of the Code of Federal Regulations is proposed to be amended as follows.

PART 1507—FIREWORKS DEVICES

1. The authority citation for part 1507 is revised to read as follows:

Authority: 15 U.S.C. 1261–1262, 2079(d); 21 U.S.C. 371(e).

§ 1507.3 [Amended]

2. In section 1507.3(a)(2), remove the words ''6 seconds'' and add, in their place, the words ''9 seconds''.

Dated: August 2, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–20150 Filed 8–6–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM96–14–000]

Secondary Market Transactions on Interstate Natural Gas Pipelines

July 31, 1996.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is issuing a notice of proposed rulemaking to revise section 284.243 of the Commission's regulations to improve the efficiency of the Commission's capacity release mechanism and encourage greater use of this mechanism. The Commission is proposing to: make changes in its regulations and policies to improve the operation of the capacity release mechanism; eliminate the prior requirement for competitive bidding; and permit shippers to release capacity, and pipelines to sell interruptible and short-term firm service, at rates above the rate cap when the shipper or pipeline has demonstrated that it does not exercise market power.

DATES: Comments on the proposed rule are due October 7, 1996. Comments should be filed with the Office of the Secretary and should refer to Docket No. RM96–14–000.

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

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 208–2294.

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 19200, 14400, 12000, 9600, 7200, 4800, 2400, 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

The Federal Energy Regulatory Commission (Commission) requires interstate natural gas pipelines to provide a mechanism that permits firm shippers to release unneeded capacity to other shippers needing that capacity. The Commission is proposing to revise its capacity release regulations, § 284.243, to improve the efficiency of the program and encourage greater use of capacity release. The Commission is proposing changes in three areas. First, the Commission is proposing to require pipelines to improve their existing capacity release procedures to make the system work more efficiently. Second, the Commission is proposing to improve the speed and certainty of transactions by removing the requirement for competitive bidding. Third, the Commission proposes to permit releases of capacity and pipeline sales of interruptible and short-term firm capacity at rates above the pipeline's maximum rate upon a showing that the releasing shipper or the pipeline cannot exercise market power.

I. Public Reporting Burden

The proposed rule would affect two existing Commission data collections, FERC–545, Gas Pipeline Rates: Rate Change (Non-formal), (OMB Control No. 1902–0154) (FERC–545), and FERC–549B, Gas Pipeline Rates: Capacity Release Information (OMB Control No. 1902–0169)(FERC–549B).

Under the existing data collection/requirements of FERC–545, there would be a one-time estimated annual reporting burden of 4,125 hours (55 hours per company) with the adoption of the revised regulations proposed herein. A one-time tariff filing would adjust certain general terms and condition language in pipeline tariffs to reflect the implementation of the proposed changes in the Commission's capacity release program. Tariff filings would be required of approximately 75 interstate natural gas pipelines. (See FERC–545 burden detail in estimated burden table below.)

Under existing data collection FERC–549B there would be a reduction in annual burden of an estimated 115,650 hours (1,542 hours per company). The estimated burden reduction reflects the proposed improvements to the way the capacity release program operates and the elimination of competitive bidding requirements.

The revised regulations proposed in the subject NOPR are being submitted to the Office of Management and Budget (OMB) 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. 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.

ESTIMATED ANNUAL BURDEN ASSOCIATED WITH THE SUBJECT NOPR

Affected data collection/requirement	No. of respondents	Total No. of responses	Hours per response	Total annual hours
FERC–549B (1902–0169):				
Reporting/Data Requirement Burden	75	75	−1,542	−115,650
FERC–545 (1902–0154):				
Reporting/Data Requirement Burden	75	75	55	4,125
Total Annual Hours Net Increase or (Decrease) in Burden	75	75	−1,487	−111,525

The above estimates include time for reviewing the requirements of the Commission's proposed regulations, searching existing data sources, gathering and maintaining the necessary data, and reviewing and completing the collection of information.

Data Collection/Requirement Costs

The Commission expects that the proposed changes in its regulations would result in a net reduction in day-to-day operating costs. The one-time tariff filing burden/cost under FERC–545 would be more than offset by the expected burden/cost reduction and efficiencies created under FERC–549B. The Commission estimates that the changes in reporting requirements proposed herein would result in an overall net reduction in the average annualized cost per respondent for the first year. Following the first year, a permanent annual reduction in burden/cost would occur under the FERC–549B data collection as indicated below.

Estimated annualized costs (per respondent)	
FERC–549B (Annual Reduction)	−$75,378
FERC–545 (One-time Initial Cost/First Year)	2,652
Net Total Cost (Net Reduction)	−$73,726

Internal Review:

The Commission has reviewed the proposed revisions to its regulations and determined that the changes are necessary to establish more efficient pipeline operations. The proposed rule would encourage buyers to use the capacity release system more often and make it more competitive with other means of acquiring capacity.

The proposed revisions are consistent with 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 reasonable and objective support for the burden estimates associated with the proposed changes in information requirements.

The Commission emphasizes that the increased cost under FERC–545 would be a one-time cost that pipelines would not incur on an ongoing year-to-year basis. The estimated cost reflects the one-time tariff filings to incorporate the revised regulations proposed herein. These revisions appear necessary to improve the efficiency of the capacity release program between shippers and pipelines, efficiency which, in the long run, should reduce the costs of all participants in the market.

II. Current Capacity Release Rules

The Commission instituted the capacity release mechanism to create a uniform, national program for the reallocation of interstate pipeline capacity to complement the unbundled, open access environment created by Order No. 636. [1] The capacity release mechanism enables firm shippers to make the most efficient and economical use of the capacity for which they pay as well as providing shippers that previously had been unable to acquire firm pipeline capacity (i.e., non-local distribution company shippers) with access to firm capacity. By permitting market forces to reallocate capacity to those who place a higher value on the capacity than the original holder, the capacity release mechanism increases economic efficiency as well as promoting the most efficient use of the natural gas transportation network.[2]

The Commission's authority to establish a uniform, national program governing the reallocation of interstate capacity has just been affirmed by the United States Court of Appeals for the District of Columbia in *United Distribution Co.* v. *FERC* (UDC).[3] The Court also affirmed the Commission's jurisdiction over, and authority to prevent, other capacity reallocations that may interfere with the establishment of the uniform federal program, such as buy-sell transactions in which an LDC uses its interstate capacity to transport gas on behalf of a purchaser. The Court found that the Commission's jurisdiction over a buy-sell derives from the transportation component of the transaction; the reallocation of interstate pipeline capacity to the purchaser is a ''central element'' of such transactions.[4]

Under the Commission's capacity release program, a firm shipper (releasing shipper) sells its capacity by returning its capacity to the pipeline for reassignment to the buyer (replacement shipper). The pipeline contracts with, and receives payment from, the replacement shipper and then issues a credit to the releasing shipper. The replacement shipper may pay less than the pipeline's maximum tariff rate, but

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,939 (Apr. 8, 1992), *order on reh'g*, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,950 (Aug. 3, 1992), *order on reh'g*, Order No. 636–B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *aff'd in part and remanded in part*, *United Distribution Co.* v. *FERC*, No. 92–1485 (D.C. Cir. July 16, 1996).

[2] As part of its restructuring of the electric industry, the Commission has also provided for transmission capacity reassignment for electric utilities. *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. Preambles [January 1991–June 1996], ¶ 31,036, at 31,694 (Apr. 24, 1996).

[3] No. 92–1485, 1996 U.S. App. Lexis 17436, slip op. at 63–81 (D.C. Cir. July 16, 1996).

[4] *Id.*, at 80. The Commission also has Natural Gas Act jurisdiction over buy-sells and other transactions to the extent they constitute the sale of natural gas for resale. *See id.*, at 68.

not more. The results of all releases are posted by the pipeline on its Electronic Bulletin Board (EBB) and made available through standardized, downloadable files.

The releasing shipper can locate a replacement shipper in two ways. The releasing shipper can choose to have the pipeline post the notice of release so other shippers can submit bids for that capacity, with the capacity awarded to the highest bidder. Or, the releasing shipper can enter into a pre-arranged transaction with a replacement shipper for the release of capacity.

The regulations establish a number of requirements for pre-arranged releases. For pre-arranged releases at less than the maximum rate, the regulations generally require that the pipeline post the release and permit other shippers to bid for that capacity. If a competitive bid exceeds the pre-arranged release rate, the designated replacement shipper is given the opportunity to match that bid and thus retain the capacity.

The Commission, however, has recognized that, for short-term transactions, shippers need the ability to reallocate capacity quickly and efficiently. The original regulations, therefore, provided an exemption from the competitive bidding requirements for transactions of less than one calendar month. This exception has been extended to transactions of 31 days or less. To ensure that parties cannot use the exception to avoid bidding for longer-term transactions, the regulations prohibit parties from rolling-over or granting extensions to 31-day-or-less transactions unless they comply with the requirements for prior notice and bidding.

Since Order No. 636, the Commission, on several occasions, has fine tuned the mechanics of the capacity release procedure. In February 1993, the Commission convened a technical conference to examine methods of creating standardized downloadable files for capacity information, so that shippers and third-party service providers could obtain capacity information without having to deal with the eccentricities of the individual pipeline EBBs. The industry formed Working Groups to devise the necessary standards, and, in Order No. 563, the Commission adopted into its regulations the standards recommended by a consensus of the industry.[5]

The Commission also began receiving requests from local distribution companies (LDCs) to revise the capacity release regulations by removing the requirements for competitive bidding and the cap on the rate releasing shippers could receive for capacity.[6] After the capacity release program had been in effect for a year, the Commission began a review of the program which involved informal meetings between staff and representatives from all segments of the industry.

During these meetings, all industry segments recommended that the less-than-one calendar month exception from the bidding requirements be extended to a full month to conform the bidding exception to the industry's monthly purchasing schedule. The Commission adopted the industry's recommendation in Order No. 577 and extended the bidding exception to 31 days.[7] The extension of the bidding exception ensures that releasing and replacement shippers can consummate monthly transactions quickly and provides replacement shippers with the needed assurance that they will obtain the contracted-for capacity at the negotiated price.

The Commission also improved the capacity release system as part of its recent standardization of pipeline business and communication practices. On July 17, 1996, the Commission issued a final rule incorporating by reference business practice and communication standards proposed by the Gas Industry Standards Board (GISB).[8] These standards will be implemented by pipelines in the spring of 1997.

The standards require changes in pipelines' capacity release procedures and in their methods of communicating capacity release information. An important procedural change is the establishment of a capacity release timeline.[9] This timeline provides that, if pipelines are notified of a non-biddable capacity release transaction by 9:00 a.m. the day of nomination, the replacement shipper can nominate the same day (at 11:30 a.m.). For biddable transactions (of less than five months), the timeline provides that if a pre-arranged transaction (or a shipper's offer soliciting bids) is posted to the pipeline by 1:00 p.m., the pipeline must complete the bidding and matching process by 5:00 p.m., and the replacement shipper can nominate the next day.[10]

The communication standards require pipelines to process file uploads of pre-arranged transactions. This change complements the file downloads previously required by Order No. 563, because shippers and third-party service providers now will be able to transmit pre-arranged deals to the pipelines without being burdened by the inconsistent and irregular procedures of individual pipeline EBBs. Instead, they will be able to efficiently transmit this information to every pipeline using the same file formats and protocols.

Proposed Revisions

The Commission proposes revisions to § 284.243 to further improve the efficiency of the capacity release mechanism and thereby create an even more robust secondary market. The revisions are intended to encourage greater use of capacity release and make capacity release more competitive with other means of acquiring capacity, such as the pipelines' interruptible and short-term firm services as well as the so-called ''gray market.'' The gray market generally refers to LDCs' use of their firm transportation capacity to make targeted bundled transportation/gas sales to specific purchasers either on-system or off-system.

Specifically, as discussed below, the Commission proposes three major revisions to its capacity release regulations and policies. First, the Commission is proposing to revise its regulations as well as change policies to improve the operation of the capacity release program. Second, the Commission proposes to eliminate the competitive bidding requirement. Third, the Commission proposes to permit shippers to release capacity, and pipelines to sell interruptible and short-term firm service, at rates above the rate

[5] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[6] *See* Petition Of United Distribution Companies and Associated Gas Distributors For A Rulemaking To Promote Growth And Development Of The Secondary Market, Docket No. RM94–10–000, filed December 9, 1993.

[7] Release of Firm Capacity on Interstate Natural Gas Pipelines, Order No. 577, 60 FR 16979 (Apr. 4, 1995), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 31,017 (Mar. 29, 1993), *reh'g granted*, Order No. 577–A, 60 FR 27882 (June 8, 1995), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 31,021 (May 31, 1995).

[8] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 76 FERC ¶ 61,042 (1996). GISB is a consensus standards organization open to all members of the gas industry. Under GISB procedures, standards must be approved by a consensus of the five segments of the industry—pipelines, LDCs, producers, end-users, and services (including marketers and third-party computer service providers).

[9] Capacity Release Standard 5.3.2. All times used in the standards are central clock time (which is central standard time, without a daylight savings time adjustment).

[10] Longer-term transactions, those of five months or longer, have a 4-day bidding period.

cap when the shipper or pipeline has demonstrated that it does not exercise market power. In addition, the Commission is revising its regulations to reflect the long-standing policy that pipelines must permit permanent releases of capacity—releases where the replacement shipper takes over the remaining term of the releasing shipper's contract, and the releasing shipper is relieved of its obligations under its pipeline contract.[11]

A. Improvements to the Mechanism

1. Comparability Between Released Capacity and Pipeline Short-Term Services

The Commission proposes to add a requirement in its regulations requiring pipelines to treat all short-term transportation—capacity release, interruptible, and short-term firm—in a comparable manner. This proposal ensures that the pipeline procedures are not inherently biased in favor of pipeline services, so that capacity release can compete on an even basis.

The recently adopted GISB standards go a long way towards achieving such comparability. Interruptible shippers can submit a nomination under their interruptible contract on the day they determine they need service. While not identical, the GISB capacity release standards permit replacement shippers (with pre-arranged transactions not subject to bidding) to nominate the same day the pipeline is notified of the capacity release transaction. If shippers submit a pre-arranged non-biddable transaction to the pipeline by 9:00 a.m., the pipeline will complete the contracting process by 10:00 a.m., thereby enabling the replacement shipper to nominate by the 11:30 a.m. nomination deadline.[12]

The Commission requests comment on whether the GISB standard should be deemed sufficient to satisfy the proposed comparability requirement. While non-biddable capacity releases must be posted to the pipeline 2½ hours prior to notification, interruptible shippers have no pre-nomination notice requirement; they can simply submit a nomination at the 11:30 a.m. nomination deadline. Comments should discuss whether the 2½ hour time differential between capacity release and interruptible nominations is of competitive significance.

The comments also should address methods for making the capacity release procedures parallel even more closely the procedures used by the pipelines for interruptible service. For example, interruptible shippers are pre-approved for creditworthiness and have master contracts that enable them to submit nominations without any further procedures. Similarly, pipelines could pre-approve replacement shippers for creditworthiness and execute a master contract with all pre-approved shippers. Once pre-approved, a replacement shipper, like an interruptible shipper, could nominate pursuant to a capacity release transaction so long as the pipeline is notified of the transaction anytime prior to the nomination deadline.

In addition, for replacement shippers that have not been pre-approved, the Commission could relax the policy, adopted in Order No. 636, that releasing shippers can never be liable for usage charges and penalties incurred by replacement shippers.[13] The Commission's rationale for the policy was that such charges are unrelated to the reservation of capacity and primarily are designed to recover the variable costs of replacement shippers' use of the pipeline or to deter replacement shippers from engaging in prohibited conduct. Since the releasing shipper has no control over the conduct of the replacement shipper after the release, the Commission found no purpose in requiring the releasing shipper to be responsible for these charges.

While the Commission still finds this rationale generally persuasive, it should not be invoked unnecessarily to impede capacity release transactions. Thus, the Commission could permit a releasing shipper to assume liability for usage and related charges for a limited period during which the pipeline completes the credit check and the contracting process.

2. Flexibility in the Use of Capacity

One of the Commission's goals is to provide shippers with the utmost flexibility to manage their capacity, so they can derive the maximum benefit from that capacity whether through their own use or through release. The Commission, therefore, has adopted policies requiring pipelines to permit shippers to segment or aggregate capacity or use their capacity to effect backhauls and exchanges.[14] In the oft-quoted example of such flexibility in Order No. 636, the Commission explained that a shipper with capacity from the Gulf of Mexico to New York City could release the portion from the Gulf to Atlanta, Georgia, and separately release the portion from Atlanta to New York or retain the Atlanta to New York portion for the releasing shipper's own use.[15]

The Commission also requires pipelines to provide for flexible receipt and delivery points. Under this policy, any firm shipper can switch its primary firm receipt or delivery points to any available point and also use any available point on a secondary basis (with a lower priority than a shipper using the point as a primary point, but a greater priority than interruptible transportation, since the use of the alternate point is for firm capacity).[16]

In some cases, releasing and replacement shippers may not be getting the full flexibility in managing their capacity that the Commission envisioned in Order No. 636. Thus, the Commission will fully enforce its current policies, and supplement those policies as necessary, so that shippers have the tools to structure their use or release of capacity to best meet their needs.

a. Segmentation of Capacity

During the informal discussions with Commission staff, several participants stated that segmentation on some pipelines was difficult, particularly in the supply area. The Commission also has become aware of segmentation problems in some cases.[17]

As the Commission stated recently in Opinion No. 405,[18] the ability to segment capacity is an integral feature of the capacity release mechanism. Segmentation can increase both releasing and replacement shippers' access to supply sources. For example, through segmentation, a releasing shipper can obtain access to an alternative supply source while still recouping some of its investment by releasing its supply area capacity to a

[11] El Paso Natural Gas Company, 61 FERC ¶ 61,333, at 62,311–12, *aff'd*, 62 FERC ¶ 61,311, at 62,999–17–999–18 (1993).

[12] For transactions subject to bidding, the standards impose a one-day delay between notification of the pipeline and the ability to nominate to permit the pipeline to complete the bidding process. This aspect of comparability is discussed in the competitive bidding section, *infra*.

[13] Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,564–65; Order No. 636–B, 61 FERC at 61,998.

[14] Order No. 636, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,420–21; Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,558; Order No. 636–B, 61 FERC at 61,997.

[15] *Id.*

[16] Order No. 636, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,428–29; Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,583.

[17] *See* ANR Pipeline Company, 75 FERC ¶ 61,082, at 61,242 and 75 FERC ¶ 61,083 (1996).

[18] Transcontinental Gas Pipe Line Corporation (Transco), 76 FERC ¶ 61,021, slip op. at 15, 18–19 (1996).

replacement shipper. The release then provides the replacement shipper with access to the supply area without having to obtain, and pay for, the full mainline path of the releasing shipper. With the right to segment capacity between interconnections, shippers can customize their capacity reservations to match their precise transportation path needs.

The Commission, therefore, will vigorously enforce segmentation rights to ensure that the capacity release system operates as effectively as possible. As summarized in Opinion No. 405, the Commission's current policy requires that pipelines adhere to the following four principles in order to provide shippers with full and effective segmentation rights.

First, to the extent operationally feasible, pipelines must assign specific rights to capacity, including storage capacity, and capacity at receipt and delivery points.[19] To ensure shippers are aware of available capacity, pipelines must fully comply with the Commission regulations to post available capacity at each receipt and delivery point.[20]

Second, the releasing shipper must be able to schedule service up to its contract demand (CD) level on any segment it retains, while the replacement shipper can simultaneously schedule up to its CD level on the released segment. The purpose of permitting segmented capacity would be frustrated if different segments of the pipeline could not be used simultaneously. Therefore, the pipeline should not impose a Maximum Daily Quantity (MDQ) limitation that prevents the segmented use of capacity.[21]

Third, absent a condition in the release, the replacement shipper must have the same right to use alternate receipt and delivery points as other firm shippers.[22]

Fourth, segmented releases must be scheduled as quickly as non-segmented releases. There should be no additional payments for segmenting capacity, nor should pipelines limit the amount charged for releases of segments of capacity except that the price for any single release may not exceed a price cap set by the Commission.[23] Thus, releasing shippers can subdivide their capacity as many times as they are able even if the total amount received for the various releases exceeds the as-billed rate paid by the releasing shipper.

In addition to the policies articulated in Opinion No. 405, the Commission expects pipelines to adhere to the principle, established in Order No. 636–B,[24] that forward haul shippers should be permitted to release their capacity for a backhaul. Backhauls are, in essence, segmented releases, which should be permitted unless the pipeline can document operational constraints.

The Commission intends to apply these policies when it reviews pipeline tariff filings or in other proceedings. Segmentation also is an issue that the industry can examine through GISB to determine whether standards for segmentation can be developed.

In addition, firm shippers should be able to use their own capacity in segments. In the Commission's original formulation of the segmentation requirement, it addressed segmentation only in the context of capacity release; it did not specifically apply the policy to shippers segmenting their capacity for their own use. There appears no reason to distinguish between segmentation for capacity release and segmentation for a shipper's own use. Permitting shippers to segment capacity for their own use may enhance their ability to make full use of capacity, as well as enhance the value of released capacity, because the replacement shipper can segment the capacity it buys. The Commission welcomes comments on whether pipelines should be required to permit shippers to segment their capacity when not releasing capacity.

b. Use of Receipt and Delivery Points

During the restructuring proceedings mandated by Order No. 636, the Commission permitted some pipelines to retain existing tariff provisions that did not permit shippers' primary receipt and delivery point CD rights to exceed their mainline rights.[25] As a consequence, the Commission accepted tariff provisions under which releasing shippers would lose their rights to primary receipt or delivery points if replacement shippers changed primary points under the release.[26] Even at the time, the Commission was skeptical about the justifications for such restrictions,[27] and rejected applications to impose similar restrictions by pipelines without pre-existing restrictions.[28]

The continuation of such restrictions appears to limit the utility of the capacity release mechanism. A releasing shipper may be unwilling to enter into a short term release if, in so doing, it loses priority to its primary receipt and delivery points for the remainder of a 20-year contract. On the other hand, a replacement shipper may need to use receipt and delivery points different from those held by the releasing shipper. The replacement shipper may be reluctant to bid on mainline firm capacity if its ability to receive or deliver gas at a currently available point is subject to bumping by shippers coming later in time.

The Commission, therefore, intends to look more closely at restrictions on the ability of replacement shippers to change primary receipt or delivery points in the future. As pointed out in Opinion No. 405, pipelines may not impose overly restrictive limits on the amount of primary receipt and delivery point capacity that a shipper can reserve, and any such limitations must be operationally justified.

Pipeline operational flow orders (OFOs) also may create difficulties for replacement shippers using secondary points. An OFO may give shippers at a primary point scheduling priority over those using that point on a secondary basis even though the operational problem giving rise to the OFO is not at the point in question, but instead affects an upstream point on the mainline to which all the shippers have equal firm rights. For example, according to OFO notices that the Commission downloaded from pipeline EBBs during

[19] *See* Texas Eastern Transmission Corp., 62 FERC ¶ 61,015 at 61,080 (1993); Arkla Energy Resources, 62 FERC ¶ 61,076 at 61,452 (1993).

[20] 18 CFR 284.8(b)(3) (provide notice of capacity at all receipt and delivery points); Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,988 (Dec. 23 1993) at 31,007, *order on reh'g,* Order No. 563–A, 59 FR 23,624 (May 6, 1994), FERC Stats. & Regs. Preambles [January 1991–June 1996] ¶ 30,994 (May 2, 1994), at 31,040–41, *order on reh'g,* Order No. 563–B, 68 FERC ¶ 61,002 (1994) (posting of operationally available capacity).

[21] *See* Texas Eastern Transmission Corp., 63 FERC ¶ 61,100 at 61,452 (1993); Texas Eastern Transmission Corp., 62 FERC ¶ 61,015 at 61,111 (1993); Panhandle Eastern Pipe Line Co., 61 FERC ¶ 61,357 at 62,419 (1993).

[22] *See* El Paso Natural Gas Company, 62 FERC at 62,984, 62,991 (1993). The priority for scheduling service at alternate receipt and delivery points is lower than that for primary receipt and delivery points. Once scheduled, however, service at alternate points has the same priority as service at primary points. Alternate firm receipt and delivery points always have priority over interruptible service.

[23] *See* Order No. 636 at 30,420–21.

[24] Order No. 636–B, 61 FERC at 61,997.

[25] Transwestern Pipeline Company, 62 FERC ¶ 61,090, at 61,659, 63 FERC ¶ 61,138, at 61,911–12 (1993).

[26] A releasing shipper could preserve its right to return to its primary point after the release by including a provision in its notice of release restricting the replacement shipper's ability to change points.

[27] *See* Transwestern Pipeline Company, 62 FERC at 61,659, 63 FERC at 61,911–12 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993).

[28] *See* Northwest Pipeline Company, 63 FERC ¶ 61,124, at 61,806–08 n.72 (1993).

the winter of 1996, some pipelines restricted scheduled secondary point deliveries, but did not limit scheduled primary point deliveries.[29] In this situation, a replacement shipper's inability to use an available primary point could result in a limitation on the amount of gas it can receive during a peak period.

The Commission invites comment on whether pipeline OFOs have caused problems for the use of secondary point capacity. Commenters should suggest, based on their experience, ways in which OFOs can be more narrowly focused or handled differently while still permitting the pipelines to respond to operational problems on their systems. Comments also should address whether primary and secondary receipt and delivery points should be treated identically in OFO situations when the operational constraint involves mainline capacity. This would be consistent with the Commission's current policy that once gas is scheduled, firm service is firm service, with no distinction in priority between firm service designated for primary and secondary points.

B. The Bidding Requirement

The current regulations exempt capacity release transactions from competitive bidding if the transactions are at the maximum rate or are for 31 days or less.[30] Bidding is thus required for all discounted releases (at less than the maximum tariff rate) longer than 31 days; and for discounted 31 day-or-less transactions if the release is a rollover or continuation of an exempt 31-day-or-less transaction. The Commission's principal goal in requiring posting and bidding was to make capacity release transactions open so other shippers could conduct price discovery and could monitor transactions for potential discrimination.[31] The competitive bidding requirement was intended to ensure that interstate transportation capacity would be allocated to those placing the highest value on obtaining that capacity and to prevent discriminatory allocation of interstate capacity at prices below the going market price.

The Commission has received a number of requests, particularly from LDCs, to eliminate mandatory competitive bidding on pipeline EBBs. Those advocating the removal of the bidding requirement contend bidding adds delay to the capacity release process due to the administrative cumbersomeness of the pipelines' bidding procedures. They maintain bidding also adds uncertainty to the process because it creates a risk for the replacement shipper that it will be unable to acquire capacity at the price it expected. Bidding, they assert, thus can prevent parties from negotiating mutually beneficial transactions. They further maintain that, in the over two years the capacity release system has been in effect, no significant pattern of abuse has been shown.

Proliance Energy LLC and Baltimore Gas and Electric Company filed comments on the GISB standards in Docket No. RM96–1, arguing that, due primarily to the bidding process, the GISB standards do not fully achieve the Commission's goal of providing for comparability between the capacity release process and the process of obtaining pipeline short-term services, like interruptible or short-term firm. They pointed out that interruptible shippers can nominate on the day they want capacity, while the GISB standards require at least one day (if not more) to complete transactions subject to bidding.

Based on the data collected by the Commission, bidding does not appear to be widespread.[32] From May 1, 1995, to June of 1996,[33] competing bids were submitted on only 14% to 20% of all transactions subject to bidding (which themselves comprise 28% of all transactions).[34] For transactions longer than 31 days, the percentage on which competitive bids were made is in the range of 25% to 31%.

The original purposes of the posting and bidding requirements were first and foremost to ensure public disclosure of capacity release transactions, for both price discovery and monitoring, and secondarily to ensure that capacity was allocated to the shipper placing the greatest value on the capacity. In light of the experience with capacity release, the Commission has reconsidered whether the bidding requirement continues to be warranted. Experience demonstrates that the competitive bidding requirement introduces delay, uncertainty, and inefficiency into the capacity release process and is used infrequently.

Even with the improvements in the GISB standards, the bidding process still creates at least a one-day delay, and consequent uncertainty for replacement shippers, who cannot be sure that they will obtain the needed capacity at the price they are willing to pay.[35] The delays and uncertainty imposed by mandatory competitive bidding just do not seem warranted given that the data show that, for all biddable transactions, competitive bids are submitted, at most, one-fifth of the time.

The delay and uncertainty created by the competitive bidding requirement further interferes with the goal of ensuring comparable treatment between capacity release and pipeline short-term services. As discussed in the prior section, if bidding is eliminated, replacement shippers can nominate under a timetable comparable to that of interruptible shippers. If competitive bidding is retained, however, the Commission does not see how comparability between biddable capacity release transactions and pipeline services could reasonably be achieved. The present GISB timetable requiring the posting, bidding, and matching process to take place in a 4-hour window the day prior to nomination seems about as fast as can be reasonably required.

In addition, the Commission is aware that parties have been able to design means of avoiding the bidding requirement.[36] Eliminating bidding

[29] Also, a pipeline's OFO may require shippers to shift supply from secondary to primary points. When this provision is coupled with a restriction on the replacement shipper's ability to change primary points at the initiation of a release, the replacement shipper may be unable to deliver gas where needed when an OFO is invoked. *Compare* Northwest Pipeline Company, 71 FERC ¶ 61,315 (1995) (OFO can require shippers to switch supply from secondary to primary points) *with* Transwestern Pipeline Company, 62 FERC ¶ 61,090, at 61,659, 63 FERC ¶ 61,138, at 61,911–12 (1993) (replacement shipper's ability to switch to a new primary point is restricted).

[30] 18 CFR 284.243(h).

[31] Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,555.

[32] The appendix provides more details of the capacity release information the Commission has downloaded from the pipelines.

[33] Although the capacity release mechanism has been in place since the fall of 1993, the May 1, 1995 date was chosen so that the analysis would be based on a consistent set of data reflecting the current regulations. Prior to May 1, 1995, the exemption from the bidding requirement applied only to less-than-one-calendar-month transactions. For the period after May 1, 1995, Order No. 577 extended the bidding exemption to 31-day-or-less transactions.

[34] As shown in the appendix, the differences in the percentages in the range reflect the effect of adjustments to deal with inconsistent, and contradictory data showing a transaction as being non-biddable, but also showing competing bids having been submitted.

[35] If the releasing shipper specifies methodologies for determining the highest bid other than the three standard methods, the bidding process may take longer, introducing even further delay. The three standard methodologies for determining the highest bid are the highest absolute rate (independent of time and quantity), the highest net revenue (rate times quantity independent of when revenues are received), and the highest net present value (rate times quantity adjusting for when revenues are received). Capacity Release Standard 5.3.3.

[36] Inside F.E.R.C.'s Gas Marketing Report for December 1, 1995 (McGraw-Hill) alludes to a ''well-developed set of tricks'' allowing some capacity

Continued

ensures that those abiding by the rules are not disadvantaged compared to those who skirt them. Trying to control these avoidance practices would only be likely to introduce greater administrative inefficiencies into the process, inefficiencies which the amount of competitive bidding does not seem to justify.

Even with elimination of bidding, the Commission's paramount goal—providing public disclosure of transactions—will still be achieved by continuing, and strengthening, the posting requirement. Indeed, elimination of bidding may well result in greater and more accurate public disclosure of price data, because shippers may forego the mechanisms they have been using to avoid the bidding requirement.

The elimination of bidding does not mean that a releasing shipper can release its capacity in an unduly discriminatory fashion, and the Commission can still take action if it detects a pattern of undue favoritism. For example, a release of capacity cannot be tied to conditions unrelated to the use of the interstate capacity, such as the purchase of gas from the releaser.[37]

The posting requirements, however, need to be strengthened. In downloading pipeline capacity release information, the Commission has found that relevant information about completed transactions is not available in a single dataset.[38] Easily accessible and retrievable information about release transactions is crucial for the Commission and the industry to monitor capacity release transactions effectively. Thus, additional standardization appears necessary. GISB should coordinate with Commission staff in seeking to resolve these issues, and, if necessary, staff can convene a technical conference.

The Commission is proposing to discontinue the pipelines' obligation to afford a posting and bidding option for those shippers wanting to solicit competitive bids. Given the preponderance of pre-arranged transactions,[39] requiring pipelines to provide a bidding service (and permitting them to recover the costs of this service in their cost-of-service) does not appear warranted.

The proposal to eliminate the requirement for pipelines to provide a bidding service does not signify that the Commission finds bidding unimportant. Even if only a small percentage of capacity release transactions are subject to bidding, the bidding results may provide valuable information about the value of released capacity.

A mandatory requirement for pipelines to provide a bidding service, however, does not appear necessary for releasing shippers to post capacity for bid. Elimination of the requirement for bidding through the pipelines will create an opportunity for the market to create even more efficient, computerized capacity trading processes. At present, third-party service providers cannot establish efficient bidding programs for transactions subject to competitive bidding, because transactions cannot be fully consummated on the third-parties' systems; a pre-arranged transaction on the third-party boards still must be transmitted to the pipeline and re-posted for a second round of bidding according to the pipeline's bidding requirements. With the bidding requirement removed, the dual posting will be eliminated, enabling third-party service providers to complete transactions and then use the GISB standards to upload the results to the pipelines for processing. In addition, if they choose, pipelines still could institute a bidding service in response to market demand.

The Commission requests comments on whether the requirement that pipelines provide a posting and bidding service should be continued, and, given that pipelines currently provide such a system on their EBBs, how expensive it would be to continue providing the service. Commenters, however, should take into account the possible need to upgrade computer systems (for example, to permit file uploads of bids and offers) as well as the additional costs of maintaining a bidding mechanism if EBBs were replaced with more standardized Internet technologies, as the industry is considering in the Business Practices Rulemaking in Docket No. RM96–1.

Those commenters recommending retention of the bidding requirement are requested to propose changes to improve the efficiency of the current bidding mechanisms. For example, the Commission requests comment on whether the efficiency of bidding could be improved if third-party boards satisfied the bidding requirement. The Commission requested and received some comments on substituting bidding on third-party boards for pipeline bidding in response to the Business Practices NOPR in Docket No. RM96–1. The few who commented on the issue opposed the requirement on the grounds that locating capacity might be made more difficult if shippers looking for capacity on one pipeline had to monitor postings on all third-party boards. Commenters should consider whether this problem outweighs the potential efficiency gains from third-party bidding. Also, comments should discuss whether the perceived problem—that pipeline listings will appear on multiple third-party boards—is likely to occur or whether there are methods for handling such problems. For example, the pipeline and its customers could jointly solicit bids for, and choose, the third-party service provider that will list offerings for that pipeline. Or, the Commission could set standards that would ensure that shippers could access multiple third-party displays on a single computer (for instance, by using Windows™ or Internet browsers).

The Price Cap

The Commission's regulations do not permit the rate for released capacity to exceed the maximum rate in the pipelines' tariffs. The Commission initially imposed this ceiling because the secondary market had not been shown to be sufficiently competitive that releasing shippers would be unable to exert market power.[40]

The Commission's inquiry here is to determine whether the price cap can be lifted because the secondary market is sufficiently competitive so that releasing shippers cannot exercise market power. The Commission recognizes that, on many pipelines, a large number of shippers hold firm capacity and, due to the Commission's flexible receipt and delivery point policy, numerous shippers may be able to compete in offering capacity to potential

---

traders to circumvent the bidding and roll-over requirements. One such tactic mentioned in the article is for the buyer to use different company names to effect multi-month releases. The buyer uses one name to purchase capacity under the 31-day-or-less exemption in the first month and then avoids the bidding requirement for the next month by using a different company name, such as that of an affiliate.

[37] Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,559. As an example of discriminatory use of interstate capacity by an LDC, see Interstate Gas Marketing., Inc. v. Pennsylvania Public Utility Commission, No. 377 C.D. 1995, 1996 Pa. Commw., Lexis 270 (June 24, 1996).

[38] For example, some relevant information about pre-arranged transactions is found in the dataset for capacity release offers, but is not transferred to the dataset providing information about awards. Thus, the Commission has to download both datasets to obtain the information. An additional complication is that some pipelines purge their offer and bid datasets after a transaction is completed. Thus, unless shippers or the Commission download daily, which adds burden and expense, some of this detail is lost.

[39] Ninety-two percent of all capacity release transactions are pre-arranged.

[40] Order No. 636–A, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,560.

replacement shippers. Pipeline short-term services, interruptible and short-term firm, also potentially compete with capacity release transactions. In addition, the Commission is mindful that removing the cap for releases and for pipeline short-term services may produce more efficient capacity utilization by permitting prices to rise to market clearing levels. Removal of the cap also may remove the incentive for releasers to use the ''gray market'' as a means of circumventing the price cap.[41]

The Commission, however, has some concerns about the potential for the exercise of market power in certain situations. First, regardless of the number of firm shippers on a pipeline, LDCs may still exercise market power over customers behind their city-gate. Because a customer behind an LDC's city-gate must use the LDC's system to transport gas to its final destination, the LDC may be able to structure its intrastate service so that the end-user's ability to obtain released interstate capacity from shippers other than its own LDC is limited.[42]

In addition, an LDC's control over take-away capacity at primary delivery points may limit the capacity choices of a customer behind the city-gate, and thus confer market power on the LDC. If a customer behind an LDC's city-gate purchases capacity from its own LDC, it will obtain access to the city-gate delivery point on a primary basis. If, however, it buys mainline capacity from another firm shipper (with a different primary delivery point), the customer would have to effect delivery to the city-gate as a secondary delivery point. Particularly during peak periods, the customer may not be able to use the secondary point if it is preempted by the LDC's use of the point on a primary basis. In this event, the customer would not have access to a competitive market for capacity; it would have only one realistic capacity option—the primary point capacity of its own LDC.

Second, on some pipelines or portions of systems, the market may not be competitive, because one or only a few shippers control the firm capacity, producing high concentration indices indicative of the potential to exercise market power. For example, a downstream shipper may possess market power because it holds a large percentage of the available capacity on the last segment of the pipeline. This may be particularly true on a telescoping pipeline where the capacity of the system decreases the farther downstream one goes.

Third, interruptible capacity, standing alone, may not be a sufficient competitive alternative to released capacity. In the first place, interruptible service on a fully subscribed pipeline becomes available only if firm shippers are not using or releasing their firm capacity. On a peak day, for instance, a replacement shipper cannot simply reject a high asking price for firm capacity release and count on the use of interruptible service. If the replacement shipper rejects the released firm capacity, and the releasing shipper either uses the capacity itself or releases it to another replacement shipper, the interruptible capacity may not be available. Even if the replacement shipper is able to acquire interruptible capacity, its use of the interruptible service is still subject to being bumped by firm service.

Although shippers potentially can use the ''gray market'' to avoid the price cap, the Commission does not find the existence of the gray market sufficient to warrant across-the-board removal of the price cap. The Commission is unaware of any empirical data on the extent of gray market activity, but the available information suggests that the gray market is not a sufficiently attractive alternative that it will replace capacity release. For example, the amount of capacity represented by capacity release transactions is growing and a significant number of the transactions during peak periods take place at maximum rates.[43] The requests by LDCs to remove the price cap from the release market further indicate that LDCs do not find the gray market a completely satisfactory substitute for capacity release.

Moreover, the Commission cannot abjure its statutory responsibility to ensure that rates are just and reasonable simply because of the potential for shippers to avoid the price cap.[44] Unless a shipper can show that it cannot exercise market power, the Commission cannot conclude that the market-based rates the shipper would charge are competitive and, therefore, just and reasonable. The appropriate response to the gray market, therefore, is not to remove the rate cap across-the-board, but to establish reasonable conditions that will permit shippers to exceed the price cap when they cannot exercise market power.

The Commission, however, does have some concerns about whether the gray market may reduce the efficiency and effectiveness of the capacity release market and may permit undue discrimination to occur. In view of the Court of Appeals decision in UDC, the Commission is interested in exploring the extent of gray market activity and possible approaches for achieving a consistent regulatory framework for both capacity release and the gray market. Although the Commission does not wish to disrupt economic transactions occurring in the gray market, it is interested in receiving comments on alternatives for regulating capacity release and gray market activities, such as whether gray market transactions should be subject to after-the-fact posting.

The Commission proposes to lift the price cap for released, interruptible, and short-term firm capacity when releasing shippers and pipelines can demonstrate that they are unable to exercise market power.[45] The Commission is proposing to include in its capacity release regulations at section 284.243(e) a provision authorizing shippers to submit applications to remove the price cap. Consistent with the Commission's Policy Statement on Alternatives to Cost-of-Service Ratemaking,[46] pipelines seeking to remove the cap for interruptible service can file a request for a declaratory order.

LDCs (or in some cases other shippers controlling take-away capacity at delivery points) would have an additional prerequisite to establish that they cannot exercise market power. They will need to establish that they provide the ability to obtain (either individually or through aggregation) open access transportation on the LDC's facilities. If an LDC does not provide

[41] By making a bundled sale, releasers avoid the cap by, in effect, adding the full price of capacity (even if above the cap) to the unregulated price for gas to produce a total price to the buyer fully reflective of the amount the buyer is willing to pay for capacity.

[42] *See* Questar Pipeline Company, 64 FERC ¶ 61,157, at 62,282–83 (1993); Meridian Oil Inc. v. Southern California Gas Co., 65 FERC ¶ 61,379 (1993) (raising concerns about intrastate rate structures effect on LDC customers' ability to seek interstate capacity from sources other than their own LDC).

[43] *See* Appendix, at p. 1 and 5. For example, according to the Commission's data, 30% of releases during the peak heating season in January 1996 were at the maximum rate.

[44] If the Commission had information showing that a shipper making a sale for resale used a bundled sale to exceed the maximum rate for interstate transportation, the Commission has the statutory authority to take action against that shipper. Such action could include revocation or limitations on the shippers' blanket marketing certificate to make sales for resale. 18 CFR 284.401–02. In addition, if the gray market sale is a buy-sell, it is prohibited. *See* Order No. 636, FERC Stats. & Regs. Preambles [January 1991–June 1996] at 30,416, *aff'd,* United Distribution Co. v. FERC, slip op. at 77–81.

[45] The Commission may, in some circumstances, need to consider the relationship between an LDC and its affiliate if that affiliation bears upon the ability of the combined entity to exercise market power.

[46] 74 FERC ¶ 61,076 (1996).

open access transportation, its intrastate rates and terms and conditions of service may discourage its customers from seeking capacity from other interstate shippers. If the LDC provides open access transportation, however, a customer can be assured of transportation on the LDC's facilities regardless of whether it purchases interstate capacity from the LDC or another shipper. In addition, an LDC's open access provisions need to deal with the market power conveyed by the LDC's control over primary delivery points. Thus, an acceptable open access service would need to include a right for customers behind the city-gate to use the LDC's city-gate as a primary delivery point, regardless of whether they purchase interstate capacity from the LDC.

The Commission solicits comments on a number of aspects of this proposal. Comments should address how to measure market power in the secondary market, such as whether to use the traditional market power analysis as used in the Policy Statement or whether modified criteria can ease the evidentiary burden, without compromising the integrity of the market power analysis. Comments should further address the minimum criteria needed for an acceptable open access program and the relationship between the open access definition and the required market power showing. For example, should the Commission presume that there is sufficient competition if an LDC's open access program includes an assignment of its upstream interstate capacity rights to its customers either individually or through aggregation? [47] By virtue of such an assignment, there presumably would be such a large number of holders of primary point capacity to the LDC's city-gate that any potential buyer behind the city-gate would have a sufficient number of alternative sources of capacity.

The Commission further requests comment on whether LDCs should be permitted to directly assign their capacity, without going through the pipeline's contracting process, in certain circumstances, such as when they have demonstrated a lack of market power. Comments should address whether a lack of market power provides adequate protection to permit direct assignment and what limitations, if any, should be imposed on direct assignment.

Comments also should consider how the Commission should determine whether an LDC's open access program meets the necessary open access criteria. For example, the Commission could review an LDC's program *de novo* or it could first require challenges to made at the state level and give deference to determinations by state Public Utility Commissions.

The Commission is proposing to permit pipelines to file to have the price cap lifted for interruptible and short-term firm service, because these services appear to compete directly with capacity release. In the staff paper attached to the February 8, 1995 request for comments on market-based rates, the staff concluded that market-based rates for pipeline interruptible service might be warranted upon a showing that capacity release was a good substitute for pipeline interruptible service, but that the ability, at that time, to make such a showing was doubtful.[48] With the revisions to the capacity release program to make it comparable to pipeline short-term services, capacity release should now become a sufficient alternative to pipeline capacity. The Commission, however, requests comments on issues relating to the release of the price cap for short-term firm service, such as how to establish regulations dealing with roll-overs or extensions of short-term firm contracts to ensure that shippers do not lose the protection of the price cap when they purchase long-term firm capacity.

As an alternative to the maximum reservation rate limitation on all capacity releases, or the complete elimination of the price cap, the Commission requests comments on the appropriateness of permitting the release and reassignment of capacity subject to a cost-based annual revenue cap. Under such an approach, what reporting requirements should be imposed on holders of capacity to ensure that the annual revenue limitation is not exceeded? If the Commission adopts this revised revenue cap, should it apply for short-term firm and interruptible transactions as well? How should the interruptible rate under an annual limitation be determined?

After receipt of comments on this proposal, the Commission intends to hold a technical conference to explore issues related to removal of the price cap and the best means of measuring market power in the secondary market. In addition, to obtain additional record information for determining whether, and how, to relax the price cap, the Commission is proposing, in a separate order in this docket, to establish an experimental, pilot program under which the cap will be lifted for some LDCs and pipelines which meet the specified criteria. The Commission will use the record developed from the comments, the technical conference, and the pilot program to make its final determination on whether, and how, to relax the price cap.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) [49] 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, in fact, the overall effect of these revisions is to reduce costs, not only for the pipelines, but for those dealing with pipelines, 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.

V. 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.[50] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[51] 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.[52] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Information Collection Requirement

OMB's regulations at 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by a Federal agency. Upon approval of a

[47] This assignment is akin to the assignment of pipeline upstream 858 capacity to its customers in Order No. 636.

[48] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 70 FERC ¶ 61,139, at 61,415 (1995) (Request for Comments on Alternative Pricing Methods).

[49] 5 U.S.C. 601–612.

[50] 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).

[51] 18 CFR 380.4.

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

collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this proposed 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–549B, Gas Pipeline Rates: Capacity Release Information.

Action: Reduction in Data Collection/Requirements.

OMB Control No.: 1902–0169.

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

Frequency of Responses: Continuing/Day-to-Day—Elimination of Certain Capacity Release/Competitive Bidding Requirements (Annual Burden/Cost Reduction).

Necessity of Information: The subject Notice of Proposed Rulemaking solicits public comments on the Commission's efforts to encourage greater use of the capacity release mechanism and to make capacity release more competitive with other means of acquiring capacity. The implementation of the proposed revisions to the Commission's regulations would help the Commission carry out its responsibilities under the Natural Gas Act and coincide with the current regulatory environment which the Commission instituted with Order Nos. 636, 563, and 587 and the restructuring of the natural gas industry. The Commission's Office of Pipeline Regulation (OPR) would use the tariff data filed under FERC–545 in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas and for general industry oversight. Based on experience over the last two years, the Commission has determined that the competitive bidding requirements may no longer be warranted and that their elimination may increase industry efficiency. The information collected under FERC–545 in the subject NOPR would be reported to the Commission and be subject to audit.

The Commission is submitting a copy of the subject NOPR to OMB for its review. Interested persons may obtain information on the proposed modifications to the Commission's regulations 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].

VII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments to this notice must be filed with the Commission no later than October 7, 1996. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM96–14–000. Additionally, the Commission strongly encourages commenters to submit a computer diskette of their comments in WordPerfect version 6.1 format or lower or in ASCII format, with the name of the filer and Docket No. RM96–14–000 on the outside of the diskette. Those providing files in ASCII format should take care to examine the form of an ASCII conversion to ensure, for instance, that it includes footnotes, headers, and footers, as these have often been left out in past electronic filings. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 284

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

By direction of the Commission.

Lois D. Cashell,

Secretary.

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

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

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

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

2. § 284.243 is amended by removing paragraph (h), redesignating paragraph (g) as paragraph (h), and revising paragraphs (b) through (f) and adding paragraph (g) to read as follows:

§ 284.243 Release of firm capacity on interstate pipelines.

* * * * *

(b) Firm shippers must be permitted to release their capacity, in whole or in part, on a permanent or short-term basis, without restrictions on the terms and conditions of the release. A replacement shipper is any shipper that obtains released capacity.

(c) A firm shipper that wants to release any or all of its firm capacity must notify the pipeline of the replacement shipper to which it wishes to release its capacity and the terms and conditions of the release. The pipeline must provide a mechanism complying with § 284.10 of this part by which the shipper or its designated agent can notify the pipeline of the terms of the release.

(d) The pipeline must provide notice of the name of the replacement shipper and the terms and conditions of the release on its Electronic Bulletin Board and in downloadable files required under § 284.10 of this part.

(e) The pipeline must allocate released capacity to the replacement shipper at the rate established by the parties, but such rate shall not exceed the pipeline's maximum rate, unless the Commission has granted the releasing shipper's application to release capacity at a rate exceeding the maximum.

(f) Unless otherwise agreed by the pipeline, the contract of the shipper releasing capacity will remain in full force and effect, with the net proceeds from any resale to a replacement shipper credited to the releasing shipper's reservation charge. If the releasing shipper has released its capacity for the remaining term of its contract, the pipeline must permit the releasing shipper to terminate its contract.

(g) The pipeline must establish tariff provisions that will permit replacement shippers to nominate and contract for service on a basis comparable to shippers nominating and contracting for interruptible or firm capacity from the pipeline.

* * * * *

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

Appendix—RM96–14–000

I. Capacity Release Award Characteristics

Source: Monthly EDI Downloads—30 Pipelines[1]

Released Capacity Held By Replacement Shippers

(Trillion Btu/day)

Capacity Held During the Month[2]

(From Awards Between 06/01/94 and 04/30/96)

	Max	Average
January 1995	9.4	8.8
February 1995	10.8	10.1
March 1995	10.5	9.9
April 1995	11.7	11.2
May 1995	12.6	11.9
June 1995	14.1	13.3
July 1995	14.9	14.0
August 1995	17.0	16.0
September 1995	17.1	16.4
October 1995	16.1	15.5
November 1995	15.1	14.4
December 1995	14.1	13.5
January 1996	13.9	13.3
February 1996	15.1	14.6
March 1996	15.2	14.7
April 1996	17.5	16.7

NOTE: The same 30 pipelines reported 86.5 trillion Btu/day firm transportation quantities in their April 1, 1996 Index of Customers filing.

CAPACITY RELEASE AWARDS BY TERM AND WHETHER PREARRANGED

[Awards from 5/1/95–5/31/96][3]

Term	Prearranged	No. of awards	Percent of total awards
<=31 days	No	1,379	7
	Yes	16,696	82
		18,075	89
> 31 days	No	172	1
	Yes	2,007	10
		2,179	11
All	No	1,551	8
	Yes	18,703	92
		20,254	100

[3] Awards data for May 1996 is not complete.

CAPACITY RELEASE AWARDS BY TERM AND WHETHER RECALLABLE

[Awards from 5/1/95–5/31/96]

Term	Recallable	No. of awards	Percent of total awards
<=31 days	No	6,188	32
	Yes	11,394	58
		17,582	90
> 31 days	No	911	4
	Yes	1,128	6
		2,039	10
All	No	7,099	36
	Yes	12,522	64
		19,621	100

II. Capacity Release Bidding

Source: Monthly EDI Downloads—30 Pipelines (Awards from 5/1/95–5/31/96)

CAPACITY RELEASE AWARDS BY TERM AND WHETHER BIDDABLE AND PREARRANGED[4]

Term	Biddable	Prearranged	No. of awards	Percent
<=31 days	Yes	Yes	1,759	22

[1] Algonquin Gas Transmission, Alabama-Tennessee Natural Gas, ANR Pipeline, Colorado Interstate Gas, CNG Transmission, Columbia Gas, Columbia Gulf, East Tennessee Natural Gas, El Paso Natural Gas, Florida Gas Transmission, Midwestern Gas Transmission, Mississippi River Transmission, Natural Gas Pipeline, Noram Gas Transmission, Northern Border Pipeline, Northern Natural Gas, Northwest Pipeline, Pacific Gas Transmission, Paiute Pipeline, Panhandle Eastern Pipe Line, Southern Natural Gas, Stingray Pipeline, Tennessee Gas Pipeline, Texas Eastern Transmission, Texas Gas Transmission, Trunkline Gas, Trailblazer Pipeline, Transcontinental Gas Pipe Line, Transwestern Pipeline, Williams Natural Gas.

[2] Includes all capacity releases since 6/1/94 still in effect during the indicated month.

CAPACITY RELEASE AWARDS BY TERM AND WHETHER BIDDABLE AND PREARRANGED [4]—Continued

Term	Biddable	Prearranged	No. of awards	Percent
		No	310	4
	No	Yes	5,726	73
		[5] No	104	1
			7,899	100
> 31 days	Yes	Yes	292	34
		No	34	4
	No	Yes	529	61
		[5] No	10	1
			865	100
All	Yes	Yes	2,051	24
		No	344	4
	No	Yes	6,255	71
		[5] No	114	1
			8,764	100

[4] Analysis limited to awards with corresponding offer information in database. Resulting sample size is 43% of all awards. Offer information is source for whether transaction is biddable.
[5] This reported data is inconsistent, since it would seem that a transaction which is non-biddable should be pre-arranged.

CAPACITY RELEASE AWARDS WITH COMPETITIVE BIDDING [6]

Term	Reported as biddable	No. of biddable awards	Awards with competing bids	Percent with competing bids
<=31 days	Yes	1,398	168	12
	No [7]	111	111	
	Total [8]	1,509	279	19
>31 days	Yes	252	64	25
	No [7]	21	21	
	Total [8]	273	85	31
All	Yes	1,650	232	14
	No [7]	132	132	
	Total [8]	1,782	364	20

[6] Analysis limited to awards with corresponding offer and bid information in database. Resulting sample size is 35% of all awards. Offer information is the source for whether transaction is biddable. Bid information indicates whether competing bids were submitted.
[7] This reported data is inconsistent, in that the underlying offers were coded as non-biddable but in fact competitive bids were submitted.
[8] This reflects the inclusion in the analysis of awards coded as non-biddable for which competitive bids were actually submitted. Including these awards leads to the higher percentage of awards with competing bids shown in the last column.

III. Capacity Release Discounts

Source: EDI Downloads—30 Pipelines
(Awards from 6/1/94–5/31/96)

Award date	No. of awards included	Percent of awards with discounted resv. rate	Percent of awards at max. resv. rate	Percent of awards with discounted volum. rate	Percent of awards at max. volum. rate	Mean percent of max. resv. rate (discounted awards)	Mean percent of max. volum. rate (discounted awards)
June 1994	900	62	6	31	1	42.2	33.6
July 1994	856	68	6	26	0	28.5	19.3
August 1994	973	65	6	29	1	18.4	25.5
September 1994	999	68	7	23	2	19.6	24.5
October 1994	1082	62	13	22	4	23.5	27.8
November 1994	907	57	12	28	4	28.0	28.9
December 1994	920	54	15	27	3	27.2	22.8
January 1995	1184	56	14	27	3	25.9	18.7
February 1995	1287	65	10	22	2	25.2	21.7
March 1995	1691	70	8	20	2	24.2	23.6
April 1995	1726	70	6	21	3	22.3	20.6
May 1995	1738	67	7	24	2	21.0	23.8
June 1995	1450	63	5	31	1	22.0	24.1
July 1995	1540	60	6	33	2	26.6	23.9

Award date	No. of awards included	Percent of awards with discounted resv. rate	Percent of awards at max. resv. rate	Percent of awards with discounted volum. rate	Percent of awards at max. volum. rate	Mean percent of max. resv. rate (discounted awards)	Mean percent of max. volum. rate (discounted awards)
August 1995	1597	59	5	34	1	24.2	28.5
September 1995	1776	60	16	23	1	28.6	33.6
October 1995	1804	58	19	22	1	25.1	37.0
November 1995	1462	58	17	21	3	34.5	46.0
December 1995	1048	48	25	24	3	43.8	39.3
January 1996	981	43	30	24	3	41.3	27.0
February 1996	922	46	29	21	3	40.9	20.5
March 1996	1555	56	24	17	3	37.0	21.3
April 1996	1357	66	19	14	2	31.2	17.8
May 1996	609	52	18	29	2	29.8	23.5
June 1996	97	70	7	23	.	15.9	19.6
	30,461	60	13	24	2	27.7	26.3

[FR Doc. 96–20048 Filed 8–6–96; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC30

Badlands National Park, Commercial Vehicles

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing this rule to exempt local commercial vehicle traffic on the 5.8 miles of park roads between the park's Northeast and Interior Entrances from the general prohibition on the use of NPS roads by commercial vehicles. The Superintendent will retain sufficient discretion: to require permits for local commercial vehicles traveling within or through the park; establish terms and conditions of such permits; and annually establish and adjust fees for such use based on current administrative costs. The proposed rule will prohibit the transportation of hazardous materials on all park roads, except in limited circumstances. The proposed rule will also prohibit certain oversize/overweight vehicles on all park roads, except in limited circumstances.

DATES: Written comments will be accepted through October 7, 1996.

ADDRESSES: Comments should be addressed to: Superintendent, Badlands National Park, P.O. Box 6, Interior, SD 57750.

FOR FURTHER INFORMATION CONTACT: Irvin L. Mortenson, Superintendent, Badlands National Park, PO Box 6, Interior, SD 57750. Telephone 605–433–5361.

SUPPLEMENTARY INFORMATION:

Background

South Dakota Route 240, from Exit 131 on Interstate 90, passes through the northeast corner of Badlands National Park, traversing the Badlands ‘‘Wall’’ at Cedar Pass and intersects with South Dakota Route 377 which, in turn, connects with South Dakota Route 44 at the town of Interior. In 1929, Congress passed legislation authorizing the establishment of Badlands National Monument, subject to the condition ‘‘that the State of South Dakota first construct 30 miles of highways through the ‘proposed park’ area in a manner satisfactory to the Secretary of Interior.’’ After the State of South Dakota completed the highway construction, Badlands National Monument was proclaimed on January 25, 1939. In 1941, the State relinquished ownership to roads within the Monument's boundary.

A general park regulation, 36 CFR 5.6, prohibits commercial traffic in National Parks. Under the proposed regulation, local commercial traffic would be allowed to use the park road connecting the Northeast entrance and the Interior entrance. The transportation of certain hazardous materials and oversize/overweight vehicles on park roads will be prohibited, except as permitted by the Superintendent. The NPS may allow transportation of certain hazardous materials on park roads as necessary to provide access to otherwise inaccessible lands within or contiguous to the park, or in emergency situations as determined by the Superintendent.

The paving of South Dakota Highway 44 in 1986 considerably changed the park's recreational and commercial vehicle patterns and number. In December of 1989, in response to these increases, Badlands National Park mailed over 500 ‘‘scoping brochures’’ to various organizations, agencies and individuals seeking public participation in the development of alternatives for the management of commercial traffic in the park. A public scoping meeting was held on January 24, 1990, in Interior, South Dakota, attended by approximately 115 people. Following the public meeting, written comments also were solicited. Public input was received during review of the environmental assessment prepared for the regulation of commercial traffic. This review occurred in April of 1990. Public comments received during that time and NPS review of the issues are reflected in the proposed rule.

Existing Conditions

Local commercial vehicles and some long haul trucks continue to travel through the Badlands National Park's northeast corner on 5.8 miles of park road between the Northeast and the Interior Entrances. South Dakota Route 240 connects with the Badlands Loop Road at the Northeast Entrance and South Dakota Route 377 connects to the park road at the Interior Entrance. South Dakota Routes 240 and 377 are exterior to park boundaries and are maintained by the State of South Dakota only up to the park boundaries. Inside the park, road maintenance is the responsibility of the NPS. South Dakota Routes 240 and 377 are two-lane, paved rural highways designed for a 55 mph speed limit for all vehicle types. The park roads are two-lane, paved roads designed for 45 mph and 25 mph speed limits. Their purpose, as defined by the *Park Road Standards for the National Park System*,

. . . ‘‘(R)emains in sharp contrast to that of the Federal and State highway systems. Park roads are not intended to provide fast and convenient transportation; they are intended to enhance visitor experience while providing safe and efficient accommodation of park visitors and to serve essential management access needs. They are not,