least two votes from each industry segment are needed to approve a standard. While such a rule is important to ensuring that any approved standard commands a consensus of the industry, the rule also can permit one industry segment voting as a block to defeat a needed standard.

That is precisely why the Commission has not previously, and is not now, delegating to the industry the responsibility to develop the needed standards. The Commission took, and is still taking, an active role in identifying the business areas needing standardization. The Commission provided the industry the opportunity to apply its expertise to craft solutions that command broad agreement throughout the industry, and has appropriately given these consensus solutions great weight. In those areas where additional consideration of modifications or enhancement of the standards may be warranted, the Commission has established a schedule for the industry to consider refinements. And, the Commission stands ready to resolve issues if necessary.²⁹

The Commission would not implement these standards if to do so would undermine or inhibit accomplishment of the goals of Order No. 636. In fact, as noted earlier, it is the very lack of standardization in pipeline implementation of Order No. 636 that may impede the full realization of the competitive market that the Commission sought to create in Order No. 636. These standards make a decided improvement in the current system, and, accordingly, the Commission will accept them.

²⁸ *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492 (1988).

²⁹ For example, in the EBB Rulemaking Proceeding in Docket No. RM93-4, the industry was unable to reach consensus on a proposal to establish an Index of Customers. The Commission ultimately determined the data elements to be included in the Index. Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019, 53053 (Oct. 11, 1995), III FERC Stats. & Regs. Preambles ¶ 31,026, at 31,505 (Sept. 28, 1995).

4. Incorporation of GISB's Principles

In the NOPR, the Commission did not propose to incorporate by reference GISB's principles, because the principles do not purport to establish obligations for pipelines. GISB comments that it views the principles as being of equal importance to the definitions, standards, and datasets, and NGSA recommends that the Commission also incorporate the principles, given their interrelationship with the definitions, standards, and datasets. Some commenters also suggest that the Commission redesignate certain principles as standards.

The Commission will incorporate the principles, since they are a part of the GISB documentation and provide guidance as to the intended meaning of the standards. Pipelines, however, will not be expected to comply with the principles unless they are officially adopted as standards.

C. Additions to or Revisions of the Standards

1. Need for a Standard for Nominations Outside of the Nomination Schedule

In the NOPR, the Commission proposed to adopt GISB's uniform nomination timetable for the entire country: a 9 a.m. central clock time (CCT)³⁰ gas day and the 11:30 a.m. start to the nomination process. A number of comments on GISB's March 15, 1996 filing claimed this nomination schedule lacked sufficient flexibility. The Commission solicited comments on whether the GISB standards provide some of the increased nomination flexibility requested by shippers because, as long as a pipeline has unscheduled capacity available, shippers can nominate gas even if the 11:30 a.m. nomination deadline has passed or they have not previously submitted a nomination for that day. If the GISB standards did not provide this flexibility, the Commission asked whether an additional standard is needed to require pipelines to process nominations outside of the nomination schedule if they have available capacity.

GISB states that its standards provide for flexibility and that the Commission's suggested standard is unnecessary because, under its standards, a pipeline is not prevented from accepting nominations at any time and has an incentive to do so in order to increase throughput. Other commenters assert that the GISB standards do not require pipelines to schedule capacity outside the standard nomination deadlines even

³⁰ Central clock time adjusts for daylight savings time.

²⁷ The Commission has, for example, found that customers should not lose priority as a result of pooling and that priority from receipt point to pooling point generally should be based on the take-away customers transportation agreement. Koch Gateway Pipeline Company, 75 FERC ¶ 61,283 (1996). Implementing these general principles may well require the establishment of firm pools as suggested by NGC/Conoco/Vastar, and the Commission expects GISB to consider these issues for its September 30, 1996 filing.

if they have unscheduled capacity. Some contend that pipelines should not be required to accept such out-of-time nominations, because the pipelines are not yet ready for a continuous 24-hour-a-day nomination process. Imposing such a requirement, they assert, would impose additional administrative burdens and cost on the pipelines. Other commenters assert that imposition of such a requirement would be beneficial.

The commenters misconstrued the Commission's inquiry. The Commission was not suggesting that pipelines necessarily should be required to move immediately to 24-hour-a-day nominations. Rather, within normal and regular business hours, the Commission saw little reason that pipelines with available capacity could not accept late nominations.³¹ Accepting such late nominations would not affect other shippers (since capacity was available) and should not impose significant cost or administrative burdens on pipelines, while it could provide the additional flexibility requested by shippers. Given the responses, the Commission will not draft an additional standard, but it fully expects pipelines with available capacity to provide nominating flexibility outside of the standard schedule. The Commission and the industry can evaluate the pipelines' response in the future to determine whether an additional standard needs to be imposed.

2. Changes or Revisions Suggested by Commenters

The issues that drew the largest number of comments (but still only 14) concerned various aspects of GISB's uniform nomination timetable: the 9 a.m. CCT gas day and the 11:30 a.m. start to the nomination process. Some contend that requiring all nominations to be submitted at the same time impedes efficiency because, they argue, varied schedules would permit parties bumped on one pipeline to renominate on other pipelines.³² Mid-West LDCs complain that GISB's 9 a.m. gas day reduces their nomination flexibility compared with the 12 noon gas day currently used by some of their pipelines.³³ AF&PA, however, suggests that the gas day should coincide with the standard day in the electric

industry, which begins at midnight, because of the close interrelation between the gas and electric markets. PG&E, a combination LDC and electric utility, and Edison, an electrical utility, on the West Coast, contend that the 11:30 a.m. start for the nomination process is too early.³⁴ SoCalGas, a large West Coast LDC, however, does not recommend a change to the starting nomination time in the GISB standard. On the other hand, National Fuel Distribution contends the timeline is too late for East Coast shippers, requiring them to work beyond their normal business hours. NGC/Conoco/Vastar and AF&PA suggest that a staggered nomination timeline with upstream pipelines going first would be more efficient, while PG&E and Edison suggest a regional nomination timeline.

Some pipelines (but not all that filed comments)³⁵ and other shippers³⁶ complain about the use of CCT because of the expense involved in having to change their metering twice a year and the inconvenience of having to deal with a 23 and 25 hour day. WINGS points out that many gathering companies use standard time, not clock time, and contends that standard time will provide for better integration.

GISB responds that the standard nomination timeline allows a shipper whose transaction spans more than one pipeline the certainty that the transaction will really "work" as contemplated. GISB states that as the industry currently operates, staggered nomination deadlines can leave a shipper with one scheduled pipeline and one unscheduled pipeline. In contrast, the standard nomination deadline gives a shipper assurance that each link in its transaction chain can be scheduled at one time. GISB also points out that its standards provide for flexibility, for instance, by permitting shippers one intra-day nomination. Brooklyn Union contends the Commission should not "water down" industry-wide standards by adopting regional solutions, because such regional solutions would perpetuate the existing system of conflicting definitions and mutually inconsistent standards that has thwarted the effort to establish an integrated pipeline grid.

The adoption of standards obviously requires changes and sacrifices by all parties and, the Commission recognizes that the effects may not always be spread equally among everyone in the industry. But the question is not whether an alternative solution may work better for some parties, but, what is best for the entirety of the interstate pipeline grid. There can be no perfect or correct solution. None of the commenters opposing the standard nomination schedule have submitted data or other evidence to show that their approaches would necessarily create a better result for the entire industry than the approach supported by the consensus of the industry.

The Commission accepts the consensus agreement that a standard nomination timeline is necessary to provide certainty and security for nomination and scheduling. For example, an integrated pipeline grid means that an East Coast LDC can nominate gas from a producer located in any time-zone on the North American continent. If an upstream-downstream system or a regional system were used, the LDC would not get confirmation of the first leg of the journey until well after it gets confirmation of the final downstream leg (which is probably well after the close of its business day). In addition, as NGSA and others point out, all these standards must work together as an integrated whole. Thus, while using central standard, as opposed to clock time, may reduce some pipeline costs, it also could exacerbate some of the timing problems addressed by the West Coast shippers by making the nomination deadlines more out of synch with individuals' business day. Adoption of clock time for the pipeline industry also is likely to lead other industry participants, like gatherers, to adopt a similar schedule to maintain the efficiency of the market. While ultimately, coordination of the gas and electric markets should be considered both industries should be involved in determining the best method of achieving such integration. GISB and the electric OASIS Working Groups should establish liaisons to explore how best to coordinate business and electronic standards to promote efficiency in the overall energy market.

For the West Coast and Mid-West shippers, the standards provide sufficient flexibility to make adjustments to nominations. The ability to use intra-day nominations provides shippers with the flexibility to adjust their nominations to respond to changes in circumstances. In addition, as discussed previously, pipelines with uncommitted capacity should provide

³¹ See the comment by Columbia Gas/Columbia Gulf, stating that pipelines should be able to insist that nomination changes be made during normal business hours.

³² See the comments of NGC/Conoco/Vastar, AF&PA, CGM, and Natural.

³³ The Mid-West LDCs are CILCO, Illinois Power, National Fuel Distribution, NDG/Minnegasco, Peoples/North Shore/Northern Illinois.

³⁴ PG&E, for instance, claims that national weather service data are not received until 8:30 a.m. to 9:00 a.m. Pacific time (9:30 to 10:00 a.m. daylight savings time) and that shippers cannot process these data in time to meet the GISB 11:30 CCT timeline and, thus, would have to rely on stale weather data.

³⁵ See the comments of CIG/ANR, Natural, PGT, Viking, WINGS, and Williston Basin.

³⁶ See the comments of SoCalGas and Peoples/North Shore/Northern Illinois.

shippers with flexibility to submit late nominations within reasonable time frames, so that shippers bumped on one pipeline can reroute their capacity on other pipelines.

CILCO contends that, if the Commission retains the nation-wide nomination timetable, it should at least establish a standard for intra-day nominations permitting a shipper submitting an intra-day nomination for firm receipt and delivery points to bump shippers using these as secondary or interruptible points.³⁷ While providing bumping rights for primary points would enhance primary firm shippers' flexibility, such bumping rights could upset the expectations of firm shippers using secondary points and interruptible shippers that had received confirmed nominations for their nominated points. The Commission will not resolve the balance between these interests at this time, since it understands that GISB is considering intra-day procedures for its September 30, 1996 filing.

Natural asks for clarification that as long as no one is adversely affected by a deviation, parties can agree on a different gas day to meet operating needs. For the most part, the Commission discourages changes to the standards because the very purpose of standardization is for all parties to use the same processes and procedures. However, as discussed in the next section, GISB envisions that pipelines may be able to exceed the standards so long as these deviations do not adversely effect other parties. Thus, in some circumstances, pipelines and individual shippers may be able to agree to additional flexibility in nomination procedures, subject to the important caveat that the change does not degrade the rights of other shippers.

Commenters also suggest changes to a variety of other specific standards, generally with only one or a very few commenters challenging each standard. As merely one example, NGC/Conoco/Vastar, AF&PA, and EMA contend that the period for resolving invoicing disputes should be two years, while the consensus of the industry was that expedition in handling disputes was important and agreed on a six-month period. In this case, as in the other challenges to the consensus standards, the issue is not susceptible to factual resolution; it is a matter of judgment as to what approach is most efficient and will best serve the needs of the entire industry. The Commission's goal in this proceeding was to achieve a set of

standards that the majority of the industry could support. After having reviewed the comments and the GISB standards, the Commission concludes that the industry consensus standards effect a sound balance between the needs of all segments and areas of the country and accepts these standards.

These standards also are not the final word. As experience is gained operating under these standards, changes or revisions may be needed. The industry and GISB need to be alert to such possibilities for improving standards, and GISB has a procedure by which parties can submit requests for changes to standards.³⁸

D. Requests for Clarification

1. Pipelines Exceeding the Standards

In the NOPR, the Commission requested clarification of GISB's statement that all of its standards should be considered minimums and that parties are encouraged to exceed these standards. The Commission was unsure whether some standards should be considered inviolate, because any change would have adverse repercussions for non-agreeing parties.

GISB responds that its intent is to permit pipelines to exceed standards, so long as the changes do not have a negative impact on contracting and non-contracting parties. For example, it states that a pipeline may accept a nomination outside the nomination deadline if doing so will not affect service to those who submit nominations on time. Brooklyn Union, Tenneco Energy, and ECT support the principle that GISB's standards should be considered minimums. ECT suggests that pipelines should be able to exceed the standards, so long as shippers can operate on the pipeline under the minimum standard. Southern supports the concept that pipelines can exceed the GISB standards and suggests that the Commission make this point clear, by revising § 284.10 to remove the requirement that pipelines "comply with" the GISB standards and substitute the phrase that pipelines must "meet or exceed" the standards. NGC/Conoco/Vastar argue that whether pipelines can exceed standards varies, depending on the standard in question and whether shippers need to rely on that standard or whether the so-called improvement is detrimental to some parties.

The Commission endorses the principle that pipelines can exceed the

GISB standards. In some cases, this principle is easy to apply. For example, pipelines can permit more than one intra-day nomination because the pipeline will still be complying with the requirement to provide *at least* one intra-day nomination.

However, in some cases application of the principle will be more difficult. For example, Peoples/North Shore/Northern Illinois point to Nomination Standard 1.3.19, which states that "overrun quantities should be requested in a separate nomination." They comment that the pipelines they use employ a superior procedure by permitting overrun nominations to be included as part of the regular nomination.

In this case, permitting the change would appear to violate the underlying premise of standardization—that shippers can use the same procedures on all pipelines without having to know the individual proclivities and rules of each pipeline. Shippers may need to count on the standardized practice of submitting overrun nominations as a separate nomination, without having to determine whether different overrun procedures apply on different pipelines. In some instances, rather than simply changing a standard, pipelines may be able to offer an additional option to shippers, provided that those shippers that want to conduct business according to the standards can still do so.

The general principle is that a pipeline's enhancement to the standards is acceptable when the revision provides increased flexibility, but does not affect shippers' ability to utilize the standard procedure or adversely affect the rights of those not a party to the revision. Some of these issues may have to be resolved when pipelines make their compliance filings and shippers file comments on the filings. In making their compliance filings, pipelines, therefore, must specifically note in their statement of the nature, reasons, and basis all proposed changes that purport to exceed the standards so that shippers can comment on these changes. The Commission also notes that, under GISB's procedures, any person may seek an interpretation of a standard, and receive a response within 90 days of the submittal.³⁹ The use of this procedure to obtain clarification of issues (that can be anticipated based on the filings here or at GISB) could prove useful when the Commission considers the compliance filings to implement the standards.

The Commission will not revise the regulation, as suggested by Southern, to read "meet or exceed," rather than "comply," because, even if pipelines

³⁷ AF&PA, EMA, and NGC/Conoco/Vastar also request a similar clarification of bumping rights.

³⁸ GISB Procedures For Adopting Standards, § 2.1. Indeed, GISB has received a request for changes to Nomination Standard 1.3.1 dealing with the standard gas day. GISB Standards Action Bulletin, June 15, 1996, Vol. 2, Number 10, at 2.

³⁹ GISB Procedures for Adopting Standards, § 5.0.

may exceed the standards in certain circumstances, they must still comply with the standards. As pointed out earlier, a pipeline permitting more than one intra-day nomination will be complying with the standard for providing at least one such nomination. Moreover, as discussed above, pipelines cannot exceed the standards by adopting what they consider a superior methodology if adherence to the GISB standard is necessary to ensure uniform procedures across the pipeline grid.

2. Clarification of Other Issues

In the NOPR, the Commission stated that it expected pipelines to implement these standards as broadly as possible to provide customers with the services needed in an integrated market. The Commission reasoned that many of the clarification requests could be resolved through consultations between the pipelines and their shippers, and, if they were not, the Commission could address them when pipelines file revised tariffs to incorporate the standards or through the complaint process.

National Fuel supports the Commission's position in the NOPR that implementation details should be worked out in individual proceedings. Other commenters, however, request clarification of a number of standards. While not exhaustive, the following provides an example of the clarification requests. Several commenters seek clarification of the standard requiring pipelines to provide intra-day nominations, such as clarifying intra-day bumping rights (as mentioned previously), the pipelines' ability to establish set times for intra-day nominations,⁴⁰ and whether intra-day nominations should apply to all services.⁴¹ NWIGU, however, maintains that the manner in which intra-day nominations are implemented should be determined on a pipeline specific basis. Other commenters request clarification of issues relating to specific pipelines or services, such as scheduling priority for late nominations if the particular service provides for priority nomination rights or how to deal with Florida Gas Transmission Company's receipt and delivery gas days.⁴² Still others request clarification of terms, such as National Fuel Distribution's concern that "mutual mistake of fact" in Flowing Gas Standard 2.3.26 could be so broad as to cover all billing mistakes⁴³ or Viking's

request for clarification of the term "quick response" in Nomination Standard 1.3.2.

As the Commission stated in the NOPR, clarification issues involve issues specific to certain pipelines, and thus are not susceptible to generic resolution. Similarly, terms used in standards need to be defined with reference to specific situations, using standard rules of interpretation, such as common usage, and the principles and intent of the standards.⁴⁴ These issues are best addressed when pipelines make their compliance filings in light of the comments made on those filings. By the time pipelines make their compliance filings, additional clarification on some of these issues, such as intra-day nominations, also may be provided through the September 30, 1996 filings. Moreover, as pointed out earlier, none of these standards are immutable. Trial and error may reveal the need for further standardization in some areas and perhaps less in others.

CIG/ANR request clarification of what the Commission intends by the consultative process. They argue that implementation of these standards is essentially ministerial and that extensive consultation could lead to further redefinition of the standards.

Implementation of many of the standards is likely to be the purely ministerial task CIG/ANR envisages. There may be some issues, however, where shippers are concerned about the method of implementation. Accordingly, pipelines should circulate advance copies of their proposed compliance filings among shippers for comments to help iron out the implementation details before filing with the Commission.

When individual trading parties have agreed to changes in the electronic data requirements, GISB's definition 1.2.22 requires parties to present mutually agreeable data elements to GISB for technical implementation.⁴⁵ Peoples/North Shore/Northern Illinois object to this definition, because they are concerned about the possible delay this requirement may introduce. ECT, on the

other hand, supports the standard, arguing that unless data elements required to implement service revisions are mapped to GISB's ASC X12 formats, individual pipeline-by-pipeline interpretation of where the data should be placed would defeat the goal of standardization.

The GISB requirement that the pipelines inform GISB of any data element changes is reasonable since it ensures that a standard industry-wide dataset is readily available. The Commission fully expects GISB to process such filings as quickly as possible.⁴⁶

E. Requests for Waivers

Some commenters support the granting of waivers based on individual circumstances if the waivers would not unreasonably interfere with gas flow across the pipeline grid.⁴⁷ NGSA and COPAS argue that waivers should be granted sparingly because all the standards are interrelated and waivers take away the certainty that standards are designed to promote. Williston Basin requests waivers of some of the GISB requirements. It claims that it should not have to comply with the EDM requirements because only two third-parties on its system now use Electronic Data Interchange (EDI) to download capacity release information.⁴⁸ It also is concerned that meeting GISB's invoicing timetable would be too onerous because of its remote meter locations. El Paso contends that it (and GISB) should not have to implement a new dataset to permit uploads of pre-arranged deals for full requirements customers.

The Commission, as a general matter, finds that waivers are at odds with the goal of adopting uniform procedures in order to achieve the greatest efficiency in transporting gas across the integrated pipeline grid. Thus, waivers will not be favored. However, the Commission will consider waiver requests on a case-by-case basis.

Although the Commission previously granted waivers of the EDI requirement to some small pipelines, the prior requirements cover only capacity release, which may have been

⁴⁴ Mutual mistake of fact is a common expression used in contract law where both parties have a mutual misunderstanding of a basic assumption of the contract. Thus, all that Flowing Gas Standard 2.3.26 provides is that the time periods for dispute resolution will not apply where the parties are seeking to resolve a problem that both misunderstood at the time. The term "quick response" refers to the immediate response of errors in nominations. See Nomination Standard 1.4.2.

⁴⁵ To ensure that changes to data elements do not undermine the goal of providing standardized communication across pipelines, Standard 1.2.22 provides that other shippers cannot be required to adopt any additional data elements in order to achieve a desired level of service.

⁴⁶ Commission approval of the data elements appears unnecessary because they involve only agreements between individual trading partners and will not affect other shippers' use of the standards. If the change involves the substance of the standards or pipelines' obligations to other shippers, then Commission acceptance would be necessary prior to implementation.

⁴⁷ See the comments of NGT/MRT, Montana-Dakota, CNG, and National Fuel.

⁴⁸ EDI generally refers to the exchange of information between computers using telephone lines and standardized file formats.

⁴⁰ See the comment of Tenneco Energy.

⁴¹ See the comments of ECT and Peoples/North Shore/Northern Illinois.

⁴² See the comments of Peoples/North Shore/Northern Illinois and Peoples Gas.

⁴³ Flowing Gas Standard 2.3.26 provides for a 6 month period to resolve allocation disputes unless a mutual mistake of fact is involved.

insignificant on these pipelines. In contrast, these standards cover the entire gamut of ongoing business transactions with the pipeline. Thus, a previous lack of interest in EDI for capacity release does not necessarily suggest a similar lack of interest in these standards.

Even for small pipelines, making what is essentially a one-time investment to adopt a standardized industry-wide technology seems preferable to continued investment in EBB or other non-standard communication technologies. The Commission also would expect that third-party vendors that will be creating formats for customers to transact business with pipelines can, at reasonable cost, use or modify the formats to enable pipelines to transact business with customers. Thus, before granting waivers of the electronic communication standards, the Commission will expect pipelines to provide full, and accurate documentation of the costs of implementing such standards on their systems. At this point, El Paso has not demonstrated why implementation of uploads for pre-arranged deals for its full requirements customers would be so onerous, since it already provides for downloads of such information and will be providing for uploads of other information.

F. Capacity Release

The GISB standards address procedures for implementing releases of capacity and the electronic methods of communicating capacity release information. The standards will require some modification of the mechanics of the pipelines' capacity release procedures. The principal change, at least for some pipelines, will be the standardized timeframe for processing release transactions. Under this schedule, for instance, pipelines must establish procedures to process pre-arranged deals, not subject to bidding, within one hour of receipt so that the replacement shipper can nominate the same day. For deals subject to bidding, the pipelines must process the transactions within one day. The communication standards require pipelines to process file uploads of pre-arranged deals, which will permit shippers and third-party capacity trading service providers to conclude pre-arranged deals and efficiently transmit the results of the deals to the pipeline, without having to use the pipelines' EBBs as is the current practice.

While most commenters find the GISB changes to be beneficial, a number comment that they do not obviate the

need for changes in fundamental capacity release policies, such as the requirement for bidding on deals longer than 31 days and the prohibition on releases above the pipeline's maximum rate. Proliance and BGE also find the GISB standards an improvement over past practice, but they believe pipeline interruptible service has a competitive advantage over capacity release because the standards fail to provide comparability between the procedures for obtaining released capacity and those for obtaining pipeline interruptible capacity.⁴⁹

Two pipelines, CIG/ANR and CNG, suggest that the Commission not require pipelines to redesign their capacity release programs until after the Commission issues its promised NOPR on capacity release.⁵⁰ CNG is particularly concerned about having to make investment in redesign of its electronic systems if the Commission is going to make further changes to the program.

The Commission does not want to change the industry's consensus standards until the industry has a further opportunity for consideration and comment through GISB's continuing process or any NOPR on capacity release. On the other hand, the Commission finds no reason for not implementing the standards at this point.

The procedural changes involve mostly revisions to tariff procedures, which should not involve significant burdens. The requirement for pipelines to speed-up the processing of capacity release transactions is consistent with the Commission's goal of ensuring comparability between capacity release and pipeline short-term services.

The only change in electronic communication is the requirement to process uploads of pre-arranged deals; all of the other standards for electronic communication of capacity release information have been in place for some time. Adding uploads of pre-arranged deals should not impose significant additional burden or expense, since pipelines already will be implementing upload capability for the other GISB standards. The ability to upload pre-arranged deals already has been delayed, and the Commission does not

⁴⁹ Proliance points to differences between capacity release and interruptible procedures in posting, bidding, creditworthiness, EBB and contract procedures, scheduling, and nominations. BGE points out that interruptible nominations are made on the same day as acquisition of capacity as compared with up to a two-day delay under GISB standards when bidding is required.

⁵⁰ Trunkline Gas Company, 75 FERC ¶ 61,064, at 61,213 (1996).

want to introduce any further delay, because such a capability is crucial for shippers and third-party capacity trading service providers to communicate efficiently with the pipelines. Moreover, the Commission is convinced that whatever changes the Commission may make in the fundamental policies of the capacity release program, the pipelines will have to provide the capability for shippers and third-party capacity trading services to efficiently transmit pre-arranged transactions to the pipelines.

In the NOPR, the Commission asked whether Capacity Release Standard 5.3.11 required pipelines to accept electronic file uploads of replacement shippers' or their agents' confirmation of the terms of pre-arranged deals (on those pipelines that require confirmation). The Commission was concerned that the efficiency created by requiring standardized uploads of pre-arranged deals would be lost if shippers or third-party capacity trading services cannot use electronic uploads of confirmations to confirm their deals.

GISB, El Paso, and Tenneco Energy confirm that the intent of Capacity Release Standard 5.3.11 is for transportation service providers to accept and process pre-arranged deal confirmations using EBBs, file uploads, as well as other electronic means to which the parties mutually agree. They point out that the Capacity Release Standards include datasets requiring pipelines to provide for uploads of confirmations as a mandatory business conditional field,⁵¹ which means that pipelines requiring confirmation must support such uploads.⁵² Tenneco Energy, however, raises questions about the conditions under which agents can confirm. It suggests that any such requirement be deferred until completion of the work of GISB's Contracts Task Force. Peoples/North Shore/Northern Illinois opposes a requirement for pipelines to support uploads of confirmations unless the costs exceed the benefit.

The Commission supports the requirement for pipelines to accept uploads of confirmations, because such uploads improve the efficiency of the process by allowing shippers and third-party capacity trading service providers to conclude pre-arranged deals without having to use the pipeline EBBs to transmit such deals to the pipeline. With respect to Tenneco Energy's comment, GISB has adopted a principle

⁵¹ See Capacity Release Datasets 5.4.12, and 5.4.19.

⁵² See Nomination Standard 1.2.2 for the definition of mandatory and business conditional.

that agents must be recognized in conducting electronic communication.⁵³ This principle is particularly important in the capacity release arena because the only way that third-party capacity trading service providers can effectively provide trading services is if they can communicate the results of such transactions to the pipelines on behalf of their clients. Thus, the Commission expects pipelines to recognize agents for the purpose of submitting pre-arranged deals and confirmations of such deals as well as for other purposes.

G. Electronic Delivery Mechanism

GISB's standards specify that Internet protocols (TCP/IP with a PPP connection) should be used for electronic communication. In the NOPR, the Commission requested comment on whether additional standards for Internet connection are needed, such as the use of file transfer protocols (FTP).

In its comments, GISB explains that, although it has determined to use Internet protocols for communication, it has not yet reached a final determination on whether the public Internet provides sufficient security for business transactions or whether private networks should be the communication vehicle. On June 7, 1996, GISB's Future Technology Task Force issued an interim report recommending the use of the public Internet as the communication vehicle. The report finds that security issues with the use of the public Internet can be satisfactorily resolved through commercially available software. However, the Future Technology Task Force has established a pilot test (to be completed by September 30, 1996) to permit a full examination of the technology. If the public Internet ultimately is not chosen, GISB states whatever communication vehicle (intranets/networks) is chosen would support its standard protocol of TCP/IP with a PPP connection.

AGA and CIG/ANR suggest that the Commission not prejudge the adoption of the public Internet as the communication vehicle, but wait for the recommendation by the Future Technology Task Force. BGE and EMA support the use of the public Internet, while ECT, National Fuel Distribution, and Peoples/North Shore/Northern Illinois are concerned about the security of using the public Internet and support the use of private intranets. NYMEX/Enersoft and WINGS request

clarification that the Commission is not adopting the public Internet as the exclusive means of communication and that third-parties can offer products which are not on the public Internet.

The Commission will reserve final judgment on the use of the public Internet until the final report by the Future Technology Task Force. The Commission is not entirely clear as to the concerns expressed by NYMEX/Enersoft and WINGS. All pipelines will have to provide data according to the protocol (whether public Internet, intranet, or other protocol) that is specified. Whatever protocol is adopted for pipelines should not affect the manner in which third-parties use or transmit that data to their customers. A third-party would be entirely free to establish its own private intranet to communicate data with its customers.

NYMEX/Enersoft and WINGS may be asking whether pipelines can agree to provide information to shippers or third-party computer service providers according to protocols that differ from the chosen one (e.g., providing a direct connection to the third-party). In the OASIS rulemaking, the Commission required the utilities to provide direct connection on an equal basis to all those requesting such a connection as long as the utility is compensated for making, and given sufficient time to make, the connection.⁵⁴ The Commission found that providing direct connections would assist private networks and third-party services in offering additional valuable services to the industry. The Commission anticipates following the same course here when it adopts the final communication standards.⁵⁵

NGC/Conoco/Vastar recommend that all electronic information disseminated by pipelines should be done on the public Internet. They further contend that pipelines should no longer be required to provide information on EBBs, nor should they be able to provide preferred connections to their EBBs. If pipelines want to continue to provide services on an EBB, NGC/Conoco/Vastar suggest that EBB service should not be subsidized by having its costs recovered as part of rate base, but should compete on an equal footing with other ventures using the pipeline information.

⁵⁴ III FERC Stats. and Regs. Preambles ¶ 31,035, at 31,618–19.

⁵⁵ The Commission also anticipates that pipelines should design tariff procedures to ensure that the first party seeking a direct connection is not disadvantaged (relative to latercomers) by having to bear the costs of establishing the connection. Thus, pipelines should consider procedures to reimburse the first applicant, and charge subsequent applicants, for the fixed common costs of establishing the direct connection.

The Commission agrees the goal of the industry should be to replace the individual pipeline EBBs, characterized by their unique log-on and access procedures and distinctive look and feel, with a uniform method of communicating all electronic information now provided on the EBBs. Standardization of electronic communication would permit shippers and third-party service providers to easily capture all relevant information and provide a single display format covering all pipelines.

In the course of their deliberations on the future of electronic communication in the gas industry, GISB and the industry participants should give consideration to the following issues. First, they should consider whether the Commission should mandate that pipelines provide additional information in electronic format (other than that required by this rule or other Commission regulations).

Second, they need to consider whether pipelines should be required to replace their EBBs with a standardized, interactive format (such as interactive, Internet world-wide-web displays). The display format would be in addition to providing for uploads and downloads in standardized file format.⁵⁶ Alternatively, the pipelines could be pure data providers and recipients, with no requirement to provide individual display formats. This approach would leave the creation of display formats to the shippers and to competition among software vendors and third-party providers (that could include pipeline EBBs that would not be covered within the pipelines' cost-of-service).

Third, the industry needs to consider the concern raised by NGC/Conoco/Vastar over connection standards, such as whether pipelines can provide for preferential connections either to their own EBBs or third-parties (including pipeline affiliates). For example, if the standard requires pipelines to provide data over the public Internet and the pipeline uses a third-party to operate its Internet server, should pipelines be able to provide direct connections to their own in-house computer system as now occurs with the pipelines' EBBs? Or, should all direct connections be to the Internet server in order to provide

⁵⁶ In the OASIS rulemaking, the utilities were required to provide both for file downloads and uploads of data as well as providing the required information through internet HTML display formats. III FERC Stats. and Regs. Preambles ¶ 31,035, at 31,616–17.

⁵³ Electronic Delivery Mechanism Principle 4.1.7. The capacity release datasets also contain a field entitled authorization code, which informs the receiver of a transaction that the sender is authorized to submit the transaction for the contractual party.

everyone with comparable access to the data.⁵⁷

Finally, GISB and the industry participants should explore making information available, on a real time basis, on the availability of capacity on the mainline and at individual receipt and delivery points. GISB has recognized that its nomination scheduling is an interim step to continuous and contiguous scheduling.⁵⁸ Moreover, as discussed earlier, pipelines must now permit intra-day nominations, and the Commission expects pipelines to schedule capacity within reasonable business hours when they have available capacity. As the industry continues its move to more flexible intra-day nominations, such efforts must be accompanied by real-time information. Some of the needed information can be obtained through compliance with the existing Operationally Available and Unsubscribed Capacity datasets.⁵⁹ As such, the Commission will continue taking steps to ensure compliance with the requirements of those data sets. However, improvements are needed. Current data is not available on a real time basis. It does not reflect capacity scheduled during the day. Moreover, information is not available on whether gas can be scheduled into or out of a particular zone. Finally, the information is often not delivered in a user friendly format. For instance, a person should be able to request information which changed after a specified date and time, *i.e.* the quantity of available capacity at individual locations which changed due to a newly scheduled quantity.

H. Consideration of Additional Standards

A number of commenters on GISB's March 15, 1996, filing argued that the GISB standards did not go far enough and that additional standards needed to be developed. While not meaning to provide a definitive list, the Commission distilled from the comments the following areas for consideration of modifications or additions to the standards: expansion of Internet protocols to include all

electronic information provided by the pipelines (discussed above), title transfer tracking, allocations and rankings of gas packages, treatment of compressor fuel, operational balancing agreements, routing models, imbalance resolution, operational flow orders, multi-tiered allocations and confirmations, and additional pooling standards. Because of the importance of the issues raised, the Commission requested detailed proposals for standards in these and other related areas by September 30, 1996.

Several commenters argue that the areas listed are among the most contentious and most difficult to resolve and maintain that the September 30, 1996 date does not provide the industry or GISB with adequate time to develop consensus. NGC/Conoco/Vastar, however, maintain that precisely because these issues are complex and contentious, GISB will be unable to reach a reasonable consensus, so that the Commission should resolve the issues. The Commission also takes notice that, after the NOPR, GISB has established a schedule leading to the development of standards (but not necessarily detailed datasets) by the September 30, 1996 date.

The Commission does not share NGC/Conoco/Vastar's dire view of GISB's prospects for resolving these issues. But the Commission still needs to monitor the progress of these considerations, so that, if they do stalemate, the Commission can begin technical conferences or other proceedings to resolve them. Accordingly, the Commission will not revise the September 30, 1996 date for submission of standards proposals. By September 30, 1996, the Commission expects that standards for many of these issues will be developed and that, for other issues, the filings will permit the Commission to assess whether GISB is on track to resolve them or whether the Commission needs to establish additional procedures. For issues that are not resolved, the reports should be sufficiently comprehensive that they fully describe the problems faced by the industry, the proposals being considered, whether any proposal is preferred over others, and an analysis of the benefits and disadvantages of the proposed solutions.

I. Cost Recovery

Viking and Iroquois request the Commission to establish a method of recovering the costs of implementing the standards. Viking maintains that a full section 4 case is not an appropriate mechanism because of the difficulty in predicting up-front and ongoing

compliance costs needed to prepare a test-year cost-of-service study. Both Iroquois and Viking suggest using limited section 4 cases, and Viking also suggests other options, such as deferred accounting, similar to procedures used for the recovery of costs related to implementation of FASB 106 (post-employment benefits other than pensions).

The Commission finds no need to establish special procedures for handling cost recovery. There is no evidence that the costs of compliance are so significant or so out-of-the-ordinary that special procedures are necessary. Moreover, implementation of many of the standards may result in changes to operations and maintenance expenses or other cost-of-service categories, which can be effectively considered only in the context of a full section 4 proceeding. With respect to Viking's concern about predicting future costs, Commission regulations permit pipelines to include in rate filings costs that are known and measurable at the time of the filing.⁶⁰

V. Implementation Schedule

GISB proposes a staggered schedule for pipeline compliance filings and implementation in which pipelines are divided into three groups. The first group would make tariff filings October 1, 1996 and implement the standards April 1, 1997 with the other two groups filing in November and December 1996 and implementing in May and June 1997. The pipeline groupings are based on three factors: pipeline willingness to implement in the first groups; implementation by downstream pipelines no earlier than their major feeder pipelines; and geographic balance with each group including pipelines from various regions of the country. GISB did not include deadlines for small pipelines, stating that they could choose their implementation date.

GISB also explains that the standards will govern business *beginning with* the implementation date. For example, in order to have gas scheduled to flow at the beginning of the gas day on April 1, 1997, the pipeline actually would begin implementing the related standards, such as Nomination Standard 1.3.2 (Nomination Timeline) in March 1997. Likewise, for pipelines with an April 1, 1997 implementation date, the invoices for April deliveries would be prepared and sent to the customer in May 1997 in compliance with the standards.

The Commission is accepting the GISB schedule for the *pro forma* compliance filings and the

⁵⁷ The OASIS rule did not permit the utilities to provide preferential direct connections. See III FERC Stats. and Regs. Preambles ¶ 31,035, at 31,619 (direct connections to the utility's computer are not permitted when another party is responsible for the Internet connection).

⁵⁸ Nomination Principle 1.1.2.

⁵⁹ Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, III FERC Stats. & Regs. Preambles, at 31,007; Order No. 563-A, III FERC Stats. & Regs. Preambles, at 31,040 (posting of operationally available capacity).

⁶⁰ 18 CFR 154.303.

implementation of the standards as set forth below. Smaller pipelines are included in the third group, but any pipeline may file or implement earlier than its effective date. The Commission is providing that interventions, protests, or comments are due 21 days after the date of the pipeline's *pro forma* tariff filing.

Pro Forma Tariff Filing Date: October 1, 1996—Standards Implementation Date: April 1, 1997

Algonquin Gas Transmission Company
El Paso Natural Gas Company
Florida Gas Transmission Company
Mojave Pipeline Company
National Fuel Gas Supply Corporation
Northern Border Pipeline Company
Northern Natural Gas Company
Panhandle Eastern Pipe Line Company
Texas Eastern Transmission Corporation
Transwestern Pipeline Company
Trunkline Gas Company

Pro Forma Tariff Filing Date: November 1, 1996—Standards Implementation Date: May 1, 1997

Canyon Creek Compression Company
Colorado Interstate Gas Company
East Tennessee Natural Gas Company
Midwestern Gas Transmission Company
Mississippi River Transmission Corporation
Natural Gas Pipeline Company of America
NorAm Gas Transmission Company
Stingray Pipeline Company
Tennessee Gas Pipeline Company
Trailblazer Pipeline Company
Williams Natural Gas Company
Wyoming Interstate Company, Ltd.

Pro Forma Tariff Filing Date: December 2, 1996—Standards Implementation Date: June 1, 1997

Alabama-Tennessee Natural Gas Company
Algonquin LNG, Inc.
ANR Pipeline Company
ANR Storage Company
Black Marlin Pipeline Company
Blue Lake Gas Storage Company
Caprock Pipeline Company
Carnegie Interstate Pipeline Company
Chandeleur Pipe Line Company
CNG Transmission Corporation
Columbia Gas Transmission Corporation
Columbia Gulf Transmission Company
Cove Point LNG Limited Partnership
Crossroads Pipeline Company
Equitrans, Inc.
Gas Transport Inc.
Gasdel Pipeline System, Inc.
Granite State Gas Transmission, Inc.
Great Lakes Gas Transmission Limited Partnership
Gulf States Transmission Corporation
High Island Offshore System
Iroquois Gas Transmission System, L.P.
K N Interstate Gas Transmission Co.
K N Wattenberg Transmission Limited Liability Company
Kentucky-West Virginia Gas Company
Kern River Gas Transmission Company
Koch Gateway Pipeline Company
Louisiana-Nevada Transit Company
Michigan Gas Storage Company
Mid Louisiana Gas Company

MIGC, Inc.
Mobile Bay Pipeline Company
Nora Transmission Company
Northwest Pipeline Corporation
Oktex Pipeline Company
Overthrust Pipeline Company
Ozark Gas Transmission System
Pacific Gas Transmission System
Pacific Interstate Offshore Company
Paiute Pipeline Company
Petal Gas Storage Company
Questar Pipeline Company
Richfield Gas Storage System
Riverside Pipeline Company, L.P.
Sabine Pipe Line Company
Sea Robin Pipeline Company
South Georgia Natural Gas Company
Southern Natural Gas Company
T C P Gathering Co.
Tarpon Transmission Company
Texas Gas Transmission Corporation
Texas-Ohio Pipeline, Inc.
Transcontinental Gas Pipe Line Corporation
Tuscarora Gas Transmission Company
U-T Offshore System
Viking Gas Transmission Company
Western Gas Interstate Company
Western Transmission Corporation
Westgas Interstate, Inc.
Williston Basin Interstate Pipeline Company
Young Gas Storage Company, Ltd.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) ⁶¹ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed regulations would 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. 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.

VII. 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. ⁶² The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. ⁶³ The action taken here falls within categorical exclusions in the Commission's regulations for rules that

are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities. ⁶⁴ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VIII. Information Collection Statement

In the NOPR, the Commission requested emergency Office of Management and Budget (OMB) clearance procedures under 5 CFR 1320.13 of OMB's regulations to avoid delays beyond the proposed January 1, 1997, target implementation date. Virtually all of the comments filed (including those filed with OMB by Viking) express concern about the Commission's target implementation date of January 1, 1997, due to concerns about complications arising during the peak winter heating season. GISB, with support from almost all commenters, has proposed, and the Commission is adopting, a staggered implementation of the standards during the spring of 1997.

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 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.

Title: FERC-545, Gas Pipeline Rates:

Rate Change (Non-formal)

Action: Data Collection/Requirements
OMB Control No.: 1902-0154

Respondents: Interstate Natural Gas Pipelines (Not applicable to small businesses.)

Frequency of Responses: One-time tariff filings (First year)

Title: FERC-549C, Standards for Business Practices of Interstate Natural Gas Pipelines

Action: Data Collection/Requirements
OMB Control No.: To be assigned by OMB

Respondents: Interstate Natural Gas Pipelines (Not applicable to small businesses.)

Frequency of Responses: One-time capital/startup new business procedures (First year)

Necessity of Information: The final rule adopts standards incorporated by reference and submitted by the Gas Industry Standards Board (GISB).

⁶¹ 5 U.S.C. 601-612.

⁶² 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).

⁶³ 18 CFR 380.4.

⁶⁴ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

These standards govern four major business practices—nominations; allocations, balancing, and measurement; invoicing; and capacity release—as well as the mechanism for electronic communication between the pipelines and those doing business with the pipelines. Without the Commission's adoption of these standards that institute common business practices and a common language for communication, the speed and efficiency with which shippers can transact business across multiple pipelines would be severely compromised. Under the final rule, all pipelines will adopt a standard set of information covering the ten high priority data elements, so that shippers will be able to communicate using the same information for the same transactions regardless of the pipelines with which they deal. In addition, all pipelines will ultimately support a standard Internet connection for communications with their customers, which will eliminate the disparity in log-on procedures and user interfaces faced by customers using the individual pipeline electronic bulletin boards.

The information collection requirements in this final rule will be reported directly to the industry users and later be subject to audit by the Commission. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and coincide with the current regulatory environment which the Commission instituted under Order No. 636 and the restructuring of the natural gas industry. The Commission's Office of Pipeline Regulation will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas and for general industry oversight.

Because the subject final rule is not significantly different from the NOPR, and OMB has not provided any comments on the proposed rule, the Commission is submitting a copy of this final rule to OMB for informational purposes only. 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].

IX. Effective Date

These regulations are effective August 26, 1996. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 1996.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

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

By the Commission.
Lois D. Cashell,
Secretary.

In consideration of the foregoing, the Commission amends Parts 161, 250, and 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for part 161 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

§ 161.3 [Amended]

2. In § 161.3, paragraph (h)(2) is amended by removing the phrase "§ 284.8(b)(4)" and adding, in its place, the phrase "§ 284.10(a)".

PART 250—FORMS

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

§ 250.16 [Amended]

2. In § 250.16, paragraph (c)(2) is amended by removing the phrase "§ 284.8(b)(4)" and adding, in its place, the phrase "§ 284.10(a)".

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 § 284.8, paragraphs (b)(4) and (b)(5) are removed, paragraph (b)(6) is redesignated (b)(4), and paragraph (b)(3) is revised to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(b) * * *

(3) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must provide all shippers with equal and timely access to information relevant to the availability of such service, including, but not limited to, the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, and whether the capacity is available directly from the pipeline or through capacity release. The information must be provided on an Electronic Bulletin Board with the features prescribed in § 284.10(a) and as required by § 284.10(b).

* * * * *

3. In § 284.9, paragraph (b)(4) is removed, paragraph (b)(5) is redesignated (b)(4), and paragraph (b)(3) is revised to read as follows:

§ 284.9 Interruptible transportation service.

* * * * *

(b) * * *

(3) An interstate pipeline that offers transportation service on an interruptible basis under subpart B or G of this part must provide all shippers with equal and timely access to information relevant to the availability of such service. The information must be provided on an Electronic Bulletin Board with the features prescribed in § 284.10(a) and as required by § 284.10(b).

* * * * *

4. Section 284.10 is added to read as follows:

§ 284.10 Standards for Pipeline Business Operations and Communications.

(a) *Electronic Bulletin Boards.* An interstate pipeline that is required by this chapter or by its tariff to display information on an Electronic Bulletin Board must provide for the following features on its board:

(1) Downloading by users;

(2) Daily back-up of information displayed on the board, which must be available for user review for at least three years;

(3) Purging of information on completed transactions from current files;

(4) Display of most recent entries ahead of information posted earlier; and

(5) On-line help, a search function that permits users to locate all information concerning a specific transaction, and a menu that permits users to separately access the notices of available capacity, the marketing affiliate discount information, the marketing affiliate capacity allocation log, and the standards of conduct information.

(b) *Incorporation by Reference of Business Practice and Electronic Communication Standards.* (1) An interstate pipeline that transports gas under subpart 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 1.0, June 14, 1996);

(ii) Flowing Gas Related Standards (Version 1.0, June 14, 1996);

(iii) Invoice Related Standards (Version 1.0, June 14, 1996); and

(iv) Capacity Release Related Standards (Version 1.0, June 14, 1996).

(2) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the Gas Industry Standards Board, 1100 Louisiana, Suite 4925, Houston, TX 77002. Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426 and at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.

Note.—The following appendix will not appear in the Code of Federal Regulations.

Appendix—RM96-1-000

COMMENTS FILED

Commenter	Abbreviation
Alabama-Tennessee Natural Gas Company	Alabama-Tennessee.
American Forest & Paper Association	AF&PA.
American Gas Association	AGA.
American Public Gas Association	APGA.
Associated Gas Distributors	AGD.
Baltimore Gas and Electric Company	BGE.
Brooklyn Union Gas Company	Brooklyn Union.
Central Illinois Light Company	CILCO.
CNG Transmission Corporation	CNG.
Coastal Gas Marketing Company	CGM.
Colorado Interstate Gas Company and ANR Pipeline Company	CIG/ANR.
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company.	Columbia Gas/Columbia Gulf.
Council of Petroleum Accountants Society	COPAS.
El Paso Natural Gas Company	El Paso.
Energy Managers Association	EMA.
Enron Capital & Trade Resources Corporation.	ECT.
Equitrans, L.P.	Equitrans.
Foothills Pipe Lines Ltd	Foothills.
Gas Industry Standards Board	GISB.
Illinois Power Company	Illinois Power.
Interstate Natural Gas Association of America.	INGAA.
Iroquois Gas Transmission System, L.P.	Iroquois.
Montana-Dakota Utilities Company	Montana-Dakota.
National Fuel Gas Distribution Corporation	National Fuel Distribution.
National Fuel Gas Supply Corporation	National Fuel.
Natural Gas Clearinghouse, Conoco, Inc. and Vastar Gas Marketing, Inc.	NGC/Conoco/Vastar.
Natural Gas Pipeline Company of America	Natural.
Natural Gas Supply Association	NGSA.
NorAm Energy Services, Inc	NES.
NorAm Gas Transmission Company and Mississippi River Transmission Corporation.	NGT/MRT.
Northern Distributor Group and Minnegasco	NDG/Minnegasco.
Northwest Industrial Gas Users	NWIGU.
NYMEX Technology Corporation and Enersoft Corporation	NYMEX/Enersoft.
Pacific Gas and Electric Company	PG&E.
Pacific Gas Transmission Company	PGT.
PanEnergy Corporation (Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company, Algonquin Gas Transmission Company).	PanEnergy Companies.
Peoples Gas System, Inc	Peoples Gas.
Piedmont Natural Gas Company, Inc	Piedmont.
ProLiance Energy LLC	ProLiance.
Questar Pipeline Company	Questar.
Southern California Edison Company	Edison.
Southern California Gas Company	SoCalGas.
Southern Natural Gas Company	Southern.
Tenneco Energy	Tenneco Energy.

COMMENTS FILED—Continued

Commenter	Abbreviation
The Peoples Gas Light and Coke Company, North Shore Gas Company, and Northern Illinois Gas Company.	Peoples/North Shore/Northern Illinois.
TransCapacity Limited Partnership	TransCapacity.
United Distribution Companies	UDC.
Viking Gas Transmission Company	Viking.
Williams Interstate Natural Gas System	WINGS.
Williston Basin Interstate Pipeline Company	Williston Basin.

[FR Doc. 96-18623 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Part 118**

[T.D. 96-57]

RIN 1515-AB83

**Centralized Examination Stations;
Immediate Suspension or Permanent
Revocation as Operator Upon
Indictment for any Felony****AGENCY:** Customs Service, Treasury.**ACTION:** Final rule.

SUMMARY: This document amends the Customs Regulations to enable Customs port directors to suspend immediately operations at a Centralized Examination Station (CES) whenever the operator, entity, or other person exercising substantial ownership or control over the operator is indicted for, convicted of, or has committed acts which would constitute any felony. This document also makes it more specific that a CES operator's failure to follow the terms of the CES written agreement constitutes a ground for proposed permanent revocation of the CES and cancellation of the written agreement to operate the facility. This action is taken in order to protect the public interest and to promote public confidence concerning the integrity of the CES program.

EFFECTIVE DATE: August 26, 1996.**FOR FURTHER INFORMATION CONTACT:**

Linda Walfish, Office of Field Operations, Trade Compliance (202) 927-1167.

SUPPLEMENTARY INFORMATION:**Background**

In T.D. 93-6 (58 FR 5596) Customs amended the Customs Regulations (19 CFR Chapter 1) to create a new Part 118 that set forth the regulatory framework for the establishment, operation, and termination of Centralized Examination Stations (CESs). A CES is a privately-

operated facility, not in the charge of a Customs officer, at which imported merchandise is made available to Customs officers for physical examination. Regarding the termination of CESs, Customs stated in T.D. 93-6 that while immediate revocation and cancellation for a criminal act should not be limited to cases involving an actual conviction or admission, the only criminal offenses which should result in an immediate revocation and cancellation would be those which involved theft, smuggling, or a theft-connected crime.

On further consideration of this issue, Customs published a document in the Federal Register (61 FR 1877) on January 24, 1996, proposing to amend the Customs Regulations to enable Customs port directors to immediately suspend operations at a CES whenever the operator, entity, or other person exercising substantial ownership or control over the operator is indicted for, convicted of, or has committed acts which would constitute any felony. The notice of proposed rulemaking also sought to make it more specific that a CES operator's failure to follow the terms of the CES written agreement constitutes a ground for proposed permanent revocation of the CES and cancellation of the written agreement to operate the facility. The regulatory amendments proposed were promulgated in order to protect the public interest and to promote public confidence concerning the integrity of the CES program. The notice proposed to amend § 118.21, which provides for the revocation of selection and cancellation of the written agreement to operate a CES. Additional, conforming changes were also proposed to §§ 118.0, 118.22, and 118.23. The document solicited comments concerning these changes.

The comment period closed on March 25, 1996. Only one comment was received and it was from a Customs field office. Because the comment is beyond the scope of the proposal, it will not be discussed in this document and will be addressed through another forum. After further consideration of the

proposal, Customs has decided to adopt the proposed regulatory amendments as a final rule without substantive change.

Regulatory Flexibility Act

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities, as the current number of centralized examination station operators is small, *i.e.*, less than 200, and the regulation only will affect those who commit felonies or fail to follow the terms of their agreement. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 118

Administrative practice and procedure, Customs duties and inspection, Examination stations, Imports, Licensing, Reporting and recordkeeping requirements.

Amendment to the Regulations

For the reasons stated above, part 118, Customs Regulations (19 CFR part 118), is amended as set forth below:

**PART 118—CENTRALIZED
EXAMINATION STATIONS**

1. The authority citation for part 118 continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

2. In § 118.0, the second sentence is revised to read as follows:

§ 118.0 Scope.

* * * It covers the application process, the responsibilities of the