circuit breakers has been reported within the last 30 days, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999.

(b) If resettable or unresettable tripping of the circuit breaker of the fuel boost pump is reported during the inspection required by paragraph (a) of this AD, or if such tripping is reported at any time subsequent to that inspection: Within 10 days after the date of the inspection or any occurrence, accomplish the applicable repair (including a resistance check and inspections of the wire and conduit for discrepancies), in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999. If any discrepancy is detected during any inspection performed during the repair, prior to further flight, repair in accordance with the service bulletin.

(c) In the event of any resettable or unresettable tripping of the circuit breakers of the fuel boost pump as indicated in paragraph (b) of this AD, the airplane may be operated for a period not to exceed 10 days after the occurrence, provided the circuit breaker of the fuel boost pump and fuel boost pump switch have been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

(d) Within 30 days after the effective date of this AD, perform a general visual inspection to detect signs of fuel leakage from the wiring conduits of the fuel boost pumps, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/28–046, dated September 1, 1999. If any fuel leakage is detected during the inspection, prior to further flight, isolate the fuel leak, and repair in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 90 days.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(e) Replace the existing three single wires (including inspections) inside the metal conduits of the fuel boost pumps with three twisted wires protected by a polyamide braided wire sleeve, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F28/28–046, dated September 1, 1999, at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable. If any discrepancy is detected during any inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the actions required by this AD.

(1) For airplanes that have accumulated less than 40,000 total flight hours as of the effective date of this AD: Within 2 years after the effective date of this AD.

(2) For airplanes that have accumulated 40,000 or more total flight hours as of the effective date of this AD: Within 1 year after the effective date of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive BLA 1999–114, dated September 13, 1999.

Issued in Renton, Washington, on February 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2830 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270, 375 and 381

[Docket No. RM00–6–000]

Well Category Determinations

January 27, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to reinstate certain regulations involving well category determinations for Internal Revenue Code Section 29 tax credits, but limited to certain well recompletions commenced after January 1,1993. These regulations were deleted by the Commission in Order No. 567.

DATES: Comments on the proposed rulemaking are due on or before April 10, 2000.

ADDRESSES: File comments on the notice of proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments should reference Docket No. RM00–6–000.

FOR FURTHER INFORMATION CONTACT:

Marilyn Rand (Technical Information), Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426, (202) 208–0444

Jacob Silverman (Advisory Attorney), Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 208–2078

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

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

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

—CIPS can be access using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

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

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

Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

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

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to reinstate provisions for well category determinations. With such determinations, natural gas producers may claim tax credits provided for by section 29 of the Internal Revenue Code (Section 29 tax credit).

The Section 29 tax credits are available only for certain categories of high cost gas. In 1999, the United States Court of Appeals for the Tenth Circuit in *True Oil Co. v. Commissioner of Internal Revenue* [1] (*True Oil*), held that, in order to obtain the tax credit, there must be a formal determination under the procedures provided by section 503 of the Natural Gas Policy Act of 1978 (NGPA) that the gas is high cost gas. However, after the January 1, 1993 decontrol of wellhead sales of natural gas by the Wellhead Decontrol Act of 1989 (Decontrol Act),[2] the Commission, in 1994, in Order No. 567,[3] deleted its regulations implementing NGPA ceiling prices, including the well category determination procedures under section 503, even though the tax credit was still available for gas produced through the year 2002. The *True Oil* decision has prompted the Commission to reconsider its prior action. In addition, a number of producers filed a petition requesting the Commission to reinstate the NGPA section 503 well category procedures because at present while producers are entitled to the section 29 tax credit for qualified gas, there is no procedure to obtain the prerequisite determination.[4] The Department of Energy (DOE) filed in support of the producers' petition and requested the Commission to renew the well category section 503 procedures as consistent with the nation's energy policy of increasing the supply of domestically produced natural gas. As a result, the Commission is proposing to reinstate some of these regulations, with modifications, in order to permit qualifying parties to obtain the tax credit provided under section 29 of the Internal Revenue Code (Code). Determinations would be limited to well recompletions commenced after January 1, 1993, and which comply with IRS Revenue Ruling 93–54, as detailed below.

II. Background

A. The NGPA and the Adoption of the Tax Credits

The NGPA established a system of varying price ceilings for different categories of natural gas. Among other things, section 107(b) authorized the Commission to establish incentive prices for various categories of unconventional natural gas. Section 107(c) of the NGPA specifically identified four types of natural gas deemed to be ''high-cost natural gas'', which were gas from (a) deep wells, (b) geopressurized brine, (c) coal seams, and (d) Devonian shale. In addition, section 107(c)(5) of the NGPA gave the Commission the authority to include in the term ''high-cost natural gas'' any natural gas ''produced under such other conditions as the Commission determines to present extraordinary risks or costs.'' NGPA section 503 set forth the procedures used for determining whether gas qualified as section 107(c) ''high-cost natural gas.'' Under that section the agency having regulatory jurisdiction with respect to the production of the natural gas in question (the jurisdictional agency) [5] makes the initial determination, and submits it to the Commission. The Commission can either affirm, reverse, remand, make a preliminary finding on, or simply take no action, regarding the agency's determination. If the Commission takes no action within 45 days after receipt of the agency's determination, that determination becomes final. Judicial review is available under section 503 only if the Commission remands or reverses the determination.

In Order Nos. 99 and 99–A,[6] the Commission exercised its authority under NGPA sections 107(b) and (c)(5) to define gas produced from tight formations as high-cost gas, and to establish an incentive ceiling price for that gas, and also set forth procedures for the designation of specific portions of formations as tight formations. After the designation of a portion of a formation as a tight formation, in order for production from a specific well to qualify as tight formation gas, the appropriate state or federal jurisdictional agency was required to make a determination that that well was producing gas from the formation which had been found to be a tight formation, and submit its determination to the Commission. In *Williston Basin Interstate Pipeline Co.* v. *FERC*,[7] the Court held that jurisdictional agency tight formation determinations must be reviewed only through the procedural scheme set forth in NGPA section 503.

Two years after passage of the NGPA, Congress enacted section 29 of the Internal Revenue Code as part of the Crude Oil Windfall Profit Tax of 1980. Section 29 allowed taxpayers to claim a credit for qualified fuels (1) which were produced from wells drilled between January 1, 1980 and December 31, 1990,[8] and (2) which were sold before January 1, 2001. The section 29 list of qualified fuels included only the NGPA section 107 (c)(2)-(4) categories, and tight formation gas under section 107(c)(5).[9] Section 29(c)(2)(A) also provided that the determination whether gas falls into a category qualifying for the tax credit ''shall be made in accordance with section 503 of the [NGPA].''

The Natural Gas Wellhead Decontrol Act of 1989 repealed all remaining NGPA price controls on wellhead sales of natural gas, as well as NGPA section 503, effective January 1, 1993. The Senate Committee on Energy and Natural Resources' Report on the 1989 Wellhead Decontrol Act stated, ''The Committee intends that any incomplete section 503 procedures continue to be carried out by the state agencies and the FERC, so that the necessary determination can be made as to sales of gas delivered before contract expiration and decontrol.'' [10] The Senate

[1] 170 F.3d 1294 (10th Cir. 1999).

[2] Pub. L. No. 101–60; 103 Stat. 157 (1989).

[3] Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, 59 FR 40240, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,999 (1994), Order on Rehearing, 69 FERC ¶¶ 61,055 and 61,042 (1994). A petition to review the deletion of other provisions in these regulation was denied by the Court of Appeals in Hadson Gas System, Inc. v. FERC, 75 F.3d 680 (D.C. Cir. 1996).

[4] The producers consisted of Smith Management Company; Patina Oil & Gas; BP Amoco; Burlington Resources; Vastar Resources, Inc.; Red Willow Production Co.; Cross Timbers Oil Company; Colorado Oil & Gas Association; Coalbed Methane Association of Alabama; Cabot Oil & Gas Corp.; and HS Resources, Inc.

[5] That agency may be either a State or Federal agency.

[6] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 56034, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,183 (1980); *reh'g denied,* FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,198 (1980) (Order No. 99–A); *aff'd,* Pennzoil Co. v. FERC, 671 F.2d 119 (5th Cir. 1982).

[7] 816 F.2d 777 (D.C. Cir. 1987).

[8] For purposes of the tax credit, the initial drilling had to be started after January 1, 1980, and this date was never changed, although the period was extended in subsequent legislation as described below. Thus, this starting date is assumed throughout.

[9] Deep gas and other categories of gas under section 107 (c)(5) were never eligible for the tax credit.

[10] Similarly, the House Report on the Decontrol Act states, ''the gradual expiration of controls after

Continued

Report also expressly noted that section 29 of the Code provided for tax credits for certain types of fuels which qualify under the NGPA section 503 procedures. The Senate Report stated that approval of the Decontrol Act, which repealed the NGPA sections referenced in section 29, was ''not intended * * * to reflect an adverse judgment by the Committee as to the merits of tax credits for any categories of natural gas production that might be affected by such action.'' [11]

B. The Commission's Actions After Passage of the Decontrol Act

In February 1990, before full wellhead price deregulation took effect under the Decontrol Act, the Commission issued Order No. 519, terminating the incentive ceiling price for sales of tight formation natural gas produced from wells spudded or recompleted after May 12, 1990. Shortly thereafter, Congress, in the Revenue Reconciliation Act of 1990, extended the Section 29 tax credit so that it would be available for qualified fuels produced from wells drilled before January 1, 1993, and sold before January 1, 2003. That act also revised the terms of eligibility so that tight formation gas would be eligible for the tax credit even though the price for such gas was no longer regulated. However, that act made no change to the provision of Section 29 (c)(2)(A) that the determination of eligibility for the tax credit shall be made in accordance with NGPA section 503.

In Order No. 523, issued April 25, 1990, the Commission amended its regulations to conform them to the Decontrol Act. [12] In that order the Commission recognized its duty to continue processing requests for well category determinations under NGPA section 503 to allow producers to obtain tax credits, even if the determinations no longer affected the price of the gas. After summarizing the statement in the Senate Report on the Decontrol Act that the Act was not intended to reflect an adverse judgment by the Committee as to the merits of tax credits for decontrolled gas, the Commission stated:

In view of the legislative history noted above which indicates that Congress did not intend the Decontrol Act to limit the availability of tax credits for qualified fuels (footnote), the Commission will continue to process well determinations, until January 1, 1993, in order to allow producers to obtain tax credits that are dependent upon such determinations even if the gas has been otherwise decontrolled.[13]

Congress' decision in the Revenue Reconciliation Act of 1990 to reinstate the tax credit for tight formation gas even though the price for such gas was no longer regulated necessitated certain technical changes in the standards the Commission used to determine whether gas qualified as tight formation gas. On April 9, 1992, the Commission issued Order No. 539,[14] making the necessary technical changes. In addition, Order No. 539 clarified the Commission's statement in Order No. 523 that it would only continue processing well determination requests until December 31, 1992. A concern had been expressed to the Commission that it would not be practical for the Commission to complete the processing of well determination requests with respect to wells drilled through December 31, 1992 by that same date, since ordinarily such requests are not filed until after the well is drilled. The Commission stated that both the House and Senate committee reports on the Decontrol Act had stated that decontrol on January 1, 1993, would not affect proceedings pending on that date. Therefore, the Commission concluded that Congress did not intend that repeal of NGPA Title I and section 503, would terminate the authority of the Commission to process well category applications filed with the jurisdictional agencies on or before December 31, 1992. Accordingly, the order stated that the Commission would continue to process notices of determination which were filed with the jurisdictional agencies by December 31, 1992, and received by the Commission by June 30, 1993.[15]

On July 7, 1992, the Commission issued Order No. 539–A,[16] denying rehearing of Order No. 539. On rehearing, no party contended that the Commission should continue to process well determination requests under NGPA section 503 for wells drilled or recompleted [17] after January 1, 1993. However, parties did seek an extension of the December 31, 1992 date for producers to file applications with applicable jurisdictional agencies for well category determinations for pre-January 1, 1993 wells. The Commission denied that request, explaining that while both the jurisdictional agencies and the Commission have authority to complete the processing of applications for well category determinations under section 503 which were pending on December 31, 1992, there was no authority to commence new proceedings before jurisdictional agencies after that date. The Commission reiterated that the December 31, 1992 deadline was jurisdictional, stating:

In light of the fact that—effective January 1, 1993—decontrol applies to all section 503 procedures carried out by the state agencies and the FERC, the Commission clarifies that the December 31, 1992 and September 30, 1993 deadlines pertain to all NGPA categories, not just applications and determinations under section 107(c)(5).[18]

However, the Commission extended the date by which jurisdictional agencies could submit their determinations to the Commission until September 30, 1993.

On July 12, 1993, the Commission issued Order 539–C,[19] extending until April 30, 1994, the time for jurisdictional agencies to submit their determinations. [20] The Commission explained that the reason for continuing

enactment and before January 1, 1993, and their complete expiration on and after that date, will not affect civil or criminal proceedings pending at the time of decontrol, nor any action or proceeding based on pre-decontrol acts or conduct.''

[11] S. Rep. No. 101–39 at 9 (1989). Senate Committee on Energy and Natural Resources' Report quoted in Order No. 523, *infra* n. 13 at 31,760.

[12] Order Implementing the Natural Gas Wellhead Decontrol Act of 1989, 55 FR 17425, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶30,887 (1990).

[13] *Id.* at 31,760. The footnote in the quote made reference to a letter from Senator J. Bennett Johnston to Commission Chairman Allday as also supporting this interpretation of the Decontrol Act. The letter was not quoted in the order. Senator Johnston's letter stated:

Until such time as the Internal Revenue Code is amended to provide a new mechanism for qualification for the nonconventional fuels tax credit, we believe that the Commission should continue to make the well category determination procedure available for these purposes. As sponsors of the wellhead decontrol legislation, we believe that this would be consistent with the intent of such legislation. We request that this letter be made part of the record in the rulemaking proceeding.

[14] Qualifying Certain Tight Formation Gas for Tax Credit, 57 FR 13009, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,940 (1992).

[15] The Commission noted in Order No. 539 that a complete application might not be able to be filed with the jurisdictional agency by December 31, 1992. Accordingly, the Commission stated that ''the jurisdictional agencies have the discretion to assign a filing date to an application that is substantially complete and specify a date when a complete application must be filed.'' FERC Stats. & Regs., Regulations Preamble 1991–1996 ¶30,940 n. 41 at 30,488. In Order No. 539–C, the Commission stated the same would be true for recompletions. In all cases, however, the well had to be initially drilled before January 1, 1993.

[16] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,947 (1992).

[17] The Commission has defined a recompletion as any perforation that occurs after reentry of a well. Thus, a perforation that occurs as part of the initial entry of the well is not a recompletion. But, once the well has been initially entered and perforated, and the tool used to perforate has been withdrawn, and the well is subsequently reentered, any subsequent perforations constitute recompletions. Oklahoma Corporation Commission and Oil Conservation Division, 68 FERC ¶61,323 at 62,320 (1994).

[18] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,947 at 30,513 (1992).

[19] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,974 (1993).

to review agency determinations for a transition period, was ''while NGPA Section 107 well category determinations have no price consequence, they are necessary to obtain the Section 29 tax credit.'' [21] However, the Commission reiterated that it ''will not accept determinations where the well was spudded or recompletion commenced on or after January 1, 1993.'' [22]

C. The Internal Revenue Service's Recompletion Ruling

As discussed above, section 29 of the Code provides that, in order to qualify for the tax credit, gas must be produced from a well drilled before January 1, 1993. During the period the Commission was issuing the above orders, both the Commission and all the parties appear to have assumed that this provision of Section 29 meant that the tax credit would not be available for wells originally drilled before December 31, 1992, that were recompleted after December 31, 1992. In any event, no party raised the issue whether the Commission's refusal to process well determination requests for wells recompleted after December 31, 1992, would improperly prevent producers from obtaining tax credits for such wells.

On August 16, 1993, a month after the Commission issued Order No. 539–C, the IRS issued Revenue Ruling 93–54,[23] which took a different view of the eligibility of recompletions after January 1, 1993 to receive the Section 29 tax credit. The IRS interpreted the provision of Section 29 that states that gas must be produced from a well drilled before January 1, 1993, as permitting tax credits for non-conventional fuels produced from a well that was drilled before January 1, 1993, through a post-January 1, 1993 recompletion in the well, as long as the recompletion does not involve additional drilling to deepen or extend the well. The IRS reasoned that the drilling deadline in Section 29 referred to the date of the initial drilling of the well, and not to the date of any subsequent recompletion in the portion of the well which had already been drilled.

After the IRS Revenue Ruling 93–54, the Commission received jurisdictional agency determinations for recompletions commenced after January 1, 1993. However, the Commission refused to process those submissions relating to those recompletions on the ground that the Decontrol Act's repeal of NGPA section 503 eliminated the Commission's authority to review well determinations for wells recompleted after December 31, 1992. For example, in *Railroad Commission of Texas,*[24] the Commission returned two well determinations to the jurisdictional agency because they were for well recompletions commenced after January 1, 1993. The Commission observed that regardless of the Commission's action, ''the IRS has the responsibility to determine whether production from a well that has not received a determination under NGPA section 503 is eligible for a tax credit.'' [25] In *Oklahoma Corporation Commission and Oil Conservation Division,*[26] the Commission rejected that part of the jurisdictional agency's determination that related to recompletions after December 31, 1992.

Producers sought review of the Commission's action, and argued to the Court that the Commission had misapplied the Commission's own definition of recompletion, and that by refusing to process these determinations, the Commission was improperly denying them the ability to obtain the Section 29 tax credit they were entitled to because the IRS had stated that such a recompletion could receive the tax credit. In *Marathon Oil Company* versus *FERC,* [27] (*Marathon Oil*) the Court upheld the Commission's refusal to process the post-December 31, 1992 recompletion determinations. The Court stated the IRS was the agency responsible for granting the tax credit, not the Commission. The Court noted that:

> While the IRS might be required to apply FERC's substantive definition of tight formation gas, it does not seem to us obliged to employ the same eligibility limitations that the Commission has adopted. Indeed, a revenue ruling seems to indicate that the IRS will consider recognizing a tax credit for gas from wells that would no longer be eligible to receive a tight formation gas designation from FERC (citing Revenue Ruling 93–54).[28]

The Court added that the Commission has obviously changed its mind as to the necessity of its role regarding tax credits, because the Commission had previously stated it was continuing to process well determinations after section 503 was repealed to enable parties to get the tax credit. [29] The Court concluded since ''the IRS may well simply ignore FERC's determination during its phase-out period'' (*i.e.* the period after January 1, 1993), ''FERC's actions in this case have no necessary legal significance bearing on the IRS' decision whether to grant the tax credit,'' [30] and denied the petitions for review.

The Court in *Marathon* did not directly discuss whether the Commission had the authority to process well determinations for recompletions commenced after the Decontrol Act's effective date. Rather, the Court concluded that there was no injury to the party from the Commission's action of not processing the determination because it did not foreclose the party from obtaining the tax credit from the IRS.

Following the *Marathon* decision, the Commission continued to decline to process jurisdictional agency determinations for post-December 31, 1992 recompletions. However, since it appeared that the IRS would permit the Section 29 credit for such recompletions without any Commission action, there did not seem to be any need for the Commission to reconsider its position.

In addition, on July 29, 1994, the Commission issued Order No. 567,[31] deleting regulations that were no longer required due to the decontrol of wellhead sales of natural gas. Among the regulations the Commission deleted were those in Part 270 through Part 275 of its regulations which set forth eligibility requirements, filing requirements, and the procedures for making well determinations under section 503 of the NGPA. The Commission concluded that those regulations were no longer needed because the Decontrol Act had repealed NGPA section 503 and the deadline for jurisdictional agency determinations to be filed with the Commission had passed.[32]

Thus matters stood from 1994 until the *True Oil* decision changed the legal landscape.

D. The 10th Circuit's True Oil Decision

In 1999, in *True Oil* v. *Commissioner of Internal Revenue*,[33] the Tenth Circuit reviewed the IRS's denial of a claim of the Section 29 credit because the producer had not obtained a formal well category determination from the jurisdictional agency or the

[20] *Id.* at 30,858.

[21] *Id.*

[22] *Id.* at n. 12.

[24] 66 FERC ¶61,130 (1994).

[25] *Id.* at n.12, 61,236.

[26] 68 FERC ¶61,323(1994).

[27] 68 F.3d 1376 (D.C. Cir. 1995).

[28] *Id.* at 1379.

[29] *Id.*

[30] *Id.*

[31] *Supra,* n.3.

[32] The Commission stated that rescission of Part 275 was prospective only and any timely filed applications for NGPA well category determination proceedings still pending before the Commission would continue to be subject to the requirements of Part 275.

[33] 170 F.3d 1264 (10th Cir. 1999).

Commission. The well was completed in 1984, but due to an oversight, no well-category determination application was filed with the jurisdictional agency. There was no issue whether the well could have qualified for the tax credit if there had been a determination. On appeal, the producer asserted that the reference to section 503 of the NGPA in section 29(c)(2)(A) merely incorporated the Commission's substantive definitions of tight formation gas. It contended that for purposes of section 29(c)(2)(A), the taxpayer itself can make the initial determination of whether a well is producing from a tight formation by applying those substantive definitions. The IRS denied the tax credit because there had been no well category determination by any authority authorized to make such determination. The Tax Court upheld the IRS, and the 10th Circuit similarly rejected the producer's contention. The Court held that notwithstanding the D.C. Circuit's decision in *Marathon Oil*, certain IRS revenue rulings, and the Commission's last position on the lack of a need for a formal well determination under NGPA section 503 to qualify for the tax credit, ''[a] producer must obtain a formal well-category determination before it can claim the Section 29 Credit.'' [34] The Court stated that, although section 29 has been amended more than once since the repeal of section 503 of the NGPA, Congress has never deleted the reference to section 503 from section 29.

The Court also specifically addressed the potential conflict between (1) the Commission's decision in Order No. 539 not to process well determinations for post-January 1, 1993 recompletions and (2) the IRS' revenue ruling one month later that gas produced from a post-January 1, 1993 recompletion could qualify for tax credits if it was produced in a well initially drilled before January 1, 1993. The producer contended that the IRS' revenue ruling should be interpreted as a finding that a well determination by the Commission was unnecessary for a producer to qualify for a tax credit for post-January 1, 1993 recompletions, since otherwise the revenue ruling would have been meaningless. The Court responded that revenue rulings do not have the force and effect of law and do not control when contrary to statute or the intent of Congress. Therefore, to the extent the revenue ruling could be interpreted to conflict with the requirement in section 29 of the Code for an NGPA section 503 determination, the Court held that it would not give the revenue ruling any weight. The Court then stated:

> While it is apparently true that a well recompleted after January 1, 1993 will not qualify for the Section 29 Credit because it is no longer possible to obtain a well category determination, this court is not at liberty to ignore the plain language of the statute and hold that a well-category determination is not required to claim the Section 29 Credit. It is the responsibility of this court to interpret statutes, not rewrite them.[35]

Thus, under *True Oil*, unless the Commission's NGPA section 503 procedures are available, the Section 29 tax credit cannot be obtained for post-January 1, 1993 recompletions, despite the IRS' revenue ruling that post-January 1, 1993 recompletions can qualify for the tax credit as long as there is no additional drilling to deepen or extend the well.

After the *True Oil* decision, a number of producers, *supra* n.4, filed a petition under Commission Rule 207, 18 CFR § 385.207, requesting that the Commission resume the NGPA section 503 well determination review process. They assert that unless the Commission does so, Congress' will would be thwarted because Congress provided that the producers could claim the Section 29 tax credit for qualified fuels until at least January 1, 2003 but at present there is no procedure to obtain it for gas produced from post-January 1, 1993 recompletions.

III. Discussion

The Commission proposes to resume processing jurisdictional agency well category determinations for certain recompletions commenced after January 1, 1993, so the Section 29 tax credit can be claimed for natural gas produced from these qualifying wells. Since the agency responsible for ruling on the Section 29 tax credit, the IRS, will permit the tax credit for certain recompletions after January 1, 1993, and in light of the *True Oil* decision requiring Commission action under NGPA section 503 procedures for a producer to obtain the Section 29 tax credit, the Commission believes it can, and should, reinstate those procedures for well recompletions commenced after January 1, 1993, in wells initially drilled before January 1, 1993, until the tax credit ends, which is now scheduled to cease on December 31, 2002. Below, the Commission first discusses its legal authority to resume processing jurisdictional agency well category determinations under NGPA section 503. The Commission then discusses the details of its proposal.

A. Legal Authority

The Commission recognizes that, in Order Nos. 539 and 539–A, the Commission stated that the Decontrol Act had terminated the Commission's authority to make well category determinations under NGPA section 503 with respect to all drilling activity after the effective date of decontrol, namely January 1, 1993. However, the Commission now concludes that Congress, in both the Wellhead Decontrol Act and the Revenue Reconciliation Act of 1990, intended to authorize the Commission to continue to review well category determinations under NGPA section 503 after wellhead decontrol, to the extent such determinations are necessary to permit qualifying producers to receive tax credits under section 29 of the Code.

At the time of Order Nos. 539 and 539–A, the Commission did not have to confront the possibility that its interpretation of the Wellhead Decontrol Act as terminating its authority to review well category determinations with respect to all post-December 31, 1992 ''drilling activity'' would affect the availability of the section 29 tax credit. It was only after Order No. 539–A that the IRS issued Revenue Ruling 93–54, interpreting section 29 of the Code, as amended by the Revenue Reconciliation Act of 1990, as permitting tax credits for post-January 1, 1993 recompletions in wells initially drilled before January 1, 1993, so long as the recompletion does not involve additional drilling to deepen or extend the well. While the Commission continued to refuse to perform well category determinations under NGPA section 503 for post-January 1, 1993 recompletions, the Commission suggested that its refusal to perform well determinations did not necessarily conflict with the IRS's revenue ruling.[36] This was because the Commission believed a formal Commission well determination under NGPA section 503 might not be a prerequisite for a tax credit. Similarly, the D.C. Circuit in *Marathon Oil* concluded that the Commission's refusal to process well category determinations did not injure producers, because producers might obtain the tax credit from the IRS without a formal NGPA section 503 determination from the Commission. In *Marathon Oil*, the jurisdictional agency had made the determination that the gas was from a well that met the tight formation requirement. Thus, neither the Commission nor the D.C. Circuit have thus far had to address the

[34] 170 F.3d at 1305.

[35] *Id.* at 1304.

[36] See 68 FERC ¶ 61,323 at 62,231.

question whether Congress intended to permit the Commission to make NGPA section 503 well category determinations with respect to post-December 31, 1992 drilling activity, where such determinations are a necessary prerequisite to obtaining tax credits Congress authorized in Section 29 of the Internal Revenue Code.

The Tenth Circuit's *True Oil* decision, combined with the IRS' interpretation of section 29 as authorizing tax credits for post-December 31, 1992 recompletions, now squarely presents this question to the Commission. In *True Oil*, the Court held that section 29 of the Internal Revenue Code requires a formal NGPA section 503 determination to obtain the Section 29 tax credit, since Section 29 states that the tight formation determination shall be made in ''accordance with section 503 of the Natural Gas Policy Act of 1978.'' Moreover, in *True Oil*, the Court specifically referred to post-January 1, 1993 recompletions as being subject to its ruling. The Court concluded:

> Although the result of our holding may appear unfair to producers who failed to obtain well-category determinations while they were being issued by FERC or to those producers who recomplete their wells after January 1, 1993, the judiciary is not ''licensed to attempt to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result (citing case).'' [37]

Thus, *True Oil* requires that in order to obtain the Section 29 tax credit the entire section 503 procedure must be followed, including Commission review of jurisdictional agency well determinations.

Therefore, unless the Commission recommences processing of requests for well category determinations under NGPA section 503, producers will be unable to obtain tax credits for gas produced from post-January 1, 1993 recompletions that qualify under Revenue Ruling 93–54. This will be true despite the fact the IRS has interpreted Section 29 of the Code, as amended by the Revenue Reconciliation Act of 1990, as authorizing tax credits for such gas. The Commission defers to the IRS's interpretation of Congress's intent in enacting the current version of section 29 as it applies to recompletions. This is because the IRS is the agency that administers the Code, and is responsible for determining whether the section 29 tax credit should be permitted in a particular situation. In light of the IRS' view that Congress intended its amendment of section 29 of the Internal Revenue Code by the Revenue Reconciliation Act of 1990 to permit tax credits for post-January 1, 1993 recompletions, we believe Congress must also have intended the Commission to continue the NGPA section 503 procedures after the decontrol date for those recompletions. Otherwise, the producers could not obtain the very credits the IRS has found Congress intended to authorize.

This conclusion is buttressed by the legislative history of the Decontrol Act. As the Commission found in Order No. 523, *supra*, that legislative history ''indicates that Congress did not intend the Decontrol Act to limit the availability of tax credits for qualified fuels (footnote) * * * .'' [38] In particular, there is the statement in the Senate Report accompanying the Decontrol Act that refers to the tax credit for qualifying fuels and states that the repeal in the Decontrol Act of NGPA sections referenced in Section 29 of the Code was not intended to reflect any adverse judgment on the merits of the tax credit. Moreover, the Chairman of the Senate Committee involved in the Decontrol Act had written to the Commission that until the Code was amended to provide a new mechanism for qualification for the gas subject to the section 29 tax credit, the Commission should continue to make the section 503 determination.[39] Since that time the Code has not been amended to provide any other mechanism for obtaining a formal determination even though the Section 29 tax credit is available at least through December 31, 2002.

Also, the Revenue Reconciliation Act of 1990 permitted tight formation gas to qualify for tax credits, even though it was no longer subject to NGPA ceiling prices. The Commission accordingly continued to process requests for well category determinations through April 1994 to aid producers in obtaining the tax credits, even though such determinations were no longer necessary to allow the gas to qualify for NGPA ceiling prices. Thus, despite the fact Congress originally enacted the NGPA section 503 well category determination procedures for the purpose of qualifying gas for NGPA ceiling prices, the Commission has previously recognized that those procedures can continue to be used, even where the determination has no significance for purposes of NGPA ceiling prices. This fact also suggests that the Wellhead Decontrol Act's elimination of all such price ceilings as of January 1, 1993, should not be viewed as requiring the Commission to cease well category determinations for tax credit purposes as of that date. Congress had previously unlinked eligibility for the tax credit from the existence of NGPA ceiling prices in 1990, and expanded the tax credit to tight formation gas.

Enabling producers to receive the tax credit would also be consistent with Congress' desire to encourage, enhance, and expand the United States natural gas supply base, allowing legitimately qualified producers to call upon a tax credit associated with developing and producing gas from formations and wells that otherwise might not have been available to supply consumers.

In summary, since the agency responsible for ruling on the Section 29 tax credit, the IRS, will permit the tax credit for certain recompletions after January 1, 1993, and in light of the *True Oil* decision which requires Commission action under NGPA section 503 procedures for a producer to obtain the Section 29 tax credit, the Commission believes it can, and should, reinstate those procedures for well recompletions commenced after January 1, 1993, in wells initially drilled before January 1, 1993, until the tax credit ends, which is now scheduled to cease on December 31, 2002. In light of this, the Commission proposes to reinstate these procedures until the later of June 30, 2003, or six months after the tax credit is no longer available for production from any well should Congress further extend the tax credit.

B. Details of the Commission's Proposal

The Commission proposes to accept jurisdictional agency determinations on those post-January 1, 1993 recompletions which satisfy the IRS' definition under Revenue Ruling 93–54, namely, that the recompletion does not involve additional drilling to deepen or extend the well. For this purpose, the Commission proposes to reinstate regulations necessary to (1) define the categories of high cost gas eligible for the tax credit and (2) provide procedures for jurisdictional agencies to file their determinations and the Commission to review those determinations. The Commission's action to provide a mechanism for claiming the section 29 tax credit for gas produced from these recompleted wells should have no consumer price impact. This is because the wellhead ceiling prices were terminated long ago, and therefore the only effect of this proposed rule will be to enable producers to obtain the tax credit. DOE states that the tax credits will help increase the Nation's supply of domestically

[37] 170 F.3d at 1305.

[38] FERC Stats. & Regs., Regulation Preambles 1986–1990 ¶30,887 at 31,760.

[39] *Supra,* n. 13.

produced natural gas by permitting unconventional gas wells to continue to operate. In addition to adding to the nation's natural gas supply, DOE states that continued operation of unconventional gas wells will be important in testing the new generation of petroleum technology.

With respect to the tight formation gas category, the Commission action will be limited to reviewing the jurisdictional agency determinations for qualifying recompletions in already designated tight formations. Well determinations for recompletions in coal seams and Devonian Shale will also be accepted.[40] The Commission proposes not to accept determinations with respect to either initial completions in wells spudded before January 1, 1993, or any pre-1993 recompletions. In Order No. 539, the Commission established deadlines for filing applications involving wells that were spudded and/or recompleted prior to January 1, 1993, and the time has long passed when those applications should have been filed. Also, in their petition, producers have not requested that the Commission accept determinations with regard to wells spudded or recompleted before January 1, 1993. However, parties may comment on this matter. Finally, the substantive rulings that the Commission has made previously concerning well determinations and the qualification under these NGPA section 107 category will continue to govern.

The Commission estimates that there are probably at least 4,000 recompletions that were performed between 1993–1999 for which a determination may be sought under the proposed rule, and that another 1,500 recompletions may occur between 2000–2002, when the tax credit is now scheduled to end.[41] The Commission finds the assistance of the State and Federal agencies to be essential to its ability to process the substantial number of new well category determination requests the Commission anticipates will be filed under the proposed rule. NGPA section 503 requires the jurisdictional agencies to make an initial well category determination, unless, as permitted by section 503(e)(2), the Commission enters into an agreement with a State or Federal agency under which the Commission would make the determinations that would otherwise be made by that agency. The Commission intends not to exercise its discretion to enter into any such agreement. Since the Commission's role in the producing area has virtually been eliminated, the Commission's resources in this area have been substantially reduced. Thus, the Commission must rely upon the jurisdictional agencies to develop the full record in these proceedings, and the Commission will limit its role to reviewing initial determinations made by the jurisdictional agencies. The Commission requests comments from the jurisdictional agencies whether they will make initial determinations under NGPA section 503, if this rule is adopted. If the jurisdictional agencies are not prepared to do this, the Commission may not proceed with the proposed rule.

Accordingly, the Commission is proposing to reinstate those portions of its prior regulations, with appropriate modifications, that are necessary to allow producers to obtain well category determinations solely for tax credit purposes. In general, the proposed regulations retain the definitions, the filing and notice requirements, and the review procedures that the Commission promulgated prior to the termination of the regulations due to the Decontrol Act. The significant changes are identified below.

Proposed § 270.101 contains the necessary definitions to implement well determination procedures to receive determinations for tax credit purposes. Definitions for tight formation gas, coal seam gas and Devonian shale gas, three of the types of gas eligible for tax credits, are included.[42] The Commission is not including a definition for gas produced from geopressured brine since our past experience shows that there is no gas likely to qualify for this category given the Commission's definition of geopressured brine and the current state of technology. Comments on this matter are requested.

Proposed § 270.201 limits the availability of the determination procedures to recompletions commenced after January 1, 1993, in wells initially drilled before that date. As discussed above, this reflects the Commission's decision to limit the determination process to correct the situation caused by the *True Oil* decision, but parties may comment on this matter. Similarly, the Commission is also not proposing any regulations that would allow a jurisdictional agency to designate additional tight formation areas. The designation of additional tight formations would require the Commission to review extensive geologic data. This could place an undue burden on the Commission. Also, it appears likely that most producing formations that qualify as tight formations were designated as such during the decade when such a designation enabled producers to qualify for a higher price ceiling.

Consistent with the Commission's prior NGPA regulations, the Commission is also proposing to revise the delegation authority to the Director of the Office of Markets, Tariffs and Rates (OMTR) or the Director's designee in § 375.307 to include tolling letters advising jurisdictional agencies notices of determination are incomplete. In addition, to facilitate the Commission's review under the reinstated procedures, the Commission is proposing to delegate to the Director of OMTR the authority to issue preliminary findings under the proposed section. However, the Commission is not proposing to delegate the authority to issue a final order to the Director of OMTR.

The Commission is also proposing to revise its regulations by adding § 381.401 to the regulations to specify a filing fee of $115 per well determination. This reflects the last fee ($100) for review of a jurisdictional agency well determination that was in effect prior to the repeal of the determination procedures, adjusted for inflation. It is the Commission's best estimate, at this time, of the cost to the Commission to review well determinations. As in the past, this fee will be revised annually in accordance with § 381.104. In addition, the past billing procedures will apply, whereby the Commission will bill each producer at the end of each billing year based on the number of determinations received during that year for that producer.

The proposed regulations contain no provisions permitting a jurisdictional agency to request alternative filing requirements. The proposed filing requirements are not unduly burdensome and are readily available to producers. However, since the Commission previously approved alternative filing requirements for Devonian shale wells in Michigan based

[40] As explained below, the Commission is not including geopressurized brine gas.

[41] Although the tax credit is scheduled to expire on December 31, 2002, it could be extended.

[42] We note that a new determination will not be required for some recompletions involving Devonian shale gas if there is a prior determination covering the entire gross Devonian age stratigraphic interval penetrated by the wellbore. The Commission will view all natural gas produced from a well to have been previously qualified as Devonian shale production if: (1) the well previously received an affirmative Devonian shale determination that was not reversed or remanded by the Commission; and (2) that determination was based on a gamma ray index test for non-shale footage that spans the entire gross Devonian age stratigraphic interval. In such cases, the Commission sees no reason to re-affirm what has already been established, i.e., that any gas produced from the gross Devonian age stratigraphic interval penetrated by such well qualifies as natural gas produced from Devonian shale within the meaning of section 107(c)(4) of the NGPA.

on unique circumstances, the proposed regulations reflect those previously-approved alternate filing requirements.

The Commission is reinstating and revising FERC Form No. 121, which a producer files with an application for determination. This form, a copy of which is attached, identifies the producer filing the application, the type of determination the producer is seeking, and information identifying the well and the completion location of the well. The Commission is considering whether or not to require producers to file this form electronically, to facilitate the Commission's noticing of determinations and requests comments on this issue.

IV. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[43] The instant proposed rule reinstates regulations that were previously in effect, and does not substantially change the effect of the underlying legislation or the regulations being revised. Accordingly, no environmental consideration is necessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration ''to small entities that would be directly regulated'' by proposed rules. *Id.* at 342. The court further concluded that ''the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'' *Id.* at 342.

The instant proposed rule reinstates regulations that were previously in effect, and would enable entities to obtain Internal Revenue Code Section 29 tax credits. There is no reporting requirement, merely the ability to obtain a formal determination that gas qualifies for the tax credit. The Commission certifies that this proposed rule will not have a significant economic impact upon a substantial number of small entities.

VI. Public Reporting Burden and Information Collection Statement

The following collections of information pursuant to Part 270 contained in this proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[44] These information collection requirements were previously in effect until the removal of the Commission regulations implementing NGPA section 503 and are now proposed to be reinstated.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

Public Reporting Burden: Estimated Annual Burden

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total annual hours
FERC Form 121	1800	1	.25	450
FERC–568	1800	1	6.01	10818

Total Annual Hours for Collection (Reporting + Record keeping) = 11,268.

Based on the Commission's previous experience for processing applications for well determinations and completion of the FERC Form 121, it is estimated that about 1800 filings per year will be made over the next three years at a burden of 6.01 hours per filing for the application, .25 hours per filing for the Form 121, for a total of 11,268 hours under the proposed regulations. These two collections of information were eliminated after passage of the Wellhead Decontrol Act of 1989. The Commission is requesting that OMB reinstate these data collections to their inventory. The total hours associated with the proposed rule will be added to the total hours for the Commission's collections of information as well as to OMB's inventory.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs: $201,425.

Annualized Costs (Operations & Maintenance) $0.00.

Total Annualized Costs: $201,545.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC Form 121, Application for Maximum Lawful Price under the Natural Gas Policy Act of 1978, FERC–568, Well Category Determinations.

OMB Control No: 1902–0038 and 1902–0112.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

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

Frequency of Responses: On occasion.

Necessity of the Information: The proposed rule reinstates the regulations to establish the procedures for the Commission to make determinations under NGPA Section 503. A determination by the Commission will enable producers of natural gas to claim credits for high cost gas as provided for by Section 29 of the Internal Revenue Code. The 10th Circuit held in a recent decision that a formal section 503 determination is required to obtain the Section 29 tax credit. The implementation of these data requirements will help the Commission to carry out its responsibilities under the NGPA.

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

[43] 18 CFR 380.4.

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

requirements. The Commission's Office of Markets, Tariffs, and Rates will use the data submitted by the information collections to determine whether it should affirm, reverse, remand, make a preliminary finding on, or take no action on an initial determination by a jurisdictional agency. The agency's initial determination is as to whether any natural gas produced under extraordinary conditions in terms of risks or costs can be considered as ''high-cost natural gas'' under Section 107(c) of the NGPA. These requirements have been reinstated as a result of the Court's decision to require well determinations in order to obtain Section 29 tax credits. These tax credits are available for qualified fuels through January 1, 2003 unless Congress should extend the program. These requirements conform to the Commission's plan for efficient information collection and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: 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) 208–2425, email: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285.]

VII. Public Comment Procedures

Prior to taking final action on this proposed rulemaking, we are inviting written comments from interested persons. The Commission also is notifying each affected State Commission and is giving reasonable opportunity to each State Commission to present its views for our consideration. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM00–6–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before April 10, 2000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM00–6–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM00–6–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at: 202–501–8145, E-Mail address: brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, comments may be viewed, printed or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Record and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 270, Chapter I, Title 18 of the *Code of Federal Regulations,* as follows:

1. Part 270 is added to read as follows:

PART 270—PROCEDURES GOVERNING WELL DETERMINATIONS FOR TAX CREDIT PURPOSES

Subpart A—General Definitions

Sec.

Subpart B—Determination by Jurisdictional Agencies

Subpart C—Requirements for Filing with Jurisdictional Agencies

Subpart D—Identification of State and Federal Jurisdictional Agencies

Subpart E—Procedures for Commission Review of Jurisdictional Agency Determination

Authority: 15 U.S.C. 717–717w, 3301 *et. seq.*; 42 U.S.C. 7101 *et seq.*; EO 12009, 3 CFR 1978 Comp., p. 142.

Subpart A—General definitions

§ 270.101 General definitions.

(a) *NGPA definitions.* Terms defined in the Natural Gas Policy Act of 1978 (NGPA) will have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

(b) *Subchapter H definitions.* For purposes of this part:

(1) *NGPA* means the Natural Gas Policy Act of 1978.

(2) *Surface* location means the point on the Earth's surface from which drilling of a well is commenced except that in the case of a well drilled in permanent surface waters, the Earth's surface means the mean elevation of the surface of the water.

(3) *Jurisdictional agency* means the state or federal agency identified in Subpart D of this part.

(4) *Tight formation gas* means natural gas that a jurisdictional agency has determined to be produced from a designated tight formation.

(5) *Designated tight formation* means the portion of a natural gas bearing formation that was:

(i) Designated as tight formation by the Commission, pursuant to section 501 of the NGPA, or

(ii) Determined to be a tight formation pursuant to section 503 of the NGPA.

(6) *Occluded natural gas produced from coal seams* means naturally occurring natural gas released from entrapment from the fractures, pores and bedding planes of coal seams.

(7) *Natural gas produced from Devonian shale* means natural gas produced from fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period.

(8) *Shales deposited during the Paleozoic Devonian Period* can be defined as either:

(i) The gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater; or

(ii) One continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater (but if the interval selected is more than 200 feet thick, the bottom and top 100 foot portions must meet the 5 percent test independently).

(9) Gamma ray index means when measuring the Devonian age stratigraphic interval, the gamma ray index at any point is to be calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

Subpart B—Determinations by Jurisdictional Agencies

§ 270.201 Applicability.

This part applies to determinations of jurisdictional agencies for tight formation gas, occluded natural gas produced from coal seams, and natural gas produced from Devonian shale which is produced through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, and before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993.

§ 270.202 Definition of determination.

For purposes of this subpart, a determination has been made by a jurisdictional agency when such determination is administratively final before such agency.

§ 270.203 Determinations by jurisdictional agencies.

A jurisdictional agency must make determinations to which this part applies in accordance with procedures applicable to it under the law of its jurisdiction for making such determinations or for making comparable determinations.

§ 270.204 Notice to the Commission.

Within 15 days after making a determination that natural gas qualifies under this part, the jurisdictional agency must give written notice of the determination to the Commission. The notice must include the following:

(a) A list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

(b) A statement indicating whether the matter was opposed before the jurisdictional agency;

(c) A copy of the application together with a copy or description of all other materials upon which the jurisdictional agency relied in the course of making the determination, together with any information which may be inconsistent with the determination.

(d) An explanatory statement, including appropriate factual findings and references, which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

Subpart C—Requirements for Filings With Jurisdictional Agencies

§ 270.301 General requirements.

(a) An application to which this subpart applies may be filed with the jurisdictional agency and signed by any person the jurisdictional agency designates as eligible to make filings with respect to the well for which the application is made.

(b) The documents required by this subpart are the minimum required in support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

(c) Each applicant must pay the fee prescribed in § 381.401 of this chapter. The applicant will be billed annually by the Commission for each jurisdictional agency determination received by the Commission. The applicant must submit the fee, or petition for waiver pursuant to § 381.106, within 30 days following the billing date.

§ 270.302 Occluded natural gas produced from coal seams.

A person seeking a determination that natural gas is occluded natural gas produced from coal seams must file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports.

(c) A radioactivity, electric or other log which will define the coal seams.

(d) Evidence to establish that the natural gas was produced from a coal seam;

(e) A statement by the applicant, under oath, that

(1) The gas was produced from a coal seam through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993,

(2) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(3) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.303 Natural gas produced from Devonian shale.

A person seeking a determination that natural gas is produced from Devonian shale shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A gamma ray log with superimposed indications of the shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section designated pursuant to § 270.101(b)(8);

(d) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(e) A sworn statement:

(1) Calculating the percentage of footage of the producing interval which

is not Devonian shale as indicated by a Gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the stratigraphic section selected is equal to or less than 5 percent of the Devonian stratigraphic age interval designated pursuant to § 270.101(b)(7);

(3) Attesting that the natural gas is being produced from Devonian Shale, through a recompletion commenced after December 31, 1979, in a well the surface drilling of which began on or after January 1, 1980 and before January 1, 1993;

(4) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(5) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.304 Tight formation gas.

A person seeking a determination that natural gas is tight formation gas must file with the jurisdictional agency an application which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A map that identifies the geographic location of the well and the geographic location of the post-January 1, 1993, recompletion's completion location in the designated tight formation, along with the geographic boundaries of such designated tight formation, or a location plat identifying the geographic location of the well and the post-January 1, 1993 recompletion's completion location in the designated tight formation, along with a list of the tract (or tracts) of land that comprise such designated tight formation;

(d) A complete copy of the well log, including the log heading identifying the designated tight formation stratigraphically; and

(e) A statement by the applicant, under oath, that:

(1) The natural gas is being produced from a designated tight formation through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993,

(2) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(3) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

§ 270.306 Recompletions in Devonian shale wells in Michigan.

A person seeking a determination that natural gas is being produced from the Devonian Age Antrim shale in Michigan shall file an application which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A gamma ray log from the closest available well bore (producing or dry hole) that is within a one mile radius of the well for which a determination is sought, with superimposed indications of

(1) The shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section penetrated by the well bore; and

(2) The boundary between the Antrim shale and the overlying formation (Berea Sandstone, Ellsworth, Bedford, or Sunbury shales, or their equivalents);

(d) A location plat showing the well for which the determination is sought and the well for which a gamma ray log has been filed;

(e) A mud log from the well for which the determination is sought, with a detailed description of samples taken from 10-foot, or less, intervals throughout the Devonian age stratigraphic section penetrated by the well bore;

(f) A driller's log, or similar report, from the well for which the determination is sought, indicating the general characteristics of the strata penetrated and the corresponding depths at which they are encountered throughout the Devonian age stratigraphic section penetrated by the well bore;

(g) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(h) A sworn statement:

(1) Calculating the percentage of footage of the producing interval (or the Antrim Shale in the event the well is a dry hole) in the well for which a gamma ray log was submitted which is not Devonian shall as indicated by a gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the Devonian age stratigraphic section penetrated by the well bore for which the submitted gamma ray log is equal to or less than 5 percent;

(3) Attesting that the natural gas is being produced from the Devonian Age Antrim Shale, through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993;

(4) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(5) Declaring that the applicant has no knowledge of any information not described in the application which is inconsistent with these conclusions.

Subpart D—Identification of State and Federal Jurisdictional Agencies

§ 270.401 Jurisdictional agency.

(a) *Definition.* With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), ''jurisdictional agency'' means the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas.

(b) The jurisdictional agency for wells located on Federal lands in each state are:

(1) Alabama—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(2) Alaska, Anchorage District—Assistant District Manager for Mineral Resources, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage, AK 99507.

Alaska, Fairbanks District—Assistant District Manager for Mineral Resources, Bureau of Land Management, North Post Fort Wainwright, Box 1150, Fairbanks, AK 99707.

(3) Arizona, except for the Navaho and Hopi Indian Reservations '' Deputy State Director for Mineral Resources, Bureau of Land Management, P.O. Box 16563, Phoenix, AZ 85011.

Arizona, Navaho and Hopi Indian Reservations '' District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(4) Arkansas—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(5) California, except Naval Petroleum Reserve No. 1 (Elk Hills) and No. 2 (Buena Vista)—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources (C–920), 2800 Cottage Way, Room E–1827, Sacramento, CA 95825.

(6) Colorado—Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 2850 Youngfield Street, Lakewood, CO 80215.

(7) Florida and Georgia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern

States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(8) Idaho—Deputy State Director for Mineral Resources, Bureau of Land Management, Idaho State Office (920), 3380 Americana Terrace, Boise, ID 83706.

(9) Illinois, Indiana, and Iowa—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(10) Kansas—Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 2850 Youngfield Street, Lakewood, CO 80215.

(11) Kentucky, Louisiana, Maryland, Michigan, Mississippi, and Missouri—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(12) Montana—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources, P.O. Box 36800, Billings, MT 59107.

(13) Nebraska—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(14) Nevada—State Director, Bureau of Land Management, Nevada StateOffice (NV–920), 300 Booth Street, Reno, NV 89520.

(15) New Mexico, Northern New Mexico—District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

New Mexico, Southern New Mexico—District Manager, Bureau of Land Management, Roswell District Office (NGPA), P.O. Box 1397, Roswell, NM 88201.

(16) New York and North Carolina—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(17) North Dakota—Chief, Branch of Fluid Minerals, Bureau of Land Management Division of Mineral Resources, P.O. Box 36800, Billings, MT 59107.

(18) Ohio—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(19) Oklahoma, except the Osage Reservation—District Manager, Bureau of Land Management, Tulsa District Office (NGPA), 6136 East 32nd Place, Tulsa, OK 74135.

Oklahoma, the Osage Reservation only—Superintendent, Osage Indian Agency, Bureau of Indian Affairs, U. S. Department of the Interior, Pawhuska, OK 74056.

(20) Oregon—Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, P.O. Box 2965 Portland, OR 97208.

(21) Pennsylvania and South Carolina—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(22) South Dakota—Chief, Branch of Fluid Minerals, Bureau of Land Management, Division of Mineral Resources, P.O. Box 36800 Billings, MT 59107.

(23) Tennessee—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(24) Texas, east of the 100th Meridian—District Manager, Bureau of Land Management, Tulsa District Office (NGPA), 6136 East 32nd Place, Tulsa, OK 74135.

Texas, west of the 100th Meridian—District Manager, Bureau of Land Management, Roswell District Office (NGPA), P.O. Box 1397, Roswell, NM 88201.

(25) Utah, except for the Navajo and Hopi Indian Reservations—Chief, Branch of Fluid Minerals, Bureau of Land Management, Utah State Office (U–922), 324 South State Street, Suite 301, Salt Lake City, UT 84111.

Utah, the Navajo and Hopi Indian Reservations only—District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(26) Virginia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(27) Washington—Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208.

(28) West Virginia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(29) Wyoming, excluding Naval Petroleum Reserve No. 3 (Teapot Dome)—Casper District * * * District Manager, Bureau of Land Management, 1701 East E Street, Casper, WY 82601.

Rawlins District * * * District Manager, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301.

Rock Springs District * * * District Manager, Bureau of Land Management, P.O. Box 1869, Rock Springs, WY 82902.

Worland District * * * District Manager, Bureau of Land Management, P.O. Box 119, Worland, WY 82401.

(c) The jurisdictional agency for wells located on Other lands in each state are:

(1) Alabama—State Oil and Gas Board, P.O. Box O, Tuscaloosa, AL 35486–9780.

(2) Alaska—Department of Natural Resources, Oil & Gas Division, 550 West 7th Avenue, Anchorage, AK 99501.

(3) Arizona—Oil and Gas Conservation Commission, 416 West Congress Street, Suite 100, Tucson, AZ 85701

(4) Arkansas—Oil & Gas Commission, P.O. Box 1472, El Dorado, AR 71730–1472.

(5) California—Department of Conservation, Division of Oil & Gas, 801 K Street, MS24–01, Sacramento, CA 95814.

(6) Colorado—Oil & Gas Conservation Commission, Chancery Building 1120 Lincoln, #801, Denver, CO 80203.

(7) Florida—Administrator Oil and Gas, Bureau of Geology, Department of Natural Resources, 903 West Tennessee Street, Tallahassee, FL 32304.

(8) Georgia—Department of Natural Resources, Geologic & Water Resources Division, 19 Martin Luther King Drive, SW., Atlanta, GA 30334.

(9) Idaho—Idaho Public Utilities Commission, Statehouse Mail, Boise, ID 83720.

(10) Illinois—Department of Natural Resources, Office of Oil & Gas Division, 524 South 2nd Street, Springfield, IL 62701.

(11) Indiana—Department of Natural Resources, Oil & Gas Division, 402 West Washington Street, Room 256, Indianapolis, IN 46204.

(12) Kansas—Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604

(13) Kentucky Natural Resources Department, 663 Teton Trail, Frankfort, KY 40601.

(14) Louisiana—Department of Natural Resources Conservation, P.O. Box 94275, Baton Rouge, LA 70804.

(15) Maryland—Department of Natural Resources, Tawes State Office Building, Annapolis, MD 21404.

(16) Michigan—Department of Natural Resources, Box 30028, Lansing MI 48909.

(17) Mississippi—State Oil & Gas Board, 500 Graymont Avenue, Suite E, Jackson, MS 39202.

(18) Missouri—Department of Natural Resources Geology and Survey Division, P.O. Box 250, 111 Fairgrounds Road, Rolla, MO 65402.

(19) Montana—Department of Natural Resources and Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, MT 59102.

(20) Nebraska—Oil & Gas Conservation Commission, Box 399, Sidney, NE 69162.

(21) Nevada—Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.

(22) New Mexico—Department of Energy and Minerals and Natural Resources, Oil Conservation Division, 2040 S. Pacheco Street, Sante Fe, NM 87505.

(23) New York—Department of Environmental Conservation, Division of Mineral Resources, 50 Wolf Road, Albany, NY 12233.

(24) North Carolina—Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, NC 27611.

(25) North Dakota—Industrial Commission, State Capitol, 600 East Boulevard Avenue, Department 405, Bismarck, ND 58505.

(26) Ohio—Department of Natural Resources, Division of Oil and Gas, 1930 Belcher Drive, Building D–3, Columbus, OH 43224.

(27) Oklahoma—Corporation Commission, Oil & Gas Conservation Division, P.O. Box 52000, Oklahoma City, OK 73152–2000.

(28) Oregon—Department of Geology & Mineral Industries, 800 N.E. Oregon Street, #28 Portland, OR 97232.

(29) Pennsylvania—Department of Conservation and Natural Resources, P.O. Box 8767, Harrisburg, PA 17105–8767.

(30) South Carolina—South Carolina Public Service Commission, P.O. Drawer 11649, Columbia, SC 29211.

(31) South Dakota—Department of Environment and Natural Resources, Foss Building, 523 East Capitol Avenue, Pierre, SD 57501.

(32) Tennessee—Office of Conservation, Division of Geology, 401 Church Street, Nashville, TN 37243.

(33) Texas—Railroad Commission Oil and Gas Division, P.O. Box 12967, Austin, TX 78711.

(34) Utah—Department of Natrual Resources, Division of Oil, Gas and Mining, P.O. Box 145801 West North Temple, Suite 1210, Salt Lake City, UT 84114–5801.

(35) Virginia—Department of Mines, Minerals & Energy, Division of Mines and Quarries, Oil & Gas Section, P.O. Box 1416, Abingdon, VA 24210.

(36) Washington—Department of Natural Resources, Geology and Earth Resources Division, P.O. Box 47001, Olympia, WA 98504.

(37) West Virginia—Commerce Bureau, Geological and Economic Survey, Oil and Gas Section, P.O. Box 879, Morgantown, WV 26507.

(d) *Federal lands.* For purposes of this section, ''Federal lands'' means

(1) All lands leased under:

(i) The Mineral Lands Leasing Act, as amended, 30 U.S.C. 181 et seq.; and

(ii) The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351 et seq.; and

(2) All Indian lands which are under the supervision of the United States Geological Survey or any successor federal agency (30 CFR Part 221); and

(3) All Indian lands which are under the supervision of the Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior.

(e) *Divided-interest leases.* Unless an agreement under this paragraph provides otherwise, where a well is located on a divided-interest lease involving Federal (or Indian) and private (or State) ownership:

(1) The Federal jurisdictional agency will make the determination where the majority lease interest is Federal (or Indian);

(2) The State jurisdictional agency will make the determination where the majority lease interest is private (or State); and

(3) The State jurisdictional agency will make the determination where the lease is divided equally.

(f) *Drilling units.* Unless an agreement under paragraph (e) of this section provides otherwise, where a drilling unit is drained by two or more wells, the Federal jurisdictional agency will make the determination if the completion location of the well in question is located on a Federal (or Indian) lease, and the State jurisdictional agency will make the determination if the completion location of the well in question is located on a private (or State) lease.

(g) *Agreements.* If a jurisdictional agency that has jurisdiction over Federal lands enters into an agreement with a jurisdictional agency that has jurisdiction over State lands that either authorizes the State jurisdictional agency to make determinations for wells located on Federal lands or the Federal agency to make determinations for wells located on State lands, such agreement shall be filed with the Commission. Upon the filing of such an agreement, the agency so authorized will be considered to be the jurisdictional agency for wells on the lands subject to the agreement.

Subpart E—Procedures for Commission Review of Jurisdictional Agency Determinations

§ 270.501 Publication of notice from jurisdictional agency.

(a) Upon receipt of notice of determination by a jurisdictional agency under § 270.204, the Commission will send an acknowledgment to the applicant and will post acknowledgment in the Commission's Public Reference Room and on the Commission's web site. Another source of the information is 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.

(b) The acknowledgment will contain the following:

(1) The date on which the jurisdictional agency notice was received;

(2) Certain information contained in FERC Form No. 121;

(3) A statement that the application and a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent the material is treated as confidential under § 270.506, at the offices of the Commission; and

(4) A statement that persons objecting to the final determination may, in accordance with this subpart, file a protest with the Commission within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to this section.

§ 270.502 Commission review of final determinations.

(a) *Review by Commission.* Except as provided in paragraphs (b), (c) and (d) of this section, a determination submitted to the Commission by a jurisdictional agency will become final 45 days after the date on which the Commission received notice of the determination, unless within the 45 day period, the Commission:

(1) Makes a preliminary finding that:

(i) The determination is not supported by substantial evidence in the record on which the determination was made; or

(ii) The determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

(2) Issues written notice of such preliminary finding, including the reasons for the preliminary finding. Copies of the written notice will be sent to the jurisdictional agency which made the determination, to the persons

identified in the notice under § 270.204 of such determination, and to any persons who have filed a protest.

(b) *Incomplete notice.* Notwithstanding the provisions of paragraph (a) of this section, the 45-day period for Commission review of a determination will not begin if:

(1) The notice forwarded to the Commission pursuant to § 270.204 does not contain all the material specified therein; and

(2) The Commission notifies the jurisdictional agency, within 45 days after the date on which the Commission receives notice of the determination, that the notice is incomplete.

(c) *Withdrawal of notice.* (1) The jurisdictional agency may withdraw a notice of determination by giving notice as specified in paragraph (c)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraphs (a) or (g)(4) of this section. Such notice must include the jurisdictional agency's reasons for the withdrawal.

(2) Withdrawal of a notice of determination will take effect at such time as the jurisdictional agency has notified the Commission, and the parties to the proceeding before the agency, of such withdrawal.

(3) Withdrawal of a notice of determination shall nullify such notice of determination.

(d) *Withdrawal of application.* (1) An applicant may withdraw an application for a determination which is before the Commission by giving notice as specified in paragraph (d)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraphs (a) or (g)(4) of this section.

(2) Withdrawal of an application will take effect at such time as the applicant has notified the Commission and the jurisdictional agency.

(3) Withdrawal of an application will nullify such application and the notice of determination on such application.

(e) *Public notice.* The Commission will publish notice of the preliminary finding in the **Federal Register** and will post the notice in its Public Reference Room. The notice will set forth the reasons for the preliminary finding.

(f) *Procedures following notice of preliminary finding.* Any state or federal agency or any person may submit, within 30 days after issuance of the preliminary finding, written comments, and request an informal conference with the Commission staff. Any jurisdictional agency, any state agency and any person receiving notice under paragraph (a)(2) of this Section may request an informal conference with the Commission staff. All timely requests for conferences will be granted. Notice of, and permission to attend, such conferences will be given to persons identified in paragraph (a)(2) of this section and to state or federal agencies or persons who submitted comments under this paragraph.

(g) *Final orders.* (1) In any case in which a protest was filed with the Commission pursuant to this subpart and a preliminary finding was issued, the Commission will issue a final order within 120 days after issuance of the preliminary finding.

(2) In any case in which no protest was filed with the Commission pursuant to this subpart, and a preliminary finding was issued, the Commission may issue a final order within 120 days after issuance of the preliminary finding.

(3) A final order issued under paragraphs (g)(1) or (g)(2) will either affirm, reverse, or remand the determination of the jurisdictional agency. Such order will state the specific basis for the Commission's action. Notice of the issuance of such order will be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency, and to participants in the proceeding before the Commission under paragraph (d) of this section and under § 270.503.

(4) In the event that the Commission fails to issue a final order within 120 days after issuance of the preliminary finding, the determination of the jurisdictional agency shall become final.

§ 270.503 Protests to the Commission.

(a) *Who may file.* Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to § 270.204.

(b) *Grounds.* Protests may be based only on the grounds that the final determination is:

(1) Not supported by substantial evidence;

(2) Not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the determination was made;

(3) Not consistent with information submitted with the protests for inclusion in the public records of the Commission, which information was not part of the record on which the determination was made; or

(4) Not based on an application which complied with the filing requirements set forth in this subpart.

§ 270.504 Contents of protests to the Commission.

Each protest must include:

(a) An identification of the determination protested;

(b) The name and address of the person filing the protest;

(c) A statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for the nonparticipation;

(d) A statement of the effect the determination will have on the protestor;

(e) A statement of the precise grounds under § 270.503(f) for the protest, and all supporting documents or references to any information relied on which is in the record on which the determination is based or is in or to be inserted in the public files of the Commission; and

(f) A statement that the protestor has served, in accordance with § 385.2010 of this chapter, a copy of the protest together with all supporting documents on the jurisdictional agency and all persons listed in the notice of determination filed pursuant to § 270.204.

§ 270.505 Procedure for reopening determinations.

(a) *Grounds.* At any time subsequent to the time a determination becomes final pursuant to this subpart, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

(1) In making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) There was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) *Contents of petition.* A petition to reopen the determination proceedings must contain the following information, under oath:

(1) The name and address of the person filing the petition;

(2) The interest of the petitioner in the outcome of the determination proceeding;

(3) The statement of material fact that is alleged to be untrue or omitted;

(4) A statement explaining why the outcome of the determination

proceeding would have been different had the statement or omission not occurred; and

(5) Copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the commission.

(c) *Procedures after reopening.* In the event the Commission reopens a determination pursuant to this section it will:

(1) Give notice to the jurisdictional agency and all persons who participated before both that agency and the Commission in the proceedings resulting in the determination in question;

(2) Permit the jurisdictional agency and other persons receiving notice pursuant to paragraph (C)(1) of this section to submit whatever documentary evidence such agency or persons deem relevant; and

(3) Take such other action or hold or cause to be held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) *Final order of Commission.* Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it will vacate the determination.

§ 270.506 Confidentiality.

(a) Except as provided in paragraph (b) of this section, the Commission will accord confidential protection to, and not disclose to the public, any information submitted by a jurisdictional agency under § 270.204, if:

(1) The jurisdictional agency, on its own motion or on request of the applicant, afforded such information confidential treatment before the jurisdictional agency; and

(2) The agency order or the applicant's request stated grounds for confidential treatment which fall within one of the exemptions described in paragraphs (1) through (9) of 5 U.S.C. 552(b).

(b) Upon receipt of a request for disclosure of information treated as confidential under paragraph (a), the Commission will determine in accordance with 5 U.S.C. 552 whether the information is exempt. 5 U.S.C. 552(b). If it determines the information is not exempt, the information will be made public. If it determines the information is exempt, the Commission will not make it public unless it determines that its conduct of the proceeding to review the jurisdictional agency determination requires making such information available to the public or to particular parties, subject to conditions (including a protective order) as the Commission may prescribe. Before making any information public under this paragraph, the Commission will provide at least 5 days notice to the person who submitted the information.

PART 375—THE COMMISSION

3. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

4. § 375.307 paragraph (p) is added to read as follows:

§ 375.307 Delegation to the Director of the Office of Markets, Tariffs, and Rates

* * * * *

(p) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice of a determination pursuant to § 270.502(b) of this chapter that the notice is incomplete under § 270.204 of this chapter.

(2) Issue preliminary findings under § 270.502(a)(1) of this chapter.

PART 381—FEES

Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

5. The authority citation for part 381 will continue to read as follows:

Authority: 15 U.S.C. 717–717W; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

6. Section 381.401 is added to read as follows:

§ 381.401 Review of jurisdictional agency determinations

The fee established for review of a jurisdictional agency determination is $115. The fee must be submitted in accordance with subpart A of this part and § 270.301(c) of this chapter.

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

Attachment—Federal Energy Regulatory Commission Form No. 121 Application for Well Category Determination

1.0 API well number for this well (14 digits maximum. If no API number assigned, leave blank.): _____-_____-_____-_____

2.0 Section 107 determination being sought (check one) is for gas produced from:
____(1) coal seams;
____(2) Devonian shale; or
____(3) a designated tight formation.

3.0 Spud date of this well:
____/____/____ (month/day/year)

4.0 Recompletion commenced: ____/____/____ (month/day/year)

5.0 Measured depth of recompletion: from _____ (top and base, in feet)

6.0 Applicant's name, address and zip code:
Name* _____
Street* _____
City* _____
State _____
Zip Code _____

7.0 Name and identification number of this well, name of reservoir into which well has been recompleted, and location of this well:
Well* _____
Reservoir* _____
Field* _____
County* _____
State* _____

8.0 If applying for determination on a recompletion into a designated tight formation, provide designated tight formation's name and corresponding FERC Designation:
Formation* _____
FERC _____
Designation* _____

9.0 Person responsible for this application:
Name* _____
Title* _____
Signature _____
Phone No. _____

*Signifies that line entry may contain up to 35 letters and/or numbers.

[FR Doc. 00–2367 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 113

RIN 1515–AC43

Amended Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to reflect the statutory provisions regarding bond procedures for the entry of articles subject to exclusion orders issued by the U.S. International Trade Commission (''Commission''). This document also proposes to include the text of a new special importation and entry bond in the Customs Regulations. These proposed changes reflect the terms of section 337 of the Tariff Act of 1930, as amended by section 321 of the Uruguay Round Agreements Act. As amended,