directories must be based on the 2000 DOE cost figure for electricity beginning on the effective date of that notice.

For Operating Cost Representations Respecting Covered Products in Catalogs

Operating cost representations in catalogs that are drafted and printed while the 2000 cost figures are in effect must be derived using the 2000 energy costs beginning July 17, 2000.

For Operating Cost Representations Respecting Products Covered by EPCA but not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, 42 U.S.C. 6293(c), but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 2000 DOE energy costs in all operating cost representations beginning July 17, 2000.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is amended as follows:

1. The authority citation for Part 305 continues to read:

Authority: 42 U.S.C. 6294.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1 to this paragraph contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2000)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	8.03¢/kWh [2,3]	$0.0803/kWh	$23.53
Natural Gas	68.8¢/therm [4] or $7.07/MCF [5,6]	$0.00000688/Btu	6.88
No. 2 heating oil	$1.09/gallon [7]	$0.00000786/Btu	7.86
Propane	$.92/gallon [8]	$0.00001007/Btu	10.07
Kerosene	$1.14/gallon [9]	$0.00000844/Btu	8.44

[1] Btu stands for British thermal unit.
[2] kWh stands for kiloWatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, I cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 00–9527 Filed 4–14–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 330 and 385

[Docket No. RM99–5–000; Order No. 639]

Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf; Final Rule

Issued April 10, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing regulations under the Outer Continental Shelf Lands Act (OCSLA) [1] to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS). The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. The final rule, by rendering offshore transactions transparent, should provide a sound basis for implementing the uniformly applicable open access and nondiscrimination mandates of the OCSLA, thus resulting in greater efficiencies in this marketplace.

EFFECTIVE DATE: The rule is effective May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Marc Poole, Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426, (202) 208–0482; Gordon Wagner, Office of the General Counsel, 888 First Street, NE. Washington, DC. 20426 (202) 219–0122

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing regulations under the Outer Continental Shelf Lands Act (OCSLA) [1a] to ensure that natural gas is transported on an open and nondiscriminatory basis

[1] 43 U.S.C. 1301–1356.

[1a] 43 U.S.C. 1301–1356.

through pipeline facilities located on the Outer Continental Shelf (OCS).[2] The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA and will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The final rule, by rendering offshore transactions transparent, should provide a sound basis for implementing the uniformly applicable open access and nondiscrimination mandates of the OCSLA, thus resulting in greater efficiencies in this marketplace. The regulations adopted by this final rule do not eliminate or modify any existing regulations or Commission policies relating to the regulation of offshore facilities pursuant to the Commission's authority under the Natural Gas Act (NGA).[3]

II. Background

On June 30, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR),[4] in which we proposed requiring all entities that move natural gas on or across the OCS to submit certain information regarding their affiliations, rates, and conditions of service. We explained that a uniform regulatory reporting regime would permit the Commission and interested persons to ensure adherence to the OCSLA's nondiscrimination and open access mandates.

After review of the comments[5] and further consideration, we believe implementing new OCSLA reporting requirements, similar to certain existing NGA reporting requirements, will realize the aims stated in the NOPR of eliminating distortions in the offshore marketplace and encouraging continued investment in the development of OCS resources.

III. Discussion

A. Rationale for the Rule

As discussed in the NOPR, offshore natural gas, predominately gas located in the Gulf of Mexico, has come to play an increasingly important role as a secure domestic source of clean-burning fuel supplies. We observed that the greater level of OCS activity in recent years had prompted a greater interest in the importance of the Commission's responsibility under the OCSLA to ensure a competitive market for gas pipeline services on the OCS, along with closer attention to the applicability of our NGA regulation to activities offshore. This attention has focused concern on the impact that the multiple, independent, and partially overlapping regulatory regimes at play offshore have on the competitive market.

In the NOPR, we noted that although all OCS gas service providers are subject to the OCSLA, only a subset thereof are also subject to the NGA, presenting potential competitive inequities that could be mitigated if all offshore facilities were subject to more uniform regulatory requirements. Currently, offshore service providers subject to the NGA, by virtue of compliance with our NGA regulations, are likely to be operating in full accord with the OCSLA; however, we have no assurance that offshore providers out of our NGA oversight also adhere to the OCSLA's open access and nondiscrimination mandates. Under the OCSLA reporting requirements promulgated by this rule, offshore service providers will report information similar to that now reported under the NGA, thereby bringing a similar transactional transparency to virtually all activities that take place on the OCS. This should moderate the distortion now present due to separate sets of OCS service providers being subject to separate regulatory regimes and promote policy goals of both the OCSLA and NGA. Making information regarding conditions of service available to OCS shippers will enable them to make informed and improved transportation arrangements; will enable OCS service providers to make better investment decisions; and will allow shippers, competitors, and the Commission to monitor the OCS for instances of discrimination and the exercise of market power. These benefits are unavailable without the transactional transparency provided by the OCSLA reporting requirements put in place by this rule. Making information publicly available that has heretofore been largely inaccessible should enhance competitive options for offshore producers and onshore purchasers of natural gas, promote a more efficient marketplace, and encourage the continued exploration and development of offshore resources.

1. Comments

Independent Petroleum Association of America (IPAA),[6] Natural Gas Supply Association (NGSA),[7] and OCS Producers[8] agree with the Commission's view that while the policy objectives of the OCSLA and NGA are different, they are complementary, and not mutually exclusive. NGSA stresses that the NGA, unlike the OCSLA, allows the Commission to undertake cost-based ratemaking to ensure that transportation rates remain just and reasonable. Thus, IPAA, NGSA and OCS Producers urge the Commission to continue to exercise dual regulatory authority over facilities subject to both statutes.[9]

Commenters note that since enactment of the OCSLA in 1953, the Commission has only infrequently invoked its OCSLA authority to address issues concerning gas or oil activities

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[2] The OCS is defined as ''all submerged lands lying seaward and outside of the area of lands beneath navigable waters * * * and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.'' 43 U.S.C. 1331(a). *See also* 43 U.S.C. 1301(a)(1), defining ''lands beneath navigable waters'' as ''all lands within the boundaries of each of the respective States.''

[3] 15 U.S.C. 717

[4] Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf, Notice of Proposed Rulemaking, 64 FR 37718 (July 13, 1999), FERC Stats. & Regs. ¶ 32,542 (1999).

[5] A list of commenters appears in the appendix to this order.

[6] IPAA is composed, generally, of smaller producers and shippers.

[7] NGSA is composed of integrated and independent gas producers and marketers.

[8] OCS Producers is composed of the following large and mid-sized offshore producers: Amerada Hess Corporation; Amoco Energy Trading Corporation; Chevron U.S.A. Inc.; Conoco Inc.; Marathon Oil Company; Mobil Exploration and Producing U.S., Inc.; OXY USA Inc.; Phillips Petroleum Company; Shell Offshore Inc.; Texaco Exploration and Production Inc.; and Union Pacific Resources Company.

[9] NGSA also argues that conditions be placed on abandonments of offshore NGA-jurisdictional facilities and services to preclude ''a fly-up in the cost of transporting OCS supplies that could cause the premature abandonment of OCS projects in mid-production cycle.'' NGSA's August 27, 1999 Comments at 4–5. In a similar vein, OCS Producers request clarification that the Commission will not change its traditional exercise of NGA jurisdiction offshore. On the other hand, El Paso Energy Corporation (El Paso) argues that all offshore facilities should be deemed gathering, and thereby exempt from the NGA, an outcome that would eliminate the dual burden of complying with the OCSLA and NGA. Issues relating to the regulatory status of particular offshore facilities under the NGA are beyond the scope of this rulemaking proceeding. Here, we restrict our considerations to how to best carry out our regulatory mandate under the OCSLA. Such issues continue to be addressed by the Commission on a case-specific basis; *see e.g.,* the decisions in Sea Robin Pipeline Company (Sea Robin), 71 FERC ¶ 61,351 (1995), *reh'g denied,* 75 FERC ¶ 61,332 (1996), *vacated and remanded,* Sea Robin v. FERC, 127 F.3d 365 (5th Cir. 1997), *order on remand,* 87 FERC ¶ 61,384 (1999), *reh'g pending.* Accordingly, while we do discuss whether certain OCS facilities are subject to the OCSLA, we do not reach the question of the jurisdictional status of any offshore facilities under the NGA.

offshore.[10] To date, to regulate offshore activity, the Commission has relied almost exclusively on its NGA jurisdiction over gas and its Interstate Commerce Act (ICA) [11] jurisdiction over oil. However, these statutes cover significantly less than the full range of offshore facilities and services. The NGA excludes natural gas facilities engaged primarily in production or gathering (roughly half of all the Gulf of Mexico offshore facilities, generally smaller lines).[12] The ICA does not apply to oil pipelines transporting oil solely on or across the OCS.[13] In contrast, offshore, the OCSLA's coverage is inclusive.[14]

Generally, interstate gas pipeline companies and their affiliated gatherers assume the absence of a history of vigorous enforcement under the OCSLA demonstrates that the Commission's practice of relying on the NGA has been satisfactory in ensuring adherence to regulatory practices and goals. In view of this, Brooklyn Union Gas Company (Brooklyn Union), El Paso, Duke Energy Field Services, Inc. (Duke), Dynergy Midstream Services, Limited Partnership (Dynergy), Interstate Natural Gas Association of America (INGAA), Leviathan Gas Pipeline Partners, LP (Leviathan), Tejas Offshore Pipeline, LLC (Tejas), and Williams Companies, Inc. (Williams) conclude the NOPR's proposal to employ the OCSLA as a means to monitor offshore gas service providers is unnecessary. OCS Producers agree and expect the proposed rule to inhibit offshore gas development.

El Paso and Williams contend the proposed rule does not address the competitive disadvantages faced by offshore NGA-jurisdictional pipelines in that NGA pipelines are subject to more stringent regulation than NGA-exempt facilities (*e.g.*, NGA pipelines require prior Commission authorization to construct, modify, or abandon facilities or services) and are thus unable to compete effectively with OCS NGA-exempt service providers.

Duke and OCS Producers maintain that absent evidence of need for the proposed rule, promulgation as a final rule would constitute legal error [17] and assert that any benefits of the rule would be outweighed by the burdens it would impose. Leviathan contends it would be arbitrary and capricious for the Commission to enact OCSLA regulations without consulting with the Department of Energy, providing for a full hearing on the proposed regulations, and taking into account the conservation and prevention of waste of OCS resources.[18] Commenters stress that continued reliance on the NGA, in conjunction with the Commission's recently revised complaint procedures,[19] should be adequate to ensure open and nondiscriminatory access to OCS facilities.

Instead of acting under the OCSLA, El Paso suggests the Commission modify its NGA regulations and policies relating to offshore facilities to make them less burdensome and more market responsive. In particular, El Paso would have the Commission issue blanket certificate authorization for natural gas companies to construct and abandon facilities offshore and permit NGA-jurisdictional companies to negotiate terms and conditions of service and charge market rates for transportation on the OCS.

2. Commission Response

In two Notices of Inquiry issued in previous proceedings initiated in 1995 [20] and 1998,[21] we sought comments on whether we might declare all offshore facilities NGA-exempt gathering facilities and exercise jurisdiction exclusively under the OCSLA. That option was not put forth in our NOPR in this proceeding. Rather, the 1999 NOPR asked whether requiring all OCS gas service providers to report information about their operations would be an effective means to enforce our regulatory mandates under the OCSLA, NGA, and Natural Gas Policy Act (NGPA).[22] However, the comments in response to the NOPR include a repetition of arguments presented in response to the prior Notices of Inquiry, urging the Commission to either declare all offshore facilities gathering or reaffirm that offshore transmission facilities are properly functionalized. We do not reach the merits of such arguments in this rulemaking. Those comments contemplate revisions to the primary function test used to determine NGA jurisdiction over offshore facilities.[23] Here, our concern is limited

[10] Since 1992, the Commission has exercised jurisdiction under the OCSLA in one oil case, Bonito Pipe Line Company (Bonito), 61 FERC ¶ (1992), *aff'd sub nom., Shell Oil Company* v. *FERC* (Shell Oil), 47 F.3d 1186 (D.C. Cir. 1995). In a current gas proceeding, Murphy Exploration & Production Company, 81 FERC ¶ 61,148 (1997), the Commission has invoked its OCSLA authority in response to a complaint alleging discriminatory rate treatment; final action in that proceeding is pending.

[11] Jurisdiction over the transportation of oil in interstate commerce by pipeline was transferred from the Interstate Commerce Commission to the Commission on October 1, 1977. *See* Department of Energy Organization Act, Pub. L. 95–91, section 402(b), 91 Stat. 565, 584 (1977), *codified at* 42 U.S.C. 7172(b) (1988) (repealed 1994), *recodified as amended at* 49 U.S.C. 60502.

[12] NGA section (1)(b) states the Act ''shall not apply to * * * the facilities used for * * * the production or gathering of natural gas.''

[13] *See* Bonito, 61 FERC ¶ 61,050 at 61,221 (1992), *aff'd sub nom.* Shell Oil, 47 F.3d 1186 (D.C. Cir. 1995) and Oxy Pipeline, Inc. (Oxy), 61 FERC ¶ 61,051 (1992). In the Bonito and Oxy cases, the Commission affirmed the OCSLA nondiscrimination provisions apply to OCS oil lines.

[14] *See* note 2. Read broadly, the OCSLA reaches across state waters to shore, since the statute's authorization extends to onshore facilities used to support OCS gas or oil production, with production including the transfer of gas or oil to shore. *See* 43 U.S.C. 1331(l) and (m), defining, respectively, development and production. OCSLA section 1331(m) and (q) define OCS ''production'' to include the ''transfer of minerals to shore,'' with gas included within the term ''minerals.'' In Order No. 509-A, we interpreted the scope of the OCSLA's ''on or across'' the OCS N to include ''the seaward movement of gas from either an onshore location or an offshore location to any point on the OCS. 54 FR 8301 (Feb. 28, 1989), FERC Stats. & Regs. ¶ 30,848 at 31,341 (1989). As defined by the OCSLA, the OCS does not include either lands covered by tidal waters up to three miles from the coast of a state or lands covered by nontidal waters within the boundaries of a state. 43 U.S.C. 1331(a).

[17] *Citing* 5 U.S.C. 557 and 706(E) at 17, n. 24.

[18] Leviathan cites 43 U.S.C. 1334(e), which states, ''oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.''

[19] 18 CFR 385.206. The Commission's procedures for responding to allegations of improper action or inaction were revised and expanded by a recent final rule, Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), FERC Stat. & Regs. ¶ 31,071 (1999), 86 FERC ¶ 61,324 (1999), *order on reh'g and clarification,* Order No. 602–A, 64 FR 43600 Aug. 11, 1999), FERC Stats. & Regs. ¶ 31,076 (1999), 88 FERC ¶ 61,114 (1999), *order on reh'g,* Order No. 602–B, 64 FR 53595 (Oct. 8, 1999) FERC Stats. & Regs. ¶ 32,545 (1999), 88 FERC ¶ 61,249 (1999).

[20] The 1995 Notice of Inquiry (NOI) led to a 1996 Policy Statement that established a presumption that facilities located in deep water of 200 meters or more were engaged in production or gathering. Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (1996), *reh'g dismissed,* 75 FERC ¶ 61,291 (1996).

[21] Alternative Methods for Regulating Natural Gas Pipeline Facilities and Services on the Outer Continental Shelf, 83 FERC ¶ 61,235 (1998).

[22] 15 U.S.C. 3301–3432. Section 311 of the NGPA addresses transportation by or on behalf of intrastate pipelines and local distribution companies, which in practice restricts the section's coverage to state waters. The OCSLA covers all non-state waters and the NGA covers all waters.

[23] The ''primary function'' test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983), which took into consideration the following factors as relevant: (1) the length and diameter of the pipeline, (2) the extension of the facility beyond the central point in the field, (3) the pipelines' geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The primary function test has been found by the Commission to

to the question of how best to harmonize our separate statutory responsibilities.

In the NOPR, we proposed that NGA-jurisdictional pipeline companies transporting gas across the OCS comply with both NGA and OCSLA reporting requirements. We stated our expectation that for NGA-jurisdictional companies, the additional OCSLA report would impose only a modest additional burden, because under existing NGA regulations, gas companies already submit the bulk of the information specified in the new OCSLA regulations. Indeed, in light of revisions to our NGA reporting requirements,[24] enacted subsequent to the OCSLA NOPR, we believe that the information that NGA-regulated companies are required to provide will prove sufficient to monitor conformity with the OCSLA's open access and nondiscrimination mandates. We anticipate that the submission of the information required under the NGA, will provide a data base adequate to ensure effective enforcement of the OCSLA's provisions. Therefore, we will revise the proposed OCSLA reporting exemptions, adding a new § 330.3(a)(4), to specify that facilities and services of OCS gas service providers that are regulated by the Commission under the NGA need not submit an OCSLA report.[25] However, if an NGA-regulated company's system includes OCS facilities that are not subject to the NGA, *e.g.*, gathering and production lines, the company must submit an OCSLA report covering its non-NGA facilities.

El Paso and Williams are concerned that offshore, NGA-jurisdictional pipelines are disadvantaged in competing against NGA-exempt lines, and assert it is more burdensome to operate under NGA jurisdiction than under the OCSLA. The existing difference between NGA and OCSLA regulation should be diminished by this rule's new reporting requirements. NGA-exempt OCS operators, for the first time, will have to present their affiliations, rates and conditions of service for public scrutiny, similar to NGA jurisdictional pipelines. In any event, Congress has explicitly charged the Commission with curbing the exercise of monopoly power in the natural gas industry and has established separate statutes to do so.

Commenters argue the lack of past reliance on the OCSLA demonstrates there is little, if any, need for the new reporting regulations. Although periodically referenced as an enforcement option, in practice we have had few occasions to employ our authority under the OCSLA. Thus, we recognize that based solely on past practice, there may appear to be little call for further exercise of our OCSLA authority. However, as the Producer Coalition observes, ''the argument that reporting requirements are not needed because there have been only a handful of OCSLA complaint misses the point'' which is that ''shippers do not know whether they are victims of discrimination or not. There simply is not enough information available to make an evaluation. Without transactional information, it is very difficult for a shipper to assemble a complaint.'' [26] Though OCSLA enforcement actions may have largely lain dormant because shippers and potential shippers lack information necessary to know whether they may be subject to discrimination, or because offshore NGA-exempt facilities were far less extensive and important than they have become within the last decade, we expect this rule to gather information adequate to enable effective oversight and enforcement of the provisions of the OCSLA.[27]

Further, we may have placed undue reliance solely on the NGA to deter discriminatory practices offshore. Thus, we are acting now in part in response to the ruling in *Sea Robin,* in which the court directed the Commission to reconsider the manner in which it applied its primary function test to Sea Robin's predominately offshore system. Informed by the court's discussion, in our order on remand we found that a significant portion of Sea Robin's system was engaged in NGA-exempt gathering.[28] Given that Sea Robin's entire system had been regulated under the NGA since its inception 30 years ago, and that some of the facilities found to be gathering include large lines, it is conceivable that this decision may result in additional existing offshore NGA transmission facilities being reclassified as gathering.[29] Although reclassified facilities will no longer be subject to NGA reporting requirements, and shippers using such facilities will no longer enjoy the formal protections against the exercise of market power afforded by the NGA, such facilities can be expected to be subject to the OCSLA reporting requirements introduced with this rule, and as a result, shippers formerly dependent on the transparency of the NGA will have an alternative and newfound assurance that they will

be applicable to both onshore and offshore facilities, as modified as applied to offshore facilities in Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990). The criteria set out in Farmland were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the NGPA.

[24] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs ¶ 31,091 (2000), 90 FERC ¶ 61,109 (2000) (Final Rule). This recent rule is intended, in part, to improve reporting requirements to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination—a goal shared in common with our efforts here with respect to the OCSLA. Specifically, Order No. 637 requires that, for firm service under part 284, pipelines post on their web site contemporaneously with the execution of the contract: The names of the parties to the contract; an identification number for each shipper; the contract number for the shipper receiving service and for the releasing shipper; the rate charged under each contract and the maximum rate, if applicable; the duration of the contract; the receipt and delivery points and zones or segments covered by the contract, as well as the common transaction point codes; the contract quantity, or volumetric quantity under a volumetric release and special details pertaining to a pipeline transportation contract (such as requirements for volume commitments to obtain discounts under a discounted transportation contract); and any affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper. For interruptible transportation, pipelines must post on their web site daily: The name of the shipper; a shipper identification number, the rate charged and maximum rate, if applicable; the receipt and delivery points and zones or segments over which the shipper is entitled to nominate gas, as well as the common transaction point codes; the quantity of gas the shipper is entitled to nominate; special details pertaining to a pipeline transportation contract; and any affiliate relationship between the shipper and the pipeline. *See* 18 CFR § 284.13(b).

[25] We treat the OCSLA, NGA, and NGPA as independent grants of statutory authority that ''must be applied reciprocally in furtherance of their individual regulatory purposes.'' Continental Oil Company v. FPC, 370 F.2d 57, 66–67 (5th Cir. 1966). Thus, to the extent it appears the information submitted under the NGA is insufficient to enable enforcement of the OCSLA, we would be inclined to revisit the OCSLA reporting exemption for NGA compliant companies.

[26] Produce Coalition's Discussion Points for Meeting on OCS Pipeline Reporting Requirements at 1 (Nov. 5, 1999).

[27] In Order No. 491, Interpretative Rule, 43 FERC ¶ 61,006 at 61,030 (1988), we observed that ''there has been little need by potential shippers to invoke the statutory, nondiscriminatory access provisions of the OCSLA'' in part because ''pipelines were usually the purchasers of offshore reserves and thus were the primary shippers of gas. Since pipelines could usually secure transportation for their gas supplies, open access was seldom an issue.'' The order contains a brief historical overview of offshore operations and explains the need to issue an Interpretative Rule addressing the OCSLA's open access provisions in view of changes brought about following the voluntary open access provisions instituted by Order No. 436.

[28] 87 FERC ¶ 61,384 (1999), *reh'g pending.*

[29] We have observed that if Sea Robin, as ''one of the largest transporters of natural gas produced on the OCS * * * is found to be a gathering system, then it is likely that other [NGA-jurisdictional] pipelines on the OCS would also be found to have that status.'' 71 FERC ¶ 61,351 at 62,404.

receive service on a transparent open access and nondiscriminatory basis.

In view of this potential for facilities' reclassification, and the importance of the OCS as a source of domestic gas, we find it prudent to prepare to provide protections for shippers under the OCSLA, and absent information regarding affiliations, rates, and conditions of service applicable to OCS transactions, neither the Commission nor others can gauge whether NGA-exempt OCS service providers are operating on an open and nondiscriminatory basis. Without such information at hand, practices prohibited by the OCSLA might only come to light when a prospective shipper was denied service and objected to the denial by filing a complaint with the Commission. We conclude that information regarding the business practices of NGA-exempt OCS gas service providers is necessary for the Commission to fulfill its responsibilities under the OCSLA. Given this need, we cannot agree with Duke's and OCS Producers' contention that there is no rationale for imposing a reporting requirement on OCS service providers. We believe our reasoning and the record support the need for new regulations to establish a means to ensure OCS service providers abide by the provisions of the OCSLA.

We are unpersuaded by Duke's and OCS Producers' assertion that the benefits to be derived by providing for public disclosure of OCS terms and conditions of service will not outweigh the burden of supplying such information. We have discussed our rationale for imposing the new requirements above. As discussed below, we seek to moderate the impact of these requirements by providing exemptions to OCS service providers that appear to have little to gain by engaging in discriminatory practices. We anticipate those OCS service providers that are subject to the reporting requirement should be able to produce the required documentation without extensive in-house auditing, analysis, or accounting. We expect the prospect of reporting will invigorate efforts to comply with OCSLA requirements. In addition, the OCS data base that this rule will establish will assist potential complainants to identify issues and articulate allegations. Recent revisions to our complaint procedures, designed to permit the Commission to process complaints in a more timely manner,[30] ask complainants to present an initial submission containing specific information. Without benefit of the OCS data base, potential complainants face a greater burden in obtaining the specific information necessary to present a complaint.

In the NOPR, we estimated that record keeping and reporting will require 16 hours per respondent per year and an annual expense of $800.[31] As discussed below, service providers expressed the apprehension that frequent changes in their affiliations or operations could cause actual costs to run much higher. In response, we have restricted the number of possible reporting updates to four per year, and in recalculating the burden, we assume every reporting entity will file every quarter. Although this doubles the data collection burden estimated in the NOPR, it still imposes a very modest cost on those service providers that are required to file.

Leviathan's assertion that we are establishing OCSLA reporting requirements without providing interested parties the opportunity for a full hearing is inconsistent with the actions taken in this rulemaking proceeding. In accordance with section 553 of the Administrative Procedure Act (APA),[32] a general notice of this proposed rulemaking was published in the **Federal Register**.[33] That notice described the proposed changes to our regulations and invited interested persons to comment on the NOPR. We have considered the comments received, and respond to them in describing the basis and purpose of the new regulations. Provisions for an evidentiary, adversary, or adjudicatory hearing are inapplicable to a rulemaking proceeding.[34] While the Commission may exercise its discretion to hold such hearings, or to institute a conference, or to seek additional information in some other manner, we see no need to do so in this case. All interested parties have had adequate opportunity to be heard in this rulemaking proceeding, as they did in the earlier related 1995 and 1998 NOI proceedings. We find the written record in this proceeding provides a sufficient basis for us to reach final determinations.

Leviathan questions whether this rulemaking has satisfied the OCSLA requirement that as a condition on every OCS right of way ''oil or natural gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.'' [35] As we reach no decision in this rule regarding amounts of gas or oil transported or purchased, we do not believe this hearing and consultation requirement is triggered.[36] Further, we note that the Secretary of Energy provided comments in response to our 1998 NOI and expressed the concern that we take no action that might interfere with the development of resources offshore.[37] We have taken the concerns of the Secretary into account, both in the preparation of the NOPR and in formulating the regulations put in place by this rule. As discussed herein, we do not believe instituting a reporting regime will inhibit the expeditious development of OCS resources.

Several OCS service providers suggest that requiring a public report of their business practices will stifle their ability to individually tailor service agreements and will inhibit innovations in operations and organization, thereby discouraging offshore development. We do not expect this result because, as discussed below, we see no bar to a service provider offering different shippers different terms—provided the variation in the terms of service either reflect differences in costs incurred to provide service or reflect differences among the shippers served. Thus, we do not expect the new reporting requirements will impose constraints on OCS service providers that could inhibit the development of, or transactions across, the OCS. Rather, we expect the

[30] *See* note 19.

[31] 64 FR 37718 at 37724. We change the figures in this final rule to reflect a reduction in the number of service providers expected to file OCSLA, due to the exemption for NGA-regulated gas companies, and an increase in estimated annual hours and expense, due to doubling (from two to four) the number of responses expected to be filed per year.

[32] 5 U.S.C. 551–559.

[33] 64 FR 37718 (July 13, 1999).

[34] *See Natural Resources Defense Council, Inc.* v. *U.S. Environmental Protection Agency,* 859 F.2d 156 (D.C. Cir. 1991) and *Willapoint Oysters, Inc.* v. *Ewing,* 174 F.2d 676 (9th. Cir. 1949), *cert. denied,* 338 U.S. 860 (1949).

[35] 43 U.S.C. 1334(e).

[36] While requiring reporting and filing reports does not impact gas flows, imposition of a remedy might—for example, prescribing that a pipeline accept gas on a pro-rata basis to effect open access—and would thereby trigger the need for consultation.

[37] In response to the 1998 NOI in Docket No. RM98–8–000, the Secretary of Energy submitted a letter dated February 11, 1999, encouraging evenhanded treatment and the removal of ''artificial regulatory barriers which might impede private sector investment, the development of advanced technologies, and the development of competitive transportation markets in the Gulf of Mexico.'' *See* note 21.

disclosure of affiliations, rates, and conditions of service will encourage continued offshore investment by ensuring shippers that offshore services are rendered on a transparent and equitable basis.

El Paso suggests that offshore the Commission apply the NGA with a lighter hand by issuing blanket construction and abandonment authorization and allowing offshore gas transporters to charge market rates and set their own conditions of service. We find insufficient evidence to conclude that this approach could assure fulfillment of our statutory obligations. The NGA directs that rates be just and reasonable, an outcome ensured by our prior approval of cost-based rates for transportation services covered by the NGA. Letting a market that may not be sufficiently competitive determine rates could not ensure this same result.

B. Technical Conference

1. Requests To Hold a Technical Conference

Tejas and OCS Producers propose a technical conference to: Address the need for and scope and aim of the rule; air the opinions of engineers and corporate executives regarding the desirability of the new regulations; provide the Commission with the opportunity to become more familiar with NGA-exempt offshore operations; and examine and compare the anticipated benefits and burdens of the rule.

2. Commission Response

We have considered the issues of the scope of our jurisdiction offshore and the need to alter how we exercise our regulatory authority offshore in the NOPR in this proceeding. Our consideration was informed by views presented in the prior 1995 and 1998 NOI proceedings, the OCS policy statement of 1998, and in individual pipeline decisions, most recently in *Sea Robin.* Given these several opportunities for interested parties to express views concerning the existing and proposed regulatory regime offshore, we do not believe there is a need for yet another forum for further comments. The rationale for the new OCSLA reporting requirements, along with anticipated benefits and burdens, are discussed in the NOPR and this final rule. We think our understanding of offshore operations is adequate to the task of determining what information is necessary to identify whether discriminatory practices are occurring on OCS facilities. Accordingly, we deny the requests to institute a technical conference.

C. Exemptions

1. Comments

Generally, OCS pipelines providing service for others—*i.e.,* pipelines subject to the new reporting requirements—advocated abolishing the proposed filing exemptions for feeder lines, single-shipper lines, and owner-shipper lines.

The Minerals Management Service (MMS) of the Department of the Interior observes that as a royalty owner in every OCS lease, if it elects to take federal gas royalties in kind (rather than in cash), it becomes a shipper on every offshore line it might use to bring gas from the leasehold to shore. MMS implies its potential shipper status should negate the single-shipper and owner-shipper exemptions. OCS Producers opposes this approach.

Tejas asks whether a pipeline can come within or fall outside of the reporting exemption depending on changes in its ownership interests or shippers. Tejas also asks whether a pipeline exempt from reporting would lose that exemption if it accepted gas volumes from a third party on an interruptible basis. Tejas requests the Commission clarify that the owner-shipper pipeline exemption applies where the same parties hold different proportionate ownership interests in gas production and in the pipeline facilities used to transport that gas.

Coastal Field Services Company (Coastal) contends the Commission's existing complaint procedure is sufficient to ensure open and nondiscriminatory access on NGA-exempt OCS service providers; therefore, OCSLA reporting should not apply to these providers. Coastal requests the proposed § 330.3(a)(1)'s single-shipper reporting exemption be extended to apply where a gas service provider transports for a gas producer and for one or more of that producer's working interest owners under the same rates and conditions of service, *i.e.,* that the Commission consider all working interest owners in a particular producing field as a single entity for the purpose of the reporting exemption. Coastal also suggests that where one or more joint working interest owners are affiliated with an OCS service provider, the Commission treat transportation on that service provider's facilities as being for a single entity, and thereby exempt.

El Paso argues the reporting exemptions will result in an uneven competitive playing field and urges the proposed exemptions for feeder lines, single-shipper lines, and owner-shipper lines be eliminated to ensure all OCS facilities receive equal treatment.

The Producer Coalition maintains that gas operations in deep water merit closer scrutiny because such projects tend to be larger than shallow water efforts, and thus present a greater barrier to entry to potential competitors. The Producer Coalition presumes that proposed § 330.3(a)(3) will exempt all deep water ''gathering or feeder lines,'' and based on this presumption, requests the Commission limit the scope of deep water exemptions to single-shipper or owner-shipper lines.

The Producer Coalition asks the Commission to clarify that for the purposes of proposed § 330.1(b), a ''facility located on the OCS'' be read to include the portion of the same facility that traverses state waters until the first point of interconnection with an onshore line.

The Producer Coalition urges the Commission to clarify that production platforms will be excluded from the definition of an offshore facility in proposed § 330.1(b). NGSA would extend this exclusion to production-related lines, services, facilities, and agreements. OCS Producers want a reporting exclusion that explicitly includes all activities involving gas extraction and collection, separation and treatment, and preparation for transportation.

As proposed, § 330.3(a)(2) provides a reporting exemption for a gas service provider ''that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from the field connected to the pipeline.'' The Producer Coalition requests the reference to ''the field'' not be interpreted to confine the exclusion to a single gas producing field and urges that the Commission expand this exemption to include owner-shippers that hold interests in and gather gas from multiple fields.

The reporting exemptions of proposed § 330.3(a)(1) for a single-shipper service provider and § 330.3(a)(2) for an owner-shipper service provider hold until a second shipper or a non-owner shipper is served or ''the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial.'' OCS Producers ask the Commission to clarify the basis upon which it may find a denial of service is justified. OCS Producers note the NOPR suggests the Commission would uphold a denial of service if a pipeline lacks available capacity, or if providing the requested

service would result in shutting in producing wells, or if the gas received is of an unacceptable quality. OCS Producers contend that denying service based on gas quality would be contrary to the result reached in *Shell Oil.*[38] OCS Producers also question whether the Commission might compel access by means of pro-rationing or the mandatory expansion of facilities.

OCS Producers ask if OCS service providers seeking a reporting exemption must file for such an exemption or if the Commission intends to issue blanket exemptions. If the former, OCS Producers seek assurance no filing fee will be charged; if the latter, OCS Producers request no penalty apply if the service provider is later found to be non-exempt.

Williams would eliminate the mandatory OCSLA reporting and instead have the Commission act case-by-case, requesting information from an OCS service provider only after an existing or prospective shipper seeks assurance that service is in accordance with the OCSLA's open and nondiscriminatory access requirements. Williams would require an OCS service provider to supply, in confidence, no more information than is necessary to show its practices conform with OCSLA principles.

2. Commission Response

a. Reporting Exemptions for Certain Companies. In the NOPR, we questioned whether we should contemplate any exemptions to the proposed OCSLA reporting requirements in view of the fact that we do not now have data sufficient to assemble an overview of NGA-exempt OCS transactions. After consideration of the comments, we are persuaded that it is appropriate to exempt service providers that are least able or inclined to discriminate. In the NOPR we proposed exemptions for service providers that confine their operations to moving their own gas or that of a single shipper. We adopt these exemptions, and in addition provide an exemption for NGA-regulated OCS service providers, because as noted above, we are persuaded these service providers, by conforming to our regulatory requirements under the NGA, present transactional and market information adequate to the task of identifying practices prohibited under the OCSLA. Rather than have such entities refile largely redundant information, we add § 330.3(a)(4) to the new regulations to exempt from reporting gas service providers that are regulated by the Commission under the NGA. We do not believe any essential regulatory purpose would be promoted by having the exempt entities file OCSLA reports. If we are presented with evidence that exempt entities are abusing the reporting exemption or are indeed discriminating, we may restrict or revoke the exemptions.

Because we have not established a data base describing NGA-exempt OCS entities' facilities and services, existing and prospective OCS shippers have no means to consider or compare offers, denials, or terms of service. Therefore, we believe it would be impractical to adopt Williams' suggestion that we forego OCSLA reporting and instead only seek information from OCS service providers in response to a specific shipper's request. Under this approach, shippers and the Commission would still be faced with the same gap in information that now exists. We feel a more efficient method to encourage proper practices is to make transactional information publicly available, then use that information as a foundation to identify and correct any discrimination or access problems.

b. Reporting Exemptions for Certain Facilities. The OCSLA, unlike the NGA, applies to the full range of gas exploration, development, production, gathering, and transportation.[39] However, section 1334(f)(2) of the OCSLA does provide the Commission the option to exempt any ''pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed'' from the requirement that OCS transportation adhere to the competitive principles of open and nondiscriminatory access. Such ''feeder line'' facilities are typically owned and operated by the same entity that holds the right to produce gas from a particular field; we do not expect issues of access or discrimination to arise where the same entity owns or leases both the mineral rights and the facilities necessary to draw gas from its own reservoirs. Therefore, § 330.3(a)(3) of the new regulations exempts lines that feed into a facility where gas is first collected, separated, dehydrated, or otherwise processed from our OCSLA reporting requirements. In addition, § 330.0(a)(1) and (2) exempt OCS service providers that serve only a single entity or its own owners. The same rationale holds as for a producer operating feeder lines on its own behalf: where a service provider carries gas only for itself or for a single customer, there is no call to compare conditions of service among multiple shippers.

The Producer Coalition argues that due to the large expense and size of deep water facilities, we should permit only the single-shipper and owner-shipper reporting exemptions, but not allow such facilities to come under the feeder-line exemption. We acknowledge that deep water projects can be orders of magnitude more costly than shallow water systems, thereby magnifying adverse impacts of anticompetitive actions. We also acknowledge that the changing technical and geographic nature of offshore exploration and production has resulted in increased drilling in deep water. Nevertheless, at this time, we find no cause to revoke the feeder-line exemption to enhance our scrutiny of deep water activities. However, we may reconsider this position if we are presented with evidence that our regulatory oversight is inadequate to ensure that deep water services conform with the OCSLA's open and nondiscriminatory access requirements.

OCS Producers and the Producer Coalition request we broaden the § 330.3(a)(2) ''feeder line'' exemption to include platforms and production-related facilities and services. The statutory language of the OCSLA indicates feeder lines are upstream of a point where gas is first collected, separated, dehydrated, or processed. This point, as a general proposition, will be on a production platform. But this will not always be the case; consequently, rather than adopt a bright line, but over-broad, definition, we believe that identifying a point where gas is first collected, separated, dehydrated, or processed and partitioning upstream from downstream facilities, is best done after examining the facts and circumstances of each specific case. While we expect exempt upstream feeder line facilities will generally be found within production fields, we cannot make a generic determination that all platforms and production-related facilities are, in accordance with OCSLA section 1334(f)(2), situated upstream of a point where gas is first collected, separated, dehydrated, or processed. Therefore, we will deny the requests for a blanket

[38] 47 F.3d 1186 (D.C. Cir. 1995).

[39] Section 1(b) of the NGA states: ''The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.''

extension of the § 330.3(a)(2) feeder line exemption.

MMS urges that we conform our § 330.3(a)(2) feeder line exemption to MMS' definition of gathering facilities.[40] We believe it would be premature to limit our discretion under OCSLA section 1334(f)(2) by tethering it to the MMS definition.[41] Our preference, as noted above, is to consider purported feeder line facilities on a case-by-case basis to determine the point at which gas is first collected, separated, dehydrated, or otherwise processed.

The federal government is a royalty interest owner in every OCS lease, and pursuant to the OCSLA, provides MMS the option of collecting its royalty share in kind or in value.[42] Almost all royalty payments are currently rendered in value, *i.e.,* in cash. However, MMS notes it is undertaking a pilot program whereby royalties due the United States can be paid in kind in gas.[43] MMS ''requests that a final regulation specifically apply the reporting requirement whenever the Federal government's royalty gas could be moved along with only one other producer's gas.'' [44] Were MMS to alter its current practice to take royalties in kind as gas, and ship such gas from its source of production to shore, because royalty payments apply to all OCS leaseholds, MMS could become a second shipper on every line used to move gas associated with federal royalties. This would effectively end the reporting exemptions, since MMS could be added as a shipper to pipelines that would otherwise be dedicated exclusively to single-shipper or owner-shipper transportation.

As discussed, we believe those OCS service providers that we propose to exempt have little apparent motive to deny access or discriminate. Thus, we hesitate to compel these service providers to report under § 330.2. However, in the event MMS moves beyond its present royalty-in-kind pilot program and begins to collect a significant portion of royalty payments as gas volumes, we may be inclined to revisit the applicability of the reporting exemptions. We note that as is, under its own authority, MMS can compel OCS service providers to disclose information relevant to MMS. Therefore, for now, we find it appropriate to retain the reporting exemptions.

If requested, we will consider whether a particular OCS service provider qualifies for a certain reporting exemption, but do not plan to initiate a blanket evaluation of every OCS entity. An entity requesting the Commission evaluate its status will be subject to the declaratory order fee.[45] Given the limited nature of the reporting exemptions, we expect OCSLA reports to be filed for the bulk of the OCS facilities that are located between production platforms and shore.[46] Like the production/gathering and Hinshaw exemptions of NGA sections 1(b) and (c), respectively, we expect service providers to exercise good faith in determinations as to whether their facilities and operations qualify for an OCSLA reporting exemption. The Commission, or any other person, may challenge a non-reporting service provider's exemption. An entity found to have erroneously presumed itself exempt can cure its error by filing in accordance with the reporting requirements established herein.

OCS Producers seek assurance we will not penalize a service provider for not reporting if that service provider has not reported because it believes it qualifies for a reporting exemption. As noted, service providers are to make a good faith effort to evaluate whether their facilities and operations come under one of the exemptions. If a service provider elects not to report and is able to present a reasonable case for its claim to a reporting exemption, that we nevertheless disagree with, we would not expect recompense beyond compelling the service provider to commence and continue timely filing of OCSLA reports. However, if we find a knowing and willful effort to evade or violate the reporting provisions, we may seek penalties as provided under OCSLA sections 1134 and 1350.

In the NOPR, we proposed granting OCS service providers newly subject to these provisions 60 days to prepare and submit an initial OCSLA report. Comments have convinced us to extend this to 90 days to alleviate constraints that might otherwise be placed on service providers, particularly those not previously reporting under the NGA, in organizing the presentation of a first filing. Proposed § 330.3(c) specified that after an initial filing, a service provider subject to reporting must submit a description of a change in affiliates, customers, rates, or terms and conditions of service within 15 days thereof. As discussed below, we will modify this and limit filings to, at most, four per year. This puts initial and updated filings on a similar timetable. Eliminating the proposed 15-day deadline should significantly reduce the reporting burden.

We clarify that if an OCS gas service provider becomes subject to reporting for the first time, it must file an initial OCSLA report within 90 days of the event that triggers the § 330.2(a) and (b) reporting requirements. It is possible a service provider may qualify for a reporting exemption, act to invalidate its exemption, then act again to requalify for an exemption (*e.g.,* a service provider may carry gas for a single customer, accept interruptible volumes from a second shipper for a limited period of time, then return to exclusively serve a sole shipper).[47] A service provider subject to reporting, that subsequently becomes exempt, then later loses its exemption, will again be required to submit an OCSLA report, and to do so within 90 days of the date that its exempt status ended.

Coastal proposes the single-shipper exemption be extended so as to treat a gas producer made up of multiple working interest owners as a single shipper where transportation is provided to the gas producer and its working interest affiliates under identical rates and conditions of service. We find no fault with the end result that Coastal posits: Multiple shippers served the same. However, without a public declaration of rates and conditions of service, there is no way to verify that the rates and terms under which the gas producer receives service are in fact identical to the rates and terms under

[40] MMS regulations state: ''Gathering means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases respectively.'' 30 CFR 206.151.

[41] MMS has considered, but has not enacted, revisions to its definition of gathering. *See, e.g.,* MMS' Amendments to Gas Valuation Regulations for Federal Leases NOPR, 60 FR 56007 (Nov. 6, 1995) and its Notice Withdrawing Proposed Rulemaking and Requesting Comments on Supplemental Information, 62 FR 19536 (Apr. 22, 1997).

[42] MMS acts under OCSLA section 1353(a)(1), which, with minor exceptions, provides for all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease to be paid in oil or gas.

[43] See Federal Oil and Gas Royalty-in-Kind Pilot Programs, Notice of Intent, 64 FR 37809 (July 13, 1999), stating MMS' intent to employ several pilot programs to take the government's royalty share of production in kind from federal oil and gas leases.

[44] MMS' Comments at 2–3 (August 27, 1999).

[45] *See* 19 CFR 381.302.

[46] At this point, we are not prepared to impose a fee for Commission services associated with processing OCSLA reports. Annual charges, assessed in accordance with the provisions of § 154.402 and part 382 of the Commission's regulations, apply to NGA-regulated gas pipelines, not to pipelines subject exclusively to the OCSLA.

[47] We clarify that once a service provider becomes subject to the reporting requirements, even if remains so only momentarily, an OCSLA report must be filed within 90 days of the event interrupting the exemption.

which each of the various working interest owners receive service.

By way of contrast, where a service provider carries gas for one shipper, *i.e.,* one entity holds title to all gas moving in one pipe, there is no opportunity to serve other shippers under different and potentially discriminatory terms. This would be the case whether the one entity holding title to the gas is a single producer or is a single entity composed of multiple parties that together agree to obtain service under a contract between the single entity and the service provider.[48] Under such conditions, the § 330.3(a)(1) exemption applies, whereas under the Coastal scenario, it does not; hence we find reporting necessary to verify that multiple shippers all receive the same rates and terms of service.

Coastal also proposes a reporting exemption for a service provider that carries gas that is produced on behalf of multiple working interest owners when one (or more) of the working-interest owners is affiliated with the service provider. Coastal maintains these circumstances are the equivalent of service for a single shipper. We disagree. Where there are multiple shippers, and particularly where some are affiliated with the service provider and some are not, a service provider may find it advantageous to serve different shippers under different and potentially discriminatory terms. We expect disclosure will discourage unequal treatment; thus, we find it prudent not to expand the reporting exemptions.

We clarify that new § 330.3(a)(2), which exempts an OCS service provider shipping only its own gas, will apply as long as the same parties hold all ownership interests in both the gas produced and the pipeline moving the gas. Recognizing the operational reality that gas shipments do not always track exact working interest owners' percentages, this exemption will hold where the parties' ownership shares are disproportionate to the gas volumes flowing in the owner-shipper line.

Tejas asks if an exempt OCS service provider could offer interruptible-only transportation to various parties and remain exempt. We believe the reporting exemption should turn on the identity of the service provider and its shippers, not the type of service provided. Regardless of whether a service provider moves gas on a firm or interruptible basis, where there are multiple shippers, the potential for differential, discriminatory treatment is present.

The Producer Coalition requests that the § 330.1(b) definition of gas service provider as, ''any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS,'' be expanded to include not only facilities on the OCS, but facilities that reach from the OCS and across state waters to the first point of interconnection with an onshore line. At this time, we do not find it necessary to apply the OCSLA in such an expansive manner, as we anticipate our joint OCSLA–NGA jurisdiction will enable us to ensure open and nondiscriminatory transportation between the OCS and the first onshore interconnection point.[49] Further, states can act to regulate activities within their waters. In view of this, we will not adopt Producer Coalition's proposal.

The Producer Coalition points out that proposed § 330.3(a)(2)'s exemption for a service provider transporting only its own gas refers to ''the gas produced from the field connected to the pipeline.'' The Producer Coalition, noting that gas can be gathered into a single line from more than a single producing field, asks that ''field'' be made plural. We recognize there may be circumstances where gas from a single field is carried to a pipeline by means of a lateral line that crosses the territory of an adjacent field, or where a pipeline's owners all hold working interests in more than one field along the route of a single line. We believe § 330.3(a)(2) should capture such situations, and will modify the language accordingly. However, this applies only where the working interest owners of the producing field(s) flow their gas through a single pipe, and only where all the gas in that one line is from the producing field(s) of the working-interest owners. The principle remains the same, service providers serving themselves are not expected to deny access to or discriminate against themselves.

OCS Producers request we elaborate upon the criteria to be used to decide when a service provider would be justified in refusing a request for service and ask whether the Commission intends to make use of pro-rationing or mandatory expansion as remedies. In the NOPR, we stated a denial of service may be upheld ''if the receipt of additional volumes could cause gas from producing wells to be shut in contrary to the OCSLA section 5(e) admonishment concerning conservation or the prevention of waste, or, if the content of the proposed gas stream would be incompatible with the characteristics of gas volumes currently flowing.''[50] Until faced with specific facts and circumstances, we are not prepared to speculate what, if any, additional reasons for denial we might find acceptable. Pro-rationing, provided it can be implemented without adversely impacting ongoing development and production, remains an option. Mandatory expansion of throughput capacity, as described in section 1334(f)(B) of the OCSLA, also remains an option. However, given that the statute states that our authority to compel expansions does *not* apply to facilities in the Gulf of Mexico or Santa Barbara Channel, we do not foresee this issue arising with any frequency.

D. Reporting Requirements

1. Comments

Numerous commenters express concern with the extent of the reporting burden that the proposed rule would impose. INGAA, El Paso, Leviathan, and Williams assert that even if all OCSLA-required information is already on file with the Commission pursuant to NGA-required submissions, the task of refiling under the OCSLA to cross-reference such information could be avoided if the proposed rule were to explicitly deem that NGA compliance fulfills the OCSLA reporting requirement. Enron Interstate Pipelines (Enron) urges an OCSLA reporting exemption be added under § 330.3 for NGA-jurisdictional pipelines.

Williams contends it is impractical to itemize a rate per particular gas pathway due to the complexity of existing

[48] Provided that a single entity signs a transportation agreement with a gas service provider and that that party holds title to the gas shipped, the single-shipper reporting exemption will apply. The nature of the business interest of the single entity signing the gas transportation contract is immaterial to the applicability of this exemption.

[49] *See* Murphy, 81 FERC ¶ 61,148 at 61,670–71. *See also* Order No. 509, 53 FR 50925 (Dec. 19, 1988), FERC Stats. & Regs. ¶ 30,842 at 31,274 (1988), stating: ''[T]he Commission believes the condition of nondiscriminatory access established in Order Nos. 436 and 500 satisfies, in large measure, the open-access requirement in section 5(f)(1)(A) of the OCSLA. However, unlike onshore pipelines, OCS pipelines cannot voluntarily choose to not participate in the open-access program.''

[50] 64 FR 37718 at 37722. OCS Producers contends denying service based on gas quality would conflict with the result in Shell Oil. We disagree. We rejected an OCS oil pipeline's contention that accepting a request to transport sour crude, oil with a high sulfur content, would degrade the sweet, low sulfur, oil stream carried by the pipeline. Our rejection was based on our finding that capacity was available, the pipeline was accepting sour crude from other shippers, and the additional requested volumes would not materially affect the quality of the pipeline's oil stream. This finding does not conflict with our statement that a pipeline may legitimately reject a request to accept new gas when the new volumes would be incompatible with the characteristics of the gas flowing in the line.

arrangements and routes to shore, stating ''the prices and terms for transporting each of two shippers' gas streams through the same pipeline from the same point of receipt to the same point of delivery can and will differ as the result of the myriad facts and circumstances which exist over time both upstream and downstream of that pipeline.'' [51]

OCS producers and gatherers, not now subject to the NGA, state that any OCSLA filing requirement would be a new and unwelcome responsibility. OCS Producers emphasize that even after the effort of making an initial filing, the reporting burden would continue as conditions change, triggering revised filings. Duke, Dynergy, OCS Producers, and Tejas believe the proposed reporting requirement would compel the disclosure of sensitive or proprietary information. Tejas suggests the Commission permit the filing of redacted contracts in order to protect shipper confidentiality.

Duke and Leviathan state that mandatory disclosure of customer contracts will undercut OCS gatherers' efforts to tailor services to meet individual shipper's needs. Leviathan and Tejas predict that gas service providers, to avoid charges of discrimination, will offer all customers a standardized, rigid set of contract terms. OCS Producers foresee a reordering of ownership interests in order to come within the reporting exemption.

Duke believes the proposed reporting exemption for owner-shipper pipelines would afford such lines a competitive advantage over non-exempt pipelines and induce pipelines to structure ownership so as to come within the reporting exemption. Tejas and Williams anticipate single-shipper or owner-shipper lines will be inclined to avoid serving other parties to maintain their exempt status. They also anticipate—based on the Commission's suggestion that it may sustain a fully subscribed pipeline's refusal to serve additional customers in the interests of conservation and prevention of waste—that construction of larger multi-shipper lines will diminish in favor of smaller proprietary lines, since the latter, if full, may be able to refuse to serve third parties yet retain a reporting exemption.

Duke claims the proposed reporting requirements conflict with provisions of the ICA prohibiting the release of contract information.[52]

Tejas and Williams ask why the reporting requirements are limited to OCS gas service providers and do not apply with equal force to OCS oil service providers.

Coastal views the proposed OCSLA filing as equivalent to an NGA tariff filing and suggests the Commission reject the rule, or alternatively, limit reporting to require that each gas service provider file a map of its system,[53] the name of a contact person, and an affirmation by an authorized officer that the company will not engage in discriminatory practices.

Leviathan expects its own reporting burden alone will exceed the Commission's estimate for the all reporting entities,[54] and anticipates OCS service providers will spend hundreds of thousands of hours and millions of dollars in contract renegotiation and litigation costs. Tejas predict its reporting burden will be 200 hours for an initial report and 1,000 hours annually for updates, on top of which it expects to bear the additional burden of defending itself against charges of discrimination. El Paso cites as an example its affiliate Tennessee Gas Pipeline Company, which during a recent 12-month period, incurred 3,077 reportable events, which could have compelled it to submit near daily updates to keep current information on file.

El Paso proposes that OCSLA filings, consistent with NGA filings, should not require updating where nonmaterial changes are made to filed contracts. Further, El Paso sees no need for an OCS gas service provider to identity affiliates that are not shippers on the OCS. OCS Producers would restrict this further and only require identifying affiliates that ship on a reporting party's pipeline.

Tejas asks for clarification regarding which event will trigger the reporting requirement: An offer to serve or a shipper's acceptance thereof? Williams notes that some existing non-NGA rate structures include escalator or adjustor clauses and seeks clarification that, as long as the formula for determining the current rate is on file, refiling will not be required each time a new rate takes effect.

The Producer Coalition is concerned that describing affiliations, rates, and certain terms is insufficient to provide a full and accurate view of OCS transactions, because such a report may omit material conditions of service such as: Agreements regarding the construction of facilities; dedication of gas supples, daily volumes; gas quality standards; priorities for scheduling services; imbalance provisions; and billing and payment arrangements. The Producer Coalition would eliminate the option to report rates and a limited description of the conditions of service and instead require a report that includes full contracts and all incidental and related letter agreements or amendments, to be updated each time a new contract is executed or an existing contract is modified, expires, or is canceled.

The Producer Coalition requests that gas service providers file in a form that alphabetically indexes (1) shippers by name, with the primary and secondary receipt points associated with each contract and the rate applicable to each pair of points and (2) receipt points by OCS block, with a cross-reference to the contracts and rates associated with each such point.

MMS proposes that all OCS gas service providers that do not submit contracts instead file a complete description of costs.[55] MMS would remove the § 330.3 reporting exemption, noting that it is a royalty owner in every OCS lease, and given that it may accept gas volumes as royalty payments, it is a potential shipper from every OCS lease. MMS observes that adopting its proposal would permit OCS lessees and affiliated providers to maintain a single set of books for their OCS transportation costs for all federal regulatory purposes.

OCS Producers opposes MMS' proposal, arguing it would be burdensome and require the disclosure of confidential producer data. Accordingly, OCS Producers urge that participation in MMS in-kind royalty payments should not be treated as shipping for a third party, so as not to undo the single-shipper and owner-shipper reporting exemptions.

Tejas asks how, mechanically, OCSLA filings will be made. OCS Producers ask whether reporting is to be submitted system-wide or line-by-line. OCS Producers also ask which party is responsible for filing when there are

[51] Williams' Comments at 11 (August 27, 1999).

[52] 49 U.S.C. app. section 15(13) (1988) prohibits a common carrier from disclosing certain information.

[53] The Producer Coalition requests the Commission specify that submitted maps be legible and understandable. We so state our presumption. We will also require that where a service providers' system undergoes significant changes, an updated map is to be submitted.

[54] In the NOPR, the Commission estimates 70 parties will file twice per year, each party requiring 8 hours to prepare each submission, resulting in an annual total of 1,120 hours to prepare filings at an estimated cost of $56,000. In response to comments, we double these estimated totals, as discussed below.

[55] *See* MMS regulations at 30 CFR 206.157(b).

multiple owners of an OCS pipeline or when the pipeline owner is not the pipeline operator.

2. Commission Response

The free flow of information regarding offshore gas activities is critical to the successful creation of a competitive and efficient marketplace. Access to relevant information is necessary for shippers to make informed decisions about capacity purchases and for the Commission and shippers to monitor transactions to determine if market power is being exercised in violation of the applicable statutes. The ready availability of information will become increasingly important, both for efficient trading and for the monitoring for the exercise of market power. We believe the information specified in §§ 330.2 and 330.3(b) and (c), as modified below, is the minimum necessary to provide a meaningful overview of OCS service providers' treatment of their different shippers. Thus, we reject requests that we require either more or less information from service providers.

Concerns relating to the overlap of information submitted under the NGA and OCSLA and the inconvenience of duplicative filings are resolved by the new § 330.3(a)(4) reporting exemption for OCS service providers currently regulated by the Commission under the NGA.

Several commenters contend the total reporting burden will exceed our estimate of 1,120 hours and $56,000 annually. In response, we will make the following changes, in order to simplify and diminish the effort required to comply with the new requirements. As proposed, § 330.2(a)(6) directs a service provider to list all its affiliates. Such affiliates, commenters note, may include companies engaged in activities unrelated to the natural gas industry. We acknowledge there are affiliates that play no part in OCS operations and agree there is no practical need to name such entities. OCS Producers and El Paso suggest restricting named affiliates to those that ship on a service provider's facilities; El Paso believes this more limited disclosure to be sufficient to identify anticompetitive practices. Such a restriction calls for a very narrow, or very charitable, interpretation of a service provider's self-interest. We can, for example, envision circumstances in which an OCS service provider might be inclined to act to the advantage of an upstream non-shipper producer affiliate or an onshore non-shipper processor affiliate. In view of this, we will qualify § 330.2(a)(6): only affiliates engaged in the exploration, development, production, processing, transportation, marketing, consumption, or sale of natural gas need be identified in the OCSLA report.[56]

Comments tend to identify ongoing compliance filings, rather than the initial OCSLA report, as a source of difficulty. In response, we will expand the time provided for filing an initial report and for filing updates and will limit the potential number of filings per year to a maximum of four. We will extend the time to submit an initial OCSLA report from the proposed 60 days until 90 days after the date a service provider becomes subject to § 330.2 or § 330.3(c) requirements. For the initial submission of OCSLA reports following issuance of this rule, OCS service providers' reports will be based on conditions on the first day of the first full calender quarter that begins after the effective date of this rule, with initial reports due on the first business day after the close of the quarter. This assures OCS service providers will have more than one full quarter in which to prepare their initial OCSLA reports.

We will also alter proposed § 330.3(c), which stated service providers are to file a description of certain changes in service within 15 days. We are persuaded that existing and prospective shippers will not be significantly disadvantaged by relaxing the 15-day schedule to have service providers update changes quarterly. Rather than try to keep a running record of OCS service providers' operations, we believe a periodic snapshot of OCS transactions will be adequate to expose potentially discriminatory practices to public view. Accordingly, OCS gas services providers will be required to submit a description of their operations as they stand on the first day of each calender quarter; this report will be due the first business day of the subsequent quarter; *e.g.,* the filing due April 1, the first day of the second quarter, will describe operations as they stood on January 1, the first day of the first quarter. Thus, a service provider will have 90 days to prepare its OCSLA report, which report will be limited to describing the service provider's status on one particular day. This approach should substantially reduce service providers' responsibilities from the reporting regime proposed in the NOPR. Regardless of the number of changes in affiliates, customers, rates, conditions of service, or facilities, a service provider will be required to file, at most, four OCSLA reports per year. If a service providers' operations are identical on the first and last days of any given quarter, the service provider need not submit an update the following quarter.

El Paso asks that service providers be permitted to make nonmaterial changes to filed contracts without triggering the obligation to report such changes. Because we are not prepared to parse material from nonmaterial contract terms, we will decline.[57] As a practical matter, because companies need only file OCSLA reports quarterly—or not at all, if there are no changed circumstances—we do not believe it will require any significant effort to maintain an up-to-date inventory of affiliates and current operating conditions with the Commission. El Paso's apprehension that submitting notice of non-material changes within 15 days thereof might require near continual filings should be put to rest by the change we adopt here. Further, we clarify that we see no need to report changes that do not disrupt the basic transparency we seek. Thus, where a contract contains provisions that provide for periodic adjustments to its terms, such as an escalator clause, and as long as current terms can be straightforwardly derived from the information on file, no update is required.

Williams maintains the complexity and rapidly changing conditions of offshore gas transactions make it impractical to specify shippers' rates and conditions of service between receipt and delivery points. This assertion challenges the premise of this rule, namely, that reporting can render a service provider's transactions transparent enough to allow interested persons to compare services among shippers. We believe the OCSLA report,

[56] As stated in the NOPR, we will use the definition of ''affiliate'' given in § 161.2(a) of our regulations as ''another person which controls, is controlled by, or is under common control with, such person.'' As specified in § 161.2(b), ''control'' ''includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent of more creates a rebuttable presumption of control.'' Although these definitions appear under Part 161 of our regulations, ''Standards of Conduct for Interstate Pipelines with Marketing Affiliates,'' for the purpose of OCSLA reporting, they include, but are not limited to, marketing affiliates.

[57] *See* Filing Requirements for Interstate Natural Gas Companies, Order No. 582, 60 FR 52960 (Sep. 28, 1995), FERC Stats. & Regs. ¶ 31,025 (1995) and Order No. 582-A, 61 FR 9613 (Mar. 11, 1996), 74 FERC ¶ 61,224 (1996). These orders explain that an NGA pipeline, after filing an unexecuted *pro forma* service agreement as part of its tariff, need not file individual service agreements unless they deviate materially from the *pro forma* agreement. We found that ''materiality'' is likely to vary with the circumstances of each case; therefore, we found it better to allow the term to remain less strictly defined in order that the particular facts of a given contract will determine whether the deviation is material and needs to be filed. We follow that rationale here.

while not requiring a service provider to report every aspect of its operations in real time, will nevertheless be adequate to serve as the basis for informed objections. The Producer Coalition proposes more detailed reporting, with service providers directed to file full contracts and specify all factors affecting service and rates. MMS would require a complete description of each service providers' transportation costs where contracts are unavailable. We are not persuaded an expansion of the filing requirements is necessary. The point of this rule is to establish a data base as a foundation for identifying discrimination. At present, there is no such record for OCS transactions. Reporting can cure this, provided the information supplied is sufficient to allow interested persons to identify instances of unequal treatment. We expect the § 330.2 reporting requirements, without being unduly intrusive, will be adequate to this task.

Commenters are concerned the new OCSLA requirements will expose sensitive aspects of their operations to public view. This may be so, and if so, is an abrupt shift for non-NGA OCS service providers, heretofore accustomed to operating in comparative privacy. However, without making OCS transactions transparent, it is not possible to determine whether shippers are subject to discrimination. We presume OCS service providers currently offer service on an equitable basis, and thereby presume disclosure will not intrude upon or disrupt present practices. Commenters are also concerned that reporting will disclose information that could compromise their competitiveness. Service providers that believe the information they submit should be withheld from public view can request privileged and confidential treatment for such information, pursuant to § 388.112 of our regulations,[58] stating the rationale for their request.

OCS pipelines stress the need to tailor individually the services they offer to meet customers' particular needs. This rule need not alter such efforts. Provided an individualized service genuinely reflects a specific customer's unique requirements, we would not expect any but the designated customer to have cause to sign up for such service. Several commenters worry that rather than try to adapt to shippers' needs, the required reporting will induce OCS service providers prophylactically to retreat to the rigidity of a one-size-fits-all service agreement. This rule does not compel uniformity. We will accept distinctions in customers' rates, conditions of service, and services rendered as long as sound reasons are put forth to warrant divergent treatment.

Duke, OCS Producers, Tejas, and Williams anticipate this rule will go beyond inducing OCS service providers to move to a standardized contract. They expect service providers to reorder their ownership interests to come within the reporting exemptions. They further suggest that owner-shippers, in order to retain their reporting exemption, will intentionally construct facilities no larger than needed to ship owner-produced gas, so as to be able to legitimately claim that capacity constraints preclude serving third parties.

We see little detriment to service providers modifying ownership interests to come within the § 330.3 reporting exemptions, although we doubt whether compliance with these reporting requirements would motivate such actions. As noted earlier, it is neither unknown nor unlawful for companies to organize their affairs so as to avoid one regulatory regime or to embrace another. Further, a reporting exemption in no way diminishes the exempt service provider's obligation to abide by the OCSLA's open access and nondiscrimination provisions. The presumption inherent in the reporting exemption is that an entity will not exploit itself. Where an exempt entity contravenes the OCSLA, we expect a principal of that entity (in all probability the person adversely impacted) will object. We dismiss speculation that exempt owner-shipper service providers might deliberately undersize new facilities so as to be able to turn away prospective third party customers. It seems unlikely that a facility owner would forego otherwise obtainable revenues merely to avoid the reporting requirements. Given that exempt and non-exempt service providers must ultimately abide by the same OCSLA nondiscrimination provisions, we do not expect opting out of reporting will confer a noticeable commercial advantage.

Duke indicates the ICA precludes disclosure of the information specified in the reporting requirements. We disagree. The ICA applies to the transportation of oil, not natural gas, and applies to common carriers, which oil pipelines are, [59] but gas pipelines are not. [60] Moreover, the Commission has determined that it lacks jurisdiction under the ICA to regulate oil pipelines located wholly on the OCS. [61] Thus, we do not believe it is appropriate to rely on the ICA as a model for gas regulation under the OCSLA.

Duke, Tejas, and Williams query why our regulations are directed exclusively at OCS gas service providers, and not OCS oil service providers as well, since the open and nondiscriminatory provisions of the OCSLA apply with equal force to both OCS gas and oil operations. Here we have elected to confine our considerations to gas matters, given that we have found rates for transportation on oil pipelines to be just and reasonable, [62] yet have made no such finding for rates for transportation on gas lines exempt from the NGA. Thus, to protect gas shippers using NGA-exempt OCS facilities from discriminatory, exorbitant charges, we look to the OCSLA.

In place of reporting, Coastal urges that we require only a map, the name of a company contact person, and an affirmation by an officer that the company will behave in accordance with the OCSLA. This is insufficient. Our experience, affirmed across the broad spectrum of federal, state, and local regulatory practice, is that, in general, a promise of propriety is not an adequate bulwark against sharp practices. We believe reporting, and the transparency it brings, will be a more reliable guarantor that appropriate practices and procedures are followed.

We clarify that the new regulatory requirements will not be triggered by either an OCS service provider's offer to a prospective shipper, a proposal to change the terms of an existing shipper's contract, or a shipper's request for new or modified service. We view offers, proposals, and requests as aspects of negotiating. Until an offer to serve or request for service is accepted,

[58] 18 CFR 388.112.

[59] The ICS provides that oil pipelines function as common carriers. However, ICA jurisdiction does not extend to oil lines located wholly on the OCS. *See* note 13.

[60] In amending the OCSLA, Congressman Morris Udall proposed that OCS oil and gas pipelines be operated as common carriers in order to ''require the OCS * * * pipelines accept, convey, transport, or purchase at reasonable rates and without discrimination.'' H.R. Rep. No. 95–590, 3 (1978), *reprinted in* 1978 U.S.C. C.A.N. 1528. This proposal was not incorporated into the amendments.

[61] Bonito, 61 FERC ¶ 61,050, *aff'd sub nom.,* Shell Oil, 47 F.3d 1186 (D.C. Cir. 1995) and Oxy, 61 FERC ¶ 61,051 (1992). Shell Oil contested the Commission's determination regarding ICA jurisdiction, but the court did not reach this issue in its review of the Commission's decision. 47 F.3d 1186, 1200.

[62] *See* Revision to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985 (1993). Whether this presumption of just and reasonable oil rates applies to oil lines located wholly on the OCS has yet to be affirmed by judicial review.

i.e., until discussions result in an exchange of promises to perform or parties' commitment to an agreement, neither party is under any obligation, and the § 330.2 reporting requirements are not triggered.

Given the complexities of offshore operations, the array of entities offshore, and the fact that we have not heretofore collected the information described in §§ 330.2 and 330.3(b) and (c), we feel it premature to fix the filing format of an OCSLA report at this time. The new regulations, described below, will require the filing entity to identify itself and its affiliates, submit a map of its system, and itemize certain transactional information.

Submissions are to include a cover sheet titled ''OCSLA Reporting Form,'' with the name of the OCS gas service provider, the date of the filing, and designating whether the filing is an initial or updated report. OCSLA Reports are to be filed in accordance with Rules 2001, 2003, 2004, and 2005 of our rules of practice and procedure.[63] Reports are to be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An original and 14 paper copies of the OCSLA Reporting Form must be submitted to the Commission. The filed OCSLA Reports will be available in the Commission's Public Reference Room and may be accessed remotely via Internet through the FERC Home Page (http://www.ferc.fed.us) using the Records and Information Management System (RIMS) link or the Energy Information Online icon.[64]

The party submitting the OCSLA report should be the party responsible for providing the service described. This may be either the owner or the operator of the facility. As with NGA submissions, where multiple parties are involved in the ownership and/or operation of an OCS facility, the parties will typically jointly authorize a single entity (composed of one or more of the owners or operators) to be formally responsible for the filing.[65] We leave to the OCS service provider's discretion whether to submit a single system-wide report or file separate facility-by-facility reports. Where facilities under the control of one entity can be straightforwardly segregated into several discrete subsystems, it may be more useful to submit an OCSLA report or reports that treat the separate subsystem individually.

Under § 330.2(a), OCS service providers are to specify the date of the filing; name and address of the gas service provider; name and address of a contact person; and the title, name, and address of the gas service provider's officers if a corporation or general partners if a partnership. In addition, the gas service provider must submit a description and map of its facilities, denoting the facilities' location, length, size, and the points at which service is rendered, with the boundaries of any rate zones or rate areas identified. The map is to be updated in the event of any major changes to the service provider's facilities. The gas service provider must identify all affiliates engaged in the exploration, development, production, processing, transportation, marketing, consumption, or sale of natural gas, providing the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the service provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the service provider.

In proposed § 330.2(b)(1) in the NOPR, we specified OCS service providers were to file copies of all current gas service contracts. We are persuaded by the comments that full disclosure of all terms of all contracts is not necessary to reach a workable degree of transactional transparency; thus, we will modify the requirement set forth in the NOPR to diminish the burden on reporting entities. Also, we expect information necessary to permit comparisons of shippers' rates and conditions of service can be most effectively accessed if summarized and presented in tabular form, rather than as a bundle of individual contracts. Accordingly, we will not require copies of actual contracts to be filed. Instead, pursuant to revised § 330.2(b), gas service providers must provide a table of shippers and services. This portion of the OCSLA report should contain headings that specify: each customer's full legal name and indicate whether the customer is an affiliate; the contract number under which each customer receives service; the nature of the service provided; the primary receipt point(s) and the primary delivery point(s); the rate between the points in cents, or dollars and cents, per thermal unit, including an explanation of how the rate is derived if it is composed of separate components (*e.g.,* a reservation charge and a usage charge). Clearly, important conditions of service include contract volumes, the effective and expiration date of the contract, dedication of gas supply, gas quality standards, scheduling priorities, imbalance agreements, billing and payment arrangements, and customer alternatives. Where these or other conditions are relevant to accurately evaluate whether similarly situated shippers receive nondiscriminatory treatment, we expect the service provider to supply all terms needed to permit a meaningful comparison among shippers served. Not to do so is to invite a Commission inquiry into apparent service disparities or allegations of inequitable treatment.

As noted in comments, certain OCS companies may not render service under formal contracts. Although we believe that comparing rates and conditions of service among customers can be done most effectively when information is presented in the manner described above, to accommodate OCS entities that are not in a position to submit reports based on existing contracts, we will retain the alternative reporting requirements proposed in the NOPR in § 330.2(b)(2), now redesignated as § 330.2(b)(9). This alternative report must provide information sufficient to derive rates charged (in cents, or dollars and cents, per thermal unit) and conditions applicable for service between two points. Nondiscrimination implies all customers would be offered service under the same terms. Any deviation from this practice calls for further explanation, as specified in § 330.2(b)(9)(iv).

E. Discrimination and Denial of Access

1. Comments

El Paso requests that the Commission state that the OCSLA's nondiscrimination provision is equivalent to the NGA's prohibition against undue discrimination, thereby placing all offshore service providers under a single standard. El Paso notes that the Commission has already done so, in part, by stating that compliance with Part 284 regulations regarding open-access under the NGA would fulfill the OCSLA's nondiscrimination requirements.[66]

[63] 18 CFR 385.2001, .2003, .2004, and .2005.

[64] In Docket No. PL98–1–000, Public Access to Information and Electronic Filing, we anticipate that, with limited exceptions, all filings by regulated entities will be made in electronic form. We expect OCSLA reports, at some future point, to be made electronically, and expect, after further experience, to provide a format for such filings.

[65] The party submitting the OCSLA report should retain the filed information in accordance with Part 225 of the Commission's regulations. 18 CFR part 225.

[66] *See* Order No. 509–A, stating Order No. 509 does not preclude OCS pipelines from selectively discounting Part 284 offshore transportation rates ''for shippers that are not similarly situated.'' Leviathan reads Order Nos. 509 and 509–A as

El Paso, the Producer Coalition, and Tejas ask if selective discounting would be considered discriminatory under the OCSLA. El Paso maintains that provided there is a reasonable basis for differentiating among shippers, discounting is not unduly discriminatory under the NGA.[67] El Paso asserts that an OCSLA prohibition on discounting would preclude pipelines from lowering rates to meet competition. El Paso and Leviathan worry a strict interpretation of discrimination under the OCSLA could put an end to all FT–2 rates.[68]

Burlington Resources Oil & Gas Company (Burlington) requests clarification of the discrimination standard and advocates acceptance of differential rates if such rates reflect a difference in the cost to provide the similar services to different shippers.[69] However, where different rates are charged for similar services, Burlington proposes shifting the burden of proof to the gas service provider to demonstrate that in incurs unequal costs to supply similar services.

2. Commission Response

a. *Discrimination:* Several commenters cite the Commission's statement in Order No. 491 that it ''interprets the language 'without discrimination' in section 5 of the OCSLA to be a higher standard than the NGA requirement to offer transportation 'without undue discrimination.' '' [70] Although the statutes use different terminology, it is unnecessary here to determine whether or to what extent the standards for prohibited discrimination are different. As a practical matter, compliance with NGA regulations will satisfy the OCSLA standard. Operating under this presumption, as El Paso has articulated, has the advantage of measuring all offshore service providers by one standard and is not inconsistent with our previous interpretation of the separate statutes.

In Order No. 509, we issued all OCS NGA pipelines blanket transportation certificates to ensure they would operate on an open and nondiscriminatory basis.[71] We commented that ''with respect to either the movement of OCS gas (on non-NGA facilities) (1) through state waters, or (2) through gathering or producer-owned facilities on the OCS, the Commission possesses ample ancillary authority under the OCSLA to ensure that the statutory requirements of the OCSLA are not thwarted.'' [72] By now exercising our authority under the OCSLA to require certain non-NGA OCS service providers to provide information regarding their operations, we have even greater assurance that the OCSLA's requirements will be observed. As a general proposition, we believe that practices permitted under the NGA conform with OCSLA standards. None of the examples raised in the comments and discussed below set forth instances of discrimination barred under the OCSLA but acceptable under the NGA. Therefore, although we will not bar bringing a claim that a particular action acceptable under the NGA violates the OCSLA, we will presume that adherence to the NGA's open access and nondiscrimination requirements will satisfy OCSLA mandates too.

As a general proposition, under the NGA and OCSLA, similarly situated shippers should not be charged different rates for the same service. Nevertheless, we accept that as a matter of fact a gas service provider, as a result of its own physical and operational characteristics, may not incur the same costs to provide the same service to each of its shippers. Where variations in shippers' rates and conditions of service reflect genuine cost-to-serve variations, different rates and conditions are not necessarily discriminatory. Thus, we view neither the NGA sections 4 and 5 bans on ''undue preference,'' ''unreasonable difference,'' and ''unduly discriminatory'' treatment, nor the OCSLA's ban on discrimination, as an absolute prohibition on different rates or conditions of service for different customers.

We deny Burlington's request that we shift the burden of proof from the party submitting a complaint to an OCS service provider when differential rates and conditions of service are identified. Notwithstanding our above observation that certain cost-based differentials could be acceptable under the OCSLA, unequal rates or conditions of service are inherently suspect. Given this, a complainant that alleges such inequities effectively obliges the service provider to explain and justify apparently discriminatory treatment. Consequently, where a service provider files an OCSLA report that contains different conditions of service or different services for similarly situated shippers, the service provider is advised to include in its report additional information. Such information might be found to justify differing rates or terms based on the service provider's cost of service or shippers' competitive characteristics or may elaborate on the nature of the conditions of service (*e.g.,* a lower rate for larger volumes). Without the benefit of such further information, we may well attribute differing rates for seemingly similarly shippers to discrimination on the part of the service provider.

In its comments, Burlington focused on rate discounts. We have previously considered the issue of discounting and determined that discounting disparities alone do not constitute unlawful discrimination under the NGA.[73] Burlington contends the OCSLA's nondiscrimination standard should preclude discounting based on differing characteristics of customers and should only be permitted where it can be demonstrated that discounting is required to lower operating costs or increase capacity. The United States Court of Appeals for the District of Columbia Circuit has not interpreted the OCSLA's nondiscrimination requirements as rigidly as Burlington. In *American Gas Association* v. *FERC,*[74] the court affirmed the Commission's holding that pipelines could refuse to transport a producer's gas absent take-or-pay credits without violating the OCSLA's ban on discrimination. In the course of its discussion, the court stated:

The producers argue that the plain meaning of ''nondiscriminatory'' precludes any restriction on producer access to OCS pipelines. But as we noted in AGD I,([75]) statutory bans on discrimination by natural monopolies have always allowed the regulatory agencies discretion to permit differing categories, including, for example,

affirmatively finding that selective discounting enhances competition and serves the public interest.

[67] *Citing* Order No. 509–A, finding that the discounting procedures of § 284.7 of the Commission's regulations were not inconsistent with the OCSLA.

[68] An FT–2 rate is offered to a shipper who agrees to transport all of a specific gas reserve, in exchange for which, the shipper is not held to a fixed daily quantity or reservation charge. *See, e.g.,* Garden Banks Gas Pipeline, LLC, 78 FERC ¶ 61,066 (1997) and Shell Gas Pipeline Company, 76 FERC ¶ 61,126 (1996).

[69] Burlington raised a similar issue in a rate proceeding in response to revised tariff sheets submitted by Sea Robin. In that proceeding, we determined this rulemaking would be the more appropriate forum to address general issues concerning the interpretation of the OCSLA's nondiscrimination standard with respect to discounting. Sea Robin, 88 FERC ¶ 61,120 at 61,314 (1999).

[70] 43 FERC ¶ 61,006 at 61,032.

[71] In Order No. 509, we observed that ''the condition of nondiscriminatory access placed on the transportation program established in Order Nos. 436 and 500 satisfies, in large measure, the open-access requirement in section 5(f)(1)(A) of the OCSLA.'' 53 FR 50925 (Dec. 19, 1988), FERC Stats. & Regs. (Regulations Preambles) ¶ 30,842 at 31,274 (1988).

[72] *Id.* at 31,280.

[73] Cities of Bethany v. FERC, 727 F.2d 1131, 1139 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 917, 105 S.Ct. 293 (1984).

[74] 912 F.2d 1496, 1511–12 (D.C. Cir. 1990).

[75] *Citing* AGD I, 824 F.2d 981, 1011.

rate classifications based on customers' differing elasticities of demand.[76]

The portion of *AGD I* referred to above affirmed the Commission's original decision in Order No. 436 to allow open access pipelines to offer selective discounts. Accordingly, the court has not interpreted the OCSLA to prohibit OCS service providers from offering selective discounts similar to those authorized in Order No. 436. Thus, we reject Burlington's contention that customer-based discounting which could be permitted under the NGA should be prohibited under the OCSLA. Of course, as the court itself stated in *AGD I,* this does not mean that all selective discounts are nondiscriminatory.[77]

Commenters ask whether FT–2 rates could remain in effect under the OCSLA's nondiscrimination standard. We see no reason to preclude such rates. An FT–1 shipper agrees to transport an expressly stated quantity of gas for a fixed time, whereas an FT–2 shipper commits to transport all gas reserves from a certain site for its productive life. The latter commitment can offer a service provider greater flexibility in developing its facilities and greater assurance that its facilities' capacity will be filled over a longer term. In view of this, we are not prepared to find inherent and improper discrimination based solely on a service provider's offer to make separate rates available for separate types of firm transportation services. Typically, variable terms—such as volume incentive pricing or lower charges for customers willing to enter into longer commitments—are acceptable as long as the service provider offers the same price to all shippers willing to meet the same terms.

b. *Denial of Access.* Generally, a service provider may turn aside allegations of unlawful discrimination due to disparities in rates or conditions of service when it can convince the Commission that such terms are a function of differences in the costs it incurs to perform the same service for separate shippers or are attributable to differences in the competitive characteristics of the customers served. We note that an OCS service provider offering uniform rates and conditions of service is not immunized from charges of discrimination or a denial of access. For example, an OCS service provider may offer all customers identical terms of service, but may charge rates disproportionately higher than rates charged by regional competitors for comparable service. In such a case, particularly if the service provider's customers lack any transportation alternatives, we may find that high rates have the effect of denying access. Thus, rates that appear to conform with the OCSLA's nondiscrimination requirement may nonetheless be found to conflict with the OCSLA's open access requirement.

F. Enforcement

1. Comments

OCS Producers find it unreasonable for the Commission to require OCSLA reports while at the same time declaring it does not intend to ''scrutinize each submission with the aim of identifying and challenging every aspect of a (gas service provider's) operations that could conceivably lead to an OCSLA-barred act.'' [78]

Tejas requests the Commission specify how enforcement will proceed.

2. Commission Response

OCS Producers' apprehension that the Commission will play only a passive role is unfounded; we do not expect to rely solely on voluntary compliance with the OCSLA requirements. We draw a distinction between the prior approval required under the NGA and the after-the-fact monitoring we will take on under the OCSLA. While we anticipate shippers, potential shippers, and competitors will actively follow the OCSLA reports and be able to bring examples of alleged discrimination to our attention, we expect to monitor the filings and act on our own initiative where we suspect discrimination. The transparency engendered by reporting should permit us to police practices presently obscured from view.

Information is the essential predicate to a complaint. Where before we presumed service providers operated on an open and nondiscriminatory basis, we will now have affirmative assurance that this is the case. We expect reporting will move us from a laissez faire to a light-handed regulatory regime. Ideally, complaints will be resolved based exclusively on information contained in a service provider's OCSLA report and supplied by the complainant.[79] However, we recognize that when a claim is raised, further investigation may nevertheless be required to resolve certain issues.

When a service provider's report meets minimum § 330.2 requirements, but in so doing presents the appearance of impropriety (*e.g.,* affiliates seemingly served on more favorable terms than nonaffiliates), it may behoove the service provider to include information that justifies any apparent disparate treatment. Otherwise, the Commission, on its own initiative or in response to a request, may require the service provider to give further detail and explanation regarding its transactions.

In addition to acting via the complaint process, allegations of OCSLA discrimination may be addressed and resolved via the Commission's Enforcement Hotline [80] and alternative dispute resolution processes.[81]

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[82] However, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[83] The action taken here—the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended—qualifies for such an exclusion.[84] This rule is procedural in nature, it directs certain offshore gas service providers to make certain information publicly available. Therefore, no environmental analysis is necessary, and none has been done in

[76] 912 F.2d 1496,1512. *See also* Williston Basin Interstate Pipeline Company, 85 FERC ¶ 61,247 at 62,028–29 (1999), wherein we found discounting to meet competitive conditions, *i.e.,* customers' capability to switch fuel supplier or type, is not *per se* discriminatory, since ''[o]ffering discounts sufficient to keep customers with elastic demands on the system will maximize throughput and revenue recovery from those customers, thereby benefitting all customers on the system.''

[77] 824 F.2d 981, 1011–12. We may find discounting unacceptable if offered for reasons other than to meet competitive pressures, or if offered preferentially, *e.g.,* only to a service provider's affiliates. *See* our discussion of discounting under the NGA in Williston Basin Interstate Pipeline Company, 84 FERC ¶ 61,348 (1998), *reh'g denied,* 85 FERC ¶ 61,247 (1998); Southern Natural Gas, 67 FERC ¶ 61,155 (1994); and in the Policy Statement Providing Guidance with Respect to the Designing of Rates, 47 FERC ¶ 61,295 (1989).

[78] NOPR, 64 FR 37718 at 37723.

[79] This outcome would conform with aspirations we expressed in revising Rule 206 of our rules of practice and procedure to require a complainant satisfy a higher threshold in terms of the information presented in the interest of realizing an expedited resolution. *See* 18 CFR 385.206(b).

[80] 18 CFR part 1b. In the Commission's recent revision of its complaint procedures, it codified as § 385.218 simplified procedures for small controversies, which may prove an effective means to resolve certain OCS conflicts.

[81] 18 CFR 385.604–06.

[82] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987), codified at 18 CFR part 380.

[83] 18 CFR 380.4(a)(2)(ii).

[84] 18 CFR 380.4.

connection with the regulations promulgated by this rule.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) [85] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.[86]

The Commission does not believe that this rule would have a significant economic impact on small entities. Commenters claim some of the entities that will be required to file for the first time pursuant to the new regulations may fall within the RFA's definition of small entity.[87] Although none of the comments name any such entities, we acknowledge that there may be businesses qualifying as small under the RFA definition that will be compelled to report information heretofore withheld from public view. However, generally, companies that transport gas for hire on the OCS do not qualify as small. OCS producers are more likely to qualify as small, but the exemptions of § 330.3 should effectively exclude producers from the new reporting requirements. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Information Collection Requirements

The following collection of information contained in this final rule (new Subchapter O) is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[88] The Commission will identify the information required as FERC–545 for OCSLA-jurisdictional gas service providers.

The regulations will impose new reporting requirements on non-NGA-regulated OCS gas service providers with multiple non-owner shippers, requiring them to make an initial submission of specific information—information which should be readily available in the ordinary course of business—and then make quarterly filings if there are changes to the initially submitted information. As long as the status of a gas service provider's affiliations, customers, rates, conditions of service, and facilities remain the same, there is no need to file again. The new rule will not apply to facilities located upstream of a point where gas is first collected, separated, dehydrated, or otherwise processed; thereby generally exempting OCS entities engaged exclusively in exploration and production.

Considering the complex nature of the offshore operating environment, we cannot state with assurance the exact number of entities likely to be subject to the new regulations. We estimate that, excluding entities engaged exclusively in exploration and production, there are less than 200 gas service providers total that transport gas on or across the OCS; approximately 30 of these are currently subject to our NGA jurisdiction. We expect the majority of the NGA-exempt OCS service providers will qualify for a reporting exemption pursuant to § 330.3(a)(1) or (2). This final rule modifies the exemptions proposed in the NOPR by adding § 330.3(a)(4), which exempts NGA-regulated service providers from the OCSLA reporting requirements. This additional exemption reduces the number of service providers that will be subject to the new filing requirements. In the NOPR, we estimated 70 service providers could be expected to file OCSLA reports under the new regulations. This number included the NGA-regulated entities that are now exempt. Consequently, we reduce the number of service providers we expect to file from 70 to 55.

In the NOPR, we anticipated that the OCS service providers subject to the new regulations would be required to update the information on file twice a year. The comments have convinced us that a significant portion of OCS service providers are likely to alter their affiliates, customers, rates, conditions of service, or facilities far more frequently. In response, we have eliminated the proposed § 330.3(c) requirement that service providers update their reports within 15 days of any change. Instead, we will require that filed reports, when necessary, be updated quarterly. For the purposes of estimating the reporting burden, we will assume all reporting entities will file every quarter. The estimated number of hours per response remains the same.

The burden estimates for complying with this rule are as follows:

Public Reporting Burden: Estimated Annual Burden.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–545	55	4	8	1,760

Total Annual Hours for Collection (Reporting + Record Keeping (if appropriate)) = *1,760.*

During the first year after the proposed rules become effective, most of the burden will consist of an initial, one-time compliance filing. In subsequent years, most of the burden will consist of OCSLA reports updating the initial filing.

Information Collection Costs: The Commission projects the average annualized cost per respondent to comply with the new OCSLA reporting requirement will be as follows:

Annualized Capital/ Startup Costs.	0
Annualized Costs (Operations & Maintenance).	$88,000 ($50 per hour)
Total Annualized Costs.	$88,000

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[89] Accordingly, pursuant to OMB regulations, the Commission is providing notice of this information collection to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal).

Action: Proposed Data Collection.

OMB Control No.: 1902–0154. The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

[85] 5 U.S.C. 601–612.

[86] 5 U.S.C. 605(b).

[87] 5 U.S.C. 601(3). Section 3 of the Small Business Act defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operations. A business engaged in oil and gas extraction may be small if it has fewer than 500 employees, a business engaged in oil and gas field exploration services may be small if annual revenues are less than $5 million. *See* 13 CFR 121.201.

[88] 44 U.S.C. 3507(d).

[89] 5 CFR 1320.11.

Respondents: Business or other for-profit, including small businesses.

Frequency of Responses: Initial, one-time filing; updated if status changes.

Necessity of the Information: The final rule implements the Commission's authority under the OCSLA to assure open and nondiscriminatory access for gas moving on or across the OCS by collecting certain information concerning OCS gas service providers' affiliations, rates, terms and conditions of service, and facilities. Without this information, neither the Commission nor a prospective or existing shipper will be able to determine whether the existing or proposed conditions of service discriminate or deny access. Implementation of these data requirements will help the Commission carry out its responsibilities under the OCSLA and coincide with the current competitive regulatory environment which the Commission fostered under Order No. 636.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the OCSLA reporting requirements. The Commission's staff will use the data in the OCS gas service providers' filings to determine whether their operations are consistent with the nondiscriminatory, open access provisions of the OCSLA. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and on FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m., Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page in the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and RIMS.

—CIPS provide access to texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the FERC Website during normal business hours from our Help line at (202) 208–2222 (E-mail to *WebMaster@ferc. fed.us.*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

The final rule will be effective May 17, 2000. The Small Business Regulatory Enforcement Act of 1966 requires agencies to report to Congress on the promulgation of final rules prior to their effective dates.[90] That reporting requirement applies to this final rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 330

Natural gas, Pipelines, Reporting and record keeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and record keeping requirements.

By the Commission.

David P. Boergers,

Secretary.

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

1. Subchapter O, consisting of Part 330, is added to read as follows:

[90] 5 U.S.C. 801.

SUBCHAPTER O—REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT (OCSLA)

PART 330—CONDITIONS OF SERVICE REPORTING REQUIREMENTS

Sec.

Authority: 43 U.S.C. 1301–1356.

§ 330.1 Definitions.

Affiliate has the same meaning as found in § 161.2(a) of this chapter.

Control has the same meaning as found in § 161.2(b) of this chapter.

Gas Service Provider means any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS.

Outer Continental Shelf (OCS) has the same meaning as found in section 1331(a) of the Outer Continental Shelf Lands Act (OCSLA);

§ 330.2 Reporting requirements.

(a) Gas Service Providers must file with the Commission an OCSLA Reporting Form consisting of the:

(1) Date of the filing;

(2) Full legal name and address of the Gas Service Provider;

(3) Name and address of a contact person;

(4) The title, name, and address of the Gas Service Provider's officers if a corporation or general partners if a partnership;

(5) A description and map of the facilities operated by the Gas Service Provider, denoting the facilities' location, length, and size, the points at which service is rendered, with the boundaries of any rate zones or rate areas identified; and

(6) For all entities affiliated with the Gas Service Provider and engaged in the exploration, development, production, processing, transportation, marketing, consumption, or sale of natural gas: the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the Gas Service Provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the Gas Service Provider (where the Gas Service Provider holds control jointly with other interest holders, so state and name the other interest holders).

(b) Gas Service Providers must file with the Commission the conditions of service for each shipper served, consisting of:

(1) The full legal name of the shipper receiving service;

(2) A notation of shipper affiliation, if any;

(3) The contract number under which the shipper receives service;

(4) The type of service provided;

(5) Primary receipt point(s);

(6) Primary delivery point(s);

(7) Rates between each pair of points, and;

(8) Other conditions of service deemed relevant by the Gas Service Provider or, alternatively;

(9) A statement of the Gas Service Provider's rules, regulations, and conditions of service that includes:

(i) The rate between each pair of receipt and delivery points, if point-to-point rates are charged;

(ii) The rate per unit per mile, if mileage-based rates are charged;

(iii) Any other rate employed by the Gas Service Provider, with a detailed description of how such rate is derived, identifying customers and the rate charged to each customer;

(iv) Any adjustments made by the Gas Service Provider to the rates charged based on gas volumes shipped, the conditions of service, or other criteria, identifying customers and the rate adjustment applicable to each customer.

§ 330.3 Applicability of reporting requirements.

(a) The § 330.2(a) and (b) reporting requirements do not apply with respect to:

(1) A Gas Service Provider that serves exclusively a single entity (either itself or one other party), until such time as the Gas Service Provider agrees to serve a second shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial;

(2) A Gas Service Provider that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from a field or fields connected to a single pipeline, until such time as the Gas Service Provider offers to serve a non-owner shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial;

(3) Services rendered over facilities that feed into a facility where natural gas is first collected, separated, dehydrated, or otherwise processed; and

(4) Gas Service Providers' facilities and services regulated by the Commission under the Natural Gas Act.

(b) A Gas Service Provider that makes no filing pursuant to § 330.3(a)(1) must comply with the specified reporting requirements within 90 days of agreeing to serve a new shipper or when required by the Commission.

(c) When a Gas Service Provider subject to these reporting requirements alters its affiliates, customers, rates, conditions of service, or facilities, within any calender quarter, it must then file with the Commission, on the first business day of the subsequent quarter, a revised § 330.2 report describing the status of its services and facilities as of the first day of the previous quarter.

PART 385—RULES OF PRACTICE AND PROCEDURE

2. Part 385 is amended as follows:

3. The authority citation for Part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–8225r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

4. In § 385.2011, new paragraph (b)(6) is added to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(b) * * *

(6) Material submitted electronically pursuant to § 330.2 of this chapter.

* * * * *

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

Appendix

List of Commenters

Brooklyn Union Gas Company
Burlington Resources Oil & Gas Company
Coastal Field Services Company
Duke Energy Companies
Dynergy Midstream Services, Limited Partnership
El Paso Energy Corporation
Enron Interstate Pipelines
Leviathan Gas Pipeline Partners, L.P.
Independent Petroleum Association of America
Interstate Natural Gas Association of America
Natural Gas Supply Association
OCS Producers
Producer Coalition
United States Department of the Interior, Minerals Management Service
Williams Companies, Inc.
Tejas Offshore Pipeline, LLC

[FR Doc. 00–9447 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–U

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB42

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its disability regulations to discontinue the current policy of conducting continuing disability reviews (CDR's) for medical recovery of disability annuitants in medical improvement not expected (MINE) cases. The Board has found that these reviews have not been cost effective and impose an unnecessary burden on the annuitant.

EFFECTIVE DATE: This rule will be effective May 17, 2000.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board conducts continuing disability reviews (CDRs) to determine whether or not a disability annuitant continues to meet the disability requirements contained in the Railroad Retirement Act and, in some cases, the Social Security Act. Payment of cash benefits based on disability ends if the medical or other evidence shows that the annuitant is no longer disabled under the standards set out in the Railroad Retirement Act or, for some benefits, the Social Security Act. Section 220.186 of the regulations of the Board provides when and how often the Board will conduct a CDR. This rulemaking would amend § 220.186(d) to discontinue the Board's current policy of conducting a CDR in cases where medical improvement is not expected (MINE). The current regulation requires a review no less frequently than once every 7 years but no more frequently than once every 5 years in MINE cases. The Board's CDR of MINE cases has not proved cost effective. For fiscal years 1995 through 1997 the Board conducted 552 MINE exams; however, in only 1 case did the evidence merit termination of the annuity. For fiscal years 1998 and 1999, 300 MINE reviews were conducted with no annuity terminations. Such results, in the Board's view, do not justify continuation of this program. Consequently, the Board proposes to cease routine continuing disability review in these cases. The cessation will be of routine reviews only. These cases