

Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),” published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

With the planned decommissioning of the Schoolcraft County, MI, VOR/DME, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, proposed modifications to VOR Federal airway V–78 and removal of V–224 would result in a gap in the enroute ATS route structure in the Manistique, MI, area. To overcome the gap in the enroute structure, instrument flight rules (IFR) traffic could file point to point through the affected area using fixes that will remain in place, or receive air traffic control (ATC) radar vectors through the area. Additionally, the Schoolcraft County DME facility is planned to be retained and charted as a DME facility with the “ISQ” three-letter identifier. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the ATC services previously listed.

### The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the description of VOR Federal airway V–78 and remove VOR Federal airway V–224. The planned decommissioning of the Schoolcraft County, MI, VOR has made these actions necessary. The proposed VOR Federal airway changes are described below.

V–78: V–78 currently extends between the Huron, SD, VOR/Tactical Air Navigation (VORTAC) and the Saginaw, MI, VOR/DME. The FAA proposes to remove the airway segment between the Escanaba, MI, VOR/DME and the Pellston, MI, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–224: V–224 currently extends between the Sawyer, MI, VOR/DME and the Schoolcraft County, MI, VOR/DME. The FAA proposes to remove the airway in its entirety.

All radials in the route descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in

this document would be subsequently published in the Order.

### Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017 and effective September 15, 2017, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

\* \* \* \* \*

### V–78 [Amended]

From Huron, SD; Watertown, SD; Darwin, MN; Gopher, MN; INT Gopher 091° and Eau Claire, WI, 290° radials; Eau Claire; Rhinelander, WI; Iron Mountain, MI; to Escanaba, MI. From Pellston, MI; Alpena, MI; INT Alpena 232° and Saginaw, MI, 353° radials; to Saginaw.

\* \* \* \* \*

### V–224 [Removed]

Issued in Washington, DC, on March 19, 2018.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 154, 260, & 284

[Docket No. RM18–11–000]

### Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is proposing a process that will allow it to determine which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of the recent reduction in the corporate income tax rate in the Tax Cuts and Jobs Act and changes to the Commission’s income tax allowance policies following the *United Airlines, Inc. v. FERC* decision.

**DATES:** Comments are due April 25, 2018.

**ADDRESSES:** Comments, identified by docket number, may be filed electronically at <http://www.ferc.gov> in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

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## I. Introduction

1. On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act.<sup>1</sup> The Tax Cuts and Jobs Act, among other things, lowers the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This means that, beginning January 1, 2018, companies subject to the Commission's jurisdiction will compute income taxes owed to the Internal Revenue Service (IRS) based on a 21 percent tax rate. The tax rate reduction will result in less corporate income tax expense going forward.<sup>2</sup>

2. Concurrently with the issuance of this Notice of Proposed Rulemaking, the Commission is issuing a Revised Policy Statement on Treatment of Income Taxes (Revised Policy Statement)<sup>3</sup> and an Order on Remand<sup>4</sup> in response to the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines*.<sup>5</sup> The Revised Policy Statement explains that a double recovery results from granting a Master Limited

Partnership (MLP) an income tax allowance and a discounted cash flow (DCF) return on equity (ROE), and accordingly establishes a policy that MLPs are not permitted to recover an income tax allowance in their cost of service. The Revised Policy Statement also explains that other partnership and pass-through entities not organized as an MLP must, if claiming an income tax allowance, address the D.C. Circuit's double-recovery concern.<sup>6</sup>

3. In response to the Tax Cuts and Jobs Act and the Revised Policy Statement following the *United Airlines* decision, the Commission proposes to require interstate natural gas pipelines to file an informational filing with the Commission pursuant to sections 10 and 14 of the Natural Gas Act (NGA) (One-time Report on Rate Effect of the Tax Cuts and Jobs Act).<sup>7</sup> The One-time Report is designed to collect financial information to evaluate the impact of the Tax Cuts and Jobs Act and the Revised Policy Statement on interstate natural gas pipelines' revenue requirement. In addition to the One-time Report, the Commission proposes to provide four options for each interstate natural gas pipeline to voluntarily make a filing to address the changes to the pipeline's recovery of tax

costs, or explain why no action is needed: (1) File a limited NGA section 4 filing to reduce the pipeline's rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act and the elimination of the income tax allowance for MLPs consistent with the Revised Policy Statement, (2) make a commitment to file a general NGA section 4 rate case in the near future, (3) file a statement explaining why an adjustment to its rates is not needed, or (4) take no action other than filing the One-time Report. If an interstate natural gas pipeline does not choose either of the first two options, the Commission will consider, based on the information in the One-time Report and comments by interested parties, whether to issue an order to show cause under NGA section 5 requiring the pipeline either to reduce its rates to reflect the income tax reduction or explain why it should not be required to do so.

4. The Commission proposes to establish a staggered schedule for interstate natural gas pipelines to file the One-time Report and choose one of the four options described above. The Commission anticipates that the deadlines for these filings will be in the late summer and early fall of this year. The Commission encourages each pipeline to meet with its customers as soon as possible to discuss whether and how its rates should be modified in light of the Tax Cuts and Jobs Act and the

<sup>1</sup> An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Public Law 115–97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

<sup>2</sup> See *id.* 11011, 131 Stat. at 2063.

<sup>3</sup> *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (2018) (Revised Policy Statement).

<sup>4</sup> *SFP, L.P.*, Opinion No. 511–C, 162 FERC ¶ 61,228 (2018) (Remand Order).

<sup>5</sup> *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016).

<sup>6</sup> Revised Policy Statement, 162 FERC ¶ 61,227.

<sup>7</sup> The One-time Report on Rate Effect of the Tax Cuts and Jobs Act is referred to interchangeably as “One-time Report” or “FERC Form No. 501–G” in this Notice of Proposed Rulemaking.

Revised Policy Statement, and whether settlement is possible. Interstate natural gas pipelines that file general NGA section 4 rate cases or pre-packaged uncontested rate settlements before the deadline for their One-time Report will be exempted from making the One-time Report.<sup>8</sup>

5. The Commission proposes to provide separate procedures for intrastate natural gas pipelines performing interstate service pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Hinshaw pipelines performing interstate transportation pursuant to a limited jurisdiction certificate under § 284.224 of the Commission's regulations. The Commission proposes to require these pipelines to file a new rate election under § 284.123(b) of the Commission's regulations if their rates for intrastate service are reduced to reflect the Tax Cuts and Jobs Act.

## II. Background

### A. Tax Cuts and Jobs Act

6. On December 22, 2017, the President signed the Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, among other things, lowers the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This means that, beginning January 1, 2018, companies subject to the Commission's jurisdiction will compute income taxes owed to the IRS based on a 21 percent tax rate. The tax rate reduction will result in less corporate income tax expense going forward.

7. The tax rate reduction will also result in a reduction in accumulated deferred income taxes (ADIT) on the books of rate-regulated companies. The amount of the reduction to ADIT that was collected from customers but is no longer payable to the IRS is excess ADIT and should be flowed back to ratepayers under general ratemaking principles. The Tax Cuts and Jobs Act does not prevent such flow back, although it does include rules on how quickly companies may reduce their excess ADIT. Specifically, the Tax Cuts and Jobs Act indicates that rate-regulated companies generally should use the average rate assumption method when flowing excess ADIT back to customers.<sup>9</sup> Rate-regulated companies must follow this requirement to be considered in compliance with normalization. This means that any flow

back of ADIT faster than the requirement imposed by the Tax Cuts and Jobs Act (e.g., a one-time large credit to ratepayers or a flow-back method that is over a relatively short period of time) would constitute a normalization violation and may result in unfavorable tax consequences.<sup>10</sup>

8. The Tax Cuts and Jobs Act also establishes a 20 percent deduction, with several exceptions, of "qualified business income" from certain pass-through businesses (such as a partnership or S corporation) for a taxpayer other than a corporation.<sup>11</sup> The deduction reduces taxable income, not adjusted gross income.

### B. United Airlines

9. In *United Airlines*, the D.C. Circuit held that the Commission failed to demonstrate that allowing SFPP, L.P. (SFPP), an MLP, to recover both an income tax allowance and the DCF methodology rate of return does not result in a double recovery of investors' tax costs. Accordingly, the D.C. Circuit remanded the underlying rate proceeding to the Commission for further consideration. While the D.C. Circuit's decision directly addressed the rate case filed by SFPP, the *United Airlines* double-recovery analysis referred to partnerships generally. Recognizing the potentially industry-wide ramifications, the Commission issued a Notice of Inquiry in Docket No. PL17–1–000, soliciting comments on how to resolve any double recovery resulting from the rate of return policies and the policy permitting an income tax allowance for partnership entities.<sup>12</sup>

10. Concurrently with the issuance of this Notice of Proposed Rulemaking, the Commission is issuing both (a) an Order on Remand in the SFPP rate case<sup>13</sup> and (b) a Revised Policy Statement in Docket No. PL17–1.<sup>14</sup> The Revised Policy Statement explains that a double recovery results from granting an MLP an income tax allowance and a DCF ROE. Accordingly, the Commission will no longer permit MLPs to recover an income tax allowance in their cost of service. The Revised Policy Statement also explains that while all partnerships

seeking to recover an income tax allowance in a cost-of-service rate case will need to address the *United Airlines* double-recovery concern, the Commission will address the application of *United Airlines* to these non-MLP partnership forms as those issues arise in subsequent proceedings.

### C. Overview of Natural Gas Rates

#### 1. The Natural Gas Act

11. As required by § 284.10 of the Commission's regulations,<sup>15</sup> interstate natural gas pipelines generally have stated rates for their services, which are approved in a rate proceeding under NGA sections 4 or 5 and remain in effect until changed in a subsequent section 4 or 5 proceeding. The stated rates recover all components of the pipeline's cost of service, including the pipeline's federal income taxes, in a single, overall rate.<sup>16</sup> When pipelines file under NGA section 4 to change their rates, the Commission requires the pipeline to provide detailed support for all the components of its cost of service, including federal income taxes.<sup>17</sup>

12. The Commission generally does not permit pipelines to change any single component of their cost of service outside of a general NGA section 4 rate case.<sup>18</sup> A primary reason for this policy is that, while one component of the cost of service may have increased, others may have declined. In a general NGA section 4 rate case, all components of the cost of service may be considered and any decreases in an individual component can be offset against increases in other cost components.<sup>19</sup> For the same reasons, the Commission reviews all of a pipeline's costs and revenues when it investigates whether a pipeline's existing rates are unjust and unreasonable under NGA section 5.<sup>20</sup>

<sup>15</sup> 18 CFR 284.10 (2017).

<sup>16</sup> Most pipeline tariffs include tracking mechanisms for the recovery of fuel and lost and unaccounted for gas, but generally pipelines do not separately track any other cost.

<sup>17</sup> 18 CFR 154.312 and 154.313 (2017). The pipeline must show the computation of its allowance for federal income taxes in Schedule H–3.

<sup>18</sup> See, e.g., *Trunkline Gas Co.*, 142 FERC ¶ 61,133, at P 24 n.28 (2013).

<sup>19</sup> *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 18 (2005).

<sup>20</sup> *Natural Gas Pipeline Co. of America LLC*, 158 FERC ¶ 61,044 (2017); *Wyoming Interstate Co., L.L.C.*, 158 FERC ¶ 61,040 (2017); *Tuscarora Gas Transmission Co.*, 154 FERC ¶ 61,030 (2016); *Iroquois Gas Transmission System, L.P.*, 154 FERC ¶ 61,028 (2016); *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016); *Columbia Gulf Transmission, LLC*, 54 FERC ¶ 61,027 (2016); *Wyoming Interstate Co., L.L.C.*, 141 FERC ¶ 61,117 (2012); *Viking Gas Transmission Co.*, 141 FERC ¶ 61,118 (2012); *Bear Creek Storage Co., L.L.C.*, 137 FERC ¶ 61,134 (2011); *MIGC LLC*, 137 FERC ¶ 61,135 (2011); *ANR Storage Co.*, 137 FERC ¶ 61,136 (2011); *Ozark Gas*

<sup>8</sup> In addition, interstate pipelines whose rates are being investigated under NGA section 5 need not file the One-time Report.

<sup>9</sup> See Tax Cuts and Jobs Act 13001, 131 Stat. at 2096.

<sup>10</sup> *Id.* 13001(b)(6)(A), 131 Stat. at 2100 ("If . . . the taxpayer does not use a normalization method of accounting for the corporate rate reductions provided in the amendments made by this section . . . the taxpayer's tax for the taxable year shall be increased by the amount by which it reduces its excess tax reserve more rapidly than permitted under a normalization method of accounting.").

<sup>11</sup> See *id.* 11011, 131 Stat. at 2063.

<sup>12</sup> *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Notice of Inquiry, 157 FERC ¶ 61,210 (2016).

<sup>13</sup> Remand Order, 162 FERC ¶ 61,228.

<sup>14</sup> Revised Policy Statement, 162 FERC ¶ 61,227.

13. NGA sections 4 and 5 proceedings are routinely resolved through a settlement agreement between the pipeline and its customers. Most of the agreements are “black box” settlements that do not provide detailed cost-of-service information. In addition, in lieu of submitting a general NGA section 4 rate case, a pipeline may submit a pre-packaged settlement to the Commission. When pipelines file pre-packaged settlements, they generally do not include any cost and revenue data in the filing. The Commission will approve an uncontested settlement offer upon finding that “the settlement appears to be fair and reasonable and in the public interest.”<sup>21</sup> Many settlements include moratorium provisions that limit the ability of the pipeline to file to revise its rates, or for the shippers to file a section 5 complaint, for a particular time period. In addition, many settlements include “come-back provisions,” which require a pipeline to file a NGA section 4 filing no later than a particular date.

14. The Commission has granted most interstate natural gas pipelines authority to negotiate rates with individual customers.<sup>22</sup> Such rates are not bound by the maximum and minimum recourse rates in the pipeline’s tariff.<sup>23</sup> In order to be granted negotiated rate authority, a pipeline must have a cost-based recourse rate on file with the Commission, so a customer always has the option of entering into a contract at the cost-based recourse rate rather than a negotiated rate if it chooses. The pipeline must file each negotiated rate agreement with the Commission. In addition, pipelines are also permitted to selectively discount their rates and the Commission approves the maximum recourse rate. While negotiated rates may be above the maximum recourse rate, discount rates must remain below the maximum rate. The maximum recourse rate is the ceiling rate for all long-term capacity releases, including capacity releases to replacement shippers by firm customers with negotiated rates.

15. Changes to a pipeline’s recourse rates occurring under NGA sections 4

and 5 do not affect a customer’s negotiated rate, because that rate is negotiated as an alternative to the customer taking service under the recourse rate. However, a shipper receiving a discounted rate may experience a reduction as a result of the outcome of a rate proceeding if the recourse rate is reduced below the discounted rate. The prevalence of negotiated and discount rates varies among pipelines, depending upon the competitive situation.

16. The Commission also grants interstate natural gas pipelines market-based rate authority when the pipeline can show it lacks market power for the specific services or when the applicant or the Commission can mitigate the market power with specific conditions.<sup>24</sup> A pipeline that has been granted market-based rate authority will have an approved tariff on file with the Commission but will not have a Commission approved rate. Rather, all rates for services are negotiated by the pipeline and its customers. Currently, 29 interstate natural gas pipelines have market-based rate authority for storage and interruptible hub services (such as wheeling and park and loan services), and one pipeline (Rendezvous Pipeline Company, LLC) has market-based rate authority for transportation services.

## 2. The Natural Gas Policy Act of 1978

17. NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport natural gas “on behalf of” interstate pipelines or local distribution companies served by interstate pipelines.<sup>25</sup> NGPA section 311(a)(2)(B) provides that the rates for interstate transportation provided by intrastate pipelines shall be “fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.”<sup>26</sup> In addition, NGPA section 311(c) provides that any authorization by the Commission for an intrastate pipeline to provide interstate service “shall be under such terms and conditions as the Commission may prescribe.”<sup>27</sup> Section 284.224 of the Commission’s regulations provides for

the issuance of blanket certificates under section 7 of the NGA to Hinshaw pipelines<sup>28</sup> to provide open access transportation service “to the same extent that and in the same manner” as intrastate pipelines are authorized to perform such service.<sup>29</sup> The Commission regulates the rates for interstate service provided by Hinshaw pipelines under NGA sections 4 and 5.

18. Section 284.123 of the Commission’s regulations provides procedures for section 311 and Hinshaw pipelines to establish fair and equitable rates for their interstate services.<sup>30</sup> Section 284.123(b) allows intrastate pipelines an election of two different methodologies upon which to base their rates for interstate services.<sup>31</sup> First, § 284.123(b)(1) permits an intrastate pipeline to elect to base its rates on the methodology or rate(s) approved by a state regulatory agency included in an effective firm rate for city-gate service. Second, § 284.123(b)(2) provides that the pipeline may petition for approval of rates and charges using its own data to show its proposed rates are fair and equitable. The Commission has established a policy of reviewing the rates of section 311 and Hinshaw pipelines every five years.<sup>32</sup> Section 311 pipelines not using state-approved rates must file a new rate case every five years, and Hinshaw pipelines must file a cost and revenue study every five years. Intrastate pipelines using state-approved rates that have not changed since the previous five-year filing are only required to make a filing certifying that those rates continue to meet the requirements of § 284.123(b)(1) on the same basis on which they were approved. Conversely, if the state-approved rate used for the election is changed at any time, the section 311 or Hinshaw pipeline must file a new rate election pursuant to § 284.123(b) for its interstate rates no later than 30 days after the changed rate becomes effective.

19. An intrastate pipeline may file to request authorization to charge market-

*Transmission, L.L.C.*, 133 FERC ¶ 61,158 (2010); *Kinder Morgan Interstate Gas Transmission LLC*, 133 FERC ¶ 61,157 (2010); *Northern Natural Gas Co.*, 129 FERC ¶ 61,159 (2009); *Great Lakes Gas Transmission Ltd. P’ship*, 129 FERC ¶ 61,160 (2009); *Natural Gas Pipeline Co. of America LLC*, 129 FERC ¶ 61,158 (2009).

<sup>21</sup> 18 CFR 385.602(g)(3).

<sup>22</sup> See *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh’g and clarification*, 114 FERC ¶ 61,042, *dismissing reh’g and denying clarification*, 114 FERC ¶ 61,304 (2006).

<sup>23</sup> *Northern Natural Gas Co.*, 105 FERC ¶ 61,299, at PP 15–16 (2003).

<sup>24</sup> *Alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996) (Negotiated Rate Policy Statement); see also *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), *reh’g denied*, Order No. 678–A, 117 FERC ¶ 61,190 (2006).

<sup>25</sup> 15 U.S.C. 3371 (2012).

<sup>26</sup> 15 U.S.C. 3371(a)(2)(B) (2012).

<sup>27</sup> 15 U.S.C. 3371(c)(2012).

<sup>28</sup> Section 1(c) of the NGA, 15 U.S.C. 717(c), exempts from the Commission’s NGA jurisdiction those pipelines which transport gas in interstate commerce if: (1) They receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state Commission. This is known as the Hinshaw exemption.

<sup>29</sup> See 18 CFR 284.224 (2017).

<sup>30</sup> 18 CFR 284.123 (2017).

<sup>31</sup> 18 CFR 284.123(b) (2017).

<sup>32</sup> *Contract Reporting Requirements of Intrastate Natural Gas Companies*, Order No. 735, FERC Stats. & Regs. ¶ 31,310, at P 92, *order on reh’g*, Order No. 735–A, FERC Stats. & Regs. ¶ 31,318 (2010); see also *Hattiesburg Industrial Gas Sales, L.L.C.*, 134 FERC ¶ 61,236 (2011) (imposing a five-year rate review requirement on Hattiesburg Industrial Gas Sales, L.L.C.).

based rates under subpart M of part 284 of the Commission's regulations. The same requirements for showing a lack of market power apply to intrastate pipelines as for interstate pipelines. The Commission has granted market-based rate authority for storage and hub services to 19 of the 112 intrastate pipelines with subpart C of part 284 tariffs.

#### D. Requests for Commission Action

20. Several entities<sup>33</sup> have sent letters to the Commission requesting that the Commission act to ensure that the economic benefits related to the reduction in the federal corporate income tax rate are passed through to customers. These entities request, among other things, that the Commission institute investigations into the justness and reasonableness of all applicable rates recovered by public utilities and/or pipelines subject to the Commission's jurisdiction with respect to the revenue requirement for federal corporate income taxes and explore ways to implement voluntary rate reductions or refunds. In response to several of these letters, the Interstate Natural Gas Association of America sent a letter to Chairman McIntyre arguing that suggestions for a generic order compelling pipelines to adjust an individual component of their respective recourse rates will, in many cases, not yield a just and reasonable result because of the Commission's policy preference for complete rate reviews, the limits the *Mobile-Sierra* doctrine places on the Commission's ability to reopen rates resulting from freely negotiated agreements, the existence of negotiated "black-box" settlements that do not specify a particular tax allowance, and the Internal Revenue Code's normalization rules that a pipeline would violate if excess ADIT was returned to ratepayers more rapidly than allowed by the required amortization methods.<sup>34</sup>

21. In addition, on January 31, 2018 in Docket No. RP18-415-000, several trade associations and companies

representing a coalition of the natural gas industry that are dependent upon services provided by interstate natural gas pipeline and storage companies (Petitioners)<sup>35</sup> filed a petition requesting that the Commission take immediate action under sections 5(a), 10(a), and 14(a) and (c) of the NGA to initiate show cause proceedings against all interstate natural gas pipeline and storage companies (unless barred by a settlement moratorium) and require each company to submit a cost and revenue study to demonstrate that their existing jurisdictional rates continue to be just and reasonable following the passage of the Tax Cuts and Jobs Act. Several parties filed comments in support of the petition. Petitioners argue that the following companies should be excluded from the show cause proceedings: (1) Section 311 pipelines (which Petitioners argue are otherwise required to file updated rate justifications on an ongoing basis), and (2) natural gas pipeline and storage companies that are obligated to file a NGA section 4 rate case in 2018.<sup>36</sup>

22. Petitioners argue that the Commission should require an immediate rate reduction, based upon the Commission's calculations, if a filed cost and revenue study demonstrates that the revenues from services offered on the interstate natural gas pipeline or storage company's system exceed the costs following the adjustments to account for changes to the tax laws implemented under the Tax Cuts and Jobs Act. Petitioners contend that, if a pipeline or storage company believes that it has a Commission-approved settlement that would exempt it from such a rate analysis (e.g., NGA section 5 rate moratorium), the Commission should require such company to provide evidence to that effect. Petitioners argue that if the Commission determines that a settlement prohibits a rate change during the term of the settlement, then the show cause order would be applicable to the company at the termination of any applicable NGA section 5 rate moratorium provisions of the settlement. Petitioners also argue that if a pipeline or storage company believes that any of its contracts are

exempt from Commission-ordered rate adjustments (e.g., discounted or negotiated rate contracts), the Commission should require such company to identify those contracts and provide evidence to that effect, and permit shipper counterparties the opportunity to contest such a claim.<sup>37</sup>

23. Several parties filed answers in opposition to the petition.<sup>38</sup> These parties argue that the petition asks the Commission to circumvent the statutory requirements of section 5 of the NGA by unlawfully shifting the burden of proof regarding the justness and reasonableness of pipeline rates and denying pipelines their right to an evidentiary hearing.<sup>39</sup> They contend that NGA section 5 and Commission precedent does not generally allow for piecemeal review of a single component of a filed rate considering that a fundamental tenet of ratemaking is that the end result, not any individual component, is what determines whether rates are just and reasonable.<sup>40</sup> They also argue that, given the unique and different circumstances across all pipeline rates including the presence of discounted and negotiated rates, "black box" settlements, and moratoria and rate case come-back provisions, a one-size-fits-all approach to modify rates for every pipeline is not appropriate.<sup>41</sup>

### III. Discussion

24. The Tax Cuts and Jobs Act, together with the Revised Policy Statement, reduce certain costs eligible for recovery in the rates of every natural gas pipeline subject to the Commission's jurisdiction. The Tax Cuts and Jobs Act reduces the federal income tax rate of all pipelines organized as corporations. The Revised Policy Statement establishes a policy that all pipelines organized as MLPs should eliminate any income tax

<sup>37</sup> *Id.* at 5–6, 12–19.

<sup>38</sup> Parties in opposition to the petition include: Interstate Natural Gas Association of America, TransCanada Corporation, Boardwalk Pipeline Partners, LP, and Kinder Morgan Entities.

<sup>39</sup> Interstate Natural Gas Association of America, Answer, Docket No. RP18-415-000, at 4–6 (filed Feb. 12, 2018); TransCanada Corporation, Answer, Docket No. RP18-415-000, at 4–9 (filed Feb. 12, 2018).

<sup>40</sup> Interstate Natural Gas Association of America, Answer, Docket No. RP18-415-000, at 9–10 (filed Feb. 12, 2018); TransCanada Corporation, Answer, Docket No. RP18-415-000, at 9–10 (filed Feb. 12, 2018); Kinder Morgan Entities, Answer, Docket No. RP18-415-000, at 7–11 (filed Feb. 12, 2018).

<sup>41</sup> Interstate Natural Gas Association of America, Answer, Docket No. RP18-415-000, at 11–18 (filed Feb. 12, 2018); TransCanada Corporation, Answer, Docket No. RP18-415-000, at 2–3, 11–12 (filed Feb. 12, 2018); Boardwalk Pipeline Partners, LP,

Answer, Docket No. RP18-415-000, at 1–8 (filed Feb. 12, 2018); Kinder Morgan Entities, Answer, Docket No. RP18-415-000, at 3–7 (filed Feb. 12, 2018).

<sup>33</sup> These entities include State Advocates (States, state agencies, and state consumer advocates), Organization of PJM States, Inc., Organization of MISO States, American Public Gas Association, Process Gas Consumers Group, Natural Gas Supply Association, Natural Gas Indicated Shippers, Liquids Shippers Group, Oklahoma Attorney General, Gordon Gooch (*pro se* consumer), Advanced Energy Buyers Group, National Association of State Energy Officials, The R-Street Institute, Office of the Ohio Consumers' Counsel, and the Governor of Delaware.

<sup>34</sup> Letter to Chairman McIntyre by the Interstate Natural Gas Association of America in response to letters by the American Public Gas Association, FERC eLibrary Accession No. 20180130-4005 (filed Jan. 30, 2018).

<sup>35</sup> Petitioners include the following trade associations: American Forest and Paper Association, American Public Gas Association, Independent Petroleum Association of America, Natural Gas Supply Association, and Process Gas Consumers Group. Petitioners also include the following companies: Aera Energy LLC, Anadarko Energy Services Company, Chevron U.S.A. Inc., ConocoPhillips Company, Hess Corporation, Petrohawk Energy Corporation, WPX Energy Marketing, LLC, and XTO Energy Inc.

<sup>36</sup> Petitioners, Filing, Docket No. RP18-415-000, at 3–4 (filed Jan. 31, 2018).

allowance from their rates.<sup>42</sup> The Commission believes that interstate natural gas pipelines and intrastate natural gas pipelines providing interstate service should flow through the benefits of the corporate income tax reduction and elimination of MLP income tax allowances to consumers to the extent that their rates would otherwise over-recover their costs of service. Therefore, the Commission is initiating this rulemaking proceeding to consider the most efficient and expeditious method of accomplishing this goal consistent with the requirements of the NGA and the NGPA. Specifically, the Commission proposes to revise its regulations to (1) require interstate natural gas pipelines to file a One-time Report concerning the effects of these tax changes, (2) permit interstate natural gas pipelines to voluntarily submit a limited NGA section 4 filing to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act and the elimination of the income tax allowance for MLPs consistent with the Revised Policy Statement,<sup>43</sup> and (3) require NGPA section 311 and Hinshaw pipelines to modify their rates for interstate service if they modify their rates for intrastate service to reflect the tax changes. These proposals are intended to encourage natural gas pipelines to voluntarily reduce their rates to the extent the tax changes result in their over-recovering their cost of service, while also providing the Commission and stakeholders information necessary to take targeted actions under NGA section 5 where necessary to achieve just and reasonable rates.

25. The Commission addresses interstate natural gas pipelines under the NGA and NGPA section 311 and Hinshaw pipelines separately below.

<sup>42</sup> Revised Policy Statement, 162 FERC ¶ 61,227.

<sup>43</sup> In addition, consistent with the Revised Policy Statement, partnerships or other pass-through entities that have not adopted the MLP business form must address the double-recovery concern raised by *United Airlines*. To the extent any of these partnerships or pass-through entities argue that they should continue to recover an income tax allowance, then the entity's revised tax rate should reflect any relevant tax reductions resulting from the Tax Cuts and Jobs Act. The Commission will review this information in light of its post-*United Airlines* policy changes, including any subsequent orders affecting the income tax policy for other non-MLP partnership or pass-through business forms. See Revised Policy Statement, 162 FERC ¶ 61,227 at P 3 ("While all partnerships seeking to recover an income tax allowance will need to address the double-recovery concern, the Commission will address the application of *United Airlines* to non-MLP partnership or other pass-through business forms as those issues arise in subsequent proceedings.").

#### A. Interstate Natural Gas Pipelines With Cost-Based Rates

26. The Commission proposes to require interstate natural gas pipelines to file, pursuant to sections 10 and 14(a) of the NGA, a One-time Report on Rate Effect of the Tax Cuts and Jobs Act, to be known as FERC Form No. 501-G,<sup>44</sup> that includes an abbreviated cost and revenue study estimating (1) the percentage reduction in the pipeline's cost of service resulting from the Tax Cuts and Jobs Act and the Revised Policy Statement, and (2) the pipeline's current ROEs before and after the reduction in corporate income taxes and the elimination of income tax allowances for MLPs. As described in more detail below, the FERC Form No. 501-G is designed to collect financial information to evaluate the impact of the Tax Cuts and Jobs Act and the Revised Policy Statement on the pipeline's cost of service, and to inform stakeholders and the Commission regarding the continued justness and reasonableness of the pipeline's rates after the income tax reduction and elimination of MLP income tax allowances. Interstate natural gas pipelines that file general NGA section 4 rate cases or pre-packaged uncontested rate settlements before the deadline for their One-time Report will be exempted from making the One-time Report.<sup>45</sup>

27. In addition to the mandatory One-time Report, the Commission also proposes several options for interstate natural gas pipelines to voluntarily make a filing to address the effect of the Tax Cuts and Jobs Act and the Revised Policy Statement. The Commission proposes to allow an interstate natural gas pipeline to make a limited NGA section 4 filing to reduce its rates by the percentage reduction in its cost of service resulting from the Tax Cuts and Jobs Act and the Revised Policy Statement, as calculated in the FERC Form No. 501-G. This would allow the pipeline to quickly pass on to ratepayers the benefit of the reduction in the corporate income tax rate or the elimination of the MLP income tax allowance, without the need for a full examination of all its costs and revenues. Alternatively, as described below, an interstate pipeline may commit to file either a prepackaged uncontested settlement or, if that is not

possible, a general NGA section 4 rate case if the pipeline believes that using the limited NGA section 4 option will not result in a just and reasonable rate. If the pipeline commits to do this by December 31, 2018, the Commission will not initiate an NGA section 5 investigation of its rates prior to that date.

28. The Commission also recognizes that there may be reasons why some pipelines need not change their rates at this time and therefore proposes an interstate pipeline may choose to file a statement explaining why an adjustment to its rates is not needed. For example, a pipeline may argue that it is currently under-recovering its overall cost of service, such that the reduction in its tax costs or elimination of an MLP income tax allowance will not lead to excessive recovery. If that is true, no reduction in the pipeline's existing stated rates would be justified under NGA section 5.<sup>46</sup> The proposed FERC Form No. 501-G will provide information as to whether an interstate pipeline may be under recovering its cost of service. Other pipelines may have settlements providing for moratoria on rate changes until some future date or requiring them to file new NGA section 4 rate cases in the near future.

29. Lastly, a pipeline may file its FERC Form No. 501-G without taking any other action. The Commission will assign each pipeline's filing of the FERC Form No. 501-G an RP docket number and notice the filing providing for interventions and protests. Based on the information in that form, together with any statement filed with the form and comments by intervenors, the Commission will consider whether to initiate an investigation under NGA section 5 of those pipelines that have not filed a limited NGA section 4 rate reduction filing or committed to file a general NGA section 4 rate case.

30. The Commission proposes to require only interstate natural gas pipelines that have cost-based rates for

<sup>46</sup> When an interstate pipeline proposes to increase its rates pursuant to NGA section 4, the Commission may issue an order reducing one component of the proposed increased cost of service, so as to reduce the proposed rate increase, before resolving other issues. *FPC v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 149–156 (1962). However, in order to reduce a pipeline's existing stated rates below their current level under NGA section 5, the Commission must consider all the pipeline's costs and revenues related to that rate. See *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 574 (1942) (finding that, when acting under NGA section 5, the Commission may adjust the pipeline's "general revenue level to the demands of a fair return" before adjusting specific rate schedules to eliminate discriminations and unfairness from its details) (emphasis added).

<sup>44</sup> Proposed FERC Form No. 501-G will not be published in the **Federal Register** or the Code of Federal Regulations, but is available in the Commission's eLibrary website under Docket No. RM18–11–000.

<sup>45</sup> In addition, interstate pipelines whose rates are being investigated under NGA section 5 need not file the One-time Report.

service under any rate schedule filed pursuant to part 154 of the Commission's regulations to comply with this proposed rule. Therefore, pipelines with market-based rates would not be subject to this proposed rule.

31. The Commission does not propose to take any action regarding the effect of the Tax Cuts and Jobs Act on ADIT in this Notice of Proposed Rulemaking. In a concurrent Notice of Inquiry,<sup>47</sup> the Commission is seeking comment regarding this issue.

#### 1. One-Time Report on Rate Effect of the Tax Cuts and Jobs Act

32. The Commission proposes to exercise its authority under NGA sections 10(a) and 14(a)<sup>48</sup> to require all interstate natural gas pipelines that file a 2017 FERC Form Nos. 2 or 2A to submit an abbreviated cost and revenue study in a format similar to the cost and revenue studies the Commission has attached to its orders initiating NGA section 5 rate investigations in recent years.<sup>49</sup> Using the data in the pipelines' 2017 FERC Form Nos. 2 and 2A, these studies will estimate (1) the percentage reduction in the pipeline's cost of service resulting from the Tax Cuts and Jobs Act and the Revised Policy Statement, and (2) the pipeline's current ROEs before and after the reduction in corporate income taxes and the elimination of income tax allowances for MLPs.<sup>50</sup> FERC Form No. 501–G is an Excel spreadsheet with formulas that, when the respondents populate the form, will calculate an indicated percentage rate reduction reflecting only the corporate income tax rate reduction provided by the Tax Cuts and Jobs Act and the elimination of the MLP tax allowance by the Revised Policy Statement. The form will also calculate the pipeline's estimated actual return on equity both before and after the tax change and implementation of the

Revised Policy Statement. The Commission and the parties may use this information in considering whether to initiate NGA section 5 rate investigations of pipelines which do not opt to file a limited section 4 to reduce their rates or commit to make a general section 4 filing by December 31, 2018, and the order in which to initiate any such investigations so as to make the most efficient use of the Commission's and interested parties' resources to provide consumer benefits.

33. Most of the required data is to be taken directly from the respondent's 2017 FERC Form Nos. 2 or Form 2–A<sup>51</sup> without modification. The cost and revenue study incorporates all the major cost components of a jurisdictional cost of service, including: Administrative and General, Operation and Maintenance, other taxes, depreciation expense, and the return related components of ROE, interest expenses and income taxes.

34. A cost and revenue study requires an indicative ROE. In the proposed form, the Commission uses, consistent with Commission practice, the last litigated ROE applicable to situations involving existing plant.<sup>52</sup> The last litigated ROE was in *El Paso Natural Gas Company*, wherein the Commission adopted an ROE of 10.55 percent.<sup>53</sup>

35. In approving the capital structure to be used for ratemaking purposes, the Commission uses an operating company's actual capital structure if the operating company (1) issues its own debt without guarantees, (2) has its own bond rating, and (3) has a capital structure within the range of capital structures approved by the Commission.<sup>54</sup> If the operating company meets these requirements, then the Commission will find that the operating company has demonstrated a separation of financial risks between the operating and parent company. Where these requirements are not met, the Commission will use the consolidated capital structure of the parent company

or a proxy capital structure in order to set the overall rate of return for the operating utility company.<sup>55</sup> The proposed form requests the respondent's FERC Form Nos. 2 or 2–A equity related balance sheet items. However, if that data does not satisfy the three-part test of Opinion No. 414, *et al.*, the form provides alternative data entries to reflect parent or hypothetical capital structures consistent with Opinion No. 414, *et al.* If the respondent uses the consolidated capital structure of the parent company, it should provide the capital structure as shown on the parent company's U.S. Securities and Exchange Commission's Form 10–K for 2017.

36. Income tax expenses for pass-through entities are not captured by FERC Form Nos. 2 and 2–A. Income tax expenses for such entities are based upon the individual unit holder's income tax levels. The form requires pass-through entities to provide the weighting and marginal tax rates for each unit holder class ending calendar year 2017. Prospectively for pass-through entities, FERC Form No. 501–G assumes a federal and state income tax expense of zero. As the Commission states in the Revised Policy Statement, all partnerships seeking to recover an income tax allowance will need to address the double-recovery concern.<sup>56</sup> If a partnership not organized as an MLP believes that a federal or state income tax expense is permissible notwithstanding *United Airlines*, proposed § 154.404(a)(3) provides that it may submit that statement with supporting documentation to justify why it should continue to receive an income tax allowance and to reduce its maximum rates to reflect the decrease in the federal income tax rates<sup>57</sup> applicable to partners pursuant to the Tax Cuts and Jobs Act. The Commission will review this information in light of its post-*United Airlines* policy changes, including any subsequent orders affecting the income tax policy for other non-MLP partnership or pass-through business forms.

37. Page 1, Line 33, of FERC Form No. 501–G contains the percentage reduction of each pipeline's cost of service attributable solely to the revised income tax allowance. This percentage reflects the amount a pipeline may choose to use to reduce its reservation rates and any one-part rates which include a fixed cost recovery should it

<sup>47</sup> *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 (2018).

<sup>48</sup> See *Tuscarora Gas Transmission Co.*, 154 FERC ¶ 61,273, at PP 4–14 (2016), requiring a pipeline to submit a more detailed cost and revenue study than that which the Commission is proposing here.

<sup>49</sup> See orders cited in footnote 20. Interstate natural gas pipelines whose rates are being examined in a general NGA section 4 rate case or an NGA section 5 investigation need not file the One-time Report. In addition, pipelines that file a pre-packaged uncontested rate settlement before the deadline for their One-time Report will be exempted from making the One-time Report.

<sup>50</sup> An MLP is a publicly traded partnership under the Internal Revenue Code that receives at least 90 percent of its income from certain qualifying sources, including gas and oil transportation. See 26 U.S.C. 7704; *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Notice of Inquiry, 157 FERC ¶ 61,210 at PP 4–7.

<sup>51</sup> FERC Form 2s (*Annual report for Major natural gas companies*) and 2–As (*Annual report for Nonmajor natural gas companies*) for calendar year 2017 are due April 18, 2018. 18 CFR 260.1(b)(2) & 260.2(b)(2).

<sup>52</sup> See, e.g., *High Point Gas Transmission, LLC*, 139 FERC ¶ 61,237, at P 154 (2012); *Alliance Pipeline L.P.*, 140 FERC ¶ 61,212, at P 20 (2012); *Northern Natural Gas Co.*, 119 FERC ¶ 61,035, at P 37 (2007).

<sup>53</sup> *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, Opinion No. 528–A, 154 FERC ¶ 61,120 (2016).

<sup>54</sup> *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414–A, 84 FERC ¶ 61,084, at 61,413–61,415, *reh'g denied*, Opinion No. 414–B, 85 FERC ¶ 61,323 (1998), *petition for review denied sub nom. N.C. Utils. Comm'n v. FERC*, D.C. Cir. Case No. 99–1037 (Feb. 7, 2000) (*per curiam*).

<sup>55</sup> *Id.*

<sup>56</sup> See Revised Policy Statement, 162 FERC ¶ 61,227 at P 3.

<sup>57</sup> If a pass-through entity that is not an MLP claims an income tax allowance, it must reflect the corporate rate reduction and any other relevant tax reductions in the Tax Cuts and Jobs Act.



choose to file a limited NGA section 4 filing as described below.

38. The next part of the report estimates the actual rate of return on equity earned by the pipeline for its non-gas revenues during calendar year 2017. Page 3 of the report requires the pipeline to report its revenues from which the cost of service items, as detailed on Page 1, are subtracted. The report depicts the pipeline's estimated actual return on equity both before and after the tax change and implementation of the Revised Policy Statement. The information will be used to guide the Commission, other stakeholders, and potentially the pipelines in determining additional steps.

39. Pipelines may believe that certain 2017 FERC Form Nos. 2 or 2A cost or revenue data require adjustments to properly reflect their situation. Respondents should not make adjustments to the data transferred from FERC Form Nos. 2 or 2-A and 10-K and reported on the FERC Form No. 501-G. Instead, respondents may make adjustments to individual line items in additional work sheets. If a respondent proposes any adjustments, it must fully explain and support the adjustment in a separate document. All adjustments should be shown in a manner similar to that required for adjustments to base period numbers provided in statements and schedules required by §§ 154.312 and 154.313 of the Commission's regulations.<sup>58</sup>

40. When respondents file their FERC Form No. 501-G, the form should be in spreadsheet format with all the formulas unchanged from those provided in the posted form. The Commission proposes to post the FERC Form No. 501-G on its website. In addition, the Commission has prepared an *Implementation Guide for One-time Report on Rate Effect of the Tax Cuts and Jobs Act (Implementation Guide)* that provides additional guidance to parties as to the expected data entries. The *Implementation Guide* also contains the proposed staggered compliance dates and the list of companies for each of the four compliance periods. Drafts of the FERC Form No. 501-G and *Implementation Guide* are attached to this NOPR for review and comment as separate files. The attachments to the NOPR will be available in the Commission's eLibrary

<sup>58</sup> See *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, Appendix, *Instruction Manual for Electronic Filing of Part 154 Rate Filings* (November 14, 2016), found on the Commission's website, <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>, wherein filers are required to show the base figure and then the adjustment and the as-adjusted figures in adjacent columns.

under Docket No. RM18-11-000 but not published in the **Federal Register** or Code of Federal Regulations.

## 2. Additional Filing Options for Natural Gas Pipelines

41. The Commission proposes that, upon filing of the FERC Form No. 501-G, interstate natural gas pipelines will have four options. The first two options—filing a limited NGA section 4 rate filing or a general section 4 rate case—allow the pipelines to voluntarily make a filing to address the effects of the Tax Cuts and Jobs Act and the Revised Policy Statement. Under the third option, pipelines may file an explanation why no rate change is necessary. Finally, pipelines may simply file the FERC Form No. 501-G described above, without taking any other action at this time. The One-time Report should help inform the pipeline's choice of the four options, as well as assist the Commission in determining what NGA section 5 investigations it should initiate in order to assure that the cost reduction benefits of the Tax Cuts and Jobs Act and the Revised Policy Statement are passed through to consumers.

### a. Limited NGA Section 4 Filing

42. Under this option, an interstate natural gas pipeline would file the proposed FERC Form No. 501-G and simultaneously make a separate limited NGA section 4 filing, pursuant to proposed section 154.404, to reduce its reservation charges and any one-part rates that include fixed costs<sup>59</sup> by the percentage reduction in its cost of service calculated in the FERC Form No. 501-G<sup>60</sup> resulting from the reduced corporate income tax rates provided by the Tax Cuts and Jobs Act and the elimination of MLP tax allowances by the Revised Policy Statement. In other words, the Commission proposes to allow interstate pipelines to reduce their rates to reflect the reduced income tax rates and elimination of the MLP income tax allowance on a single-issue basis, without consideration of any other cost or revenue changes. Interested parties may protest the limited NGA section 4 filing, but the Commission will only consider arguments relating to matters within the scope of the proceeding. Thus, interested parties could raise issues as to whether the interstate pipeline is eligible to make the limited NGA

<sup>59</sup> A pipeline's 100 percent load factor rate for interruptible service is an example of a one-part rate containing fixed costs.

<sup>60</sup> That percentage reduction is listed on Page 1, Line 33 of the proposed FERC Form No. 501-G.

section 4 filing,<sup>61</sup> whether the percentage reduction has been properly applied to the pipeline's rates, and whether the correct information was used in calculating the percentage reduction. However, the Commission will consider any other issues raised as being outside the scope of the proceeding and will dismiss it without prejudice. If shippers or other interested parties believe further adjustments to the rate are warranted, they may file an NGA section 5 complaint with the Commission.

43. The Commission believes that FERC Form No. 501-G's comparison of (1) the pipeline's existing cost of service as reported in its FERC Form Nos. 2 or 2-A for 2017 to (2) a revised cost of service using the new income tax rates, or eliminating the income tax allowance of an MLP, is the most reasonable method to estimate the rate reduction to be implemented in a limited NGA section 4 filing. The Commission recognizes that, after the Tax Reform Act of 1986, the Commission established a procedure for public utilities to reduce their rates based on a formula using cost data provided by the public utility in its most recent FPA section 205 rate filing.<sup>62</sup> However, this methodology does not appear workable for many interstate natural gas pipelines. In recent years, many interstate pipelines have filed "pre-packaged" uncontested settlements pursuant to § 385.207(a)(5) of the Commission's regulations,<sup>63</sup> without submitting the cost and revenue data required to be filed with a general NGA section 4 rate case by §§ 154.312 or 154.313 of the Commission's regulations.<sup>64</sup> In addition, a number of pipelines have not filed rate cases in many years, with the result that the cost and revenue data underlying their existing rates is stale and may not reflect all their current services or system expansions.

44. The Commission recognizes that it generally does not permit pipelines to change any single component of their cost of service outside of a general NGA

<sup>61</sup> The pipeline may not be eligible to make a limited NGA section 4 filing because of a settlement rate moratorium or an ongoing NGA section 4 or 5 proceeding.

<sup>62</sup> *Rate Changes Relating to Federal Corporate Income Tax Rate for Public Utilities*, FERC Stats. & Regs. ¶ 30,752, order on reh'g, 41 FERC ¶ 61,029 (1987) (Order No. 475).

<sup>63</sup> 18 CFR 385.207(a)(5) (2017).

<sup>64</sup> 18 CFR 154.312 and 154.313 (2017). See, e.g., *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005); *Colorado Interstate Gas Co.*, 156 FERC ¶ 61,085 (2016).



section 4 rate case.<sup>65</sup> Here, however, the Commission believes an exception to that policy is justified in order to permit interstate pipelines to voluntarily reduce their rates as soon as possible to reflect a reduction in a single cost component—their federal income tax costs—so as to flow through that benefit to consumers. In addition, our proposed requirement that all interstate pipelines file the abbreviated cost and revenue study in FERC Form No. 501–G will enable pipelines and all other interested parties to evaluate whether there are significant changes in other cost components or revenues that affect the need for a rate reduction with respect to taxes.

45. Finally, any rate reduction implemented pursuant to a limited NGA section 4 filing under this option would be a reduction to the pipeline's maximum recourse rates. Similar to the situation in a general NGA section 4 rate case or an NGA section 5 rate investigation, a pipeline's limited NGA section 4 filing to reduce its maximum recourse rate to reflect reduced income tax rates, or elimination of the MLP income tax allowance, ordinarily will not affect any negotiated rate agreements the pipeline has with individual shippers. In the Negotiated Rate Policy Statement,<sup>66</sup> the Commission allowed pipelines to negotiate individualized rates that are not bound by the maximum and minimum recourse rates in the pipeline's tariff.<sup>67</sup> Among other things, this permits pipelines, as a means of providing rate certainty, to negotiate a fixed rate or rate formula that will continue in effect regardless of changes in the pipeline's maximum recourse rate.<sup>68</sup> Accordingly, unless a negotiated rate agreement expressly provides otherwise, the rates in such agreements will be unaffected by any reduction in the pipeline's maximum rate reductions resulting from the policies adopted in the rulemaking proceeding, whether in a limited or general NGA section 4 rate proceeding or a subsequent NGA section 5 investigation.

46. Discounted rates, by contrast, must remain within the range established by the pipeline's maximum and minimum recourse rates.<sup>69</sup>

Accordingly, to the extent a pipeline reduces its maximum rate below the level of a shipper's discounted rate, that shipper's discounted rate will be similarly reduced.

#### b. Commitment to Make General NGA Section 4 Filing

47. Under this option, an interstate natural gas pipeline would include with its One-time Report a commitment to file either a prepackaged uncontested settlement or, if that is not possible, a general NGA section 4 rate case to revise its rates based upon current cost data. If a pipeline believes that a reduction in its rates by the percentage reduction in its cost of service calculated in its FERC Form No. 501–G would not be reasonable because of other changes in its costs and revenues since its last rate case, this option would permit the pipeline to adjust its rates taking into account all such changes either through an uncontested settlement or a general section 4 rate case. The pipeline would also indicate an approximate time frame regarding when it would file the settlement or make the NGA section 4 filing. The Commission proposes that if the pipeline commits to make such a filing by December 31, 2018, the Commission will not initiate an NGA section 5 investigation of its rates prior to that date.

#### c. Statement Explaining Why Adjustment in Rates Is not Needed

48. Under this option, an interstate natural gas pipeline would include with its One-time Report a statement explaining why no adjustment in its rates is needed at this time. The Commission recognizes that, despite the reduction in the corporate income tax and the elimination of MLP income tax allowances, a rate reduction may not be justified for a significant number of pipelines. For example, the Commission is aware from its reviews of pipeline Form Nos. 2 and 2–A financial data for prior years that a number of pipelines may currently have rates that do not fully recover their overall cost of service. Accordingly, the reduction in those pipelines' tax costs may not cause their rates to be excessive. The proposed FERC Form No. 501–G will provide information as to whether an interstate pipeline may fall into this category. Accordingly, a pipeline may include with its FERC Form No. 501–G a full explanation of why, after accounting for its reduction in tax costs, its rates do not over recover its overall cost of service and therefore no rate reduction is justified. The pipeline would provide this statement along with any additional

supporting information it deems necessary.

49. In addition, interstate pipelines may provide any other reason they believe a rate reduction is not justified at this time. For example, they may assert that an existing rate settlement provides for a moratorium on rate changes that applies to any rate changes that might result from the Tax Cuts and Jobs Act or the Commission's change in policy concerning MLP income tax allowances. Parties agree to rate moratoria in settlements in order to provide rate certainty, and therefore the Commission generally does not disturb a settlement during a rate moratorium.<sup>70</sup>

50. As described above, interested parties will have an opportunity to comment on any assertion by a pipeline that no adjustment to its rates is needed, and the Commission will then determine whether further action is needed with respect to that pipeline.

#### d. Take No Action

51. Under this option, the interstate natural gas pipeline would take no action other than making the One-time Report. This option is consistent with the fact that the Commission lacks authority under the NGA to order an interstate pipeline to file a rate change under NGA section 4.<sup>71</sup> While the Commission is permitting interstate pipelines to voluntarily file a limited NGA section 4 filing or commit to make general NGA section 4 filing to modify their rates to reflect the reduction in the income tax rates or elimination of the MLP income tax allowance, the Commission is not ordering interstate pipelines to make such filings. However, based on the information contained in the pipeline's FERC Form No. 501–G, which the Commission is proposing to require each interstate pipeline to file, and comments by interested parties, the Commission will, on a case-by-case basis, consider initiating a section 5 investigation of a pipeline's rates, if it appears those rates may be unjust and unreasonable.

#### B. Initial Rates Under NGA Section 7

52. The issue of how to address the Tax Cuts and Jobs Act in establishing initial rates for new projects arises in a variety of contexts, depending upon the current status of the certificate proceeding and the type of project at

<sup>65</sup> See, e.g., *Trunkline Gas Co.*, 142 FERC

¶ 61,133, at P 24 n.28 (2013).

<sup>66</sup> Negotiated Rate Policy Statement, 74 FERC

¶ 61,076 at 61,225–61,226.

<sup>67</sup> *Northern Natural Gas Co.*, 105 FERC ¶ 61,299, at PP 15–16 (2003).

<sup>68</sup> *Columbia Gulf Transmission Co.*, 109 FERC ¶ 61,152, at P 13, *reh'g denied*, 111 FERC ¶ 61,338 (2005). See also *Iberdrola Renewables, Inc. v. FERC*, 597 F.3d 1299, 1305 (D.C. Cir. 2010).

<sup>69</sup> *Columbia Gulf*, 109 FERC ¶ 61,152 at P 16.

<sup>70</sup> *Iroquois Gas Transmission System L.P.*, 69 FERC ¶ 61,165, at 61,631 (1994); *JMC Power Projects v. Tennessee Gas Pipeline Co.*, 69 FERC ¶ 61,162 (1994), *reh'g denied*, 70 FERC ¶ 61,168, at 61,528 (1995), *aff'd*, *Ocean States Power v. FERC*, 84 F.3d 1453 (D.C. Cir. 1996).

<sup>71</sup> *Pub. Serv. Comm. of New York v. FERC*, 866 F.2d 487, 492 (D.C. Cir. 1989).

issue. For greenfield pipelines such as PennEast,<sup>72</sup> the Commission added a condition to the certificate order directing the company to recalculate its initial rates consistent with the Tax Cuts and Jobs Act when it files its compliance tariff records before going into service. For other filings, such as the Transco St. James Project,<sup>73</sup> the Commission estimated downward the incremental rate in order to ensure analysis of the appropriate initial rate.

53. For pending incremental expansion certificate filings without near-term deadlines, Commission staff has issued data requests to pipelines directing them to provide an adjusted cost of service and recalculation of the proposed initial recourse rates consistent with the Tax Cuts and Jobs Act. The Commission will take these responses into account when evaluating and approving initial rates.

54. There are a number of certificate projects which have been authorized by the Commission—including approval of initial rates—but which have not yet gone into service. The Commission proposes that existing pipelines, in their FERC Form No. 501–G reports and/or section 154.404 limited NGA section 4 rate reduction filings, address any approved initial rate for services provided by expansion facilities that have not gone into service. We recognize that there is also a finite group of greenfield pipeline projects that have been authorized but are not yet in service and therefore will not file a Form No. 2 or 2A for 2017. As a result, those pipelines also are not required to file a FERC Form No. 501–G report. The Commission proposes to address the issue of the Tax Cuts and Jobs Act and the Revised Policy Statement impact on these pipelines on a case-by-case basis.<sup>74</sup>

### C. NGPA Section 311 and Hinshaw Pipelines

55. The Commission believes that its existing regulations and policy concerning the rates charged by NGPA section 311 and Hinshaw pipelines are generally sufficient to provide shippers reasonable rate reductions with respect to the Tax Cuts and Jobs Act and Revised Policy Statement. However, as described below, the Commission is

proposing to modify § 284.123 of its regulations to require all NGPA section 311 and Hinshaw pipelines to file a new rate election for interstate service if their rates for intrastate service are reduced to reflect the Tax Cuts and Jobs Act.

56. As described above, § 284.123(b) allows NGPA section 311 and Hinshaw pipelines an election of two different methodologies upon which to base their rates for interstate services.<sup>75</sup> First, § 284.123(b)(1) permits an intrastate pipeline to elect to base its rates on the methodology or rate(s) approved by a state regulatory agency included in an effective firm rate for city-gate service. Second, § 284.123(b)(2) provides that the pipeline may petition for Commission approval of rates and charges using its own data to show its proposed rates are fair and equitable. The Commission has a policy of requiring a review of the rates of each NGPA section 311 and Hinshaw pipeline every five years.<sup>76</sup> Consistent with that policy, when the Commission issues an order approving rates filed by an NGPA section 311 pipeline, the Commission requires the pipeline to file a new rate election within five years. When the Commission approves rates filed by a Hinshaw pipeline, it requires the pipeline to file a cost and revenue study within five years. In addition, the Commission requires NGPA section 311 and Hinshaw pipelines that have elected to use a state rate pursuant to § 284.123(b)(1) to file a new rate election within 30 days after any change in the state rate.<sup>77</sup>

57. The Commission believes that these requirements adequately provide for the approximately 44 NGPA section 311 and Hinshaw pipelines that have elected to use state-derived rates pursuant to § 284.123(b)(1) to pass on to ratepayers the benefit of the reduction in the corporate income tax rate. Pursuant to their rate election, these pipelines are authorized to charge rates approved by their state regulatory agency. Therefore, the decision whether the interstate rates of these pipelines should be reduced to reflect the Tax Cuts and Jobs Act is in the hands of the state regulatory agency. If the state regulatory agency requires any of these pipelines to reduce their intrastate rates

to reflect the decreased income tax, Commission policy, as explained above, requires those pipelines to file with the Commission to reduce their interstate rates correspondingly within 30 days of the effective date of the reduced intrastate rates.

58. We now turn to the approximately 61 NGPA section 311 and Hinshaw pipelines which have elected to use Commission-established cost-based rates pursuant to § 284.123(b)(2). Pursuant to our five-year rate review policy, we estimate that almost half of these pipelines will have their rates restated within the next 24 months. In addition, a review of the quarterly transactional reports filed by these pipelines pursuant to § 284.126(b)<sup>78</sup> indicates that these pipelines rarely charge their maximum rates. Instead, they charge discounted rates for most of their transactions so that any reduction in their maximum rates is unlikely to provide significant benefits to the customers in those transactions.

59. However, the Commission believes that, if an NGPA section 311 or Hinshaw pipeline using Commission-established cost-based rates reduces its intrastate rates to reflect the reduced income taxes resulting from the Tax Cuts and Jobs Act, it would be reasonable for that pipeline to make a corresponding reduction in its rates for interstate service. This would give the same rate reduction benefit to any interstate shippers on those pipelines as the intrastate shippers receive, thereby ensuring that the two groups of shippers are treated similarly. Therefore, for the purposes of the Tax Cuts and Jobs Act only, the Commission proposes a new § 284.123(i), which would impose the same re-filing requirement on § 284.123(b)(2) rates as on pipelines electing to use state-derived rates under § 284.123(b)(1). Namely, if any intrastate pipeline adjusts its state-jurisdictional rates to reflect the reduced corporate income tax rates adopted in the Tax Cuts and Jobs Act, then the intrastate pipeline must file a new rate election pursuant to paragraph (b) of this section no later than 30 days after the reduced intrastate rate becomes effective.

60. The Commission notes that, for any pipeline that the Commission does identify that charges an excessive Commission-established cost-based maximum rate to captive shippers (whether through staff investigation or a shipper-filed complaint), the Commission could exercise its authority under NGPA section 311(c) to order any such section 311 intrastate pipeline to

<sup>72</sup> PennEast Pipeline Co., LLC, 162 FERC ¶ 61,053, at P 66 (2018).

<sup>73</sup> Transcontinental Gas Pipe Line Co., LLC, 162 FERC ¶ 61,050, at P 17 (2018).

<sup>74</sup> For example, the Commission may, under section 5 of the NGA, direct the greenfield pipeline to recalculate its initial recourse rates consistent with the Tax Cuts and Jobs Act and Revised Policy Statement when it files actual tariff records before going into service. See, e.g., PennEast Pipeline Co., LLC, 162 FERC ¶ 61,053 at P 66.

<sup>75</sup> 18 CFR 284.123(b) (2017).

<sup>76</sup> Contract Reporting Requirements of Intrastate Natural Gas Companies, FERC Stats & Regs. ¶ 31,310 at P 96. Pipelines using state-approved rates pursuant to section 284.123(b)(1) may certify that those rates continue to meet the requirements of section 284.123(b)(1) on the same basis on which they were approved.

<sup>77</sup> 18 CFR 284.123(g)(9)(iii) (2017). See also Lobo Pipeline Co. L.P., 145 FERC ¶ 61,168, at P 5 (2013) and Atmos Pipeline—Texas, 156 FERC ¶ 61,094, at P 8 (2016).

<sup>78</sup> 18 CFR 284.126(b) (2012). These reports are set forth in Form No. 549D.

reduce its rates to reflect the reduced income tax rates, and take similar action against any such Hinshaw pipeline under NGA section 5.<sup>79</sup>

61. Finally, the Commission will not take any action with respect to the market-based rates it has approved for some NGPA section 311 and Hinshaw pipelines. Market-based rates are, by definition, subject to change according to market forces, and do not have cost-based rates that directly account for taxes. For such rates, no change is required.

#### IV. Implementation

62. The Commission proposes staggered dates for pipelines filing the FERC Form No. 501–G report. In the *Implementation Guide* for the proposed FERC Form No. 501–G, 133 interstate natural gas pipelines with cost-based rates are split into four groups. The due date for the first group will be 28 days from the effective date of any final rule in this proceeding, and the due date for each subsequent group will be 28 days from the previous group's due date. When the final due dates are known, the Office of the Secretary will issue a Notice and update the FERC Form No.

501–G *Implementation Guide*. Pipelines may file their FERC Form No. 501–G report earlier than the proposed dates. The Commission will post the FERC Form No. 501–G form and the FERC Form No. 501–G *Implementation Guide* on its website at <http://www.ferc.gov/legal/maj-ord-reg.asp#gas>. As noted in the discussion above, this form is in spreadsheet format. The Commission proposes to require that the form be filed with the Commission in the same spreadsheet format. Respondents should not modify the formulas. If respondents, in addition to the required spreadsheet version of the report, wish to attach a PDF version of the report, they may do so. The Commission proposes to require that FERC Form No. 501–G forms be filed through eTariff. The Commission will establish a new Type of Filing Code (TOFC)<sup>80</sup> just for these reports. Respondents may include with this filing, as appropriate, a statement explaining why no adjustment in its rates is needed, or their commitment to make a general NGA section 4 rate case filing in lieu of a limited NGA section 4 filing as permitted by § 154.404. The *Implementation Guide* provides contact

information for Commission staff if assistance is needed regarding FERC Form No. 501–G.

63. For the limited NGA section 4 rate reduction option proposed in § 154.404, the Commission proposes to establish a new TOFC. Pipelines are required to incorporate by reference their filed FERC Form No. 501–G as a supporting document. No other documentation is necessary if the pipelines propose to reduce their rates by the percentage shown on their FERC Form No. 501–G. Pipelines may file a § 154.404 rate reduction earlier than the proposed FERC Form No. 501–G compliance dates.

64. Each report and limited NGA section 4 filing will receive a new root docket number. The Commission will issue a Notice for each report and filing, with interventions and comments due under the standard § 154.210 notice period.<sup>81</sup> The following table lists the proposed new TOFCs. FERC Form No. 501–G is a one-time form. As such, the Commission proposes to retire these TOFCs after the end of the staggered compliance dates provided in the FERC Form No. 501–G *Implementation Guide*.

Type of filing code	Filing title	Citation	Type of filing category
1430 .....	FERC Form No. 501–G Report .....	260.402	Compliance.
1440 .....	Limited Sec. 4 Tax Reduction .....	154.404	Normal/Statutory.

65. Intrastate pipelines with cost-based rates established pursuant to § 284.123(b)(2) of the Commission's regulations that are filing to reduce rates pursuant to proposed § 284.123(i) may use any appropriate existing TOFC under the NGPA Gas Tariff Program options.

#### V. Regulatory Requirements

##### A. Information Collection Statement

66. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (information collection) imposed by an agency.<sup>82</sup> Therefore, the Commission is submitting its proposed information collection to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995. Upon approval of a collection

of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

67. *Public Reporting Burden*: The overall proposed data collection (FERC–501G, One-time Report on Rate Effect of the Tax Cuts and Jobs Act) includes the following requirements.

68. The Commission has identified 133 interstate natural gas pipelines with cost-based rates that will be required to file the proposed FERC Form No. 501–G. That figure is based upon a review of the pipeline tariffs on file with the Commission. Interstate natural gas pipelines have four options as to how to address the results of the formula

contained in FERC Form No. 501–G. Each option has a different burden profile and a different cost per response. Companies will make their own business decisions as to which option they will select, thus the estimate for the number of respondents for each option as shown in the table below is just an estimate.

69. The number of NGPA section 311 and Hinshaw pipelines that will be required to file a rate case pursuant to proposed § 284.123(i) is a function of state actions outside of the control of the Commission. Thus, the estimate for the number of respondents for NGPA section 311 and Hinshaw pipelines filing a rate case in compliance with proposed § 284.123(i) as shown in the table below is just an estimate.

70. Based on these assumptions, we estimate the one-time burden and cost<sup>83</sup>

<sup>79</sup> The courts have held that the Commission's conditioning authority under NGPA section 311(c) permits the Commission to order changes in section 311 pipelines' rates, terms, and conditions of service. See *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1016–7 (D.C. Cir. 1987). See also *Bay Gas Storage Co.*, 126 FERC ¶ 61,018, at PP 22–24 (2009) (requiring a prospective change in intrastate pipeline's Statement of Operating Conditions).

<sup>80</sup> The type of filing business process categories are described in the *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (November 14, 2016), found on the Commission's website, <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

<sup>81</sup> 18 CFR 154.210 (2017).

<sup>82</sup> 5 CFR 1320.11 (2017).

<sup>83</sup> The estimated average hourly cost of \$79.77 (rounded) assumes equal time is spent by an accountant, management, lawyer, and office and administrative support. The average hourly cost (salary plus benefits) is: \$53.00 for accountants (occupation code 13–2011), \$81.52 for management (occupation code 11–0000), \$143.68 for lawyers (occupation code 23–0000), and \$40.89 for office and administrative support (occupation code 43–

for the information collection requirements as follows.

### FERC-501G: ONE-TIME REPORT ON RATE EFFECT OF THE TAX CUTS AND JOBS ACT

	Number of respondents	Number of responses per respondent	Total responses	Avg. burden hr. per response	Avg. cost per response	Total burden hours	Total cost (\$)
	(1)	(2)	(3)	(4)	(5)	(3)*(4)=(6)	(3)*(5)=(7)
<b>Interstate Natural Gas Pipelines with Cost-Based Rates</b>							
FERC Form No. 501-G, One-time Report <sup>84</sup> .....	133	1	133	9	718	1,197	95,485
<b>Optional Response</b>							
No Response .....	53	0	0	0	0	0	0
Case for no change .....	64	1	64	5	399	320	25,526
Limited Sec 4 filing <sup>85</sup> ...	15	1	15	6	479	90	7,179
General Sec. 4 filing <sup>86</sup>	1	1	1	<sup>87</sup> 512	40,842	512	40,842
<b>NGPA section 311 and Hinshaw Pipelines with Cost-Based Rates</b>							
NGPA rate filing <sup>88</sup> .....	<sup>89</sup> 15	1	15	24	1,914	360	28,717
Total .....	<sup>90</sup> 148		228			2,479	197,749

71. The Commission does not expect any mandatory or voluntary reporting requirements other than those listed above.

72. *Action:* Proposed information collection, FERC-501G (One-time Report on Rate Effect of the Tax Cuts and Jobs Act).

73. *OMB Control No.:* To be determined.

74. *Respondents for this Rulemaking:* Interstate natural gas pipelines with cost-based rates, and certain NGPA section 311 and Hinshaw pipelines.

75. *Frequency of Information:* One-time, for each indicated reporting requirement.

76. *Necessity of Information:* The Commission requires information in order to determine the effect of the Tax and Jobs Act on the rates of natural gas pipelines to ensure those rates continue to be just and reasonable.

77. *Internal Review:* The Commission has reviewed the proposed information collection requirements and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden

estimates associated with the information collection requirements.

78. The Commission requests comments on the utility of the proposed information collection, the accuracy of the burden estimates, how the quality, quantity, and clarity of the information to be collected might be enhanced, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Interested persons may obtain information on the reporting requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 (Attention: Ellen Brown, Office of the Executive Director, (202) 502-8663, or email [DataClearance@ferc.govmailto:](mailto:DataClearance@ferc.govmailto:)). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission), by email at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

#### B. Environmental Analysis

79. 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.<sup>91</sup> The actions proposed to

be taken here fall within categorical exclusions in the Commission's regulations for rules regarding information gathering, analysis, and dissemination, and for rules regarding sales, exchange, and transportation of natural gas that require no construction of facilities.<sup>92</sup> Therefore, an environmental review is unnecessary and has not been prepared in this rulemaking.

#### C. Regulatory Flexibility Act Certification

80. The Regulatory Flexibility Act of 1980 (RFA)<sup>93</sup> generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if proposed regulations would not have such an effect.

81. As noted in the above Information Collection Statement, approximately 133 interstate natural gas pipelines, both large and small, are respondents subject to the requirements adopted by this rule. In addition, the Commission estimates that another 59 NGPA natural gas pipelines may be required to file restated rates pursuant to proposed § 284.123(i). However, the actual

000). (The figures are taken from the Bureau of Labor Statistics, October 2017 for the year ending May 2016, figures at [http://www.bls.gov/oes/current/naics2\\_22.htm](http://www.bls.gov/oes/current/naics2_22.htm)).

<sup>84</sup> 18 CFR 260.402 (proposed).

<sup>85</sup> 18 CFR 154.404 (proposed).

<sup>86</sup> 18 CFR 154.312 (2017).

<sup>87</sup> The estimate for hours is based on the estimated average hours per response for the FERC-

545 (OMB Control No. 1902-0154), with general NGA section 4, 18 CFR 154.312 filings weighted at a ratio of 20 to one.

<sup>88</sup> 18 CFR 284.123(i) (proposed).

<sup>89</sup> Estimate of number of respondents assumes that states will act within one year to reduce NGPA section 311 and Hinshaw pipeline rates to reflect the Tax Cuts and Jobs Act.

<sup>90</sup> Number of unique respondents = (One-time FERC Form No. 501-G) + (NGPA rate filing).

<sup>91</sup> Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>92</sup> See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5) and 380.4(a)(27) (2017).

<sup>93</sup> 5 U.S.C. 601-612 (2012).

number of NGPA section 311 and Hinshaw pipelines that will be required to file is a function of actions taken at the state level. The Commission estimates that only 15 of the 59 NGPA natural gas pipelines will file a rate case pursuant to proposed § 284.123(i).

82. Most of the natural gas pipelines regulated by the Commission do not fall within the RFA's definition of a small entity,<sup>94</sup> which is currently defined for natural gas pipelines as a company that, in combination with its affiliates, has total annual receipts of \$27.5 million or less.<sup>95</sup> For the year 2016 (the most recent year for which information is available), only five of the 133 interstate natural gas pipeline respondents had annual revenues in combination with its affiliates of \$27.5 million or less and therefore could be considered a small entity under the RFA. This represents 3.8 percent of the total universe of potential NGA respondents that may have a significant burden imposed on them. For NGPA section 311 and Hinshaw pipelines, three of the 59 potential respondents could be considered a small entity, or 5.1 percent. However, it is not possible to predict whether any of these small companies may be required to make a rate filing. In view of these considerations, the Commission certifies that this proposed rule's amendments to the regulations will not have a significant impact on a substantial number of small entities.

#### D. Comment Procedures

83. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 25, 2018. Comments must refer to Docket No. RM18-11-000, and must include the commenter's name, the organization they represent (if applicable), and their address in their comments.

84. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word

processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

85. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

86. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### E. Document Availability

87. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission'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.

88. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

89. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at 202-502-8371, TTY 202-502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

90. The proposed FERC Form No. 501-G and the *Implementation Guide* are available on the Commission's eLibrary and website. These will not be published in the **Federal Register** or the Code of Federal Regulations.

#### List of Subjects in 18 CFR Parts 154, 260, & 284

##### Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements.

##### Part 260

Natural gas, Reporting and recordkeeping requirements.

##### Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: March 15, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

In consideration of the foregoing, the Commission proposes to amend parts 154, 260, and 284, Chapter I, Title 18, Code of Federal Regulations, as follows.

#### PART 154—RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 154 continues to read as follows:

**Authority:** 15 U.S.C. 717-717w; 31 U.S.C. 9701; 42 U.S.C. 7102-7352.

■ 2. Add § 154.404 to read as follows:

##### § 154.404 Tax Cuts and Jobs Act Rate Reduction.

(a) *Purpose.* The limited rate filing permitted by this section is intended to permit:

(1) A natural gas company subject to the federal corporate income tax to reduce its maximum rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act of 2017,

(2) A natural gas company organized as a master limited partnership to reduce its maximum rates to reflect the elimination of any tax allowance included in its current rates, and

(3) A natural gas company organized as a partnership (but not a master limited partnership) either

(i) To eliminate any income tax allowance included in its current rates or

(ii) To justify why it should continue to receive an income tax allowance and to reduce its maximum rates to reflect the decrease in the federal income tax rates applicable to partners pursuant to the Tax Cuts and Jobs Act of 2017.

(b) *Applicability.* (1) Except as provided in paragraph (b)(2) of this section, any natural gas company with cost-based rates may submit the limited rate filing permitted by this section.

(2) If a natural gas company has a rate case currently pending before the Commission in which the change in the federal corporate income tax rate can be reflected, the public utility may not use this section to adjust its rates.

(c) *Determination of Rate Reduction.* A natural gas company submitting a filing pursuant to this section shall reduce:

(1) Its maximum reservation rates for firm service, and

<sup>94</sup> See 5 U.S.C. 601(3) citing section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation (2017).

<sup>95</sup> 13 CFR 121.201 (Subsector 486—Pipeline Transportation; North American Industry Classification System code 486210; Pipeline Transportation of Natural Gas) (2017). "Annual Receipts" are total income plus cost of goods sold.

(2) Its one-part rates that include fixed costs, by

(3) The percentage calculated consistent with the instructions to FERC Form No. 501–G prescribed by § 260.402 of this chapter.

(d) *Timing.* Any natural gas company filing to reduce its rates pursuant to this section must do so no later than the date that it files its FERC Form No. 501–G pursuant to § 260.402.

(e) *Hearing Issues.* (1) The only issues that may be raised by Commission staff or any intervenor under the procedures established in this section are:

(i) Whether or not the natural gas company may file under this section.

(ii) Whether or not the percentage reduction permitted in § 154.402(c)(iii) has been properly applied, and

(iii) Whether or not the correct information was used in that calculation.

(2) Any other issue raised will be severed from the proceeding and dismissed without prejudice.

## PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 3. The authority citation for part 260 continues to read as follows:

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

■ 4. Add § 260.402 to read as follows:

### § 260.402 FERC Form No. 501–G. One-time Report on Rate Effect of the Tax Cuts and Jobs Act.

(a) *Prescription.* The form for the One-time Report on Rate Effect of the Tax Cuts and Jobs Act of 2017, designated herein as FERC Form No. 501–G is prescribed.

(b) *Filing requirement.* (1) *Who must file.* (i) Except as provided in paragraph (b)(1)(ii) of this section, every natural gas company that is required under this part to file a Form No. 2 or 2A for 2017 and has cost-based rates for service under any rate schedule that were filed electronically pursuant to part 154 of this chapter, must prepare and file with the Commission a FERC Form No. 501–G pursuant to the definitions and instructions set forth in that form and the Implementation Guide.

(ii) A natural gas company whose rates are being examined in a general rate case under section 4 of the Natural Gas Act or in an investigation under section 5 of the Natural Gas Act need not file FERC Form No. 501–G. In addition, a natural gas company that files an uncontested settlement of its rates pursuant to § 385.207(a)(5) of this chapter after March 26, 2018 need not file FERC Form No. 501–G.

(2) FERC Form No. 501–G must be filed as prescribed in § 385.2011 of this

chapter as indicated in the instructions set out in the form and Implementation Guide, and must be properly completed and verified. Each natural gas company must file FERC Form No. 501–G according to the schedule set forth in the Implementation Guide set out in that form. Each report must be prepared in conformance with the Commission's form and guidance posted and available for downloading from the FERC website (<http://www.ferc.gov>). One copy of the report must be retained by the respondent in its files.

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

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

**Authority:** 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 6. In § 284.123, add paragraph (i) to read as follows:

### § 284.123 Rates and charges.

\* \* \* \* \*

(i) If an intrastate pipeline's rates on file with the appropriate state regulatory agency are reduced to reflect the reduced income tax rates adopted in the Tax Cuts and Jobs Act of 2017, the intrastate pipeline must file a new rate election pursuant to paragraph (b) of this section not later than 30 days after the reduced intrastate rate becomes effective. This requirement applies regardless of whether the intrastate pipeline's existing interstate rates are based on § 284.123(b)(1) or (2).

[FR Doc. 2018–05669 Filed 3–23–18; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 1100, 1140, and 1143

[Docket No. FDA–2017–N–6107]

RIN 0910–AH88

### Regulation of Premium Cigars

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing this advance notice of proposed rulemaking (ANPRM) to obtain information related to the regulation of premium cigars

under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), and regulations regarding the sale and distribution of tobacco products. Specifically, this ANPRM is seeking comments, data, research results, or other information that may inform regulatory actions FDA might take with respect to premium cigars.

**DATES:** Submit either electronic or written comments by June 25, 2018.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 25, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of June 25, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.