program by exempting all transactions valued at $50 million or less. Because this final rule does not affect the information collection requirements of the premerger notification program as implemented by the interim rules, it has not been resubmitted to OMB under the PRA for review.

List of Subjects in 16 CFR Part 802

Antitrust, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 802 as follows:

PART 802—EXEMPTION RULES

1. The authority citation for part 802 continues to read:

Authority: 15 U.S.C. 18a(d).

2. Amend § 802.21 by revising the text of paragraph (b) preceding the examples; by removing example 2; by redesignating examples 3 and 4 as examples 2 and 3 respectively; and by revising examples 1 and newly redesignated examples 2 and 3 to read as follows:

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

* * * * *

(b) *Year 2001 transition.* For transactions filed using the 1978 thresholds where the waiting period expired after February 1, 1996, an acquiring person may, during the five-year period following expiration of the waiting period, acquire up to what was the next percentage threshold at the time it made its filing without filing another notification, even if in doing so it crosses a 2001 notification threshold in § 801.1(h) of this chapter. However, after the end of that period, any additional acquisition will be the subject of a new notification if it meets or exceeds a 2001 threshold in § 801.1(h) of this chapter.

Examples: 1. Corporation A filed to acquire 20 percent of the voting securities of corporation B and indicated the 15 percent threshold. The waiting period expired on October 3, 1999. ''A'' acquired the 20 percent within the year following expiration of the waiting period. ''A'' has until October 3, 2004, to acquire additional securities up to 25 percent of ''B'''s voting securities, and need not make another filing before doing so, even though such acquisition by ''A'' may cross the $50 million, $100 million or $500 million notification threshold in § 801.1(h) of this chapter. After October 3, 2004, ''A'' and ''B'' must observe the 2001 notification thresholds set forth in § 801.1(h) of this chapter.

2. Prior to February 1, 2001, ''A'' filed to acquire 12 percent of the voting securities of corporation B, valued at $120 million, and indicated the $15 million notification threshold. After February 1, 2001, ''A'' determines that it will make an additional acquisition which will result in its holding 16 percent of the voting securities of B, valued at $160 million. ''A'' is required to file notification at the $100 million notification threshold prior to making the acquisition since it is now crossing the next higher 1978 threshold (15 percent).

3. Prior to February 1, 2001, ''A'' filed to acquire 26 percent of the voting securities of ''B'' and indicated the 25 percent notification threshold. After the end of the five-year period following expiration of the waiting period, ''A'' will acquire additional shares of ''B'' which will result in its holding 30 percent of the voting securities of ''B'', valued at $125 million. ''A'' is required to file notification at the $100 million notification threshold prior to making the acquisition. ''A'' could, however, have reached this level (30 percent valued at $125 million) prior to the end of the five-year period without making an additional filing since it would not have crossed the next higher threshold at the time it filed (50 percent) and the acquisition would have been exempted by this § 802.21(b).

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–6252 Filed 3–15–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–019; Order No. 587–N]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued March 11, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations governing standards for interstate pipeline business operations and communications to require that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. Recalls of released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with at least one opportunity to rescheduled any bumped volumes, which is similar to the protection afforded interruptible shippers. This rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The rule also will enhance competition by freeing up capacity that otherwise would not be released and creating greater parity between scheduling of capacity release transactions and pipeline interruptible service.

DATES: 1. The rule becomes effective April 17, 2002.

2. Pipelines must make tariff filings by May 1, 2002, to become effective by July 1, 2002, to provide shippers with the ability to recall scheduled and unscheduled capacity at the Timely and Evening Nomination cycles and to recall unscheduled capacity at the two other standard nomination times.

3. Comments are to be filed by the North American Energy Standards Board and others by October 1, 2002, regarding standards for implementing partial day or flowing day recalls. Reply comments must be filed by October 15, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:
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Federal Energy Regulatory Commission

Before Commissioners: Pat Wood, III Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

[Docket No. RM96–1–019; Order No. 587–N]

Standards for Business Practices of Interstate Natural Gas Pipelines; Final Rule

Issued March 11, 2002.

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12(c)(1)(ii) of its open access regulations to require that interstate pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at any of the scheduling opportunities provided by interstate pipelines. Recalls of released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with at least one opportunity to rescheduled any bumped volumes, which is similar to the protection afforded interruptible shippers. This rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The rule also will enhance competition by freeing up capacity that otherwise would not be released and creating greater parity between scheduling of capacity release transactions and pipeline interruptible service.

2. Background

3. In Order No. 636, the Commission adopted regulations permitting shippers (releasing shippers) to release their capacity to other shippers (replacement shippers).[1] Under these regulations, releasing shippers were permitted to ''release their capacity in whole or in part, on a permanent or short-term basis, without restriction on the terms and conditions of the release.'' [2] The regulation permits releasing shippers to impose terms for a release transaction under which the releasing shipper reserves the right to recall that capacity to use the capacity itself. As an example, a shipper might include a recall condition in the event that temperature drops below a pre-determined level.[3]

4. In July 1996, in Order No. 587,[4] the Commission incorporated by reference consensus standards approved by the Gas Industry Standards Board (now the North American Energy Standards Board (NAESB)) [5] designed to standardize business practices and communication protocols of interstate pipelines in order to create a more integrated and efficient pipeline grid. NAESB is a private, consensus standards developer whose wholesale natural gas standards are developed by representatives from all segments of the natural gas industry.

5. One aspect of NAESB's standards adopted in Order No. 587 covered capacity release transactions. Of relevance here, two standards, 5.3.6 and 5.3.7, apply to recalls of capacity release transactions.

Standard 5.3.6: If the releasing shipper wishes to recall capacity to be effective for a gas day, the notice should be provided to the transportation service provider and the acquiring shipper no later than 8 a.m. Central Clock Time on nomination day.[6]

Standard 5.3.7: There should be no partial day recalls of capacity. Transportation service providers should support the function of reputting by releasing shippers.[7]

In this context, a partial day recall (also referred to as a flowing gas recalls)[8] refers to a recall condition that applies only to part of gas day, rather than the full gas day.[9]

6. In 1996, when NAESB first adopted these standards, NAESB's standards provided for one nomination, at 11:30 a.m. CCT [10] for the next gas day and only one intra-day nomination at an indeterminate time. In order to create a more standardized intra-day nomination schedule,[11] NAESB amended its standards to provide for three standardized intra-day nomination opportunities: an Evening nomination at 6 p.m. CCT to take effect at 9 a.m. CCT the next gas day, an Intra-Day 1 nomination at 10 a.m. CCT to take effect at 5 p.m. CCT on the same gas day, and an Intra-Day 2 nomination at 5 p.m. CCT to take effect at 9 p.m. CCT on the same gas day.[12]

	Nomination deadline	Effective time
Timely Nomination	11:30 a.m	9 a.m. next gas day.
Evening Nomination	6 p.m	9 a.m. next gas day.
Intra-Day 1	10 a.m	5 p.m. same gas day.
Intra-Day 2	5 p.m	9 p.m. same gas day.

[1] 18 CFR 284.8 (2001).

[2] 18 CFR 284.8(b).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,418 (Apr. 8, 1992).

[4] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996).

[5] The Commission is revising § 284.12 to reflect the name change. The Commission finds good cause for making such a change without notice and comment since the change is purely administrative. *See* 5 U.S.C. § 553(b)(A)&(B).

[6] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.6.

[7] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.7.

[8] Gulf South, in its comments, contends that the term ''partial day recall'' is somewhat of a misnomer, and that the more apt term is ''flowing day recall.'' It states that the term partial day recall suggests the recall is for a specified portion of gas day when, in fact, the standard refers only to whether the recall occurs after gas has begun to flow. In this rule, the terms ''partial day recall'' and ''flowing day recall'' are used interchangeably to refer to recalls occurring during a gas day after gas has begun to flow, not to recalls between specified times.

[9] Under the NAESB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

[10] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. *See* 18 CFR § 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

[11] *See* Order No. 587–C, 62 FR at 10687, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050, at 30,585 (rejecting a proposed NAESB intra-day nomination standard for being vague and non-standardized and providing additional time for NAESB to develop a standardized intra-day nomination schedule).

[12] 18 CFR 284.12(b)(1)(i) (2001), Nominations Related Standard 1.3.2.

NAESB, however, has not amended its capacity release recall standards to take into account its adoption of these standardized intra-day nomination opportunities.

7. In Order No. 637, the Commission adopted § 284.12(c)(1)(ii) of its regulations which requires interstate pipelines to ''permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity.'' [13] The purpose of this regulatory change was to permit capacity release transactions to take place on an intra-day basis so that released capacity can compete with pipeline capacity on a comparable basis.[14] The adoption of § 284.12(c)(1)(ii) permits shippers to acquire released capacity and nominate using that capacity at any of the four intra-day nomination opportunities.[15]

8. On February 1, 2001, NAESB filed a report with the Commission, in Docket No. RM98–10–000, concerning its development of standards regarding partial day recalls of capacity. According to NAESB, some members believed that partial day recalls fell within the purview of the scheduling equality requirements of Order No. 637, while others did not. Some members, NAESB asserts, believed that partial day recalls are a valid business practice, irrespective of whether this practice is required by Order No. 637. Due to these disagreements, NAESB reports it has been unable to reach consensus on how to proceed.

9. On March 16, 2001, AGA filed a ''Reply to February 1, 2001, Gas Industry Standards Board Report and Petition for Clarification and Directive from FERC Regarding Requirement for Capacity Release Scheduling Equality.'' AGA argued that the Commission should require pipelines to allow partial day recalls as part of their compliance with § 284.12(c)(1)(ii).

10. On October 12, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) [16] proposing to require pipelines to afford releasing shippers enhanced ability to recall released capacity by permitting them to use partial day recalls at any of the four nomination opportunities established by the NAESB standards.

11. Comments

12. Twenty-eight comments on the NOPR were filed.[17] The comments can roughly be divided into three categories: those that supported the proposal, those that either supported or did not object to the proposal, but sought clarifications principally regarding implementation details, and those opposing the proposal. The majority of comments support the proposal.[18] They contend it would provide greater flexibility to releasing shippers, enhance competition by freeing up capacity that otherwise would not be released, and better accommodate retail unbundling programs at the state level.[19] The local distribution companies (LDCs) maintain that under state unbundling mechanisms, they are frequently the suppliers of last resort and, therefore, need to recall capacity in the event marketers fail to deliver.

13. Those opposing the proposal [20] contend it would decrease the reliability of the pipeline grid by reducing (bumping) volumes of already scheduled gas and thereby reduce liquidity. They maintain that partial day recalls will reduce reliability because bumping a replacement shipper's scheduled volumes may affect scheduling on a number of pipelines, and bumped replacement shippers will be forced to try and reschedule their gas. Those opposing the proposal also are concerned partial day recalls will reduce the value of released capacity and create less competition between pipeline firm capacity and capacity release. NiSource maintains that partial day recalls may decrease reliability for LDCs that permit marketers (using other LDCs' released capacity) to bring capacity to their city-gates by permitting a diversion of gas from one LDC market to another.

14. A number of comments raise operational issues relating principally to partial or flowing day recalls occurring during the gas day after capacity has begun to flow. These include: the need for advance notice to pipelines and replacement shippers of capacity to be recalled, and whether the pipeline or releasing shipper should provide the notice; [21] allocating capacity as well as imbalances and penalties between releasing and replacement shippers when recalls take place during the gas day; [22] and ensuring that total volumes delivered do not exceed original contract MDQ.[23] Some comments suggest the Commission convene a technical conference to address these issues.[24]

15. Discussion

16. Overview

17. The Commission is revising § 284.12(c)(1)(ii) of its regulations to require pipelines to permit recalls of capacity at each nomination opportunity. Specifically, the Commission is requiring pipelines to permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity according to the notice and bumping provisions applicable to interruptible shippers.[25] Recalls of

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[13] 18 CFR 284.12(c)(1)(ii) (2001).

[14] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156, 101–58–60 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091, at 31,297 (Feb. 9, 2000).

[15] Prior to Order No. 637, NAESB's capacity release nomination standards had not been amended to reflect the intra-day nomination standards. Thus, prior to Order No. 637, a replacement shipper acquiring released capacity had to acquire the capacity and notify the pipeline by 9 a.m. CCT in order to nominate at the Timely Nomination cycle (11:30 a.m. CCT) for the next gas day and could not make use of any intra-day nomination opportunities for the current gas day. With the changes made in § 284.12(c)(1)(ii), shippers will be able to acquire released capacity and submit a nomination at each intra-day nomination opportunity.

[16] Standards For Business Practices Of Interstate Natural Gas Pipelines, 66 FR 53134 (Oct. 19, 2001), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,556 (Oct. 12, 2001).

[17] The commenters and the abbreviations used in this order are listed on the Appendix.

[18] *E.g.,* AGA, APGA, APS/PWEC, Con Edison, Dominion LDCs, ENA, Kentucky, Keyspan, MLGW, PSCNY, PA OCA, Xcel.

[19] Xcel provides a succinct summary of the position:

> The proposed rules would provide firm capacity holders, including the Xcel Energy utility operating companies, with increased flexibility in structuring capacity release transactions to best fit their business needs. The Xcel Energy utility operating companies could benefit from the potential increase in value of non-recallable capacity release and from the greater flexibility when a recall is necessary.

Comment at 2.

[20] *E.g.,* DETM, Dynegy, EIP, EPSA, NGSA, NiSource, Williston.

[21] See Comments by Algonquin/Texas Eastern; Dominion; Dynegy; ENA; Gulf South; INGAA; Kinder-Morgan; NiSource; Williston; Industrials.

[22] See Comments by Algonquin/Texas Eastern; Dynegy; Gulf South; ENA; INGAA; Kinder-Morgan; NiSource; Williston. As an example, a replacement shipper with capacity of 2400 Dth/day could nominate the entire 2400 Dth for the full gas day, but take 1200 Dth in the first five hours of the day, leaving only 1200 Dth remaining for the remainder of the gas day. If a releasing shipper sought to recall the full 2400 Dth at the Intra-Day 1 cycle taking, which would take effect at 5 p.m., the issue raised by the comments are how to allocate the 2400 Dth between the releasing and replacement shippers and how to determine imbalances and potential penalties. Williston also raises the issue of how to perform such an allocation when there are multiple capacity releases: e.g., a releasing shipper releases capacity to a single replacement shipper who re-releases that capacity to three other replacement shippers. If the initial releasing shipper recalls, the capacity, Williston requests clarification as to how the remaining daily quantity should be allocated among the three final replacement shippers.

[23] Williston.

[24] Comments by EPPG; ENA.

[25] The Commission is rescinding the incorporation by reference of NAESB standard 5.3.6 (which requires notice of capacity release recalls by 8 a.m. CCT) and the first sentence of NAESB Standard 5.3.7 (which prohibits partial day recalls

released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes.[26]

18. The regulations adopted in this rule will be implemented in two phases. This two-phase approach will ensure an expeditious implementation of partial day recalls for recalls that do not raise the operational details addressed in the comments, while at the same time providing time for NAESB to further consider standards to address the operational issues raised. By May 1, 2002, each pipeline will be required to make a compliance filing, to be effective July 1, 2002, that will permit shippers to recall capacity at both the Timely Nomination cycle and the Evening Nomination Cycle and to recall capacity at any nomination time if the capacity has not been previously scheduled by the replacement shipper. To ease the compliance and review process, the Commission is establishing a standard tariff provision providing a notification schedule for these recalls.

19. Second, the Commission will provide NAESB six months in which to develop standards to apply to the operational details involved in allowing partial or flowing day recalls. NAESB should file a report with the Commission by October 1, 2002, detailing the standards it has adopted (or those it has considered) and all other material relevant to its consideration of such standards. Other industry members can also submit comments by October 1, 2002, and will have an additional 15 days from the filing of the NAESB information to file additional comments on the NAESB report. Upon the receipt of these comments, the Commission will issue a further order regarding implementation of Intra-Day 1 recalls.

20. Regulatory Changes

21. The regulations adopted in this rule will ensure consistency with the original intent of the Commission's capacity release regulations by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs, by providing greater incentives for releasing shippers to release capacity, and by fostering greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and pipeline interruptible service. At the same time, the regulations will afford replacement shippers whose capacity is recalled the same advance notice and protection from bumping as provided to interruptible shippers under the Commission's regulations.

22. In Order No. 636, the Commission established the capacity release mechanism to create competition with pipeline firm and interruptible transportation. [27] One of the fundamental tenets of the Commission's capacity release regulations is that releasing shippers have the opportunity to establish any recall conditions for their capacity.

23. When NAESB first considered recall standards, it established one notification time for all recalls (8 a.m. CCT) and did not permit partial or flowing day recalls. When NAESB adopted this standard, however, the standards provided for only one nomination a day, at 11:30 a.m. CCT and a single non-standardized intra-day nomination. But the circumstances under which the recall standards were developed have markedly changed as the number of nomination opportunities have now expanded to four nomination opportunities. At the same time, it is apparent from the comments in this rulemaking that the consensus supporting NAESB's existing recall standards no longer exists, and NAESB itself has recognized that it can no longer make progress in resolving this issue. Although the Commission places great reliance on NAESB's development of consensus standards,[28] the Commission has found it necessary to resolve disputes between industry segments when NAESB has been unable to reach consensus on issues concerning Commission policy, so that the standards development process can proceed in line with Commission policies.[29] In these circumstances (where consensus no longer exists on recall standards), the Commission must resolve the policy issue over whether to permit greater recall flexibility.

24. An examination of both past and current Commission policy supports allowing releasing shippers to recall capacity more frequently than currently permitted under NAESB's standards.

25. The Commission's general policy adopted in Order No. 636 would permit more extensive recall rights than those permitted by the NAESB standards. Section 284.8(b) of the Commission's regulations (adopted in Order No. 636) expressly permits shippers to ''release their capacity in whole or in part, on a permanent or short-term basis, *without restriction on the terms and conditions of the release.*'' [30] In Order No. 636–A, the Commission recognized that ''a releasing shipper may include terms and conditions, such as recall rights, that will ensure it has adequate peak day capacity.'' [31] In *Texas Eastern Transmission Corporation,* for example, the Commission rejected a pipeline's proposed restriction on recall rights, stating ''any provision relating to recall rights must not operate to impede the ability of releasing shippers to employ recall provisions as terms and conditions of their releases.''[32] Thus, all recall conditions, including partial day recalls are consistent with the Commission's regulations.

26. Moreover, in Order No. 637, the Commission sought to create greater scheduling parity between capacity release transactions and pipeline services by enabling capacity release transactions to take place on an intra-day basis at each of the four scheduling opportunities.[33] While this regulatory change will enable shippers to release capacity at any nomination opportunity, the existing NAESB recall standards do not permit releasing shippers to take full advantage of the intra-day nomination opportunities by recalling the capacity and renominating that capacity at each of the four scheduling opportunities. Allowing partial day recalls is, therefore, consistent with the overall regulatory changes promulgated in Order Nos. 636 and 637.

of capacity). The Commission is retaining the portion of Standard 5.3.7 that requires transportation service providers to ''support the function of reputting by releasing shippers.'' Reputting refers to the ability of a releasing shipper to include a condition in a release under which it can recall capacity when needed and, after the recall has ended, the capacity will revert (be reputted) to the replacement shipper, without the need for a new release.

[26] The use of partial day recall rights is voluntary. As with any other recall condition, releasing shippers are free to offer their capacity without partial day recall rights. Whether partial day recall rights are permitted depends on the terms of the releasing shipper's offer.

[27] Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,556 (Aug. 3, 1992) (''competition between pipeline capacity and released capacity helps ensure that customers pay only the competitive price for the available capacity'').

[28] Order No. 587, 61 FR at 39057 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038, at 30,059.

[29] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30–668–72 (Apr. 16, 1998) (resolving dispute over bumping of interruptible service by firm service).

[30] 18 CFR 284.8(b) (emphasis added).

[31] Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,558 (Aug. 3, 1992).

[32] 62 FERC ¶ 61,015, at 61,104 (1993).

[33] 18 CFR 284.12(c)(1)(ii) (2001) (permitting shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity).

27. Policy considerations further support enhanced recall rights. Permitting enhanced recall rights will provide firm shippers with added flexibility and will better enable releasing shippers to offer released capacity that competes with the pipelines' interruptible service. The current NAESB standards inhibit the ability of shippers to release capacity because releasing shippers cannot quickly reclaim capacity when they require it for their own use. For example, under the current NAESB standards, in order to recall capacity for the next gas day, a shipper must notify the pipeline by 8 a.m. the day before the recall can take effect and cannot use partial or flowing day recalls. By establishing an 8 a.m. deadline for recall notifications, the standard effectively precludes a releasing shipper from recalling capacity at the Evening Nomination cycle. In fact, a shipper that misses the 8:00 a.m. CCT recall notification time will miss four nomination opportunities and will be unable to have its volume flow until 48 hours after it submits the recall notification.[34]

28. As a result of such lengthy delays, releasing shippers may not be able to use their recall rights as effectively as possible to ensure that they can retain adequate peak day capacity for their own needs. The delay in rescheduling recalled capacity also can have an adverse competitive impact on the market by reducing the amount of capacity available for release. As AGA points out, if an LDC is a provider of last resort under a state unbundling initiative and is given notice that insufficient supply is being delivered to its city-gate, the LDC will need to recall released capacity for later in the same day or, at least, for the next day. Without the ability to recall capacity more frequently, a releasing shipper with supplier-of-last-resort obligations will be reluctant to release capacity at all since it will not be able to recall that capacity when it is needed. In that event, replacement shippers will have less capacity from which to choose and will have fewer alternatives to purchasing pipeline interruptible service.

29. Replacement shippers benefit from having a more open and competitive capacity market, with more capacity available to compete with pipeline interruptible transportation. As APS/PWEC states, ''as a captive shipper on a fully subscribed pipeline, APS/PWEC supports any initiative that would free up excess capacity (even in the short run).'' [35] Replacement shippers will not be required to purchase released capacity with partial day recalls, but will be able to choose the capacity with terms that best fits their needs. Releasing shippers will be able to release capacity without a partial day recall condition and will have an incentive to do so, because a release not subject to recall will be more valuable (and higher priced) than a release subject to recall. Replacement shippers will know the terms of releases upfront and can determine whether to purchase recallable capacity or seek more reliable capacity, and can take the recall conditions into account in determining how much the capacity is worth.

30. Under the regulations adopted in this rule, the releasing shipper will be able to recall unscheduled capacity at any of the four nomination cycles and can recall scheduled capacity so long as the replacement shipper has an opportunity to reschedule its gas. The replacement shipper will receive protection against loss of service similar to that interruptible shippers currently receive.

31. In Order No. 587–G, the Commission adopted a regulation stating that when an interruptible shipper's volumes are to be reduced as a result of a nomination by a firm shipper, the interruptible shipper must be provided with advanced notice of such reduction and must be notified whether penalties will apply on the day its volumes are reduced.[36] The Commission further determined that interruptible shippers could be bumped by firm intra-day nominations at the first three nomination opportunities, but could not be bumped at the third intra-day nomination opportunity (5 p.m. CCT) since they would not have an opportunity to reschedule their gas for that gas day. The Commission provided this protection against bumping to provide stability in the nomination system, so that shippers can be confident by late afternoon that they will receive their scheduled flows.[37]

32. This rationale applies equally to replacement shippers, which, under the regulations adopted in this rule, must be given advance notification of any recall and cannot have scheduled volumes reduced unless they have been given an opportunity to reschedule their gas. In addition, the Commission required pipelines to waive certain non-critical penalties for bumped interruptible shippers, and the same penalty waiver will be applied to bumped replacement shippers.[38]

33. The Commission recognizes that implementation of recalls at the Intra-Day 1 and 2 cycles can affect flowing gas and, as the comments point out, result in the need to allocate daily nominations (and potentially penalties) between releasing and replacement shippers. But these issues are not insurmountable and should not prevent implementation of partial day recalls. Some pipelines already have implemented partial day recalls on their systems.[39] Rather than having pipelines implement partial day recalls based on their own distinct processes for handling allocation and other operational issues, the Commission is providing an opportunity for NAESB to reach consensus on a set of standards that can be applied to all partial day recalls. Therefore, the Commission will postpone implementation of partial or flowing day recalls of scheduled gas at the Intra-Day 1 and Intra-Day 2 cycles, and provide NAESB with six months to develop standards governing recalls at these cycles that affect flowing gas. At the end of this period, NAESB should file with the Commission the standards it has developed or, if it is unable to reach consensus, a report outlining the standards considered, the voting records with regard to these standards, and the reasons for its inability to reach consensus. Other industry members can also submit comments and will have an additional 15 days from the filing of the NAESB information to file additional comments on the NAESB report. Since NAESB has already been working on the partial day recall issue, six months should provide a sufficient time period for developing standards. Once the Commission receives the report from NAESB and the comments, it will issue an order establishing the requirements for partial day recalls.

34. The Commission, however, sees no reason for delaying implementation of partial day recalls for the Evening Cycle and for recalls of unscheduled capacity. Recalls in these situations will not present allocation or other operational difficulties for the pipelines. Such recalls do not affect flowing volumes and, therefore, do not result in the need to allocate daily gas supplies

[34] A releasing shipper that misses the 8 a.m. CCT notification time cannot renominate that capacity until 11:30 a.m. CCT the next day, a nomination under which gas will not flow until 9:00 a.m. CCT the day after.

[35] APS/PWEC Comment, at 3.

[36] 18 CFR 284.12 (c)(1)(i)(A).

[37] Order No. 587–G, 63 FR at 20078, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,671–72.

[38] Order No. 587–G, 63 FR at 20078–79, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,672–73.

[39] Dominion Transmission, Inc., 95 FERC ¶ 61,316, at 62,080 (2001); National Fuel Gas Supply Corporation, 96 FERC ¶ 61,182, at 61,804 (2001).

between releasing and replacement shippers. In order to provide shippers more flexibility in their use of capacity, the Commission will require pipelines by May 1, 2002, to file tariff sheets, as discussed below, to implement partial day recalls for the Evening Cycle and for unscheduled capacity. These tariff sheets are to become effective by July 1, 2002.

35. Schedule for Implementation of Recalls for Evening Nomination Cycle and Unscheduled Capacity

36. The NOPR proposed that no advance notice of recalls would be provided, so that the recall and a renomination of the releasing shipper would be provided at each of the standard nomination cycles. For example, under the proposal in the NOPR, the releasing shipper would notify the pipeline at 6 p.m. CCT (Evening Nomination) that capacity is being recalled and would simultaneously submit a nomination at the same time. The replacement shipper would not be notified of the bump, under this proposal, until the deadline for reporting of scheduled volumes (10 p.m. CCT).

37. A number of comments, however, maintain that recall notices and nominations should not be simultaneous and that pipelines and replacement shippers need advance notice of recalls. Whether to establish an advance notification requirement for recalls, and how that notice should be provided, are issues NAESB needs to consider during its deliberations. The treatment of advance notification can determine whether recalls at the Intra-Day 2 cycle can bump scheduled volumes. If NAESB provides for advance notice of recalls to pipelines and replacement shippers, releasing shippers could be permitted to bump scheduled gas at the Intra-Day 2 cycle, since replacement shippers will have sufficient advance notice to reschedule bumped gas at the Intra-Day 2 cycle.[40] On the other hand, if advance notice is not provided, then, under this rule, recalls would not be permitted at the Intra-Day 2 cycle since the replacement shipper would not have an opportunity to reschedule its gas.

38. Since the Commission is implementing recalls of scheduled gas at the Evening Nomination cycle and recalls of unscheduled gas at the Intra-Day 1 and Intra-Day 2 cycles, pipelines will need to implement an interim schedule for implementing recalls for these cycles. In order to assure expeditious compliance with these requirements, the Commission is establishing, as discussed below, an interim timeline for recalls and will require each pipeline to include standard tariff language in its tariff providing for such recalls.

39. The fundamental precept of the interim schedule being adopted by the Commission is that releasing shippers must be provided with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall. Releasing shippers, such as LDCs, need to be aware of the scheduled volumes for their systems prior to determining whether they will need to recall capacity. Thus, the advance notification period should give releasing shippers the time to evaluate the scheduled quantities information before having to submit the recall notice.[41] Further, although the Commission is not convinced that the existing 3 ½ hour advance notice requirement for the Timely Nomination cycle[42] is necessary, the Commission will permit pipelines to continue to use this notification period for notification of recalls for the Timely Nomination cycle while NAESB considers the schedule for recalls.

40. Based on these precepts, the Commission is establishing the following interim schedule for notification to pipelines and replacement shippers of recalls of capacity at the Evening Nomination cycle and for recalls of unscheduled capacity.

Nomination cycle (all times in CCT)	Receipt of scheduled volumes (from prior nomination cycle)	Recall notification to pipeline	Pipeline notification to replacement shipper of recall	Nomination time (same day)
Timely	NA	8 a.m	9 a.m	11:30 a.m.
Evening	4:30 p.m. same day	5 p.m	6 p.m	6 p.m.
Intra-Day 1	10 p.m. CCT prior day	8 a.m	9 a.m	10 a.m.
Intra-Day 2	2 p.m. same day	3 p.m	4 p.m	5 p.m.

41. To ease the compliance and review burden on both pipelines and shippers, each pipeline is required to file standard tariff language to implement such recalls stating the following:

Releasing shippers may, to the extent permitted as a condition of the capacity release, recall released capacity (scheduled or unscheduled) at the Timely Nomination cycle and the Evening Nomination cycle, and recall unscheduled released capacity at the Intra-Day 1 and Intra-Day 2 Nomination cycles by providing notice to the Transporter by the following times for each cycle: 8 a.m. CCT for the Timely Nomination cycle; 5:00 p.m. CCT for the Evening Nomination Cycle; 8 a.m. CCT for the Intra-Day 1 Nomination cycle, and 3:00 p.m. for the Intra-Day 2 Nomination cycle. Notification to replacement shippers provided by Transporter within one hour of receipt of recall notification.

The Commission will revisit this schedule after NAESB has had an opportunity to develop standardized timelines for partial day recalls.

42. The Commission will address below those comments opposing or suggesting changes in the regulation or requesting clarification. Comments addressing procedural issues will not be addressed since NAESB will be considering those issues.

[40] If advance notice of recalls is provided, the bumping rules for recalled capacity may not need to be identical to those for interruptible shippers. Interruptible shippers cannot be bumped at the Intra-Day 2 cycle because, under current NAESB standards, they are not provided with advance notice of the bump and so cannot renominate at the Intra-Day 2 cycle. 18 CFR 284.12(b)(1)(1), Nominations Related Standards 1.3.2 (Intra-Day 2 nomination is received at 5 p.m. CCT with no advance notice to interruptible shippers of volumes to be bumped). In contrast, if advance notice of recalls is provided to replacement shippers, their scheduled capacity can be recalled at the Intra-Day 2 cycle because the replacement shipper will have sufficient notice to renominate at the Intra-Day 2 cycle.

[41] For example, under the Timely Nomination cycle, scheduled volumes are provided at 4:30 p.m. Releasing shippers need sufficient time to evaluate this information before determining whether to recall capacity for the 6 p.m. Evening Nomination cycle.

[42] Capacity Release Related Standards 5.3.6 (notice must be given by 8 a.m. CCT for recall effective at the 11:30 a.m. Timely Nomination cycle).

43. Comments on Adoption of Partial Day Recall Requirement

44. Those opposing adoption of a regulation permitting partial day recalls contend that permitting any partial day recalls will operate to diminish the attractiveness of released capacity, and will, therefore, result in limiting competition between pipeline firm and released capacity. They further maintain that allowing partial day recalls will be harmful to replacement shippers, because replacement shippers will be unable to reschedule gas bumped by the partial day recall. DETM contends that, for better or worse, all gas transactions occur for a full gas day, and that this will create difficulties for replacement shippers trying to reschedule gas subject to partial day recalls. DETM further maintains that no data supports the proposition that the availability of partial day recalls will have any measurable impact on the availability of released capacity.

45. Since Order No. 636, the Commission's regulation of released capacity has proceeded from the presumption that the best way to improve access to capacity is to provide both releasing and replacement shippers as much flexibility as possible in structuring their capacity release transactions. In Order No. 637, for instance, the Commission required pipelines to permit releasing and replacement shippers to consummate capacity release transactions at each of the four intra-day nomination opportunities to ensure that replacement shippers could obtain capacity when they need it.[43] Similarly, allowing partial day recalls will provide releasing shippers with similar flexibility to structure capacity releases that fit their requirements. Indeed, as the gas market has been developing, shippers want more flexibility, not less, to adjust nominations on an intra-day basis.[44] Allowing partial day recalls is a step towards the Commission's, as well as the industry's, goal of providing shippers with enhanced scheduling opportunities so that they can adjust their gas nominations to accord with their market needs.[45]

46. Moreover, it is not clear that prohibiting partial day recalls would benefit replacement shippers in the long run. DETM and Dynegy appear to be assuming that without partial day recalls, firm shippers will release the same amount of capacity on a full day's basis as they would if partial day recalls are available. However, many of the comments point out that firm shippers that need capacity on short notice are reluctant to release their capacity at all if they are unable to recall that capacity in the event of changed circumstances, such as dropping temperatures or the failure of a marketer to deliver gas.[46] According to the comments, this is particularly true for LDCs with supplier-of-last-resort obligations that need to be able to recall capacity quickly if marketers fail to provide gas to the LDCs city-gate.[47] Allowing partial day recalls will remove this disincentive to release capacity, thereby making incremental capacity available and benefitting replacement shippers by providing them with more options, particularly on fully subscribed pipelines.[48]

47. Dynegy, DETM, and EPSA further assert that allowing partial day recalls may make capacity releases subject to such recalls less valuable to replacement shippers. In the first place, as noted above, the commenters are assuming such capacity will be available for release if partial day recall rights were not available to the releasing shipper, an assumption that other comments show is not necessarily correct. Released capacity available subject to partial day recall is certainly more valuable to replacement shippers than not having that capacity available at all.

48. Moreover, if replacement shippers find that released capacity with partial day recalls is too unreliable, they need not purchase that released capacity and can negotiate with the releasing shippers for conditions providing more reliable service. Under the regulations adopted here, releasing shippers are not required to include partial day recalls in their releases. Releasing shippers can release capacity on a full day basis (not subject to partial day recalls) and will have an incentive to do so, because a full day release will be more valuable (and higher priced) than a partial day recall release. The replacement shippers will know the terms of releases upfront and can determine whether to purchase that capacity, negotiate other terms with the releasing shipper, or seek more reliable capacity, and can take the recall conditions into account in determining how much the capacity is worth. In a fully functioning market, buyers and sellers negotiate over the terms of their deals so that the price and other components reflect terms that are mutually agreeable to both parties. Imposing artificial regulatory limits on the negotiating position of one party to the transaction, as proposed by those opposing partial day recalls, is the antithesis of fully functioning markets, and can only create a less efficient marketplace.

49. DETM and Dynegy also contend that permitting partial day recalls will reduce the reliability of the pipeline grid because replacement shippers are subject to losing their capacity and may be unable to reschedule capacity. These arguments are reminiscent of the arguments made in 1998 against allowing firm intra-day nominations to bump interruptible transportation on the grounds that interruptible shippers would have difficulty rescheduling their gas.[49] In that case, the Commission rejected such claims, finding that:

> Firm shippers are paying reservation charges for priority rights and those rights should include the right to have a nomination become effective as early as possible on the gas day following the nomination. Interruptible shippers voluntarily take the risk that their service will be interrupted and while they are entitled to advance notice of such interruption, they should not be able to prevent firm shippers from having their nominations take effect at the earliest possible time. Gas flows on the interstate grid 24-hours a day, and is consumed throughout the day, so interruptible shippers need to be prepared to adjust gas volumes even during non-business hours.[50]

50. In this instance, firm shippers paying reservation charges should similarly have the ability to control the use of their capacity by employing partial day recalls. Shippers purchasing released capacity subject to partial day recalls, like those purchasing interruptible transportation, are taking the risk that their scheduled quantities may be disrupted. As gas markets continue to develop, such adjustments will be increasingly necessary to provide those shippers holding firm

[43] 18 CFR 284.12(c)(1)(ii).

[44] *See* Reliant Energy Gas Transmission Company, 93 FERC ¶ 61,141 (2000) (proposal for hourly nominations to meet customer needs for quick adjustment due to demand changes).

[45] NAESB's standards recognize that the current nomination scheduling is merely ''an interim step to continuous and contiguous scheduling.'' Nominations Related Standards 1.1.2.

[46] *See* Comments of Dominion LDCs, at 4 (partial day recalls ''will free up capacity that would otherwise be held by LDCs and other shippers that cannot risk releasing it for an extended period''); Kentucky (''the inability to reschedule recalled capacity will result in the reduction of the amount of capacity available, thereby adversely impacting competition'').

[47] *See* Comments of AGA, Dominion LDCs, APGA, Con Edison, Kentucky, KeySpan, PSCNY (partial day recalls crucial to retail access programs where recall is needed to ensure reliability).

[48] *See* Comment of APS/PWEC, at 3 (supporting partial day recalls as making incremental capacity available on fully subscribed pipelines).

[49] *See* Order No. 587–G, 63 FR at 20077–78, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,669–30,672.

[50] Order No. 587–G, 63 FR at 20078, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,671.

capacity with the utmost flexibility in their use of the capacity for which they pay.

51. Moreover, like interruptible shippers, replacement shippers are protected, because bumping of scheduled volumes is only permitted if the replacement shipper has at least one opportunity to reschedule its gas. Replacement shippers also have tools available, such as pooling, gas package identifiers, and ranking, that they can use to manage their gas supplies in the event of a bump. [51]

52. WDG maintains that the Commission should not exempt the Intra-Day 2 nomination from a partial day recall. It argues that the replacement shippers have fair notice that their capacity is recallable, and therefore are not prejudiced by having a recall at the Intra-Day 2 cycle.

53. The regulation adopted in this rule does not prohibit all recalls at the Intra-Day 2 cycle. Recalls of unscheduled capacity can be made at the Intra-Day 2 cycle. As discussed earlier, NAESB is to consider establishing a notification schedule by which pipelines and replacement shippers are to be notified of recalls. Bumping at the Intra-Day 2 cycle may be permitted depending on whether the replacement shipper is given sufficient time to renominate any bumped gas at the Intra-Day 2 cycle.

54. DETM maintains that the partial day recall issue is not a policy dispute, but a business issue that should be left to NAESB to resolve. It argues that the Commission has historically deferred to the determinations of NAESB on business issues and, therefore, should not overturn the business decision by NAESB to prohibit partial day recalls.

55. The dispute here is not simply a question of business practices, but a question of regulatory policy regarding the relative rights of releasing and replacement shippers under the Commission's capacity release mechanism. Here, the Commission has determined that, under its regulations, releasing shippers should be given full rights to use their capacity flexibly by recalling that capacity on an intra-day basis, and that the contrary NAESB standards should no longer be incorporated by reference.

56. It is true that the Commission gives great weight to the standards adopted by NAESB, because these standards represent a consensus of the industry. In fact, the Commission initially adopted NAESB's consensus standards limiting capacity release recalls, even though the Commission's regulations (§ 284.8 (b)) would have permitted partial day recalls. Now, however, it is clear from the record of deliberations at NAESB, and the comments filed in this proceeding, that the existing NAESB standards on partial day recalls no longer command a consensus of the industry.[52] At this point, NAESB is stalemated, without being able to achieve a consensus in either direction. Since consensus no longer obtains, the Commission needs to resolve the policy dispute and has determined that allowing partial day recalls is consistent with the Commission's regulations, will provide incentives to release additional capacity, and will foster enhanced competition.

57. Requests for Clarification

58. A number of the comments ask for clarification of aspects of the regulations and the way in which partial day recalls will operate.

59. Applicability of Recall Conditions

60. NiSource maintains the Commission's regulation is vague and seems to imply that all released capacity is subject to partial day recalls. Williams and ENA similarly seek clarification that parties retain the flexibility to decide whether capacity is recallable on an intra-day basis. Williams further seeks clarification that the proposed rule is prospective only and does not affect previous capacity release contracts.

61. The Commission has revised its proposed regulation to make clear that pipelines need only provide releasing shippers with the opportunity to include partial day recalls as a condition in capacity release offers. Whether a partial day recall applies to a capacity release will depend upon the terms of the agreement between the releasing and replacement shipper. Because the terms of the agreement govern, the Commission agrees with Williams that implementation of this regulation is prospective only and will not change the terms of already negotiated capacity release transactions.

62. Schedule for Notification of Recalls for Timely Nomination Cycle and Reputs

63. The Industrials maintain that the Commission should not eliminate NAESB standard 5.3.6 which establishes 8 a.m. CCT as the deadline for notification of a recall applicable to the Timely Nomination cycle (11:30 a.m.). The Industrials are concerned that the elimination of this provision will force all recalls into the intra-day cycles or will mean that recall timing will be left either to the contract between the releasing and replacement shipper or to individual tariff provisions. The Industrials further request that the Commission consider a timeline for notification of reputs (in which recalled capacity reverts to the replacement shipper after a recall ends), or request NAESB to consider this issue.

64. The Commission recognizes that a standard timeline for recall notification is needed and is referring this issue to NAESB for consideration of a new standard. In the interim while NAESB is considering a new standard, the Commission is permitting pipelines to continue to use the notification period in current standard 5.3.6 for the Timely Nomination cycle, and, as described earlier, has established an interim notification schedule for the other nomination cycles. NAESB also should consider whether a schedule or timeline for reput notification is necessary.

65. Penalty Exposure

66. Dynegy and NGSA maintain that partial day recalls should not result in greater penalty exposure for shippers whose capacity has been recalled. As discussed earlier, the Commission in Order No. 587–G required pipelines to waive non-critical penalties for bumped interruptible shippers. Pipelines should apply the same waivers for gas bumped through partial day recalls.

67. Effect on Alternate Points

68. NiSource seeks clarification that partial day recalls will not permit the releasing shipper recalling capacity to change to an alternate point and bump firm capacity that is already scheduled (by a third party) at that point. The recall only permits the releasing shipper to displace gas scheduled by the replacement shipper. The Commission agrees that partial day recalls will not give the recalling shipper any greater scheduling rights vis a vis third parties.

69. Pipelines Offering Non-Standard Nomination Opportunities

70. Dominion requests clarification that pipelines offering more nomination opportunities than the four standard

[51] 18 CFR § 284.12 (b)(1)(i), Nominations Related Standards 1.3.18, 1.3.23, 1.3.24. Pooling together with ranking permit shippers to designate which supplies or markets should be cut first in the event scheduled volumes are reduced.

[52] Under NAESB's procedures, a consensus is required to approve standards, but equally a consensus is needed to change or remove a standard. For example, if NAESB's current partial day recall standards (5.3.6 and 5.3.7) were resubmitted for a vote today, the comments make clear that these standards would not command a consensus at NAESB.

times provided in the NAESB standards, need not offer partial day recall at non-standard nomination times. Dominion maintains that it provides additional nomination times early in the morning (7:45 a.m. CCT) and late in the evening (8:45 p.m.), and states that its staffing, and that of shippers, at these times does not permit processing of recalls. In addition, Dominion contends that other pipelines are not equipped to coordinate recalls at those hours.

71. Pipelines are certainly free to provide for recalls at non-standard nomination periods. However, in implementing recalls during the interim period in which NAESB is considering standards, the Commission will require recalls to be processed only at the standard nomination periods; pipelines need not permit recalls at any non-standard nomination times. In considering standards for partial day recalls, NAESB should consider whether standards should be developed to permit recalls at certain non-standard nomination opportunities.

72. Effect on Already Accepted Partial Day Recall Programs

73. Dominion requests clarification that the final rule does not affect Dominion's settlement in its Order No. 637 proceeding in which it provides partial day recalls at certain nomination opportunities. For example, Dominion states that it currently does not permit recalls at the Intra-Day 1 cycle, although it does not object to permitting such recalls if required by the Commission.

74. All pipelines will be required to conform to the requirements of the Commission regulation, regardless of the terms of previous approved tariffs. The Commission is acting under section 5 of the Natural Gas Act in requiring pipelines to permit releasing shippers to use partial day recalls and is seeking to establish standards to apply to such recalls across the interstate grid. Accordingly, all pipelines with tariffs inconsistent with the Commission's regulation must comply with that regulation. Dominion, for instance, is required, as are the other pipelines, to permit recalls at the Intra-Day 1 cycle (to which it has no objection). Similarly, Dominion is required to permit recalls under the schedule established by the Commission in this rule for the interim period while NAESB is considering standards for partial day recalls, and will be required to comply with subsequent timeline NAESB develops and the Commission adopts.

75. Pipeline Capacity

76. EIP is concerned that partial day recalls are at odds with the NAESB standards requiring that all nominations be for daily quantities. EIP maintains that if partial day recalls are permitted for released capacity, pipelines should be permitted to sell their capacity for less than a full day as well.

77. EIP appears to be suggesting that a partial day recall refers to a sale of capacity for a time period of less than one day, whereas pipelines under the NAESB standards can only sell capacity for a full day's quantity. The Commission is not establishing different standards for pipeline capacity as compared to released capacity. As Gulf South explains in its comments, a partial day recall should not be viewed as a recall for a specific portion (number of hours) of a gas day. Rather, the recall is for a proportionate share of the total contract quantity. For example, if a capacity release is for a contract quantity of 2400 Dth, and the replacement shipper flowed 800 Dth during the first eight hours prior to recall, the releasing shipper would still have a contract quantity of 1600 Dth remaining on the contract for the remainder of the gas day. In the same way, pipelines can sell capacity at each of the intra-day nomination opportunities whenever capacity is available.[53]

[53] Indeed, Commission policy requires pipelines to sell capacity at the maximum tariff rate whenever that capacity is available, including on an intra-day basis. Tennessee Gas Pipeline Company, 91 FERC ¶ 61,053, at 61,190 (2000); 18 CFR 284.7 & 284.9 (must sell services without regard to duration of the service).

78. Notice of Use of Voluntary Consensus Standards

Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule identifying whether a voluntary consensus standard or a government-unique standard is being adopted. In this rulemaking, the Commission is issuing its own regulation and rescinding the incorporation by reference of NAESB standard 5.3.6 and part of 5.3.7, because the existing NAESB standard has not been revised to take into account changed circumstances, there is no longer consensus supporting this standard, and the existing standard fails to reflect Commission policy.

79. Information Collection Statement

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

81. The final rule will affect one existing data collection, FERC–545 ''Gas Pipeline Rates: Rate Change (Non-Formal)'' (OMB Control No. 1902–0154). The following burden estimates are related only to this rule and include the costs of complying with the tariff filing requirement. Since this final rule will be implemented in two phases, the number of responses per respondent has been increased from one, as proposed in the NOPR, to two because each respondent will need to make two tariff filings, one for phase one and one for phase two.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total annual hours
FERC–545	93	2	38	7,068

	FERC–545
Annualized Capital/Startup Costs	$397,714
Annualized Costs (Operations & Maintenance)	0
Total Annualized Costs	397,714

The cost per respondent is $4,276.00 (rounded off).

82. The Commission sought comments to comply with these requirements. Comments were received from twenty-eight entities. No comments addressed the reporting burden imposed by these requirements. The substantive issues raised by the commenters are addressed within the rule.

83. The Commission's regulations adopted in this rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communication of interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and provide greater flexibility for capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The public also benefits by having greater competition across the pipeline grid as a result of firm capacity holders having increased flexibility in structuring their capacity release transactions.

84. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in the Final Rule will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

85. 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, CI–1, (202) 208–1415, or mike.miller@ferc.fed.gov] or the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, DC 20503. The Desk Officer can also be reached at (202) 395–7318, or fax: (202) 395–7285.

86. Environmental Analysis

87. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. [54] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[55] The regulations adopted in this rule fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[56] Therefore, an environmental assessment is unnecessary and has not been prepared.

88. Regulatory Flexibility Act Certification

89. The Regulatory Flexibility Act of 1980 (RFA) [57] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

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

[55] 18 CFR 380.4.

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

[57] 5 U.S.C. 601–612.

90. Document Availability

91. 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.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

92. 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 accessed using the CIPS link or the Documents & Filing link. The full text of this document is 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 Documents & Filing link. 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.

93. 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*).

94. 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.

95. Implementation Dates

96. As discussed herein, interstate pipelines are required, by May 1, 2002, to make tariff filings, to become effective by July 1, 2002, to comply with the requirement to implement recalls of scheduled and unscheduled capacity for the Timely and Evening Nomination cycles and for recalls of unscheduled capacity. Each tariff filing must include the tariff language set forth at P. 41.

97. By October 1, 2002, NAESB should file comments with the Commission detailing the standards NAESB has adopted relating to partial day recalls or, if none has been adopted, those that were considered, as well as all other material relevant to NAESB's consideration of the standards. Other industry members also can submit comments by October 1, 2002, and will have until October 15, 2002 to file additional comments on the NAESB report.

98. Effective Date

99. These regulations are effective April 17, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

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

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended as follows:

a. The heading of paragraph (b) is revised by removing the word ''GISB'' and adding, in its place, the word ''NAESB.''

b. Paragraphs (b)(1) and (b)(2) are amended by removing the words ''Gas Industry Standards Board'' and adding, in their place, the words ''North American Energy Standards Board.''

b. Paragraph (b)(1)(v) is revised.

c. The heading of paragraph (c)(1)(ii) is revised, and the text of paragraph of (c)(1)(ii) is designated as (c)(1)(ii)(A).

d. Paragraph (c)(1)(ii)(B) is added.

The revised and added text reads as follows:

§ 284.12 Standards for pipeline business operations and communications.

* * * * *

(b) * * *

(1) * * *

(v) Capacity Release Related Standards (Version 1.4, August 31, 1999), with the exception of Standard 5.3.6 and the first sentence of Standard 5.3.7.

* * * * *

(c) * * *

(1) * * *

(ii) Capacity release scheduling.

(A) * * *

(B) A pipeline must permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. Each replacement shipper must be provided with advance notice of such recall and must be notified whether penalties will apply on the day its volumes are reduced.

* * * * *

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

Appendix

COMMENTS FILED

[Docket No. RM96–1–019]

Commenter	Abbreviation
American Gas Association	AGA.
Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation	Algonquin/Texas Eastern.
American Public Gas Association	APGA.
Arizona Public Service Company and Pinnacle West Energy Corporation	APS/PWEC.
Consolidated Edison Company of New York and Orange and Rockland Utilities, Inc	Con Edison.
Dominion Transmission, Inc	Dominion.
Duke Energy Trading and Marketing, LLC	DETM.
Dynegy Marketing and Trade	Dynegy.
East Ohio Gas Company, The Peoples Natural Gas Company, Hope Gas, Inc	Dominion LDCs.
El Paso Pipeline Group	EPPG.
Enron North America Corp	ENA.
Enron Interstate Pipelines	EIP.
Electric Power Supply Association	EPSA.
Gulf South Pipeline Company	Gulf South.
Interstate Natural Gas Association of America	INGAA.
Public Service Commission, Commonwealth of Kentucky	Kentucky.
KeySpan Delivery Companies	Keyspan.
American Gas Association	AGA.
Kinder Morgan Pipelines	Kinder Morgan.
Memphis Light, Gas and Water Division	MLGW.
Natural Gas Supply Association	NGSA.
Public Service Commission of New York	PSCNY.
NiSource, Inc	NiSource.
Pennsylvania Office of Consumer Advocate	PA. OCA.
Process Gas Consumers Group, American Forest & Paper Association, and Georgia Industrial Group	Industrials.
Williams Companies	Williams.
Williston Basin Interstate Pipeline Company	Williston.
Wisconsin Distributor Group	WDG.

COMMENTS FILED—Continued
[Docket No. RM96–1–019]

Commenter	Abbreviation
Xcel Energy Services, Inc	Xcel.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–475; Ref. Notice No. 924]

RIN: 1512–AC29

Addition of New Grape Variety Names for American Wines (2000R–322P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is adding four new names to the list of prime grape variety names for use in designating American wines: Albariño, Alvarinho, Black Corinth, and Fiano.

EFFECTIVE DATE: Effective May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY 14202–2301; telephone (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) (FAA Act), wine labels must provide the consumer with adequate information as to the identity of the product. The FAA Act also requires that the information appearing on wine labels not mislead the consumer.

To help carry out these statutory requirements, ATF has issued regulations, including those that designate grape varieties. Under 27 CFR 4.23(b) and (c), a wine bottler may use a grape variety name as the designation of a wine if at least 75 percent of the wine (51 percent in the case of wine made from *Vitis labrusca* grapes) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all of the grapes used to make the wine are of the labeled varieties, and the percentage of the wine derived from each variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while alternative grape names temporarily authorized for use are listed at § 4.92. We believe the listing of approved grape variety names for American wines will help standardize wine label terminology and prevent consumer confusion.

How May New Varieties Be Added to the List of Prime Grape Names?

Under § 4.93, any interested person may petition ATF to add additional grape varieties to the list of prime grape names. The petitioner should provide evidence of the following:

- Acceptance of the grape variety;
- The validity of the name for identifying the grape variety;
- That the variety is used or will be used in winemaking; and
- That the variety is grown and used in the United States.

Documentation submitted with the petition may include:

- A reference to the publication of the variety's name in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety, such as the acreage planted and its location or market studies.

Section 4.93 also places certain eligibility restrictions on the approval of grape names. We will not approve a name:

- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39; or
- If a name of a new grape variety contains the term ''Riesling.''

The Director will not approve the name of a new grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

Notice 924

In Notice 924, published on July 19, 2001, ATF proposed to add the names Albariño, Alvarinho, Black Corinth, and Fiano to the list of approved grape variety names in § 4.91. We based the proposal on the petitions and evidence described below. We received no comments to the notice. Because the petitioners provided sufficient evidence to support the requirements of § 4.93, we are adding the new names to the approved list.

Petitions

Petition for Albariño/Alvarinho

Havens Wine Cellars of Napa, California, petitioned ATF to add ''Albariño'' to the list of prime grape names approved for the designation of American wines. Grown for centuries in Spain and Portugal, Albariño, a white *Vitis vinifera* grape, is relatively new to the United States. In Portugal the grape is called ''Alvarinho.''

The petitioners stated that Albariño has long been recognized in Europe and in academic communities. As evidence of this, the petitioners submitted the following supporting documents provided by Professor Carole Meredith of the Viticulture and Enology Department at the University of California at Davis (UC Davis):

- European Union Regulation 3201/90: This regulation permits the use of the name ''Albariño'' on labels of Spanish wines, and the name ''Alvarinho'' on labels of Portuguese wines.
- Two scientific papers published in the American Journal of Enology and Viticulture: ''Effects of Grapevine Leafroll-Associated Virus 3 on the Physiology and Must of Vitis vinifera L. cv. Albariño Following Contamination in the Field,'' (Vol. 50, 1999) which discusses a study conducted on Albariño grape vines, and ''Contribution of Saccharomyces and Non-Saccharomyces Populations to the Production of Some Components of Albariño Wine Aroma,'' (Vol. 47, 1996) which describes a study conducted on Albariño musts.
- ''The Genetic Resources of Vitis'': This listing of international grape variety names and synonyms, published in 1988 by the German Federal Grape Breeding Institute, lists Alvarinho as the