FDC date	State	City	Airport	FDC No.	SIAP
11/30/94 ...	PA	Harrisburg	Capital City	FDC 4/6737	ILS Rwy 8 Amdt 10A.
12/02/94 ...	NE	North Platte	North Platte Regional	FDC 4/6750	VOR OR GPS Rwy 35, Amdt 17.
12/02/94 ...	NE	North Platte	North Platte Regional	FDC 4/6751	ILS Rwy 30R, Amdt 5.
12/07/94 ...	MN	Maple Lake	Maple Lake Muni	FDC 4/6821	VOR–A Amdt 2.
12/07/94 ...	OH	Cincinnati	Cincinnati-Blue Ash	FDC 4/6820	NDB OR GPS Rwy 6 ORIG.
12/08/94 ...	OR	Salem	Salem/McNary Field	FDC 4/6822	NDB Rwy 31, Amdt 18.
12/08/94 ...	OR	Salem	Salem/McNary Field	FDC 4/6823	LOC BC Rwy 12, Amdt 6.
12/08/94 ...	OR	Salem	Salem/McNary Field	FDC 4/6824	ILS Rwy 31, Amdt 27.
12/08/94 ...	OR	Salem	Salem/McNary Field	FDC 4/6825	LOC/DME Rwy 31, Amdt 2.
12/09/94 ...	HI	Kahului	Kahului	FDC 4/6875	ILS Rwy 2 Amdt 22.
12/12/94 ...	WY	Jackson	Jackson Hole	FDC 4/6904	VOR OR GPS–A, Amdt 6A.
12/12/94 ...	WY	Jackson	Jackson Hole	FDC 4/6905	VOR/DME OR GPS Rwy 36, Amdt 4.
12/13/94 ...	AK	Ketchikan	Ketchikan Intl	FDC 4/6916	ILS/DME–1, Rwy 11, Amdt 5C.
12/14/94 ...	CT	New Haven	Tweed-New Haven	FDC 4/6944	ILS Rwy 2 Amdt 15.

[FR Doc. 95–355 Filed 1–5–95; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 270, 271, 272, 273, 274 and 275

[Docket No. RM94–18–002; Order No. 567–B]

Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production

Issued December 15, 1994.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing concerning the deletion of a section of the Commission's regulations implementing the Natural Gas Policy Act (NGPA). That section provided that any sale by an affiliate of an interstate pipeline, intrastate pipeline, or local distribution company (LDC) is a first sale under the NGPA unless the Commission determines not to treat it as such. The Commission finds that Congress eliminated the only statutory basis for defining pipeline and LDC affiliate marketers as first sellers and reaffirms the Commission's finding that, with the decontrol of wellhead pricing, no purpose is any longer served by the anti-circumvention rule deleted by the Commission's previous order.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Elliott, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 208–0694.

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 Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Order on Rehearing

I. Introduction

This order addresses requests for rehearing or reconsideration of the Commission's October 17, 1994 order [1] on rehearing issued in the above referenced proceeding. The October 17, 1994 order denied rehearing of the Commission's July 28, 1994 final rule (Order No. 567),[2] which, in pertinent part, deleted section 270.203(c) of the Commission's regulations implementing the NGPA. That section provided that any sale by an affiliate of an interstate pipeline, intrastate pipeline, or local distribution company (LDC) is a first sale under the NGPA unless the Commission determines not to treat it as such. Enron Capital & Trade Resources Corporation (Enron), Coastal Gas Marketing Company (Coastal), and Designated Parties request rehearing.[3] The petitioners argue that the Commission erred and should reinstate section 270.203(c). For the reasons discussed below and in the October 17, 1994 order, the Commission denies rehearing and reconsideration.

II. Background

The Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act) eliminated

[1] 69 FERC ¶ 61,055 (1994).

[2] Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, 59 FR 40,240 (August 8, 1994), III FERC Stats. & Regs. Preambles ¶ 30,999 (July 28, 1994).

[3] The Designated Parties consist of Amoco Energy & Trading Corp.; Aquila Energy Marketing Corp.; Chevron U.S.A., Inc.; Hadson Gas Systems, Inc.; Heartland Energy Services, Inc.; Natural Gas Clearinghouse; O&R Energy, Inc.; and Texaco, Inc.

as of January 1, 1993, all maximum lawful prices for first sales of natural gas. Order No. 567 removed from the Commission's regulations various regulations that the Commission considered obsolete or nonessential in light of the decontrol of first sale prices. These included the § 270.203(c) definition of a first sale. On October 17, 1994, the Commission issued the subject order which denied rehearing of Order No. 567.

In the October 17, 1994 order, on rehearing of Order No. 567, in response to objections directed at the removal of § 270.203(c), the Commission upheld its action, finding that, in light of wellhead decontrol, no purpose would be served by § 270.203(c). That section was originally adopted pursuant to the Commission's authority under NGPA section 2(21)(A)(v) to define, as a first sale, any sale that does not otherwise qualify under NGPA section 2(21) as a first sale ''in order to prevent circumvention of any maximum lawful price established under this Act.'' The Commission held that circumvention of maximum lawful prices cannot be a concern when there are no maximum lawful prices to circumvent. The Commission also found that the removal of that section had no substantive impact on the rights of the parties since, at present, there is no practical difference between operating under the blanket marketer sales certificate (to which affiliated marketers may became subject as a result of the removal of that section [4]) and treatment as a nonjurisdictional first seller. Finally, the Commission rejected arguments that the Commission violated the Administrative Procedures Act's (APA) notice and comment requirements.

III. Arguments on Rehearing

On rehearing, Enron first asserts that, by retaining NGA jurisdiction over affiliate sales, the Commission is acting in contravention of its own pro-marketing policies as well as those of Congress stated in the Wellhead Decontrol Act. Enron asserts that the Commission appears to acknowledge only that its action will affect interstate pipeline affiliates, whereas it also affects marketing affiliates of intrastate pipelines and LDCs. Further, it argues that this returns to the bifurcated system of jurisdiction of sales for resale, but not of direct sales, that led to gas shortages in the 1970's. Further, it asserts that the legislative history of the Wellhead Decontrol Act is rife with statements that indicate Congress' intent to remove all vestiges of natural gas price control. It asserts that Congress only intended to continue NGA jurisdiction of interstate pipelines and, in response to the reasoning of the October 17, 1994 order, queries of what purpose will be served by continuing the appearance of regulation, rather than meaningful regulation. Second, Enron asserts that nonjurisdictional marketers have a competitive advantage over marketing affiliates who make sales for resale in interstate commerce, because marketing affiliates are subject to regulatory uncertainty. It submits that this uncertainty increases market risks and impedes the ability of marketing affiliates to obtain financing and plan transactions. Finally, Enron argues that the substantive impact of the removal of § 270.203(c) required the Commission to give parties advance notice and the opportunity to comment under the APA. It maintains that the Commission has broad rulemaking authority under section 501 of the NGPA to reinstate section 270.203(c).

In their request for rehearing, in addition to a number of arguments similar to those made by Enron, Designated Parties contest the Commission's position that the change to light-handed regulation has no substantive impact on the rights of the parties. They assert that regulation diminishes the attractiveness of natural gas as a fuel for power generation projects because regulation may adversely affect the availability or cost of financing such projects. They assert that regulation tends to adversely affect the ability of parties ''to monetize the asset represented by accounts receivable under long-term supply agreements'' due to the risk of changes in contract pricing or other terms pursuant to the Commission's NGA section 5 authority. They assert, like Enron, that regulation resurrects the bifurcated regulation/non-regulation system and allegedly gives nonjurisdictional marketers an advantage. Finally, they assert that, in certain cases,[5] some intrastate pipelines may lose their non-jurisdictional status under Title IV of the NGPA as a result of the Commission's action which may have a ''ripple'' effect as intrastate entities take contractual action to protect themselves from regulation. Finally, they argue that the Commission has failed to recognize that Title VI of the NGPA coordinates the NGA and NGPA and defines the boundaries of the Commission's jurisdiction, contrary to the Commission's ruling.

Designated Parties also allege that the Commission violated APA and NGPA notice and comment requirements by leaving the parties to seek rehearing. They argue that Order No. 567 gave no notice of the reasoning behind the elimination of the regulation and, hence, this rehearing is the first real opportunity the parties have had to respond to the Commission's order. They argue that the Commission failed to adequately justify its finding of ''good cause'' to dispense with the APA procedures for the reason that the instant situation does not fall into the kind of situations where action is required immediately. Further, they assert that the Commission's finding that the APA procedures were unnecessary was in error for the same reason, as asserted above, that the Commission's action did have a substantive effect on the parties. They also observe that section 502(b) of the NGPA provides that an opportunity for oral presentations is to be made available ''to the maximum extent practicable.'' Accordingly, they ask that the Commission stay the effect of its order and institute new rulemaking procedures on this issue.

Coastal contends that the Commission erred in finding no substantive effect of its decision and in failing to provide notice and comment. It asserts that the number of comments might have been greater than those received on rehearing had the Commission not issued a final rule at the outset.

IV. Discussion

For the reasons discussed below and in the October 17, 1994 order, the Commission finds that the petitioners have raised no new arguments that warrant any change in the Commission's action on this issue. Accordingly, the Commission denies the requests for rehearing or reconsideration.

A. The Authority of the Commission To Define First Sales

The Commission continues to believe that the deletion of § 270.203(c) was appropriate for the reasons stated in the October 17, 1994 order. The Decontrol Act has eliminated all maximum lawful prices applicable to first sales. As we observed in our October 17, 1994 order, no purpose is served any longer by our exercising our authority under NGPA section 2(21)(A)(v) to define additional categories of sales as first sales ''in order to prevent circumvention of any maximum lawful price established

[4] Pipeline and LDC marketing affiliates only become subject to the blanket certificate to the extent they sell natural gas for resale in interstate commerce. Thus, a direct sale or a sale in intrastate commerce would not be covered by the blanket certificate since the Natural Gas Act does not otherwise apply to such sales.

[5] Citing Westar Transmission Co., 43 FERC ¶ 61,050 (1988) and Texas Utilities Fuel Co., 44 FERC ¶ 61,171 (1988).

under this Act.'' The rehearing petitioners have not disputed our finding that circumvention of maximum lawful prices cannot be a concern when there are no maximum lawful prices to circumvent. The Commission would exceed its authority under the NGPA if it defined categories of first sales for reasons other than to prevent circumvention of maximum lawful prices.

Accordingly, for the same reason, petitioners' arguments regarding Congressional intent in passing the Decontrol Act are unpersuasive. It is not the Commission's action which causes the pipeline and LDC affiliates' sales for resale to be subject to our NGA jurisdiction. It was passage of the Decontrol Act which changed the first sale status of affiliate sales for resale. The Decontrol Act repealed the maximum lawful price provisions of Title I of the NGPA but did not revise the definition of first sales in section 2(21) of the NGPA. The legislative history cited by Enron indicates the intent of Congress that the definition of first sale in section 2(21) still be given full effect. However, that definition includes the delineation of the Commission's authority under section 2(21)(A)(v) to add categories of sales to the first sale definition.[6] That part of section 2(21) grants discretionary authority to the Commission to add categories of sales to the first sale definition in only one narrow circumstance: to prevent circumvention of NGPA maximum lawful prices, which no longer exist as a result of the Wellhead Decontrol Act.

Enron tries to bolster its argument on Congressional intent by claiming that the use of the term ''wellhead'' in the NGPA and Decontrol Act is a misnomer and that the scope of both acts is much broader than the production area market. Thus, it argues, when the Congress explained that Commission jurisdiction over interstate pipeline sales for resale was to be unaffected by the Wellhead Decontrol Act,[7] it can be inferred that Congress thereby meant to indicate that all other sales for resale were to remain first sales. We do not interpret the cited reaffirmation of the Commission's NGA jurisdiction over pipeline sales for resale, on which Enron relies, to create an exclusion from NGA jurisdiction relative to all other sales not therein mentioned. The effect of the Decontrol Act on the NGPA is more properly based on the plain terms of the relevant sections of the statutes as enacted and express statements of intent in the Congressional reports, and we find nothing there to support Enron's proposed inference.

Designated Parties maintain that, in finding no substantive effect of its rule, the Commission failed to recognize the role of Title VI of the NGPA providing for the coordination of the NGPA with the NGA. However, all that Title VI and, in particular, section 601(a) of the NGPA provides is that the Commission's jurisdiction under the NGA does not apply to first sales. Accordingly, that section says nothing of relevance to the issue addressed here regarding what sales are first sales.

The petitioners also assert that the Commission has broad rulemaking authority under section 501 of the NGPA to reinstate § 270.203(c).[8] We do not agree. The Commission's authority to define terms used in the NGPA, including first sales, is limited. Section 501(b) of the NGPA states, ''Any such definition shall be consistent with the definitions set forth in this Act.'' For the Commission to define first sales for purposes other than circumvention would be inconsistent with the definition of first sales established by Congress in section 2(21) of the NGPA. The Commission cannot exceed the authority granted to it by the statute in performance of its duties.

We also reject the suggestion that the October 17, 1994 order erred in finding that no competitive disadvantage for marketing affiliates would arise from no longer treating marketing affiliate sales for resale in interstate commerce as first sales. As the October 17 order stated, Order No. 547 issued blanket certificates under NGA section 7 to all persons making sales of gas for resale in interstate commerce who are not interstate pipelines. Thus, the blanket certificates apply to all affiliated marketers who make sales for resale in interstate commerce, whether affiliated with an interstate pipeline or with an intrastate pipeline or LDC. Those certificates allow the affiliated marketers to operate exactly as if they were nonjurisdictional first sellers. Marketers making sales under the blanket certificate may make sales to whomever they choose at any price they can negotiate; no Commission authorization of any kind is required beyond the blanket marketer certificate itself. In short, the blanket marketer certificates place all marketers on an equal competitive footing by effectively eliminating the distinctions in treatment that formerly existed between jurisdictional and nonjurisdictional marketers.

Petitioners have not provided any evidence to support their contention of an adverse effect from the removal of the § 270.203(c) first sale definition. Moreover, any change in the blanket marketer certificate would entail a new rulemaking proceeding in which parties would have a full opportunity for notice and comment. Any supportable economic harm could be raised at that time.

In any event, Petitioners' contentions concerning the negative effect on marketing affiliates of subjecting their sales for resale to the Commission's NGA jurisdiction are essentially policy arguments that should have been directed to Congress. The Commission does not have the ability to expand the authority granted it by Congress, even if arguably there are valid policy reasons for reinstating § 270.203(c).

B. Procedure

Rehearing applicants contend that the Commission failed to satisfy the requirements of the APA and section 502 of the NGPA by removing § 270.203(c) without notice and comment. The notice and comment issue was fully addressed in the October 17, 1994 order and we will not repeat that discussion here. With one exception, the petitioners essentially make the same arguments which were rejected in the October 17, 1994 order.

The one new contention is that section 502 of the NGPA requires the Commission to give an opportunity for oral argument. Section 502(b) provides that, ''to the maximum extent practicable,'' an opportunity for oral presentation shall be provided with respect to any proposed rule. Section 502(b) does not provide for an absolute right to make an oral presentation, and the Commission has the discretion to rely on written comments if its appears that no purpose would be served by establishing oral argument. In particular, we believe the Commission is not required to provide an opportunity for oral presentations in the instant case where the Commission is acting on a statutory mandate for which there is no other course of action authorized and there currently is no practical difference in treatment of the affected companies after, as opposed to before, elimination of the subject regulation. In any event, petitioners' central claim is for the Commission to start the rulemaking process principally in order to make written comments. We

[6] Enron's rehearing request at page 5.

[7] Request for Rehearing or Reconsideration of Enron at p. 5 (citing NGPA Conference Report at pp. 8–9).

[8] NGPA Section 501(a) provides that the Commission may issue ''rules and orders as it may find necessary or appropriate to carry out its functions under this Act.''

believe the petitioners have exhausted their lines of argument in their rehearing requests and nothing would be gained by delaying the effect of our action in order to proceed with a different administrative vehicle to arrive at the same result.

The Commission Orders

The requests for rehearing and reconsideration are denied as discussed in the body of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–321 Filed 1–5–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority in order to redelegate authorities relating to determining the classification of devices first marketed after May 28, 1976, to additional officials in the Center for Devices and Radiological Health (CDRH).

EFFECTIVE DATE: January 6, 1995.

FOR FURTHER INFORMATION CONTACT:

Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765, or

Ellen R. Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.51 *Determination of classification of devices* (21 CFR 5.51) by extending the authority in § 5.51(b)(1) to determine the classification of a medical device first intended for commercial distribution after May 28, 1976, pursuant to section 513(f)(1)(A) of the Federal Food, Drug, and Cosmetic Act, to Deputy Division Directors, Associate Division Directors, and Branch Chiefs, Office of Device Evaluation, CDRH. The expanded delegation will ensure greater efficiency in making these classification decisions.

Further redelegation of the authority delegated is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.51 is amended by revising paragraph (b)(1) to read as follows:

§ 5.51 Determination of classification of devices.

* * * * *

(b) * * *

(1) The Director and Deputy Director, CDRH, and the Director, Deputy Director, Associate Director, Chief of the Premarket Notification Section, Division and Deputy Division Directors, Associate Division Directors, and Branch Chiefs, Office of Device Evaluation, CDRH.

* * * * *

Dated: December 29, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 95–359 Filed 1–5–95; 8:45 am]

BILLING CODE 4160–01–P–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–13–1–6389; FRL–5125–8]

Approval and Promulgation of Implementation Plan: Louisiana Emission Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Louisiana State Implementation Plan (SIP) to include revisions to the Louisiana Department of Environmental Quality (LDEQ) Regulation Title 33, Part III, Chapter 9, *General Regulations on Control of Emissions and Emission Standards*, Section 919, *Emission Inventory*. These revisions are for the purpose of implementing an emission statement program for stationary sources within the ozone nonattainment areas. The implementation plan was submitted by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for Louisiana.

EFFECTIVE DATE: This final rule is effective on February 6, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert R. Sherrow, Jr., Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7237.

SUPPLEMENTARY INFORMATION:

Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the Clean Air Act (CAA or ''the Act''),