foods,[5] to describe pet food ingredients,[6] or to describe flavoring.[7]

Several commentators stated that they do not consider the AAFCO Model Regulations to be sufficient to protect consumers, primarily because the AAFCO Model Regulations (and state regulations based on the AAFCO Model Regulations) do not cover advertising. By rescinding the Guides, however, the Commission is not relinquishing jurisdiction over the labeling and advertising of dog and cat food. In fact, pet food labeling and advertising, including labeling and advertising for foods for pets other than dogs and cats, must still comply with Section 5 of the FTC Act. In enforcing Section 5, however, the Commission will be unlikely to challenge advertising claims under the FTC Act that are consistent with labeling claims that satisfy the requirements of the AAFCO Model Regulations or the regulations issued by the FDA. As in any area of policy, the Commission strives to minimize regulatory burdens on industry by avoiding conflicts with other federal and state regulatory agencies.

For those topics not addressed by the AAFCO Model Regulations or by FDA's regulations, the Dog and Cat Food Guides provide only limited guidance, and do not resolve demonstrated uncertainty regarding what claims are likely to be deceptive. For example, §§ 241.3, 241.6, 241.7, and 241.11 of the Guides merely admonish industry members not to misrepresent various characteristics of dog or cat food.[8] The Commission does not believe that it is necessary to retain guides that simply admonish sellers not to misrepresent various items, especially when, as here, there is no evidence that sellers to not understand that such misrepresentations are illegal.

Further, there do not currently appear to be particular areas covered by the Guides where industry members would have difficulty in determining whether specific claims are likely to be deceptive. For example, the Commission believes that industry members should have little difficulty determining that a representation that a dog or cat food contains whole fresh milk is likely to be deceptive if it does not contain whole fresh milk (*see* 16 CFR 241.5(f)). In addition, industry members should know, without the Guides, that they should not disseminate advertising for dog or cat food that contradicts the labeling on the product (*see* 16 CFR 241.6(m)). Thus, the Dog and Cat Food Guides do not appear to clarify specific representations that likely will be considered deceptive.

Other sections of the Guides dealing with claims beyond dog and cat food content and nutrition are also unnecessary, for they do not provide guidance beyond that given in other Commission guides. For example, §§ 241.15, Bait advertising, and 241.16, Guarantees, warranties, etc., of the Guides do not give significant guidance beyond that already contained in the Commission's Guides Against Bait Advertising (16 CFR 238) and Guides for the Advertising of Warranties and Guarantees (16 CFR part 239).

For all of these reasons, the Commission has determined to rescind the Dog and Cat Food Guides.

III. Other Guidance

In rescinding the Guides, the Commission directs the industry's attention to the principles of law articulated in the FTC's Deception Statement[9] and pertinent Commission and court decisions on deception, both of which are generally applicable to all industries. As articulated in the Policy Statement on Deception, the Commission ''will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, the consumer's detriment.'' In addition, industry members are required to possess substantiation for objective claims made about products.[10] That is, advertisers must have a reasonable basis for claims before they are disseminated.

Therefore, sellers must have competent and reliable evidence to substantiate objective claims about dog or cat food, such as claims that dog or cat food provides adequate nutrition or promotes health in dogs or cats. In this respect, the AAFCO Model Regulations and FDA's regulations on animal food labeling may provide industry members with useful guidance. Other tests, research, or information, however, also might be used by sellers to substantiate claims. Industry members bear the responsibility of ensuring that such information constitutes competent and reliable evidence in support of their claims. The Commission will evaluate the adequacy of substantiation on a case-by-case basis.

List of Subjects in 16 CFR Part 241

Advertising, Animal food, Foods, Labeling, Pets, Trade practices.

PART 241—[REMOVED]

The Commission, under the authority of Sections 5(a) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 46(g), amends chapter I of title 16 in the Code of Federal Regulations by removing part 241.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–27783 Filed 10–22–99; 8:45 am]

BILLING CODE 6750–01–M

[5] For example, 21 CFR 501.3(e) requires that the term ''imitation'' be used to identify certain animal foods.

[6] For example, 21 CFR 501.4(b)(ii)(3) permits concentrated skim milk or reconstituted skim milk to be referred to as ''skim milk'' on labels.

[7] For example, 21 CFR 501.22(a)(3) sets requirements for using the terms ''natural flavor'' or ''natural flavoring.''

[8] Section 241.3, for example, advises industry members not to misrepresent dog or cat food ''in any . . . material respect.''

[9] Deception Statement, appended to Cliffdale Associates, Inc., et al., 103 F.T.C. 110, 175 (1984).

[10] Policy Statement Regarding Advertising Substantiation, 48 FR 10471 (Mar. 11, 1983), appended to Thompson Medical Co., 104 F.T.C. 648, 839 (1984).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153, 157, 380

[Docket No. RM98–17–000; Order No. 609]

Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements

Issued October 13, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Natural Gas Act (NGA) by adding certain early landowner notification requirements that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also is amending certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including expanding the list of activities categorically excluded from the need for an Environmental Assessment in § 380.4 of the Commission's regulations; and expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificates.

Finally, the Commission also is requiring that pipelines conduct an abbreviated consultation with the National Marine Fisheries Service concerning essential fish habitat as

required by regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act; and applying the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures to activities conducted under the pipelines' blanket construction certificates.

DATES: These regulations become effective November 24, 1999.

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

FOR FURTHER INFORMATION CONTACT:

John S. Leiss, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1106

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2246

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 8.0. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Natural Gas Act (NGA) by adding certain early landowner notification requirements that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also is amending certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including: (1) Expanding the list of activities categorically excluded from the need for an Environmental Assessment in § 380.4 of the Commission's regulations; and (2) expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificates.

Finally, the Commission also is: (1) Requiring that pipelines conduct abbreviated consultations with the National Marine Fisheries Service concerning essential fish habitat as required by regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act); and (2) applying the Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures) to activities conducted under the pipelines' blanket construction certificates.

II. Background

As part of an ongoing review of its regulations, the Commission continues to seek ways to make its certificate process more efficient and effective. Recently, it has become evident that landowners that may be affected by a pipeline's proposal to construct facilities want earlier and better notice of that pipeline's intent to construct pipeline facilities on or near their property.

Under the Commission's current practice, landowners with property on a proposed pipeline route, adjacent to compressor station or LNG plant sites, or adjacent to existing fee-owned rights-of-way which would be used for a proposed pipeline, are generally notified by the Commission as part of its environmental review of the proposed project. Generally, the Commission notifies the potentially affected landowners when it issues a Notice of Intent to Prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA) as required by the National Environmental Policy Act of 1969 (NEPA).[1] The Notice of Intent is mailed to the affected landowners after the Commission has begun to process the pipeline's application and after the Commission notices the application for the new facilities and, usually, after the intervention period has run.[2]

Recently, landowners and other citizens have expressed increasing interest in participating in the major pipeline projects, especially the greenfield pipelines and pipeline expansions in heavily populated areas.[3] On April 28, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR)[4] proposing that, among other things, applicants that file to construct pipeline facilities notify affected landowners within three days of filing the application.

The Final Rule adopts the Commission's landowner notification proposal with minor modifications. The Final Rule also adopts the Commission's proposals to: (1) Expand the list of activities categorically excluded from the need for an EA; (2) expand the authority to rearrange facilities under the blanket construction authority; (3) require that pipelines consider essential fish habitat under the Magnuson Act; and (4) require that the pipelines apply the Commission's Plan and Procedures to blanket construction activities.

The Final Rule also incorporates a number of changes from the proposals in the NOPR in response to the comments filed. Some of the changes in the Final Rule include: (1) Clarifying that the Commission expects that the pipelines would use a good faith effort to notify all affected landowners; (2) requiring, in addition to notification of individual landowners, that the pipelines publish notification of their applications in a local newspaper; (3) allowing for hand delivery of the notification; (4) establishing an

[1] Specifically, NEPA requires that federal agencies carefully weigh the potential environmental impact of all their decisions and consult with federal and state agencies and the public on serious environmental questions.

[2] Once the application is filed, the Commission issues a notice of the filing, which is published in the **Federal Register**. The notice appears approximately 10 days after the filing. The notice specifies an intervention period, usually extending 21 days from the notice date.

[3] Greenfield pipelines are pipeline proposals that will be located in a new pipeline right-of-way for most of their length.

[4] Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, 64 FR 27717 (May 21, 1999), IV FERC Stats. and Regs. ¶ 32,540, (Apr. 28, 1999).

exception to the notification requirement for abandonments by sale or transfer; (5) providing for notification of landowners with property that abuts the edge of a proposed right-of-way; (6) requiring that pipelines notify any landowner with property containing a residence within one-half a mile of proposed compressors, their enclosures, or LNG facilities; (7) clarifying that ''property rights'' includes all rights listed in the tax records, surface and subsurface, within the certificated boundaries of a storage field; (8) explaining that the Commission pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?'' will be updated and modified consistent with this and other recent rulemakings; (9) adding additional requirements for the notice, including a general map of the applicant's proposal; (10) deleting the notification requirement for activities performed under § 2.55 of the Commission's regulations; and (11) creating several exemptions from landowner notification requirements for activities performed under the Commission's blanket certificate authorization.

III. Discussion

A. Pre-Filing Meetings

In the NOPR, the Commission stated that it was in the pipelines' best interest to attempt to involve the public early on in the construction process, specifically before an application is filed, by seeking public input before determining the exact route of a proposed pipeline. The Commission contended that earlier landowner participation could result in a more definitively defined route that would help alleviate some of the significant delays the Commission is presently experiencing in processing a certificate due to the time needed to address and resolve landowner concerns. The Commission stated that it wished to encourage pipelines to hold pre-filing meetings, but it did not believe it was necessary to mandate those meetings at this time. However, it solicited further comments concerning this issue.

Comments. Generally, the Interstate Natural Gas Association of America (INGAA), Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation (Algonquin), Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), Great Lakes Gas Transmission LP (Great Lakes) , El Paso Energy Corporation Interstate Pipelines (El Paso), Enron Interstate Pipelines (Enron), and the Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group (Industrials) contend that the Commission should encourage, but not mandate, pre-filing meetings. They assert that the pipelines should continue to have the flexibility to determine the substance and scope of notification prior to filing an application based on the specifics of each individually proposed project. Additionally, they claim that such pre-filing procedures could seriously impair the efficiency of the current certificate process.

Conversely, several parties support the need for pre-filing meetings. The Iowa Utilities Board (Iowa Board) believes pre-filing information meetings are highly beneficial to landowners and should seriously be considered. However, it indicates that as long as the landowners are given sufficient time and opportunity to participate meaningfully, the proposed route is easily modified in response to landowner concerns, and landowner's rights are protected, post-filing notification may be acceptable.

GASP Coalition (GASP) contends that the Commission's proposal to have landowners notified when a application is filed does not cure what is wrong with the process and is too late. GASP urges that the Commission establish a structured pre-filing notification requirement and also require collaboration with potentially affected landowners from the inception of a project. GASP asserts that notification at the time of filing does not create a level playing field. It states that few landowners have the financial resources, the tenacity, the time, or the ability to participate. Alice and Peter Supa, property owners along the proposed Millennium Pipeline route, contend that landowner notification needs to be changed to require natural gas companies to communicate in good faith with each landowner, the public, municipalities, and public officials long before an application is filed. They argue that the Commission should require pipelines to purchase legal notices in local newspapers and penny savers and to conduct several local informational meetings.

Commission Response. We are unconvinced by the argument that prefiling notification would impair the certificate process to any significant degree. To the contrary, as stated, we believe that the more landowners and the local community know of the application before it is filed, the more expediently the Commission will be able to process that application. Therefore, although we do not intend to mandate pre-filing meetings at this time, we believe that there is a strong incentive for the applicant to conduct such meetings.

We also believe that notifying landowners at the beginning of the Commission's process, when the application is filed, will give landowners sufficient time and opportunity to become involved in the process and to have meaningful participation, as recommended by the Iowa Board. As part of its NEPA review process, the Commission studiously reviews all suggestions and recommendations concerning alternative sites before making a final decision. Many times the Commission adopts these suggestions and recommendations in approving the ultimate route for the pipeline.[5] It also considers all other concerns raised by all participants in the proceeding, including, among other things, safety, air quality, noise, and other issues as appropriate to each proceeding.

Further, we believe notification at the time the application is filed gives landowners fair and adequate access to the Commission's process. It provides them with notice of a proposed application at the same time, if not sooner, than other parties that monitor the Commission's issuances and the **Federal Register**. Further, it allows them to participate equally with other parties.

Finally, we note that the Commission is investigating other areas and is implementing other programs to facilitate the application and review process. These initiatives will foster more efficient and effective landowner participation. These initiatives include the *ex parte* rule in Docket No. RM98–1–000,[6] the complaint rule in Docket No. RM98–13–000,[7] the electronic service rule in Docket No. RM99–6–000,[8] and the collaborative process rule adopted in Docket No. RM98–16–000.[9] In the *ex parte* rule, the Commission exempts communications related to developing environmental documentation from the Commission's

[5] *See* Vector Pipeline LP, 87 FERC ¶ 61,225, 61,892–94 (1999).

[6] Regulations Governing Off-the-Record Communications, Order No. 607, 64 FR 51222 (Sept. 22, 1999), III FERC Stats. and Regs. ¶ 31,079 (Sept. 15, 1999).

[7] Complaint Procedures, Order No. 602, 64 FR 17087, (Apr. 8, 1999), FERC Stats. and Regs. ¶ 31,070 (Mar. 31, 1999), *order on reh'g*, Order No. 602–A, 64 FR 43600, (Aug. 11, 1999), III FERC Stats. and Regs. ¶ 31,076 (July 28, 1999).

[8] Electronic Service of Documents, Order No. 604, 64 FR 31493 (June 11, 1999), III FERC Stats. and Regs. ¶ 31,074 (May 26, 1999).

[9] Collaborative Procedures for Energy Facility Applications, Order No. 608, 64 FR 51209 (Sept. 22, 1999), III FERC Stats. and Regs. ¶ 61,080, (Sept. 15, 1999).

ex parte rules. In the complaint rule, the Commission encourages and supports consensual resolution of complaints, and organizes complaint procedures so that all complaints are handled in a timely and fair manner. In the electronic service rule, the Commission stated that it would permit participants to a proceeding to voluntarily serve documents on one another by electronic means. Finally, in the collaborative process rule the Commission delineates a program under which it establishes an optional pre-filing consultation process for potential applicants to foster constructive dialog between the applicant and other interested parties to help resolve disputes among the participants before an application is filed with the Commission. The Commission believes that these initiatives will facilitate greater and more efficient and effective landowner participation in certificate matters.

At this time, we believe that the landowner notification requirement adopted here is adequate. However, the Commission continuously reviews its policies and procedures and updates them regularly with policy statements and subsequent rulemakings. If the Commission determines that its landowner notification policy needs subsequent revisions, it will make such modifications at a later date.

B. Notification Requirement

In the NOPR, the Commission proposed to require that all applicants proposing NGA section 7 projects notify all affected landowners of record from the most recent tax rolls by certified or first class mail within three (3) business days following the date they file the application with the Commission. The Commission also proposed to require that the pipeline make a good-faith effort to determine the correct address for any undeliverable notices and to send notices to the corrected addresses.

1. Good-Faith Effort To Notify

Comments. Columbia requests that the Commission clarify that the requirement to notify all landowners falls under the good faith effort concept. Columbia asserts that many of its facilities are in locations where property has been handed down from one generation to another over long periods of time resulting in diffused ownership spread over many heirs. It contends that the rigidity implied by the word ''all'' sets up an unrealistic and, in some cases, unachievably high standard. Therefore, it requests that the Commission extend the good faith effort concept to the landowner notification requirement.

The Industrials contend that the Commission should only require that the pipeline attempt to notify all affected landowners. They claim that some of the affected landowners will be difficult to identify, and in some cases there may not even be agreement as to who the landowners are (*e.g.* where there is a dispute among decedents or other land claimants). They state that the Commission should not create legal rights that could be used to block or delay pipeline construction.

The Iowa Board proposes several options to deal with landowners who may not get notification. First, it suggests that the Commission adopt a substantial compliance provision, which would provide that missed landowners would not negate the entire notification effort if the pipeline company can show a good faith effort to identify and notify all parties. Another option it recommends is that in addition to mailed notices, that a public notice should be published in newspapers along the pipeline route. It also recommends that landowners who did not receive the notice should be given an opportunity to file for late intervention or submit late-filed comments.

Commission Response. The Commission's intent behind the landowner notification requirement was that the applicant should make a good faith effort to serve all affected landowners. However, to clarify this we will modify § 157.6(d)(1) to specifically state that the applicant shall make a good faith effort to notify all affected landowners.

We will also modify § 157.6 by adding a requirement that the applicant also publish notice of the application in newspapers of general distribution in the project area within a week of the filing of the application. We will leave it to the applicant's discretion how many newspapers may be appropriate. However, a reasonable guideline, consistent with requirement in §§ 157.10(b) and (c) of the Commission's regulations concerning placing copies of the application in accessible central locations, would be one per county involved in the project unless a single newspaper fits the general distribution criterion in more than one county.

This newspaper notification will serve not only to embrace those individuals who may not have received notification along the proposed route, but also to give some advance notice to people in the general project area who might be affected by alternatives. Further, the Commission may subsequently decide, on a project-specific basis, what additional notification may be appropriate for other landowners potentially affected by alternatives.

To the extent some notices may be received by the affected landowner after the intervention deadline, § 385.101(e) of the Commission's regulations provides for waiver of the Commission's rules for good cause. Traditionally, the Commission has granted waivers of its intervention requirements and allowed late interventions when the party did not receive notice of a pending application until after the intervention deadline had passed. Further, §§ 157.10 and 380.10(a)(1)(i) allow parties to intervene in response to Commission action in its environmental documentation.[10]

2. Hand Delivery of Notices

Comments. Williston Basin Interstate Pipeline Company (Williston Basin) asserts that it continues to believe that the landowner notification requirement should be performance based and that the Commission should not impose the notification rules on all pipelines. It contends that the Commission should only require landowner notification if it receives valid complaints against a particular pipeline. Williston Basin believes the current policy, which allows each pipeline company flexibility in landowner notification and which takes into account the geographic and demographic characteristics of the areas in which the proposed construction will take place, is the most appropriate policy. In the alternative, it suggests that, at a minimum, the Commission should modify the regulations proposed in §§ 153.3, 157.6(d), and 157.103, to allow pipelines the option to hand-deliver this information to affected landowners. Williston Basin states that it should be allowed the opportunity to explain to the landowner that the contents of the notice are being provided in compliance with Federal regulations and not in anticipation of condemnation through an eminent domain proceeding.

Commission Response. The Commission does not believe it is appropriate to require notification only on a performance basis. First, the large greenfield pipeline project is most likely to be filed by a new pipeline trying to enter the market and who will have no track record of appropriate public relations. Given the considerable public outcry over the lack of notification for several such projects recently, we do not believe that a wait-and-see policy is justified.

[10] *See* Southern Natural Gas Company, 79 FERC ¶ 61,280, 62,202 (1997).

Second, we believe it is discriminatory to require only some companies to provide the notification. In the worst case scenario, this would allow a company to potentially be a bad neighbor until some threshold was reached in terms of the number of complaints the Commission received. In the meantime, the landowners who have not been treated well may have irrevocably lost the opportunity to have early and complete involvement in the Commission's process.

Finally, we will modify §§ 153.3, 157.6(d), and 157.103 to allow the applicant to hand deliver the notification. However, we note that no matter how delivery is made, the applicant is required to deliver the notice to the landowner of record, which may not necessarily be the person occupying the property. Moreover, the contents of the notification must be the same regardless of the mechanism of delivery.

3. Docket Number

Comments. INGAA requests that the Commission assign the application a docket number at the time the filing is made. It contends that if the Commission assigns the application a docket number subsequent to when the application is filed, it will be difficult for the pipelines to meet the Commission's notice requirements in a timely matter. It proposes that the Commission revise § 157.6(d) and related sections to provide that the pipelines notify all affected landowners within three business days following the date the Commission assigns a docket number to the application. The Industrials, Algonquin, and El Paso make similar requests.

Columbia requests that the Commission clarify the requirement to notify all affected landowners within three days refers to the mailing date of the notice and not the date of receipt by the landowner. It contends that requiring that the notice be received by the landowners within three days of the filing of the application is unreasonably burdensome and not justified for the purpose of the new regulation.

Commission Response. While the Commission believes that it is rare that a filing is not docketed the day it is received, we will modify § 157.6(d) and require that the notice be sent within three-business days of the day the application is assigned a docket number. The three business day requirement applies to the date of mailing or the day the notice is hand delivered. In other words, the notification must be in the mail by the end of the third business day after the docket number is assigned, or, if the company chooses to deliver the notification by hand, then it must be so delivered within three business days of the date the filing is assigned a docket number.

4. Abandonments

Comments. National Fuel Gas Supply Corporation (National Fuel) contends that the Commission should clarify that the landowner notification requirement applies to activities involving construction and not to activities such as abandonments by transfer and customer name changes. It contends that facility transfers do not involve any disturbance of property. Therefore, it asserts there is no need to enlarge on whatever rights of notice or consent the landowners may have under applicable rights-of-way. Also, it requests that the Commission clarify that advance landowner notice can be waived by the landowner.

National Fuel also claims that there are abandonment situations when consultations with landowners would not be appropriate. For example, it cites instances where the abandoned pipeline may be utilized to cathodically protect another pipeline, or where the pipeline crosses under a roadway or stream and it is impractical to remove the pipeline. It requests the Commission clarify that its intent is to require the applicant to identify landowner consultations, or provide an explanation as to why particular consultations were not made.

INGAA contends that the requirement to notify landowners about abandonments impinges on binding easement agreements. It states that often the pipeline's easement document will specify whether a pipeline is permitted to abandon its pipeline in place. It claims that the Commission's requirement amounts to a unilateral renegotiation of the easement by allowing the landowner to request that the pipeline be removed. It also asserts that it may falsely lead landowners to believe they have rights contrary to their negotiated easement agreements. Further, it contends that implying that the landowner may request removal of the pipeline may create unnecessary landowner tension should environmental and other factors make it impractical to honor the landowner's request. Great Lakes makes a similar argument.

Algonquin contends that a requirement that the pipeline consult with landowners prior to abandoning facilities will raise expectations that facilities will be removed when there is no practical reason to do so and the cost of removing the facilities is excessive under the circumstances. In fact, it argues that unless there is a legitimate reason to remove the facilities, removal in virtually all cases will result in totally unnecessary environmental disturbances. Also, it claims that the pipeline's right-of-way agreement may specify whether a pipeline is to be abandoned in place or not. It asserts that the Commission has not identified any reason to interfere with such agreements.

Commission Response. First, we note that we agree that the notification discussed herein does not need to be done for name changes or other activities that do not affect the use of the easement. Therefore, in § 157.6(d)(1) we will exempt abandonments of facilities by sale or transfer. However, we do not agree that all abandonments should automatically be exempt from the notification requirements.

In a NGA section 7(b) abandonment proceeding, the Commission will review all the relevant factors concerning the abandonment and make a determination if it is in the public convenience and necessity to grant the abandonment. While it is possible, as some of the commenters allege, that easement agreements may specify the pipeline's responsibility under the agreement upon abandonment of the easement, that is not always true. Further, the presence of such a stipulation in the easement does not necessarily override the other considerations that the Commission must weigh in ruling on the abandonment.

In the case of abandonment by removal, the same individuals who would have been affected by construction of the facilities also may be affected by the removal. However, changed circumstances since the original construction of the facility could warrant that the existing landowner be notified.

The Commission is aware that in many cases the environmental impact of removal is unwarranted or that other considerations mentioned by the commenters, *e.g.*, cost, use of the abandoned pipeline for cathodic protection, presence of a road or railroad, may make it impractical or undesirable to remove the pipeline. The pipeline applying for abandonment may identify the reasons it believes its proposed disposition of the pipeline is appropriate. Those reasons may be economic, environmental, related to safety, or stem from the landowner's choice, but in order to make a reasoned decision on the effects of its approval of the abandonment, the Commission needs to have this information. If the Commission decides that it is in the

public convenience and necessity to have the pipeline disposed of in a different manner than stipulated in the easement agreements, it will explain its reasons in the order granting the abandonment.

With respect to National Fuel's request for advance waiver of the right to notification, we see little advantage to the pipeline or to the Commission. These pipelines are in the ground for many years. Further, facts, circumstances, and the law change over time. The Commission believes it is important to review all the relevant factors in place at the time the pipeline is proposed to be abandoned. Therefore, we do not believe that a waiver of the notice requirement in these situations is appropriate.

5. Tax Records

Comments. Market Hub Partners LP (Market Hub) claims that the Commission's definition does not specify what county/city tax record the pipeline must examine in determining what landowner to notify. Specifically, it asks if the pipeline must only examine the annual tax rolls, or must it look at other property records, update its search quarterly, or obtain the most recent tax roll prior to sending out its notice. It also contends that the pipeline can ''hide behind'' the tax roll if it has reason to believe it is incomplete or incorrect. It requests that the Commission clarify that the applicant is required to examine the annual records as well as any quarterly updates and that it must provide notice to any other affected landowners it is aware of that do not appear on the public record.

Commission Response. The requirement to make a good faith effort implicitly involves using the most current source at the time of filing. It would include any independent material the applicant has in its possession concerning the landowners it must deal with to obtain property rights. Given the need to obtain those rights and to obtain permission to survey property for various environmental requirements in our regulations, we see very little reason or advantage for the applicant to avoid deriving a good faith list.

6. Route Changes

Comments. The Iowa Board points out that the route may change during the certificate process and the landowners on the alternative routes may not be included in the initial notice. It suggests that: (1) The landowners on any alternative routes also being considered by the applicant be included in the initial notification process; (2) the Commission require notice within a corridor wide enough to accommodate minor route shifts; and (3) landowners affected by a major route shift proposed during the certificate process should be given notice as soon as possible and provided the opportunity for late intervention or late-filed comments.

Commission Response. The Commission will not at this time require that the pipeline notify any landowners other than those potentially affected by the proposed route/facilities. The range of potential relocations of facilities is so broad that it would not be productive to require such notification. We will also not require that the pipelines notify all landowners along alternatives it looks at on its own. This would tend to be a real disincentive for the applicant to look at any alternatives until later in the process. We intend to rely on the Commission's staff to determine which additional individuals should be notified during the environmental analysis.

Nevertheless, we will point out to potential applicants that it is in their best interest to make sure a wide universe of landowners is aware of the project as early as possible to ensure input into the routing/location of facilities. In addition, waiting for the Commission's staff to determine who should receive notification may tend to lengthen the Commission's review process.

Also, as discussed, we are adding a requirement to § 157.6(d)(1), that the applicant publish notice of the application in local newspapers. We believe this is sufficient notice at this time.

C. Affected Landowner

In the NOPR, the Commission proposed to define affected landowners to include owners of: (1) Property directly affected by the proposed activity, including all property subject to the right-of-way and temporary work space; (2) property abutting an existing right-of-way (owned in fee by a utility) in which the facilities would be constructed; (3) property abutting a compressor or LNG facility; or (4) property over new storage fields or expansions of storage fields and any applicable buffer zones.

1. Property Directly Affected

Market Hub argues that the term ''directly affected'' introduces ambiguity into the definition of ''affected landowner''. It contends that the word ''directly'' does not add or delete any substance from the definition of ''affected landowner''. It states that it is uncertain whether the word ''directly'' is intended to impose an obligation to notify landowners who would not otherwise be notified. It requests that it be deleted.

Commission Response. The Commission deliberately used the term ''directly'' to indicate that the property would be physically used by, or for the construction of, a facility. The word was used to distinguish the properties which would be used in some way for the project from those properties which would simply be within view or earshot. However, we will add a parenthetical to § 157.6(d)(2)(i) clarifying our intent to mean those properties being used or crossed by construction activities.

2. Abutters

INGAA requests clarification that any pipeline that owns the right-of-way in fee is not considered a utility company and therefore is not required to notify affected landowners that abut its right-of-way. It claims that to impose such a condition could discourage construction along existing rights-of-way. Similarly, the Industrials question why notice should be legally required for landowners adjacent to property that is actually owned by the pipeline. They argue that when the pipeline owns the right-of-way in fee, it has a legal right to do what it wants in the right-of-way. Columbia also objects to the inclusion of abutters to existing rights-of-way in the list of affected landowners. It contends that abutting landowners will not have facilities on their property, will not be subject to condemnation and will not have restrictions on the use of their property.

Market Hub requests that the Commission clarify whose property abuts a right-of-way or facility site for the purpose of this rule. It states that a facility site should mean actual facilities that are a part of the operating facility, *i.e.*, the actual pipeline, or the actual compressors used for gas injection. In the alternative, it recommends that the Commission replace its proposed ''abuts'' rules with one that simply requires pipelines to give notice to all owners of property rights on or in parcels of property adjacent to the property and/or property rights that have been or will be acquired by the pipeline.

INGAA, Enron, and the Industrials generally question the usefulness of notifying a landowner that abuts a large block of land owned by a utility where the pipeline only acquires a right-of-way on a small piece of the property that is distant from the abutting landowner's property. INGAA and Enron request that the Commission clarify § 157.6(d)(2)(ii) to provide for notification where the

pipeline is in an utility right-of-way and construction/disturbance is proposed within 50 feet of the adjacent property. The Industrials request that the Commission clarify that this provision, at most, requires notice only to those landowners whose abutting property is adjacent to that portion of the existing right-of-way or facility site that will be used for the proposed pipeline facility construction.

The Supas recommend that landowners within 150 feet of construction be notified and the Schavers, landowners who participated in the Vector Pipeline proceeding, recommend that all landowners who will be affected by pollution, accidents, noise, or visual obstructions be notified.

Commission Response. First, we will clarify that the requirement to notify abutters (in § 157.6(d)(2)(ii)) refers to *any* utility right-of-way owned in fee. We see no reason to distinguish between natural gas pipelines and other utilities. The important consideration is whether there is construction-related activity taking place in the area, not whether this utility or that owns the land. It is the abutting landowner's right to comment on the project work area that is of concern.

Further, we do not believe that this requirement will discourage the use of existing rights-of-way since there are many advantages of using them, not the least of which is the ability to potentially deal with only a single landowner (the utility) for the use of extensive lengths of right-of-way. The issue here is simply whether people get notified and comment on the project. The Commission's long-standing preference for such co-location will still encourage pipelines to propose using existing rights-of-way. A decision to do otherwise, will still need to be justified in the application.

We believe that requiring notice to the abutters of existing ''in fee owned'' right-of-way is appropriate. It is our experience, as borne out by comments from other governmental agencies and private citizens, that the more notification that is provided, the more useful relevant information that can be obtained from the local individuals who are likely to be most knowledgeable about the project area. Notification to just the landowner (the utility company) would not allow any significant public notice and would not stimulate much public input to the process. We think this consideration alone warrants the proposed notification to abutters. In addition, we are simply codifying our current practice.

In the case of a new natural gas pipeline across land not owned in fee or not previously encumbered by a right-of-way, we believe that notification of all abutters is equally appropriate to treat them in the same way as abutters to ''in fee owned'' right-of-way. In general, this requirement will not significantly increase the number of landowners who need to be notified since easements more commonly cross property than share property boundaries. In addition, these additional properties will be easy to identify along with those properties crossed. Therefore, we will modify § 157.6(d) and require that the pipeline provide notice to all landowners whose property abuts the right-of-way.

Finally, we believe that property owners with residences within sight or hearing of a compressor station or LNG facilities also deserve notification. The impact of such facilities extends beyond the localized potential for effect from a pipeline. For instance, the Schavers' suggestion that people who would be affected by noise or visual effects of projects be notified applies to these kinds of facilities, since they have the potential for long-term effects of this kind. Choosing an appropriate distance is difficult; however, our experience with the potential noise impact of compressors indicates that a reasonable distance is one-half mile. Within this range it is not uncommon for the noise restrictions we usually place on compressors to come into play. We also submit that within this range the existence of a new compressor station or LNG facility may also be apparent to the unaided eye.

3. Storage Areas

Market Hub contends that the Commission's landowner notification rules should take into account the various estates that exist in a single parcel of property, including separate rights to surface, subsurface, minerals, oil and gas extraction, and oil and gas storage estates. It requests that the Commission require pipelines to notify the owners of all estates and rights-of-way in the parcel of property at issue as they are identifiable based on public land records. Similarly, Mr. Edward Deming, a landowner with property on a CNG Transmission Corporation storage field, states that the Commission should require notification of all affected property owners in areas of storage facilities including owners of surface and subsurface rights. On the other hand, Enron requests that the Commission clarify that the phrase ''owners'' means surface owners only.

Columbia recommends that notification of owners of property rights within new storage fields be limited to the owners of properties on which facilities (above and below ground) will be constructed. It asserts that the focus should be on those surface landowners who will be directly affected by the construction proposals in contrast to others within the boundaries of new storage fields whose property will not be disturbed.

Market Hub states that the phrase ''within the area of new storage fields or expansions of storage fields and any applicable buffer zone'' is vague. It explains that storage operations sometimes involve drilling wells that reach several thousand feet below the surface, and involve the storage of gas in formations that cover large areas. It contends that various owners and various property interests may be affected by a proposal to build or modify a storage facility. Therefore, it asserts that the storage operator's notification obligation should apply to all owners of property rights within the existing certificated boundaries of the relevant storage field.

New York State Department of Environmental Conservation (NYSDEC) states that it is unclear that the rules as currently proposed will provide owners of property within the boundaries of proposed storage projects adequate information to meet the Commission's goal of ensuring affected landowners sufficient and timely opportunity to actively participate. It also asserts that the Commission's pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?'' does not address property rights or environmental concerns as they relate to storage fields. For example, it points out that the pamphlet states that the right-of-way may be 75–100 feet wide, whereas a storage field may be hundreds of acres or several square miles in size. It states that property rights issues such as in-place resources of native gas or salt are unique to storage safety issues. Also, it contends that the pamphlet does not inform landowners that certain storage field expansions may be categorically excluded from the Commission's environmental review. It recommends that the contents of the notice for storage projects be expanded to include additional issues of concern that are unique to storage fields.

Commission Response. The Commission's intent in § 157.6(d)(2)(v) is to include all recorded property interests in the area within the entire certificated boundaries of the storage field. We believe this is appropriate because once a storage field is certificated, there may be future construction within the boundaries of the field for which no additional

Commission authorization will be required. For example, auxiliary facilities of many kinds may be installed subsequent to the Commission's initial authorization without any further Commission involvement. In addition, pipelines within a storage field may be relocated under blanket authority without any further Commission action. There may be landowners affected by this future construction that would not have been affected when the original proposal was approved. Therefore, we believe it is appropriate to notify all property interest owners that potentially could be affected within the storage field even if the facilities proposed in the current application would not directly affect them.

Additionally, the Commission's intent is for the applicant to notify all property interests noted in the tax records, surface and subsurface. As stated, the Commission believes that all owners of property interests that may be affected by the applicant's proposal have a right to know what the pipeline intends to do. Finally, we believe that surface landowners have a right to know that natural gas is proposed to be stored beneath their property and have the opportunity to have their views on the proposal heard even if the surface area of their property will not be disturbed as a result of the applicant's proposal.

While the current edition of the landowner pamphlet does not contain any information specific to the issues of interest for storage field projects, the Commission intends to update the information in the pamphlet consistent with the changes made in this and other recently issued rulemakings. It also will make appropriate modifications in the future as the need arises. Additionally, we note that the applicant may add any additional information that it deems necessary to its notice that would clarify or explain how the pamphlet pertains to its particular project.

4. Buffer Zones

Comments. Market Hub objects to the term ''buffer zone'' because it proposes to bestow upon pipelines rights to an amorphous zone for which the pipeline has not acquired some or all of the surface or sub-surface property rights. It argues that the Commission has failed to explain the basis for its legal authority under NGA section 7 to reach zones that are outside the certificated 7(c) boundary. If the Commission has authority over the buffer zone, it should explain the rights conveyed on an applicant that receives approval of a buffer zone. Additionally, it states that the owners of property within a buffer zone should be accorded all the same rights and notifications of those in the active zone of a proposed project. Finally, it asserts that the Commission should make clear what jurisdictional activities are permissible inside the buffer zone.

Commission Response. Since the delineation of the gas storage reservoir confinement cannot be precisely established for most fields, the Commission certificates a buffer zone or protective area beyond the estimated reservoir boundaries to assure continued reservoir integrity of the gas storage field. This practice is consistent with some state requirements. The buffer zone, which will vary in size based on the geologic and engineering data available to define the lateral boundaries of the storage field, identifies the area under which the company has the right to store natural gas in the specified formation as determined in the certificate authorization. It is the storage operator's responsibility to verify and define the storage boundary through the life of the storage operation as additional operational experience is obtained. If there is any migration from the certificated boundaries of the field, including the buffer zone, the operator is obligated to notify the Commission and apply for a new boundary to the field.

Section 157.6(d)(2)(v) expressly requires that all recorded owners of property interests in the applicable buffer zone should receive notification of the applicant's proposal for that area. We note that the Commission's certificate authority only gives the applicant the authority to construct, operate, and maintain the storage facilities within the certificated boundary. It does not bestow upon the applicant any specific property rights outside of that area. The company may only conduct jurisdictional activities expressly approved by the Commission in the certificate authorization.

D. Contents of Notice

In the NOPR, the Commission proposed that the notice should include: (1) The docket number of the filing; (2) a detailed description of the proposed facilities including specific details of their location, the purpose of the project, and the timing of the project; (3) a description of the applicant; (4) the name of specific contacts at the pipeline where the landowner can obtain additional information about the project; and (5) a location where the applicant has made copies of the application available.[11] Additionally, the notice should either include map(s) of the project or information where detailed map(s) of the project can be viewed or obtained. The pipeline contact should be knowledgeable about the project and should be able to answer specific questions concerning the project. The NOPR also proposed that the notice include a copy of the Commission's pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?''.

Comments. National Fuel states that the requirement to include the Commission's pamphlet should only be required for landowners affected by pipeline construction. It contends that the pamphlet does not address other types of activities, such as compressor station construction or modification, storage field development or expansion, or pipeline abandonment and should not be required in those situations.

GASP claims that the Commission's pamphlet is not appropriate. It asserts that the pamphlet takes for granted the pipeline's right to take the landowner's property, and discourages landowner intervention in the process.

The Iowa Board suggests the following additions to the Commission's proposal: (1) The rule should specifically require the inclusion of a map showing the proposed route of the pipeline, it recommends two maps for larger projects, one showing the total project and another the local area (*i.e.* the county or township); (2) the notice should include a general, up-front statement that easements will be sought, and explaining the nature of the rights the pipeline will seek on those easements; and, (3) the Commission should require that the notice provide information concerning the legal rights of the landowners. It suggests that since easement acquisition, and usually condemnation, is a function of the laws of the individual state, the Attorney General of the affected state should be requested by the Commission to prepare and provide the summary of legal rights. Additionally, the Iowa Board states that the Commission may want to review the proposed notice before it is mailed.

Commission Response. The pamphlet was created specifically for pipeline facilities and has been adopted for this larger purpose at the suggestion of previous commenters including INGAA and other industry and Congressional representatives. As stated, the Commission intends to revise the

[11] In new § 157.10, promulgated in RM98–9–000, the pipelines are required to make complete copies of the application available in central locations in each county in the project area.

current version of the pamphlet consistent with the action taken in this and other recent rulemakings. We expect to revise the pamphlet as needed to allow it to cover as many of the facility types as is reasonably feasible.[12] Further, as stated, the applicant is free to provide any additional information it deems necessary in its notice to further clarify or explain the Commission's process as it applies to the applicant's proposed project.

As for GASP's claim that the pamphlet is inappropriate, we note that the purpose of the pamphlet is to explain the Commission's process and how the landowner may participate in that process. The pamphlet simply states the factual situation which is that once a certificate has been issued, the pipeline has the right to take property if it cannot negotiate an easement agreement with the landowner.

The Iowa Board makes some good suggestions for the contents of the notice. Accordingly, we find that requiring a map would not burden the applicant since maps are part of the application, including a map of the overall project. We also believe that the applicant can also easily include a generic description of what the applicant will need from the landowner if the project is approved and a brief description of the eminent domain rules in the relevant state. Finally, we do not believe it is necessary to impose upon the state attorneys general to provide a summary of their state's laws. We will modify § 157.6(d)(3) accordingly.

E. Landowner Notification Under §§ 2.55 and 157.202

In the NOPR, the Commission proposed to add a landowner notification requirement to §§ 2.55 and 157.202 that requires that pipelines notify the affected landowner 30 days prior to commencing construction under these sections. The notification would include: (1) A brief description of the facilities to be constructed/replaced and the effect the construction activity will have on the landowner's property; (2) the name and phone number of a company representative that is knowledgeable about the project; and (3) a description of the Commission's Enforcement Hotline procedures explained in § 1b.21 of the Commission's regulations and the Enforcement Hotline phone number.

Comments. Generally, many of commentors contend that the existing easement agreements should determine what type of landowner notification should be required for projects constructed under §§ 2.55 and 157.202 and that the proposed 30-day notice requirement is unnecessary. They contend that there is no substantial evidence of significant landowner concerns in the case of § 2.55 or 157.202 activities that would warrant any change in existing procedures.

1. Section 2.55

INGAA contends that formal notification under § 2.55 is not consistent with the type of work performed. Specifically, it states that § 2.55(b) involves existing lines with previously negotiated easements and established pipeline/landowner relationships. Additionally, it asserts that the work often requires completion in less than 30 days from the time it is identified or it involves a problem that must be corrected immediately, including situations that could not properly be characterized as emergencies, but nevertheless demand some action in a short period of time. INGAA contends that under these circumstances, the pipeline/landowner easement agreements should control how and when the pipelines provide landowner notification. Further, it notes that the 30-day waiting period may be in conflict with the requirements of the easement agreements as well as safety and environmental regulations. Algonquin, Columbia, El Paso, and Williston Basin raise similar arguments.

Commission Response. Upon reconsideration, we agree that there is no need for this Commission to require advance notification to landowners for replacement conducted under § 2.55. As the commentors point out, all of the activity involved with such a replacement is within existing right-of-way and subject to an existing easement agreement which dictates the pipeline's right to obtain access to maintain the facilities. However, we believe that prudence would dictate that the pipeline should give the landowner as much advance warning as is possible to avoid misunderstandings and ill-will.

2. Blanket Certificates

INGAA believes that the pipeline/landowner easement agreement should also control for routine construction for activities performed under the pipeline's automatic blanket certificate. It argues that to perform new construction under its blanket certificate, the pipeline must already have or have obtained the necessary right-of-way and, in the normal course of business, notify the resident prior to entering the property. Therefore, it contends that the Commission's notification requirement is unnecessary. Additionally, it claims that the Commission's requirement to notify all affected landowners of real property is too restrictive. It recommends that the Commission adopt the ''good faith'' language of the Commission's section 7(c) notification requirement.

Similarly, El Paso agues that the Commission's advance notification requirement for construction performed under the automatic authorization essentially nullifies those provisions. Further, it contends that the notification requirement is not necessary. For new construction in an area covered by an existing easement, El Paso asserts that advance notification is not necessary because the landowner previously granted the pipeline the property rights necessary to perform the construction. It states that the Commission should not interfere with the existing relationship between the pipeline and the landowner. As for construction in new rights-of-way, El Paso contends that it must obtain additional easement rights with the landowner before beginning construction and that this serves as adequate notice of the impending construction. It claims that an additional 30-day notification requirement would only unnecessarily delay construction.

For prior notice activities, INGAA asserts that the pipeline/landowner easement agreement should govern the type and timing of notice provided to landowners for activities performed under the prior notice provisions. It claims that as a condition precedent, a pipeline performing new construction under its blanket certificate would have had to negotiate with the landowners for right-of-way easements. Therefore, it states that the Commission's notification requirement duplicates what the pipeline already negotiated or provided with the landowner. Further, INGAA states that it is concerned that the requirement that the pipeline inform the landowner of its right to protest almost invites protests and may mislead landowners into believing that a protest is necessary to be a participant in the process. At a minimum, INGAA suggests that whether verbal or written, the notice describe the right to intervene or protest and also alert the landowner that the Director of the Office of Pipeline Regulation (OPR) has the authority to dismiss unsubstantiated protests.

The Industrials object to a notification requirement where the pipeline's filing indicates it has secured all rights-of-way and easements for the project in advance of the filing. They contend that

[12] We note that the current version of the pamphlet is available for downloading off the Commission's Internet Home Page.

there is little to be gained from imposing new filing notice burdens on this class of projects. They also state that if the Commission proceeds with imposition of the new landowner notice provision , it should at least amend the language to require that the pipeline only attempt to notify all directly affected landowners.

Columbia and Williston Basin believe that the Commission should build sufficient flexibility into this process and allow for a waiver of the waiting period when necessary for the pipeline to properly operate and maintain its system. National Fuel recommends that the Commission have an exception for replacement work necessitated by an immediate threat to public safety. Further, it claims that the Commission should clarify that the advance landowner notification requirement can be waived by the landowner. El Paso asserts that the proposed regulation would unduly delay prompt replacements of unsafe, deteriorated facilities. It contends that a 30-day delay under these circumstances would be untenable.

Similarly, Great Lakes contends that the pipelines may not be able to identify replacement projects conducted under § 157.203(d)(1) a full 30 days prior to the date on which the work should or will be done. It argues that the 30-day notice provision for replacement projects is unnecessary and burdensome. As an example, it explains that a pipeline may discover a defective mainline pipe section while working on installing a new loopline. It argues that under the Commission's proposal, the pipeline would have to wait 30 days to do this work. It contends that the delay would raise the cost of the project by requiring the trench to be re-opened and the necessary equipment returned to the site, and may increase the risk to the pipeline and the public during the waiting period.

Enron states that the 30-day landowner notification requirement will create conflicts with a pipeline's efforts to comply with the Department of Transportation (DOT) and environmental regulations. The Industrials request that the Commission, at a minimum, exempt from the proposed notice requirements automatically authorized construction of eligible facilities required to address unplanned or emergency repair or maintenance situations or other circumstances in which there are valid business reasons for proceeding without prior written notice.

National Fuel contends that the 30-day prior notice requirement should be shortened to 10 days. It asserts that a shorter notice period is appropriate because these projects promote public safety and only impact owners of properties already affected by pipeline construction and maintenance. Similarly, the Industrials request that if the Commission does impose a pre-construction notice requirement, it should be less than 30 days.

If the Commission declines to eliminate the 30-day notice requirement, INGAA suggests: (1) The notice period be eliminated for unplanned maintenance and replacements (e.g. line hits, equipment failures); (2) the notice time frame for planned work should be reduced from 30 days to three days or a time period provided for in the easement agreement or such period as agreed upon in writing by the landowner, *i.e.*, a waiver of notification rights; (3) the notice be limited to the immediate landowners affected by the construction activity (as compared to the broader definition of affected landowners for section 7(c) applications); and (4) that verbal notice be permitted as long as the pipeline maintains records of who was notified and provides the landowner with a company contact person and telephone number.

El Paso suggests that the Commission should, at a minimum, eliminate the requirement for projects which clearly have a *de minims* impact on landowners. For example, it refers to: (1) Construction which occurs within a fenced area, *e.g.* a compressor or meter station yard); (2) construction of above-ground facilities where no ground disturbance is involved; and (3) replacements performed for safety reasons.

Finally, Columbia is concerned that the Commission's notification requirement for blanket construction activities creates an open-ended process for which there appears to be no closure from a timing standpoint. It contends that the Commission's proposal is silent on the internal process that will be adopted in connection with administering the increased contacts that may result from the notification requirement

Commission Response. Unlike activities performed under § 2.55, the Commission believes that many of the activities performed under the pipeline's blanket construction certificate authorization require that the pipeline notify the affected landowners regardless of the terms of the easement agreements. While the Commission may not have seen specific expressions of concern regarding blanket projects, this could easily be a result of the fact that most people outside the natural gas industry are not familiar with the Commission or its programs. Nevertheless, we are trying to make sure that our regulations provide for similar protections for similar activities. Therefore, we find a need for advance notification of landowners for blanket certificate activities.

Additionally, we believe that the landowners deserve the opportunity to air their views and concerns regarding the activity proposed for their property. The Commission also wants the opportunity to act on those concerns if necessary. Whenever the pipeline conducts an activity subject to the Commission's jurisdiction, the Commission has the authority to impose conditions on that activity. However, in light of the comments received, we will make certain modifications to the notification requirements for blanket certificate activities as proposed in the NOPR.

First, we note that removing the notice requirement for activities performed under § 2.55 largely eliminates the concern raised by the commentors for replacements done for safety, DOT compliance, and unplanned maintenance reasons. However, there may still be certain situations that will require that these activities be performed under the pipeline's blanket certificate. Therefore, in § 157.203(d)(3)(i) we will exempt replacements that are being done for safety, DOT compliance, or unplanned maintenance reasons which the pipeline has not foreseen and which require immediate attention.

Additionally, we realize that there will be blanket-authorized projects that would have been done under § 2.55 except that they involve a change in the capacity of the facilities. To the extent that these activities involve only the existing right-of-way construction work area, we also find that advance landowner notification is not necessary. Therefore, we will also exempt these types of activities in § 157.203(d)(3)(i).

Finally, in § 157.203(d)(3)(ii), we will clarify that the notification requirement applies only to activities which involve the abandonment of facilities if the pipeline is intends to relinquish the right-of-way, and the facilities are not intended for continued use by the landowner or the future holder of the easement.

For all other activities under the blanket authorization, we will continue to require that the pipeline notify the landowner at least 30 days prior to commencing construction as proposed in the NOPR. However, we will clarify that the pipeline may deliver the notification by hand or by mail. Further,

if the pipeline is negotiating for a new easement, it must deliver the notice either before or at the time it initiates easement negotiations. The 30-day notice period and the easement negotiations could run concurrently.

We do not believe it is appropriate to allow the pipeline to deliver the notice orally. First, several of the components of the required notice cannot be conveyed orally. Second, it is not fair to expect landowners, who may have no premonition that they are about to be approached with respect to the use of their land, to assimilate the details of the required notice without any written materials to study.

For activities under the prior notice procedure, we will allow pipelines to give the landowner notice before or after the application is filed. If the pipeline gets landowner approval for the proposed activity before it files the application, it should provide evidence of that approval with the application and no further notification will be required. If the pipeline needs to commence construction prior to the end of the 30 days, it should request a waiver of the requirement from the Director of OPR. We believe that for most of the activities not covered by the exceptions discussed above, the pipeline knows in advance of the thirty days that it intends to construct facilities.

3. Enforcement Hotline

Comments. National Fuel also opposes the inclusion of information about the Enforcement Hotline. It contends that it may be misleading to suggest that the Enforcement Hotline is the appropriate dispute resolution mechanism. It requests that if the Commission includes this requirement it should clearly describe the range of issues appropriate for bringing to the attention of the Enforcement Hotline.

INGAA asks that the Commission eliminate the reference in §§ 2.55(b)(1)(iv)(3) and 157.203(d)(1)(iii) to the Enforcement Hotline. It contends that it implies that the pipeline is acting unlawfully in some way and that some form of regulatory oversight is necessary for an activity which is generally handled through a self-implementing authorization. Further, it claims that the reference to the Enforcement Hotline encourages an escalation of landowner's concerns on what are likely to be routine maintenance activities. It states that calling the company representative identified on the notice would put the responsibility to address the landowner's concern where it belongs, on the company.

Columbia asserts that the pipelines need to be assured that adequate resources are available to resolve any Enforcement Hotline matters that may arise. It claims that a significant number of landowners will avail themselves of the opportunity to use the Enforcement Hotline regardless of whether they have a legitimate substantive problem, because they would prefer that the facility not be on their property. It also asserts that the Commission should not entertain issues of landowner allegations over the lease agreements. It states that the pipelines must have certainty that the issues will be resolved within the 30-day period and that they will be able to begin construction at the expiration of the 30-day period. It argues that to suggest that the work cannot begin until the Enforcement Hotline process is exhausted is impractical, burdensome, and provides landowners with a method to effectively undercut property rights they or their predecessors have already granted to the pipeline.

Algonquin asserts that the Commission's proposal invites protests or Enforcement Hotline calls regardless of the merit and could well convert what is now an expedited construction process into a traditional section 7 process and impair the pipeline's ability to construct minor facilities in a short time period.

Commission Response. We agree that the Commission 's Enforcement Hotline may not necessarily be the appropriate mechanism of first resort. We cannot force the landowner to take this approach, and we will not forego providing the landowner with information on how to contact the Commission.

Further, we do not believe that including a reference to the Enforcement Hotline implies the company is doing something unlawful. It would, of course, be possible to present this information in such a way that this was the implication. However, we have not specified how the company is to present the Enforcement Hotline number and we expect the companies will be able to present it as merely being a means to contact the Commission, which is in fact what it is.

Columbia states that the Commission must resolve protests quickly and limit the protests to issues properly before the Commission. It recommends that the form of notification include not only references to the landowner's right to protest but also to the Director of OPR's power to reject non-substantive protests. As stated, the pipeline is not foreclosed from further explaining the Commission's regulations in its notice. Further, the Commission does not envision that providing the landowners with information concerning the Commission and its processes would necessarily delay any of the pipeline's activities under its blanket certificate. The Commission will address any situations that may arise on a case-by-case basis.

E. Observation Wells

In the NOPR, the Commission stated that it was beyond the intent of the blanket certificate for pipelines to construct new injection and withdrawal wells. However, it proposed to allow pipelines to drill observation wells under their blanket certificate authorization.

Comments. NGAA contends that observation wells are drilled under § 2.55. Therefore, it states that they do not need to be codified under the blanket certificate regulations and should not be subject to the new advance landowner notification requirements. Williston Basin and Enron request that the Commission clarify that deteriorated wells can be replaced under § 2.55.

Market Hub contends that the Commission's proposal to allow drilling of observation wells will be used to circumvent the Commission's authority and to avoid obtaining advance site-specific approval for new storage/injection wells. It requests that the Commission require site-specific approval before a pipeline may drill or construct any and all wells. Specifically, it states that a pipeline might avoid obtaining approval for the drilling and construction of storage injection/withdrawal wells by calling all wells observation wells at the time they are drilled. Then, after drilling and completing a well a pipeline will seek approval to convert the observation well for use as an injection/withdrawal well. This, it argues, will diminish the Commission's ability to conduct a site-specific review of the new well and will eliminate the ability of affected landowners or other intervener to review and object to the drilling of such wells. Mr. Deming also asserts that the Commission should not allow storage companies to drill any wells without getting specific approval.

Market Hub also contends that the Commission's proposed rule favors storage facilities that have occasion to drill observation wells (*e.g.* depleted reservoir facilities) over storage facilities that generally do not (*e.g.* salt cavern storage facilities). Thereby, creating an unfair and discriminatory advantage by

''handing additional loopholes to depleted reservoir facilities''.[13]

In the alternative, Market Hub requests that the Commission adopt regulations that articulate standards distinguishing between legitimate observation wells and ''convert'' storage injection/withdrawal wells. For example, it recommends that the Commission: (1) Impose restrictions upon the diameter of the well bore because the well bore for observation wells is typically smaller than the well bore used for injection/withdrawal wells; (2) limit the area where the well can be drilled because observation wells normally are drilled either near the edges of an active storage field, or outside the confines of the storage field; (3) review the type of equipment and facilities used in or on the well.

On the other hand, INGAA also requests that the Commission revise § 157.202 to allow for replacement wells to be drilled under the pipeline's blanket certificate authority. Similarly, Williston Basin believes that the Commission should revise § 157.202 to allow storage related replacement wells under blanket certificates in order to provide pipelines with additional flexibility regarding such facilities. As far as landowner issues are concerned, it contends that most storage rights-of-way or easement agreements are in place for the entire storage field. It asserts that these agreements generally define the rights of storage field operators to construct replacement storage wells and detail the compensation due the property owners. If there is no agreement, it contends, then a new agreement will be entered into before any storage well replacement takes place. Therefore, Williston Basin concludes that the agreements will control what notice is required if the operator needs to install replacement facilities.

NYSDES requests that the Commission clarify that its proposal to allow observation wells to be drilled under a blanket certificate does not supersede applicable state well permitting requirements.

Commission Response. In *Natural Gas Pipeline of America,*[14] the Commission stated that ''[o]bservation wells are not facilities within section 7(c) of the Natural Gas Act, and therefore do not require [a] certificate.'' As such, as the commentors point out, they can be constructed under § 2.55(a) of the Commission's regulations. Consequently, we will withdraw our proposal to include such wells within the ambit of the blanket certificate program.

We will also clarify that we fully intended § 2.55(b) to be available for the replacement of wells which fit the requirements of that section. Therefore, injection/withdrawal wells which meet the specifications of § 2.55(b)(1)(i and ii) may be replaced using this section of our regulations.

We reject the comment that just because the physical characteristics of the typical storage field using depleted oil or natural gas reservoirs, or aquifers make observation wells necessary whereas observation wells are unnecessary in conjunction with the salt cavern storage of natural gas, allowing companies that need such facilities to drill them is in any way discriminatory. The fact that some pipelines may not benefit from a particular Commission's regulations does not make that regulation discriminatory.

Further, we do not believe that site-specific approval is necessary before a pipeline can drill or construct any and all wells. As stated, the Commission currently allows pipelines to do minor construction on existing wells under § 2.55 of its regulations. The types of activities performed under this section are relatively minor ones that do not significantly disrupt the environment and do not warrant further Commission review. The Commission does not believe it is necessary to further restrict or add further standards to these activities at this time.

However, we do not believe that the Commission's blanket certificate authorization provides adequate oversight for the construction of new injection/withdrawal wells. As stated in the NOPR, and the rehearing order in Order No. 603–A, we do not intend for the change in this section to allow pipelines to drill additional injection/withdrawal wells under the blanket certificate because such wells may inherently alter the deliverability, capacity, or boundary of a reservoir. Drilling new injection/withdrawal wells in existing storage pools requires separate section 7(c) authorization.

Finally, in general, inclusion of facilities under the blanket certificate does not exempt them from obtaining any applicable permits required by any other jurisdiction. However, as the courts have ruled, no non-Federal jurisdiction may use its permitting authority under state or local statute to delay or counteract the execution of a Commission certificate.

F. Plan and Procedures

In the NOPR, the Commission proposed to apply the same erosion control procedures (the Plan) and stream and wetland crossing mitigation measures (the Procedures) to activities conducted under blanket certificate authorization as are routinely used in the regular certificate process.

Comments. Generally, INGAA, Williston Basin, Algonquin, and Enron request that the Commission clarify that the Plan and Procedures are guidelines which may or may not apply to a particular project and have not been adopted in this proceeding as requirements. INGAA asserts that if the Plan and Procedures continue as guidelines, its member pipelines would reflect in their annual report whether they have employed the guidelines or equivalent procedures. INGAA also requests that the Commission permit pipelines, independent of any specific project, to file and obtain approval for company procedures that they may intend to employ in lieu of the Plan and Procedures. INGAA and El Paso also state that pipelines should be allowed to obtain blanket waivers of the Plan and Procedures for construction in certain regions of the country where they do not fit local conditions. Enron and El Paso state that they should be permitted to establish their own Plans and Procedures adapted to fit different geographic regions.

National Fuel states that if the Commission intends to make the Plan and Procedures applicable to all blanket certificate projects, it should consider the specific comments National Fuel raised about the Plan and Procedures in RM98–9–000. Additionally, National Fuel requests that the Commission clarify that it intends to allow state permitting agencies and local land management agencies to grant variances to the Plan and Procedures. It contends that the clarification would avoid most of the conflicts between the requirements of permitting agencies and the Plan and Procedures. Finally, it asserts that the Commission should have clear procedures in place for efficiently processing requests for variances by the time the final rule in this proceeding takes effect.

The Iowa Board states that by making the Plan and Procedures mandatory, it is unclear whether the Commission intends to preempt the state standards or state agreements. It urges the Commission to continue, explicitly, to allow states to enforce state and local standards and agreements more stringent than the federal requirements, as long as the state and local standards and agreements are consistent with the federal requirements.

Commission Response. As part of its responsibility under NEPA, the

[13] Market Hub's comments, at 17.

[14] 32 FERC 61,287 n.1 (1985)

Commission needs to ensure that pipelines employ proper erosion control and stream and wetland crossing mitigation measures for activities performed under their blanket certificate authorizations. In the NOPR, the Commission proposed to use the Plan and Procedures in the context of blanket certificate projects in a manner similar to the way they are employed in a traditional NGA section 7(c) filing.

In case-specific section 7 filings, the applicant has two choices regarding these mitigation measures: (1) Either use the Plan and Procedures as specified by the Commission; or (2) specify what alternative procedures it intends to use. In the latter case the Commission determines if the alternative methodology is acceptable. The requirements proposed here continue to give the certificate holder the same alternatives. However, since the Commission does not generally review blanket certificate construction activities in advance, we will allow pipelines to substitute the recommendations of the local state and Federal agencies in place of the Commission's Plan and Procedures.

If the certificate holder can obtain agreement from the appropriate agency(ies) to use a different set of procedures, then it may do so under the blanket certificate program. However, the agency must make a conscious decision to choose the alternative method and, therefore, must be provided with a copy of the Commission's Plan and/or Procedures, to use in its review process.

We will not allow certificate holders to come in with generic alternative plans for each section of the country for the Commission to review, as suggested by some commentors. We believe it would be a better use of Commission time and resources to review such requests on a case-by-case basis, as necessary, given the regional nature of this issue and the relatively minor nature of the projects constructed under the blanket certificate program.

Finally, as noted in the Final Rule in Docket No. RM98–9–000, we intend to revise the Plan and Procedures in light of the suggestions raised by National Fuel and as other needs arise. The Commission will issue notices when changes are made to alert pipelines of the specific modifications.

G. Magnuson Act

In the NOPR, the Commission stated that the pipelines should be contacting the National Marine Fisheries Service (NMFS) to determine what level of consultation is necessary for their projects for the appropriate consideration of ''essential fish habitat'' (EFH). It proposed regulations that would require that the pipelines consult with NMFS.

Comments. The Department of Commerce (Commerce) contends that the Commission's proposed rule may unnecessarily increase filing requirements for pipeline companies and makes the following recommendations. First, it recommends that the Commission provide a separate subsection dealing with compliance with the Magnuson Act similar to § 380.13 of the regulations for the Endangered Species Act (ESA). Second, it states that under the EFH regulations, a non-Federal representative can conduct an abbreviated consultation with the NMFS when an action does not have the potential to cause substantial adverse effects on EFH. However, it points out that an expanded consultation is required if the proposed action would result in substantial adverse effects on EFH, or if additional analysis is needed to accurately assess the effects of the proposed action. It states that the EFH regulations do not allow expanded consultations to be conducted by non-Federal representatives. It asserts that the Commission should clarify its proposed rule to state that pipeline companies could only be designated to conduct abbreviated consultations and EFH assessments.

Third, it contends that while the designated non-Federal representative may conduct certain activities, the EFH regulations require that the agency provided written notice of such designation to NMFS. It states that the Commission should modify its proposed rule to conform with the NMFS regulations regarding notice of designation of non-Federal representatives. Fourth, it states that under section 305(b)(4)(B) of the Magnuson Act, the Federal agency is required to provide certain information to the NMFS. It asserts that the Commission should revise its proposed rule to reflect the Commission's responsibility to respond to the EFH recommendations. Fifth, its states that the Commission should revise Resource Report 3 to prevent confusion with ESA consultations by removing references to EFH and adding the following: ''Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of consultation with NMFS.

Finally, it recommends that the Commission consult with the NMFS to determine if certain categories of activities can be treated on a programmatic basis or in combination with other existing consultation processes.

INGAA and El Paso assert that the NMFS does not consult with individual companies or respond to the pipelines' consultation requests. Therefore, they contend that it may be difficult, if not impossible for pipelines to comply with the revised regulations. They suggest that the Commission consult with the NMFS regarding compliance with the Magnuson Act.

Commission Response. The Commission is presently working with Commerce on how to best address the requirements of the Magnuson Act in its regulations. However, in the interim, the purpose of the Commission's proposal in the NOPR was to preliminarily put pipelines on notice that they need to comply with the requirements of the Magnuson Act and to provide guidance on what the Commission expects. Accordingly, we will modify Resource Report 3 to reflect that the Commission will require that the applicant identify all federally listed EFH and to provide the results of any abbreviated consultations the applicant may have had with NMFS. If necessary, we will address Commerce's specific comments in a subsequent rulemaking to codify the more specific requirements of the Magnuson Act.

H. Categorical Exclusions

In the NOPR, the Commission proposed to add several new categories to the list of categorical exclusions, including, among others, abandonment, construction, or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), so long as it does not increase the noise or air emissions from the facility, as a whole.

Comments. INGAA, Columbia, and Enron request that the Commission replace the phrase ''within an existing building'' with ''within the previously disturbed station yard'' because not all compression is housed within a building.

Commission Response. The Commission specifically limited this categorical exclusion to ''within an existing building'' because such a change, combined with the other requirements, would not be detectable outside the property. In addition, it would have no potential to affect threatened or endangered species or cultural resources. Changes ''within the previously disturbed station yard'' would normally be detectable outside the property and, while there may be low potential for an effect on threatened

or endangered species, cultural resources potentially could be affected. Accordingly, we will not extend the exclusion to include facilities outside of the existing building.

I. Intervention Status

Several landowner groups requested that the Commission change its intervention process to accommodate the small filer. In response, the Commission explained that its regulations allow for the waiver of a rule for good cause and stated that if parties were having difficulty participating in a proceeding, they should request a waiver of the Commission's service rule.

Comments. Market Hub agrees that landowners who arguably cannot afford to participate in a certificate proceeding may request appropriate waivers, but should not be given special status which would allow them to take advantage of reduced filing or service requirements as a matter of course. It contends that there is no reason for the Commission to adopt a new system to relieve administrative burdens on landowners on a global basis, because it could unfairly burden jurisdictional pipelines and prejudice other participants in the regulatory process.

Conversely, GASP contends that landowners should be able to participate in the process without having to spend thousands of dollars on copying and postage to protect their property rights. It recommends that the landowner be permitted to file pleadings and serve them on the applicant and any party that would be directly or adversely affected by what the landowner is proposing. It argues that the Commission should routinely grant landowners waivers of the Commission's rule requiring service of pleadings on all parties.

Commission Response. The Commission will consider the need for special filing or service requirements on a case-by-case basis. We do not believe it is necessary to create a special class of filers who automatically do not need to serve copies of their filings on everyone. This would not be fair to the rest of the universe of filers. Additionally, as stated, the Commission now permits participants to a proceeding to voluntarily serve documents on one another by electronic means.[15] This should help reduce some of the costs of participating in a Commission proceeding.

J. Construction Inspectors

In the NOPR, in response to comments, the Commission explained that as part of the environmental conditions imposed in a certificate proceeding, it requires that the pipelines hire environmental inspectors to make sure that the environmental conditions of the certificate are appropriately applied.

Comments. The Shavers ask why environmental inspectors are not assigned by the Commission. They contend that the pipelines should pay their salary but they should not be allowed to hire their own inspectors.

Commission Response. The Commission's staff and its contractors routinely inspect projects. In addition, there have been cases where the Commission has had the company pay for inspectors who are directly under the control of the Commission. We will continue to use these various methods of ensuring compliance as necessary, on a project-specific basis.

Further, we do not find any reason that would warrant a ban on pipelines hiring independent contract inspectors. The pipelines recognize it is in their best interest to meet the certificate conditions, so they are protecting themselves by hiring inspectors. In addition, these inspectors are usually professionals who have a vested interest in their credibility. They move from one project to another and their work becomes known within the industry and at the Commission. The independent contract inspectors are not only hired by the pipelines, they are occasionally hired by the Commission. It would be detrimental to their future employment interests if the Commission were to find that they are not being impartial in their inspections.

K. Need/Eminent Domain/ Compensation

GASP questions the Commission's current policy concerning the demonstration of public need for proposed facilities. It contends that the Commission is granting certificates based on private convenience and ''corporate greed'', and not public need. It claims that the Commission has strayed from its statutory mandate by substituting desires of the marketplace for demonstrated public need.

The Shavers argue that market demand cannot be twisted to mean the same thing as public need. They state that courts condemn the land for market value with no consideration for loss of use to the landowner. They argue that the courts assume the certificate means a critical shortage will exist for gas at the end of the pipeline. They question why the landowner should pay a higher price than the recipients of the gas, while the pipeline company profits. They also claim that public convenience and necessity can only be argued if new customers (who did not previously have gas service) or additional volumes of gas for existing customers is being provided. They argue that the Commission's policy of using contracts to determine need leaves more half-empty pipelines and is only convenient to pipelines, utilities, and shareholders.

Ms. Laurie Smith, a landowner that had participated in a Southern Natural Gas pipeline proceeding, contends that the Commission is misinterpreting and misusing the power of eminent domain granted in NGA section 7. She argues that this misuse has led to the violation of landowners' Fifth Amendment property rights. Ms. Smith states that proper notification and explanation does not justify violating landowners' constitutional rights. She states that the rights of eminent domain, as spelled out in the NGA, are not applicable in a deregulated, competitive natural gas industry and that ''[i]t is time that the Commission recognizes what the real issues are and that their current stance on them only pits the landowner against the pipeline rather than forming a mutual beneficial business relationship.'' [16]

The Shavers question the Commission's statement that the pipeline's right to eminent domain is not optional. They contend that the Commission makes it optional when it allows pipelines to construct facilities under the optional certificate regulations. They argue that risk and actual necessity are two different things. Ms. Supa contends that the pipelines should pay a royalty to the landowner yearly for the use of their land.

The Iowa Board recommends that the Commission consider whether the record shows the pipeline company has made a good faith effort to obtain voluntary easements before granting a certificate that conveys the right of eminent domain.

Commission Response. First, we note that how the Commission determines the need for a pipeline and the right to eminent domain are not issues in this proceeding. The goal of this rulemaking is to implement landowner notification requirements, make minor changes to the Commission's regulations to help expedite the certificate process, and to implement additional environmental requirements.

[15] *See* Electronic Service of Documents, Order No. 604, 64 FR 31493 (June 11, 1999), III FERC Stats. and Regs. ¶ 31,074 (May 26, 1999).

[16] Ms. Smith's letter filed June 21, 1999.

The Commission generally determines the need for a proposed pipeline on a case-by-case basis, based on the facts and circumstances in each proceeding. In addition, the Commission recently issued a policy statement to provide guidance as to how it will evaluate proposals for new construction. In the policy statement, we stated that our goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.[17] The Commission intends to apply this criteria on a case-by-case basis.

As stated in the NOPR, a pipeline's right to use eminent domain is a statutory right imposed by Congress. NGA section 7(h), confers the right to obtain property through the power of eminent domain if the certificate holder cannot otherwise reach an agreement with the property owner. The courts have uniformly held that the Commission has no authority to deny unilaterally that power to the certificate holder.[18] Further, a pipeline's right to use eminent domain to acquire the necessary property does not violate the landowner's constitutional rights. Issues of an unconstitutional taking arise only when the government acts in a way to deprive a citizen of its property without compensation. The Fifth Amendment does not proscribe the taking of property; it proscribes taking without compensation.[19]

Finally, compensation for rights-of-ways is determined by the laws of the state in which the condemnation proceeding takes place. The Commission has no jurisdiction over those issues.

L. Easement Documents

In the NOPR, in response to landowners' requests, the Commission stated it did not believe it was necessary to review every easement document negotiated by a pipeline or submitted for condemnation proceedings. However, we stated that we expected that pipelines would negotiate with landowners for easement rights fairly and in good faith, and that certain information would be provided to the landowner.

Comments. INGAA explains that a pipeline may enter into easement agreements prior to the time it files its certificate application or before the certificate has been granted. Therefore, it asserts that the pipeline would not have the exact right-of-way location at that time. It states that the pipeline will generally explain to the landowner the proposed route. It also contends that if the pipeline negotiates in good faith, it should not be prohibited from acquiring more land than is covered by the ultimate certificate.

Similarly, Questar Pipeline Company (Questar) asserts that the Commission's proposal to inform landowners of the proposed uses of their land ignores the practicalities of undertaking pipeline construction. It contends that many pipelines negotiate and secure right-of-way agreements prior to filing a certificate application. It states that the Commission's proposal would discourage any pre-filing efforts and thereby delay construction of the facilities. Questar claims that the Commission's proposal would allow property owners to object to the project or previously negotiated easement once the application is filed thus avoiding their side of the easement agreement. Further, it argues that the Commission has no authority to examine or require the alteration of easement agreements entered into prior to the Commission's granting the certificate.

Great Lakes requests that the Commission reconsider its intent to place easement conditions on certificates, and to clarify that such conditions will not affect existing pipeline easements, including those negotiated with landowners prior to receipt of a certificate. Additionally, Great Lakes is concerned that the Commission will require the pipeline to re-negotiate every easement agreement it holds with the landowners if the Commission conditions the certificate. It claims that this would create an enormous delay and aggravation for both the pipelines and landowners.

Columbia presents similar arguments and states that pipelines must be able to acquire property rights necessary for a project on timetables consistent with their present and long range project plans. It claims that there has been no showing of any need to regulate freely negotiated property rights transactions.

In contrast, GASP questions the Commission's statement that the pipeline will negotiate with landowners fairly and in good faith. It alleges that in that case the ''landowners are being lied to, threatened, intimidated, and badgered to give up more than the certificate requires.''

Further, INGAA states that easement agreements are long-term documents and that identifying company representatives and phone numbers in the document should not be required. Great Lakes questions the usefulness of such a requirement since the landowners know with whom they negotiated with and the description of the affected property will be set forth in the easement documents and the easements are subject to applicable state statutes on recording and legal descriptions that would render the Commission's requirements duplicative. It also asserts that requiring to put pipeline contacts and phone numbers in the easement documents is unlikely to provide up-to-date contact information to the landowner. Questar states that the Commission should not use its certificate authority to tinker with the form and substance of easement agreements. Specifically, it points out that as a practical matter, adding phone numbers and names to easement agreements does not make sense since the numbers and names will change long before the easements do. Enron makes similar arguments.

Commission Response. The Commission has received numerous complaints from landowners alleging that pipelines are not negotiating with landowners for easement rights. In essence, filings in recent proceedings allege that the pipelines are threatening landowners with a take-it or be-subject-to-condemnation deal in which the landowner is not allowed any meaningful negotiations. Additionally, they allege that the pipelines are representing to the landowners that the property they may need for their long range plans will be included in any condemnation proceeding. Landowners also claim that the pipelines are wrongly representing that the Commission's certificate will give them the authority to use the property for whatever use they deem necessary, including the placement of fiber optic cable. They also contend that the pipelines are representing that if landowners do not sign the agreement voluntarily, the pipeline will have the right to acquire the same rights in a condemnation proceeding.

The Commission understands that the pipelines would like to be able to acquire the property rights necessary for their present and long range plans. However, the pipelines should specifically explain to the landowner during negotiations what exactly they would have the right to in a condemnation proceeding, and what

[17] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999).

[18] *See FPC* v. *Tuscarora Indian Nation,* 362 U.S. 99, 123–24 (1960); Columbia Gas Transmission Corp. v. Exclusive Natural Gas Storage Easement, 776 F.2d 125, 129 n.1 (6th Cir. 1985)(holding that issuance of a certificate authorizing a pipeline to operate any facility gives the pipeline the right to condemn the necessary easements).

[19] *See Williamson County Reg'l Planning Comm'n* v. *Hamilton Bank,* 473 U.S. 172, 194 (1985).

extras they are seeking in the negotiations for an easement agreement. Landowners should be compensated for such extras. We do not believe it is appropriate for the pipelines to take advantage of the landowners' lack of knowledge by negotiating an agreement using misrepresentation or the incomplete disclosure of all the relevant facts to the landowners.

The Commission does not intend to change or challenge existing negotiated easement agreements. However, we note that to the extent the pipelines are acquiring rights through questionable tactics, the validity those agreements would be determined by applicable state law.

Finally, the Commission only intends to consider the imposition of conditions on a pipeline's easement agreements on a case-by-case basis in individual proceedings where the Commission deems such action to be necessary. Any objections to the specific details of such conditions may be raised in the individual proceedings.

IV. Information Collection Statement

The Office of Management of Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and record keeping requirements (collection of information) imposed by an agency. Upon approval of collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collection information related to the subject of the Final Rule falls under the Commission's FERC–537 [20] and FERC–577 [21] data collections. Specifically, the subject rule would require notification of all landowners whose land may be affected by proposed natural gas pipeline projects.

In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995,[22] the proposed data requirements in the subject rulemaking have been submitted to the Office of Management and Budget (OMB) for review.

The estimated reporting burden related to the notification requirements in the Final Rule is shown in the tables below. The estimates include an initial one-time start-up burden of 8,800 hours for the first year plus an on-going annual burden of 10,744 hours under FERC–577 and a decrease of 12,600 hours under FERC–537. The net change in total reporting burden under the data collections would be an estimated net increase of 6,944 hours for the first year. In subsequent years, there would be a net decrease of 1,856 hours.

The burden estimates for complying with the Final Rule are as follows:

Public Reporting Burden: Estimated Annual Burden: The burden estimates for complying with this proposed rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–537	50	−50	252	−12,600
FERC–577	70	−20	[23] 13.9	[24] +19,544
Total	70	−70	[25] 4.1	+6,944

[23] The increase per response based on an estimated 1,160 responses per year. *Note:* Detail may not add to total because of rounding.
[24] Includes one-time initial start-up burden of 8,800 hours.
[25] Represents the increase per response (rounded) based on the net increase in total reporting burden (6,944 hours) divided by the total number of responses expected annually under both FERC–537 and FERC–577 (1,690 responses).

Total Annual Hours for Collections: Annual reporting burden (including one-time start-up burden during the first year of implementation) plus record keeping (if appropriate) = 6,944 hours.

Based on the Commission's experience with processing applications for construction and acquisition of pipeline facilities over the last three fiscal years (FY96–FY98), it is estimated that 1,690 filings/responses per year (under both data collections) will be made over the next three years. The average burden per filing would increase 4.1 hours. Following the first year of implementation, the reporting burden under FERC–577 would be reduced by 8,800 hours.

Information Collection costs: The average annualized cost for all respondents during the first year of implementation to be:

Data collection	Annualized capital/ start-up costs	Annualized on-going costs (operations and maintenance)	Total annualized costs
FERC–537		−$665,674	−$665,674
FERC–577	$464,915	567,619	1,032,534
Total	464,915	−98,055	366,860

OMB regulations require its approval of certain information collection requirements imposed by agency rule.[26] Accordingly, pursuant to OMB regulations, the Commission has provided notice of its proposed information collections to OMB.

Title: FERC–537 ''Gas Pipeline Certificate: Construction, Acquisition, and Abandonment.'' and FERC–577 ''Environmental Impact Statement.''

Action: Proposed Data Collections.

OMB Control No.: 1902–0060 (FERC–537); 1902–0128 (FERC–577).

Applicants shall not be penalized for failure to respond to these collections of information unless the collections of information display a valid OMB control number.

[20] Gas Pipeline Certificates: Construction, Acquisition, and Abandonment.

[21] Gas Pipeline Certificates: Environmental Impact Statement.

[22] 44 U.S.C. 3507(d).

[26] 5 CFR 1320.11.

Respondents: Businesses or other for profit. (Interstate natural gas pipelines (Not applicable to small business))

Frequency of Responses: On occasion.

Necessity of Information: The Final Rule revises the Commission's regulations governing the filing of applications for the construction and operation of pipeline facilities to provide service or to abandon facilities or service under section 7 of the NGA. Section 7 of the NGA requires the Commission to issue certificates of public convenience and necessity for all interstate sales and transportation of natural gas, the construction and operation of natural gas facilities used for those interstate sales and transportation and prior Commission approval of abandonment of jurisdictional facilities or services. The Commission has determined that portions of its regulations need to be revised to reflect a recent increase in sensitivity of the public to pipeline construction, and a desire on the part of the public to receive more timely notification of pipeline construction proposals. Certain other changes are being made because of the Commission's experience in the processing of some applications for which an Environmental Assessment is unnecessary.

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

For information on the requirements, submitting comments concerning the collection of information and the associated burden estimates, including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208–1415, fax: (202)273–0873, e-mail: mike.miller@ferc.fed.us]. In addition, comments on reducing the burden and/or improving the collections of information should also be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW, Washington, DC 20503, phone (202)395–3087, fax: (202)395–7285.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities. [27] The Commission is not required to make such analyses if a rule would not have such an effect.[28]

The Commission does not believe that this rule would have such an impact on small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VI. Environmental Statement

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.[29] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[30] Generally, the actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[31] While the additions of the categorical exclusions in §§ 380.4(a)(31) through (36) include construction-type activities, the NOPR discussion of those sections explains why they do not have a significant effect on the environment. Accordingly, we do not believe that any further analysis is needed. Therefore, an Environmental Assessment is unnecessary and has not been prepared in this rulemaking.

VII. Effective Date

These regulations become effective November 24, 1999. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

[27] 5 U.S.C. 601–612.

[28] 5 U.S.C. 605(b).

[29] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990, ¶30,783 (Dec. 10, 1987).

[30] 18 CFR 380.4.

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

List of Subjects

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Parts 153, 157, and 380 Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR OF IMPORT NATURAL GAS

1. The authority citation for part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p.136. DOE Delegation Order No. 0204–112. 49 FR 6684 (February 22, 1984).

2. New § 153.3 is added to read as follows:

§ 153.3 Notice requirements.

All applications filed under this part are subject to the landowner notification requirements in § 157.6(d) of this chapter.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for part 157 continues to read as follows:

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

4. In § 157.6, a new paragraph (d) is added to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) *Landowner notification.* (1) For all applications filed under this subpart which include construction of facilities or abandonment of facilities (except for abandonment by sale or transfer where the easement will continue to be used for transportation of natural gas), the applicant shall make a good faith effort to notify all affected landowners:

(i) By certified or first class mail, sent within 3 business days following the date that a docket number is assigned to its application; or

(ii) By hand, within the same time period; and

(iii) By including notice of the project in a newspaper(s) of general circulation in the project area within a week of such filing.

(2) All affected landowners includes owners of property interests, as noted in the most recent county/city tax records as receiving the tax notice, whose property:

(i) Is directly affected (*i.e.*, crossed or used) by the proposed activity, including all facility sites, rights-of-way, access roads, pipe and contractor yards, and temporary workspace;

(ii) Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed right-of-way which runs along a property line in the area in which the facilities would be constructed;

(iii) Contains a residence within one-half mile of proposed compressors or their enclosures or LNG facilities; or

(iv) Is within the area of new storage fields or expansions of storage fields, including any applicable buffer zone.

(3) The notice shall include:

(i) The docket number of the filing;

(ii) The most recent edition of the Commission's pamphlet that explains the Commission's certificate process and addresses the basic concerns of landowners. Except: pipelines are not required to include the pamphlet in notifications of abandonments or in the published newspaper notice;

(iii) A description of the applicant and the proposed project, its location (including a general location map), its purpose, and the timing of the project;

(iv) A general description of what the applicant will need from the landowner if the project is approved, and how the landowner may contact the applicant, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;

(v) A brief summary of what rights the landowner has at FERC and in proceedings under the eminent domain rules of the relevant state; and

(vi) Information on how the landowner can get a copy of the application from the company or the location(s) where a copy of the application may be found as specified in § 157.10.

(4) If the notice is returned as undeliverable, the applicant will make a reasonable attempt to find the correct address and notify the landowner.

(5) Within 30 days of the date the application was filed, applicant shall file an updated list of affected landowners, including information concerning notices that were returned as undeliverable.

5. In § 157.103, a new paragraph (k) is added to read as follows:

§ 157.103 Terms and conditions; other requirements.

* * * * *

(k) Applications filed under this section are subject to the landowner notification requirements described in § 157.6(d).

6. In § 157.202, paragraphs (b)(6)(ii) and (b)(11)(i) are revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) * * *

(6) * * *

(ii) When required by highway construction, dam construction, encroachment of residential, commercial, or industrial areas, erosion, or the expansion or change of course of rivers, streams or creeks, or

* * * * *

(11) *Sensitive environmental area* means:

(i) The habitats of species which have been identified as endangered or threatened under the Endangered Species Act (Pub. L. 93–205, as amended) and essential fish habitat as identified under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*);

* * * * *

7. In § 157.203, new paragraph (d) is added to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.*

(1) Except as identified in paragraph (d)(3) of this section, no activity described in paragraph (b) of this section is authorized unless the company makes a good faith effort to notify all affected landowners, as defined in § 157.6(d)(2), at least 30-days prior to commencing construction or at the time it initiates easement negotiations, whichever is earlier. The notification shall include at least:

(i) A brief description of the facilities to be constructed or replaced and the effect the construction activity will have on the landowner's property;

(ii) The name and phone number of a company representative who is knowledgeable about the project; and

(iii) An explanation of the Commission's Enforcement Hotline procedures, as codified in § 1b.21 of this chapter, and the Enforcement Hotline telephone number.

(2) For activities described in paragraph (c) of this section, the company shall make a good faith effort to notify all affected landowners, as defined in § 157.6(d)(2), within at least three business days of filing its application or at the time it initiates easement negotiations, whichever is earlier. The notice should include at least:

(i) A brief description of the facilities to be constructed or replaced and the effect the construction activity will have on the landowner's property;

(ii) The name and phone number of a company representative that is knowledgeable about the project;

(iii) The docket number (if assigned) for the company's application; and

(iv) The following paragraph: This project is being proposed under the prior notice requirements of the blanket certificate program administered by the Federal Energy Regulatory Commission. Under the Commission's regulations, you have the right to protest this project within 45 days of the date the Commission issues a notice of the pipeline's filing. If you file a protest, you should include the docket number listed in this letter and provide the specific reasons for your protest. The protest should be mailed to the Secretary of the Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426. A copy of the protest should be mailed to the pipeline at [pipeline address]. If you have any questions concerning these procedures you can call the Commission's Office of External Affairs at (202) 208–1088.

(3) *Exceptions.*

(i) No landowner notice is required for replacements which would have been done under § 2.55 of this chapter but for the fact that the replacement facilities are not of the same capacity and as long as they meet the location requirements of § 2.55(b)(1)(ii) of this chapter; or any replacement done for safety, DOT compliance, environmental, or unplanned maintenance reasons that are not foreseen and that require immediate attention by the certificate holder.

(ii) No landowner notice is required for abandonments which involve only the sale or transfer of the facilities, and the easement will continue to be used for transportation of natural gas.

8. In § 157.206, new paragraphs (b)(2)(xii) and (b)(3)(iv) are added to read as follows:

§ 157.206 Standard conditions.

* * * * *

(b) *Environmental compliance.* * * *

(2) * * *

(xii) Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*)

(3) * * *

(iv) Paragraphs (b)(2)(i) and (viii) of this section only if it adheres to Commission staff's current ''Upland Erosion Control, Revegetation and Maintenance Plan'' and ''Wetland and Waterbody Construction and Mitigation Procedures'' which are available on the Commission Internet home page or from the Commission staff, or gets written approval from the staff or the appropriate Federal or state agency for the use of project-specific alternatives to clearly identified portions of those documents.

* * * * *

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

9. The authority citation for Part 380 continues to read as follows:

Authority: 42 U.S.C. 4321–4370–a; 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

10. In § 380.4, new paragraphs (a)(31) through (a)(36) are added to read as follows:

§ 380.4 Projects or actions categorically excluded.

(a) * * *

(31) Abandonment of facilities by sale that involves only minor or no ground disturbance to disconnect the facilities from the system;

(32) Conversion of facilities from use under the NGPA to use under the NGA;

(33) Construction or abandonment of facilities constructed entirely in Federal offshore waters that has been approved by the Minerals Management Service and the Corps of Engineers, as necessary;

(34) Abandonment or construction of facilities on an existing offshore platform;

(35) Abandonment, construction or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), if it does not increase the noise or air emissions from the facility, as a whole; and

(36) Conversion of compression to standby use if the compressor is not moved, or abandonment of compression if the compressor station remains in operation.

* * * * *

11. In § 380.12, paragraphs (c)(5) and (c)(10) are revised; paragraphs (e)(6) and (e)(7) are redesignated (e)(7) and (e)(8); and new paragraph (e)(6) is added to read as follows:

§ 380.12 Environmental reports for Natural Gas Act applications.

* * * * *

(c) * * *

(5)(i) Identify facilities to be abandoned, and state how they would be abandoned, how the site would be restored, who would own the site or right-of-way after abandonment, and who would be responsible for any facilities abandoned in place.

(ii) When the right-of-way or the easement would be abandoned, identify whether landowners were given the opportunity to request that the facilities on their property, including foundations and below ground components, be removed. Identify any landowners whose preferences the company does not intend to honor, and the reasons therefore.

* * * * *

(10) Provide the names and mailing addresses of all affected landowners specified in § 157.6(d) and certify that all affected landowners will be notified as required in § 157.6(d).

* * * * *

(e) * * *

(6) Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project. Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments.

* * * * *

12. In Appendix A to Part 380, paragraph 8 in Resource Report 1 and paragraphs 7 and 8 of Resource Report 3 are revised to read as follows:

Appendix A to Part 380-Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act

Resource Report 1—General Project Description

* * * * *

8. Provide the names and address of all affected landowners and certify that all affected landowners will be notified as required in § 157.6(d). (§§ 380.12(a)(4) and (c)(10))

* * * * *

Resource Report 3—Vegetation and Wildlife

* * * * *

7. Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments. (§ 380.12(e)(6))

8. Describe any significant biological resources that would be affected. Describe impact and any mitigation proposed to avoid or minimize that impact. (§§ 380.12(e)(4 & 7))

* * * * *

[FR Doc. 99–27782 Filed 10–22–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OK17–1–7410; FRL–6463–2]

Standards of Performance for New Stationary Sources (NSPS); Supplemental Delegation of Authority to the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The purpose of this document is to inform the public that the EPA approved the updated delegation of authority to the State of Oklahoma for implementation and enforcement of NSPS. This action is in response to a request from the Oklahoma Department of Environmental Quality (ODEQ).

On November 2, 1998, the State of Oklahoma approved an emergency rule that incorporates by reference EPA's New Source Performance Standards in 40 CFR part 60. Both emergency and permanent rules incorporating by reference the NSPS were adopted by the Environmental Quality Board on September 15, 1998 and the permanent rules took effect June 1, 1999. The State adopted all of the NSPS except subpart AAA, New Residential Wood Heaters, and those sections that contain authorities reserved by the EPA.

EFFECTIVE DATE: The effective date of the delegation of authority is October 8, 1999.

ADDRESSES: The related materials in support of this action may be requested by writing to the following address: Environmental Protection Agency, Region 6, Air Planning Section (6PD–L),