

their accounts prior to the transfer of such accounts to a new commodity broker.

4. Sound Risk Management Practices

The final rule promulgated in this release is not expected to have a direct effect on the risk management practices of commodity brokers.

5. Other Public Considerations

Recent events, such as the Refco and Lehman proceedings, have demonstrated that the final rule is necessary and prudent.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to promulgate the final rules as set forth below.

List of Subjects in 17 CFR Part 190

Bankruptcy, Brokers, Commodity Futures.

■ For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 190 as follows:

PART 190—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761–766, unless otherwise noted.

■ 2. Add new paragraph (d)(3) to Section 190.04 to read as follows:

§ 190.04 Operation of the debtor's estate—general.

* * * * *

(d) * * *

(3) *Exception to Liquidation Only.*

Notwithstanding paragraph (d)(2) of this section, the trustee may, with the written permission of the Commission, operate the business of the debtor in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of the debtor under appropriate circumstances, as determined by the Commission.

* * * * *

Issued in Washington, DC on July 23, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–18790 Filed 7–29–10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM08–2–002 and RM08–2–000; Order No. 720–B]

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission clarifies its regulations requiring major non-interstate pipelines to post daily scheduled volume information and other data for certain points, as well as its regulations requiring interstate pipelines to post information regarding the provision of no-notice service. These modifications include establishing the compliance deadline for major non-interstate pipelines after the effective date of this rule and clarifying the requirement for interstate pipelines to update posted no-notice service volumes.

DATES: *Effective Date:* This rule will become effective October 1, 2010.

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United States of America Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff,
Chairman; Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Docket Nos. RM08–2–002, Order No. 720–B, Order On Rehearing and Clarification

Issued July 21, 2010.

I. Introduction

1. On November 20, 2008, the Federal Energy Regulatory Commission (Commission) issued Order No. 720 requiring interstate and certain major non-interstate natural gas pipelines to post limited information on publicly accessible Internet Web sites regarding

their operations.¹ On January 21, 2010, the Commission issued Order No. 720–A in response to requests for rehearing and clarification of Order No. 720.²

¹ *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, Order No. 720, 73 FR 73,494 (Dec. 2, 2008), FERC Stats. & Regs. ¶ 31,283 (2008) (Order No. 720).

² *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, Order No. 720–A, 75 FR 5178 (Jan. 21, 2010), FERC Stats. & Regs. ¶ 31,302 (2010) (Order No. 720–A).

2. Following the issuance of Order No. 720–A, three parties filed pleadings with the Commission seeking clarification and/or rehearing of Order No. 720–A. In this order, the Commission grants in part and denies in part those requests.

II. Background

3. In the Energy Policy Act of 2005 (EPA 2005),³ Congress added section 23 to the Natural Gas Act (NGA)⁴ authorizing the Commission “to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets * * * and the protection of consumers.”⁵ Section 23 further provides that the Commission may issue such rules as it deems necessary and appropriate to “provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.”⁶

4. On December 21, 2007, the Commission issued a Notice of Proposed Rulemaking (NPR), proposing to require both interstate and certain major non-interstate natural gas pipelines to post daily information regarding their capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments.⁷ The Commission believed that the posting proposal would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the Natural Gas Act.⁸

5. Acting under its authority in section 23 of the NGA, the Commission, on November 20, 2008, issued Order No. 720 requiring non-exempt major non-interstate pipelines to post scheduled flow and other information for each receipt or delivery point with a design capacity greater than 15,000 MMBtu per day.⁹ Order No. 720 defined a “major non-interstate pipeline” as a natural gas pipeline that is not a natural gas company under the NGA and delivers

annually more than 50 million MMBtu measured in average deliveries over the past three years. The Commission found that information about scheduled natural gas flows on major non-interstate pipelines is necessary to fill in significant gaps in the information currently available to interstate market participants. The Commission found that a significant amount of natural gas flows from producing basins to interstate markets on non-interstate pipelines. These scheduled flows affect supply considerations in interstate markets. Similarly, flows on non-interstate pipelines at the end of the delivery chain affect the demand considerations in the interstate market. Without access to significant information about supply and demand, interstate natural gas market participants are left with incomplete information to understand interstate wholesale prices.

6. Regarding interstate natural gas pipelines, Order No. 720 expanded the Commission’s existing posting requirements under 18 CFR Part 284 to require interstate pipelines to post volumes of no-notice service flows at each receipt and delivery point three days after the gas flow. The Commission stated that, without reporting of no-notice service, the market cannot see large and unexpected increases in gas demand and therefore cannot understand price formation during such occasions. The Commission found that reporting such information after the gas flows, as required by Order No. 720, allows market participants to understand historical patterns of flows and will enable them to better predict future no-notice flows, with less of a burden than requiring full posting of actual flows.

7. Order No. 720 required major non-interstate pipelines to comply with the new rules within 150 days of Order No. 720’s publication in the **Federal Register**.¹⁰ Subsequently, the Commission extended the compliance deadline for major non-interstate pipelines until 150 days after an order on rehearing of Order No. 720. Order No. 720 required interstate natural gas pipelines to comply with the posting requirements no later than 60 days following the order’s publication, and the Commission did not extend that deadline.¹¹

8. Following the issuance of Order No. 720, several parties filed requests for rehearing and clarification of Order No. 720. In Order No. 720–A, the Commission generally affirmed Order

No. 720, granting a number or requests for rehearing and clarification and adopting regulations consistent with its findings. Order No. 720–A, among other things: modified the definition of “major non-interstate pipeline” to include new pipelines (pipelines that have been operational for less than three years) with design capacities of more than 50 million MMBtu of natural gas annually; and established that, where design capacity is unknown or does not exist at a particular delivery or receipt point, a major non-interstate pipeline must post scheduling information for that point if gas volumes equal to or greater than 15,000 MMBtu were scheduled to it on any day within the prior three calendar years. Order No. 720–A also established a July 1, 2010 compliance deadline for major non-interstate pipelines (150 days following the publication of Order No. 720–A in the **Federal Register**).¹² The Commission did not modify the January 30, 2009 compliance deadline for interstate pipelines.¹³

9. Following the issuance of Order No. 720–A, three parties filed pleadings with the Commission seeking clarification and/or rehearing of Order No. 720–A: Interstate Natural Gas Association of America (INGAA); American Gas Association (AGA); and Atmos Pipeline–Texas, a division of Atmos Energy Corporation (Atmos).

10. In addition, subsequent to the issuance of Order No. 720–A, Atmos, AGA, the Railroad Commission of Texas, and Texas Pipeline Association made requests to the Commission to extend the July 1, 2010 deadline for major non-interstate pipelines to comply with the requirements of Order Nos. 720 and 720–A. On May 28, 2010, the Secretary of the Commission issued a Notice of Extension of Time extending the compliance deadline from July 1, 2010 until September 1, 2010.¹⁴

11. As discussed below, the Commission grants in part and denies in part the requests for rehearing and clarification of Order No. 720–A.

¹² See *Pipeline Posting Requirements Under Section 23 of the Natural Gas Act*, Docket No. RM08–2–001 (Jan. 27, 2010) (*Errata Notice On Compliance Deadline*). The notice corrected paragraph 216 of Order No. 720–A which incorrectly stated that major non-interstate pipelines must comply with the order no later than 150 days following its issuance.

¹³ *Id.* P. 215.

¹⁴ *Pipeline Posting Requirements Under Section 23 of the Natural Gas Act*, Docket No. RM08–2–000 (Issued May 28, 2010) (Notice of Extension of Time).

³ Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

⁴ NGA § 23, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

⁵ NGA § 23, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

⁶ 15 U.S.C. 717t–2(a)(2).

⁷ *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, 73 FR 1116 (Jan. 7, 2008), FERC Stats. & Regs. Proposed Regulations 2004–2007 ¶ 32,626, at P 3 (2007).

⁸ *Id.* P. 5.

⁹ Order No. 720 at P 1.

¹⁰ *Id.* P. 168.

¹¹ Order No. 720 at P 167.

III. Discussion

A. Definition of Major Non-Interstate Pipeline

12. In Order No. 720, the Commission adopted a definition of “major non-interstate pipeline” as a pipeline that: (1) Is not a “natural gas pipeline” under section 1 of the NGA; and (2) delivers annually more than 50 million MMBtu of natural gas measured in average deliveries over the past three years.¹⁵ Order No. 720 added that the delivery threshold would be applied on a “facility-by-facility” basis,¹⁶ which Order No. 720–A clarified applies both to determine whether a pipeline is a major non-interstate pipeline under 18 CFR 284.1(d) and also whether a major non-interstate pipeline is exempted from the posting requirements as provided in 18 CFR 284.14(b).¹⁷ Order No. 720–A also explained that, under a facility-by-facility analysis, if a set of facilities is physically interconnected and operationally integrated (*i.e.*, transports natural gas through a centralized scheduling process), then the facilities should be treated as one entity, as opposed to multiple entities.¹⁸ The Commission noted that whether pipelines are organized into separate corporate divisions or formal operating systems is irrelevant to the analysis.¹⁹

1. Request for Clarification or Rehearing

13. Atmos requests clarification or rehearing regarding certain facilities that are jointly owned by two or more parties, but which are operated by only one of the parties. In Atmos’ hypothetical, Pipeline A and Pipeline B each own an undivided but equal interest in Facility X, which is a major non-interstate pipeline physically interconnected with other facilities of both Pipeline A and Pipeline B. Under its hypothetical, Pipeline A is the operator of Facility X and Pipeline B merely shares in the revenues and expenses from the ownership and operation of Facility X. Atmos believes that under this hypothetical the posting requirements are satisfied by Pipeline A’s assumption of the reporting obligation for all eligible receipt and delivery points on Facility X inasmuch as Pipeline A is operating Facility X. Atmos also believes that, to the extent Pipeline B operates receipt or delivery points on Pipeline B’s side of the interconnect with Facility X, Pipeline B

would have the reporting obligation with respect to those points.

14. Atmos also requests clarification that Facility X can be effectively treated as part of the larger system of Pipeline A for purposes of reporting requirements to the extent that Pipeline A operates Facility X as part of a larger, major non-interstate pipeline system that is both physically connected and operationally integrated.

15. Lastly, Atmos requests clarification that annual information regarding transport and storage quantities reported on FERC Form 2 or a state equivalent form may be utilized by a major non-interstate pipeline for the initial and subsequent determinations of whether its average annual deliveries over the preceding three years exceeded 50 million MMBtu.

2. Commission Determination

16. Atmos’ requests for clarification and rehearing are granted in part and denied in part. We agree with Atmos that where facilities are jointly owned by two or more parties, but are operated by only one of the parties, it is appropriate that the operating party post the necessary information regarding the jointly-owned facility.

17. Regarding whether its hypothetical Facility X can be treated as part of the larger system of Pipeline A for purposes of the reporting requirements, the Commission explained in Order No. 720–A that, under a facility-by-facility analysis, physically interconnected and operationally integrated (*i.e.*, utilize centralized scheduling process) facilities shall be treated as one entity for purposes of determining whether a pipeline is a major non-interstate pipeline. Consistent with that explanation, Facility X can be treated as part of the larger system of Pipeline A for purposes of the reporting requirement, and need not be treated as a stand-alone major non-interstate pipeline with an independent reporting requirement.²⁰

18. Atmos’ request for clarification regarding the use of FERC Form 2 or a state equivalent for the threshold determinations is granted in part and denied in part. In order to determine if a pipeline qualifies as a major non-interstate pipeline under the rule, the pipeline must aggregate its natural gas deliveries over the previous three calendar years and divide by three. In making this calculation, a pipeline may

use any data source, not limited to FERC Form 2 or a state equivalent, that accurately reports its total deliveries for each of the preceding three calendar years.

B. Posting Requirements for Major Non-Interstate Pipelines

19. In Order No. 720, the Commission required all non-exempt major non-interstate pipelines to post both scheduled natural gas flow and design capacity information for each receipt and delivery point with a design capacity equal to or greater than 15,000 MMBtu per day.²¹ The Commission also amended its regulations in Order No. 720–A and found that, where design capacity is unknown or does not exist, major non-interstate pipelines must post scheduling information for points with scheduled volumes equal to or greater than 15,000 MMBtu on any day within the prior three calendar years.²²

1. Point Design Capacity

20. In Order No. 720, the Commission stated that, in circumstances where the design capacity of a receipt or delivery point could vary according to operational or usage conditions, a major non-interstate pipeline must post the design capacity for the most common operating conditions of its system during peak periods.²³ Order No. 720–A also stated that, if the major non-interstate pipeline has greater capacity at its point than the interconnecting interstate pipeline, the major non-interstate pipelines must nevertheless post the actual design capacity of its point. That is because the obligation to post design capacity relates to the facilities of the major non-interstate pipeline. Order No. 720–A added that major non-interstate pipelines must use reasonable efforts to determine design capacity at physical receipt and delivery points and to the extent that a major non-interstate pipeline is uncertain as to how to calculate design capacity, it is free to contact the Commission’s compliance help desk for informal guidance.²⁴ Further, major non-interstate pipelines are free to post additional information, including, for example, operational considerations that could affect available capacity.

a. Request for Clarification

21. Atmos requests that the Commission clarify to a greater degree what constitutes “reasonable efforts” to determine the design capacity for a

¹⁵ 18 CFR 284.1(d)(2).

¹⁶ Order No. 720 at P 64.

¹⁷ Order No. 720–A at P 76.

¹⁸ *Id.* P 77.

¹⁹ *Id.* P 78.

²⁰ As a reminder, the Commission’s help desk can facilitate responses to questions regarding compliance with our regulations. See *Obtaining Guidance on Regulatory Requirements*, 123 FERC ¶ 61,157 (2008).

²¹ Order No. 720 at P 82.

²² Order No. 720–A at P 90.

²³ Order No. 720 at P 92.

²⁴ Order No. 720–A at 107.

physical receipt or delivery point. Atmos states that it has performed some engineering analysis at receipt and delivery points on its system where the point capacity, either individually or combined with other points on the same pipeline or lateral, exceeds the delivery capabilities of the upstream or downstream pipeline or lateral. For example, Atmos states that one pipeline segment on its system has a maximum daily capacity of approximately 800 MMSCF per day. However, two eligible points on this segment each have a design capacity of 500 MMSCF per day, so that the total capacity of the two points exceeds the segment capacity by 200 MMSCF. Therefore, Atmos submits, in this type of situation the design capacity of an individual receipt or delivery point is not a reasonable determination of the point's capacity in every instance.

22. Atmos believes that a more reasonable determination of a point's capacity in such circumstances would be the highest scheduled volume to that point on any day during the three calendar years because that is truly reflective of known and actual pipeline system operating conditions and requests that the Commission allow a major non-interstate pipeline to utilize this benchmark for point capacity posting purposes if (i) a reasonable attempt has been made to calculate design capacity consistent with the standard articulated in Order No. 720–A and (ii) the calculated design capacity is not a reasonable representation of the capacity at the point due to upstream or downstream facility limitations. Atmos recognizes the Commission has authorized major non-interstate pipelines to post additional information that may affect available capacity, but Atmos anticipates that this will result in postings replete with footnotes and caveats that may only serve to create more confusion for data observers.

b. Commission Determination

23. Atmos' request for clarification is approved in part and denied in part. In Order No. 720–A, the Commission provided clear instructions for determining the applicable capacity for points where design capacity is unknown; major non-interstate pipelines must post scheduled flow data for points where design capacity is unknown or does not exist with scheduled maximum natural gas volumes equal to or greater than 15,000 MMBtu on any day within the prior three calendar years.²⁵ The Commission adopted these rules with the

understanding that there exist a small number of physical receipt and delivery points where major non-interstate pipelines cannot reasonably determine a physical design capacity. While not identifying herein specific actions that would constitute "reasonable" effort in determining a point's capacity, the Commission will clarify that major non-interstate pipelines would not be expected to undertake studies that would involve a physical survey of the point in question or use information not on hand or easily obtainable by the company.

24. That clarification notwithstanding, Atmos' comments attempt to reopen the question about whether design capacity is the appropriate measure to be posted. The Commission elected to require posting based on each receipt and delivery point's design capacity as opposed to some measure of highest actual usage at a point, because a point's design capacity was relatively fixed and lent itself to stable posting requirements. Ultimately, the Commission also believed that this would be less burdensome for pipelines.²⁶ In Order No. 720–A, the Commission affirmed its position and found that, despite the day-to-day operational factors that can sometimes affect available capacity, market participants should nevertheless be able to ascertain available capacity from the data to be posted by major non-interstate pipelines.²⁷

25. Atmos has not presented any evidence indicating that it is unable to determine the design capacity of the points on its system. In fact, in its example, the design capacity of each point is known to be 500 MMSCF. Simply put, Atmos desires that the Commission require posting based on maximum scheduled flows at a point, as opposed to design capacity.

26. As discussed above, the Commission believes that design capacity is a less burdensome and reasonably objective criterion, although operationally available capacity provides market participants additional information about capacity availability. If Atmos, or any other major non-interstate pipeline, desires to post on its Web site a point's operationally available capacity, in addition to its design capacity, we support its efforts to do so.

2. Timing of Posting Where Design Capacity Is Known

27. In Order No. 720–A, the Commission required major non-

interstate pipelines to begin Internet posting for newly-eligible receipt and delivery points within 45 days of the date the point becomes eligible for posting.²⁸

a. Request for Clarification

28. AGA asserts that it is not clear when a newly-installed point with a physically metered design capacity equal to or greater than 15,000 MMBtu per day should be considered to become eligible for posting for purposes of triggering the 45-day period after which the pipeline must post information about the point. AGA recommends that the Commission clarify that such a new point does not become eligible for posting until the date the point has volumes scheduled to it. Atmos supports AGA's request for clarification.

b. Commission Determination

29. The Commission clarifies that a newly installed point with a physically metered design capacity equal to or greater than 15,000 MMBtu per day becomes eligible for posting on its in-service date. Therefore, the major non-interstate pipeline must begin posting the required information about that point 45 days after its in-service date. Scheduled volume information is only one category of the information section 284.14(a)(4) of the Commission's regulations requires major non-interstate pipelines to post. Also required is information regarding a point's design capacity. As the Commission found in Order No. 720, market participants can utilize design capacity and scheduled volume information to help determine available capacity at a particular point and therefore, required posting of both design capacity and scheduled volume information.²⁹ When a new point is placed into service its capacity is available for use by shippers, and therefore the major non-interstate pipeline should begin posting the availability of capacity at that point within 45 days, regardless of whether volumes have yet been scheduled at that point. AGA's and Atmos' request to delay posting until volumes are first scheduled to a new point would frustrate this very purpose and therefore, their request is denied.

3. Timing of Posting Where Design Capacity Is Unknown or Does Not Exist

30. When the design capacity of a point is unknown or does not exist, major non-interstate pipelines must post scheduling information for that point if

²⁸ *Id.* P 115. This requirement is set forth in section 284.14(a)(3) of the Commission's regulations, as revised by Order No. 720–A.

²⁹ Order No. 720 at P 82, 84.

²⁵ Order No. 720–A at P 90.

²⁶ Order No. 720 at P 91.

²⁷ Order No. 720–A at 104.

its scheduled volumes were equal to or greater than 15,000 MMBtu on any day within the prior three calendar years. Order No. 720–A held that major non-interstate pipelines need only review scheduled volume data annually to determine whether points where no design capacity is known must be posted. Therefore, such points do not become eligible for posting until January 1 of the year after the first day on which scheduled volumes equaled or exceeded 15,000 MMBtu.³⁰ This means that major non-interstate pipelines do not have to begin posting the required information about that point until 45 days after January 1, or on February 15.

a. Request for Clarification or Rehearing

31. AGA contends that a January 1 eligibility date for points where design capacity is unknown or does not exist is problematic because it means that, by February 15 of each year, the pipeline must, both collect and analyze the data necessary to determine whether a point would be eligible and make the necessary system changes to begin posting each eligible point. AGA recommends that the Commission clarify that for a point where the physically metered design capacity is not known or does not exist, such points become eligible for posting on February 1 of the following year, thus, postponing the date when the major non-interstate pipeline must begin posting information about the points until March 18 of the following year. Atmos supports AGA's request for clarification.

b. Commission Determination

32. AGA's request is denied. As described above, the eligibility determination for points whose design capacity is unknown or does not exist is based on calendar year data. Therefore, it is appropriate that the point be considered eligible for posting immediately upon completion of the calendar year during which scheduled volumes at the point reached or exceeded 15,000 MMBtu for at least one day. By requesting that the Commission move the eligibility date for such points from January 1 to February 1, AGA is effectively asking that the Commission extend the 45-day deadline to commence posting by one month, to 76 days. In denying earlier requests to expand the 45-day period, the Commission found that major non-interstate pipelines have access to, and utilize on a daily basis all of the information necessary to determine whether a receipt or delivery point must

be posted under the new regulations.³¹ Further, the Commission found that the posting of newly eligible points is of substantial value to market participants as new receipt and delivery points or increased scheduled flow to points could have immediate, substantial effect on market prices.³² Balancing the transparency benefits of timely posting for newly eligible points with the burden of collecting and analyzing the data necessary to determine whether a point would be eligible and making the necessary system changes to begin posting, the Commission concluded that 45 days is appropriate.³³ AGA has not provided any specific evidence that would contradict the Commission's findings, even where design capacity is unknown or does not exist. Therefore, its request is denied.

C. Compliance Deadline for Future Major Non-Interstate Pipelines

33. A "major non-interstate pipeline" is defined as a natural gas pipeline that is not a natural gas company under the NGA and delivers annually more than 50 million MMBtu measured in average deliveries over the past three calendar years.

a. Request for Clarification

34. Atmos and AGA state that a pipeline may not currently qualify as a major non-interstate pipeline because its average deliveries over the last three calendar years were less than 50 million MMBtu. However, the pipeline could subsequently qualify as a major non-interstate pipeline if its annual deliveries increase. Atmos and AGA state that the Commission's posting regulations do not clearly articulate when a major non-interstate pipeline must begin complying with the posting requirements in subsequent years if its three-year deliveries average rises above the 50 million MMBtu threshold or it is no longer exempt. Atmos and AGA recommend that the Commission revise the regulations to make clear that after 2010, a pipeline that did not previously have to comply with the posting regulations, but then meets the definition of a major non-interstate pipeline and is not otherwise exempt, has until July 1 of that year to comply with the posting requirements. AGA argues that such pipelines should be permitted no less than 150 days to develop the systems and Internet resources to comply with the posting requirements, which is the same compliance period for pipelines today

that meet the definition of a major non-interstate pipeline.

b. Commission Determination

35. Atmos' and AGA's requests for clarification are granted in part and denied in part. The Commission will provide pipelines that: (a) Meet the definition of a major non-interstate pipeline in the future; and (b) currently exempt major non-interstate pipelines that in the future no longer qualify for an exemption, have 150 days from the date the pipeline meets the definition of a major non-interstate pipeline or is no longer exempt to comply with the posting requirements.³⁴ However, this requires compliance by June 1, not July 1.

36. Similar to points where design capacity is unknown or does not exist, the threshold for determining if a pipeline meets the definition of a major non-interstate pipeline is based on calendar year data. Because points where design capacity is unknown or does not exist are based on calendar year data, they become eligible for posting on January 1 of the following year. Likewise, because the major non-interstate pipeline delivery threshold and posting exemptions are based upon calendar year data, the pipelines become eligible on January 1 of the following year.

D. Confidentiality of Data To Be Posted by Major Non-Interstate Pipelines

37. In Order No. 720, the Commission required that all postings by major non-interstate pipelines pursuant to this rule be public. The Commission recognized that posting scheduled gas flows at eligible delivery points dedicated to a single customer could have some effect on the competitive position of that customer. However, the Commission found that posting such information will provide useful information to the Commission, market participants, and other market observers and will greatly increase market transparency. The Commission concluded that this benefit outweighs concerns about publicly posting information about scheduled flows to a customer with a dedicated delivery point.³⁵ The Commission pointed out that interstate pipelines are required to post daily scheduled volumes for delivery points dedicated to a single customer, and there have been no indications that competitive balance

³¹ *Id.* P 116.

³² *Id.*

³³ *Id.*

³⁴ This time period is consistent with the time provided under Order No. 720 for major non-interstate pipelines to comply initially with the rule. Order No. 720 at P 168.

³⁵ Order No. 720 at P 88–89.

³⁰ Order No. 720–A at P 94.

has been harmed since the interstate requirement to post was instituted.

38. In Order No. 720–A, the Commission denied rehearing of its requirement that all postings be public.³⁶ The Commission rejected contentions that this requirement would cause disclosure of potentially sensitive information regarding the physical location of receipt and delivery points or actual natural gas flows that would implicate national security.³⁷ The Commission also found that there had been no showing that the public posting requirement would result in the violation of state commission rules regarding the disclosure of private customer data.³⁸

1. Request for Clarification or Rehearing

39. AGA requests that the Commission clarify that major non-interstate pipelines have flexibility in the manner in which they comply with the rule's posting requirements in order to prevent the disclosure of confidential information or the violation of state law or other regulatory requirements. Alternatively, AGA seeks rehearing on the grounds that the Commission's explanations for dismissing AGA's concerns are unsupported and contrary to law. AGA raises generally the same arguments that were discussed and rejected in Order Nos. 720 and 720–A.

40. AGA contends that not affording pipelines flexibility in this regard would be contrary to section 23 of the NGA, which provides that in determining the information to be disclosed, “the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.”³⁹ AGA contends that, under the revised regulations, if a particular delivery point services a single large customer and the current Location Name of the delivery point were designated as the name of the customer, then listing the Location Name as the name of the customer, the Posted Capacity of the customer's delivery point, and the customer's Scheduled Volumes on a daily basis would each disclose customer-specific information. AGA contends that this could be a violation of state law if a utility were prohibited from disclosing customer-specific information under state law. Likewise, AGA contends that

if a Location Name is the name of a military installation, disclosing daily scheduled volumes could have national security implications. Further, AGA argues that the posting of scheduled natural gas volumes could have anti-competitive effects.

41. AGA contends that potential ways of affording flexibility to major non-interstate pipelines would be to allow: (a) The Location Name to be changed to a region or county to protect the identity of the customer (*e.g.*, [County Name] 1—Delivery, [County Name] 2—Delivery); (b) the pipeline to post information at an upstream aggregation point served by more than one customer; (c) the aggregation of customer data within given regions, instead of requiring the posting of the scheduled volumes of a single customer. Atmos supports AGA's request for clarification and rehearing.

2. Commission Determination

42. The Commission grants in part AGA's request for clarification in order to give major non-interstate pipelines some flexibility in how they comply with the requirement that they publicly post scheduled flows at delivery points dedicated to a single customer. As the Commission pointed out in Order No. 720–A, the major non-interstate posting requirements do not mandate the disclosure of the physical location or composition of receipt and delivery point facilities.⁴⁰ Nonetheless, the Commission will allow, although not require, a major non-interstate pipeline labeling a customer-specific point according to the city or county within which it is located, as opposed to the specific name of the customer, as proposed by AGA. Such an identification should provide the Commission, market participants, and other market observers sufficient information about the location where the gas flow is being delivered, to analyze and understand the demand conditions affecting price formation in that area, while not revealing the name of the specific customer to whom the gas is being delivered. The Commission will not require this alternative designation; if the major non-interstate pipeline chooses to identify a single-customer delivery point as interstate pipelines have for several years, it may do so.

43. However, AGA's other suggestions would appear to allow the pipeline to use broader geographic areas than just a single city or county for purposes of identifying the location of the delivery point. This could significantly reduce the value of the posted information to

understand demand conditions affecting price formation. Therefore, the Commission denies AGA's request to allow pipelines to post information at an upstream aggregation point served by more than one customer or allow the aggregation of customer data within given regions.

44. With regard to AGA's concern about the posting requirement violating state regulatory requirements, the Commission will not, in this rulemaking proceeding, grant major non-interstate pipelines a blanket exemption from posting scheduled flows to delivery points dedicated to a single customer whenever they believe such a posting might violate a state regulatory requirement. In section 23(a)(2) of the NGA, Congress called for any transparency rule to provide for the “dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, *and the public.*”⁴¹ The Commission believes that requiring all postings to be public is specifically in keeping with this directive. Moreover, the posting information will provide useful information to the Commission, market participants, and other market observers, thereby greatly increasing market transparency. As stated previously, the Commission believes that this benefit outweighs the concerns about publicly posting information about scheduled volumes to a customer.

45. AGA points out that section 23(b)(2) provides, “In determining the information to be made available under this section and the time to make the information to be available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.” AGA appears to read this provision as requiring the Commission to exempt from public posting any information that might have some effect on the competitive position of a particular participant in the natural gas market. However, this provision only provides that, in requiring public disclosure, the Commission should seek to ensure that consumers and competitive markets are protected from “the adverse effects of *potential collusion or other anti-competitive behaviors*” (emphasis supplied). AGA has provided no

³⁶ Order No. 720–A at P 123.

³⁷ *Id.* P 124.

³⁸ *Id.* P 125.

³⁹ AGA Request for Rehearing at 11 (citing NGA § 23(b)(2)).

⁴⁰ Order No. 720–A at P 124.

⁴¹ Section 23(a)(2) of the NGA; 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005) (emphasis added).

explanation as to how public disclosure of scheduled deliveries at points dedicated to a single customer would contribute to “collusion or other anti-competitive behaviors.” In fact, as the Commission found in Order No. 720–A, “understanding * * * demand in large non-interstate pipelines downstream of the interstate market will enable market observers to better understand prices and, therefore, identify potential cases of market manipulation.”⁴² We therefore believe that the requirement to disclose scheduled flows at delivery points with significant load⁴³ likely to affect market prices is more likely to minimize anti-competitive behaviors, than contribute to them.

46. Moreover, the Commission is not persuaded, based upon the limited information provided by AGA, that, even without the clarification granted above, the Commission’s requirement that major non-interstate pipelines post scheduled flows at major delivery points dedicated to a single customer conflict with state prohibitions regarding the disclosure of private customer data. For example, AGA cites a provision in the tariff of Pacific Gas and Electric Co. (PG&E), approved by the California Public Utilities Commission (CPUC), providing that “to preserve customer privacy, PG&E will not release confidential information, including financial information, to a third party without the customers electronic signature or the written consent.”⁴⁴ However, it is not clear that scheduled deliveries at a major delivery point would be considered confidential information, subject to this provision. As we noted in Order No. 720–A, not a single state commission has raised this issue in this proceeding.

47. Nevertheless, if a major non-interstate pipeline believes that posting scheduled flows to eligible delivery points dedicated to a single customer violates a state regulatory confidentiality requirement, and if the flexibility provided in this order to identify the point by county or city is insufficient to avoid a violation of that requirement, the pipeline may request a waiver from the posting requirement. In any such waiver request, the pipeline should provide a complete explanation of why the state regulatory requirement is applicable, together with citations to any applicable state agency or court precedent supporting its interpretation

of the state regulatory requirement. The Commission would also expect that in such a waiver request the applicant would affirmatively demonstrate that it has spoken with and obtained the support of the applicable state regulatory agency with respect to its waiver request.

E. Interstate Pipeline Posting of No-Notice Service

48. Order No. 720 required interstate natural gas pipelines to post volumes of no-notice service flows at each receipt and delivery point before 11:30 a.m. central clock time three days after the day of gas flow.⁴⁵ The Commission found that such information is valuable, even posted three days after gas flow, because it allows market participants to increase their understanding of historical patterns of no-notice gas flows and enables them to better anticipate future no-notice flows.

49. In Order No. 720–A, the Commission clarified that, because interstate pipelines have varying metering and measurement equipment, they are only required to post information that is available to them.⁴⁶ The Order No. 720 regulations do not require construction of new metering equipment. Instead, the interstate pipelines should post whatever data it has available after three days, noting any deficiencies in the posting on its website. Order No. 720–A added that an interstate pipeline should update previously posted information if, subsequent to an initial posting, more complete no-notice service data becomes available.⁴⁷

1. Request for Clarification or Rehearing

50. INGAA’s request for clarification or rehearing focuses on Order No. 720–A’s statement that, “if subsequent to an initial posting, more complete no-notice service data becomes available, interstate pipelines must update previously posted information.” INGAA requests that the Commission clarify that an interstate pipeline’s obligation to update previously posted information is limited to providing no-notice information where none was available within three days after the day of gas flow, as opposed to revising information that has already been posted.⁴⁸ If, however, the obligation to update previously posted data goes beyond supplying missing data to revising data that has already been posted, INGAA

prefers that the Commission eliminate the update requirement in its entirety or, in the alternative, limit it to one update for each posted figure, to be provided within ten business days after the end of the month in which the posted service was rendered.⁴⁹

51. INGAA argues that the Commission promulgated the after-the-fact obligation to update initially posted no-notice information without developing a record on the cost of assembling and reporting this information or the benefit that updated no-notice data would provide either to market participants, price formation and other market behavior, or market transparency. INGAA contends that updated no-notice data is of no value to market participants, price formation or market transparency and that the minor and non-substantive changes that would be made to the originally posted data do not warrant the additional costs associated with providing it.

52. INGAA contends that meter adjustments and the receipt of corrected data from third parties cause minor departures from initially posted no-notice information and as a result, certain no-notice quantities are not fully known until the “close of measurement,” which is defined by NAESB as five business days after the end of the month. If the Commission insists on some form of updating, INGAA urges limiting it to one update for each posted figure, to be provided within ten business days after the end of the month in which the posted service was rendered.

2. Commission Determination

53. The Commission grants INGAA’s request for rehearing in part and modifies 18 CFR 284.13(d) to provide that an interstate pipeline must provide no-notice transportation information based on its best estimate before 11:30 a.m. central clock time three days after the day of gas flow and make one update to each posted figure as necessary within ten business days after the month in which the posted service was performed. The Commission finds that requiring a single update should ensure that interstate pipelines provide accurate information about no-notice gas flows, without burdening pipelines with a requirement to make frequent, minor changes in posted volumes. As stated in Order No. 720, information on no-notice volumes is valuable even posted after the no-notice gas flows because it allows market participants and other market observers to understand the historical patterns of

⁴² Order No. 720–A at P 62.

⁴³ As discussed in Order No. 720, at P 90, the posting requirement only applies at delivery points with significant load, such as major pipeline interconnections and points with substantial industrial load.

⁴⁴ AGA Request for Rehearing at 14.

⁴⁵ Order No. 720 at P 160.

⁴⁶ Order No. 720–A at P 190.

⁴⁷ Order No. 720–A at P 190.

⁴⁸ INGAA Request for Rehearing and Clarification at 2–3.

⁴⁹ *Id.* at 3–4.

flows and will enable them to better predict future no-notice flows.⁵⁰ Updating the initially posted flow data based on corrected information obtained through the close of the NAESB measurement period will assist in understanding historical flow patterns and predicting future no-notice flows. We therefore decline to limit an interstate pipeline's obligation to update previously posted information to providing no-notice information where none was available within three days after the day of gas flow. Of course, if the no-notice information posted three days after the flow date does not change before the close of the NAESB measurement period, no update will be necessary.

54. Based upon INGAA's comments, interstate pipelines have access to reasonably accurate no-notice information within 3 days after gas flow, but within 5 business days of the end of the month of gas flow the no-notice information is more fully known by the interstate pipelines. The revised regulation takes into account this lag time in information, thus reducing the burden on interstate pipelines to continuously update estimated no-notice information. At the same time, however, this modification presents the Commission and the market with continued access to the most-accurate data, thereby enhancing transparency.

IV. Information Collection Statement

55. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, recordkeeping, and public disclosure (collections of information) imposed by and for an agency.⁵¹ The information collection requirements or FERC-551 were approved by OMB under OMB Control No. 1902-0243. This order further revises these requirements in order to more clearly state the obligations imposed in Order Nos. 720 and 720-A. In response to the requests for rehearing, the Commission has made several revisions that can be considered as "substantive or material modifications" to the information collection requirements,⁵² and we will submit them for OMB review under the Paperwork Reduction Act.⁵³ The revisions in this order will not have a significant impact on the Commission's burden estimates expressed in Order No. 720-A and so the Commission will retain those estimates.

56. 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 Executive Director]; e-mail: DataClearance@ferc.gov, Phone: (202) 502-8415, Fax: (202) 273-0873. For submitting comments concerning the collection of information, please send your comments to the contact listed above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission] Phone: (202) 395-4638, Fax: (202) 395-7285. Due to security concerns, comments should be sent electronically to the following e-mail address: oir_submission@omb.eop.gov. Please reference OMB Control No. 1902-0243 and the docket number of this order in your submission.

V. Document Availability

57. 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.

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

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

VI. Effective Date and Compliance Deadlines

60. Changes to Order Nos. 720 and 720-A made in this Order on Rehearing will become effective on October 1, 2010. Accordingly, the compliance deadline for major non-interstate

pipelines shall be extended to October 1, 2010.

List of Subjects in 18 CFR Part 284

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

By the Commission.
Nathaniel J. Davis, Sr.,
Deputy Secretary.

■ For the reasons set forth in the preamble, the Federal Energy Regulatory Commission amends 18 CFR part 284 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. 7101-7352; 43 U.S.C. 1331-1356.

■ 2. In § 284.13, paragraph (d)(1), the last two sentences are revised and a third final sentence is added, to read as follows:

§ 284.13 Reporting requirements for interstate pipelines.

* * * * *

(d) * * *

(1) * * * An interstate pipeline must also provide information about the volumes of no-notice transportation provided pursuant to § 284.7(a)(4). This information must be posted at each receipt and delivery point before 11:30 a.m. central clock time three days after the day of gas flow and must reflect the pipeline's best estimate. Updated information must be posted at each receipt and delivery point as necessary within ten business days after the month of gas flow.

* * * * *

■ 3. Amend § 284.14 by adding paragraph (a)(5) to read as follows:

§ 284.14. Posting requirements of major non-interstate pipelines.

* * * * *

(5) Newly constructed major non-interstate pipelines, which commence service after the effective date of this section, must comply with the requirements of this section upon their in-service date. Except for newly constructed major non-interstate pipelines, a major non-interstate pipeline that becomes subject to the requirements of this section in any year after the effective date of this section

⁵⁰ Order No. 720 at P 162.

⁵¹ 5 CFR 1320.12 (2009).

⁵² 5 CFR 1320.5(g).

⁵³ See 44 U.S.C. 3507(h)(3).

has until June 1 of that year to comply with the requirements of this section.

* * * * *

[FR Doc. 2010-18312 Filed 7-29-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9490]

RIN 1545-BJ12

Extended Carryback of Losses to or From a Consolidated Group; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9490) that were published in the *Federal Register* on Wednesday, June 23, 2010 (75 FR 35643) affecting corporations filing consolidated returns under section 1502. These regulations contain rules regarding the implementation of section 172(b)(1)(H) within a consolidated group and also permit certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition carryback period pursuant to section 172(b)(1)(H) for specific losses attributable to certain acquired members.

DATES: This correction is effective on July 30, 2010, and is applicable on June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Grid Glycer, (202) 622-7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9490) that are the subject of this document are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9490) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502-21T(b)(3)(v) is amended by revising paragraphs (B), (C)(1), (C)(2), the last sentence of paragraph (E) *Example 1*(i), the fourth sentence of paragraph (E) *Example 1*(iii) and the fourth sentence of paragraph (E) *Example 2*(ii) to read as follows:

§ 1.1502-21T Net operating losses (temporary).

* * * * *

(B) *Taxpayer's taxable income.* For purposes of computing the limitation under section 172(b)(1)(H)(iv) on a Five-Year Carryback to any consolidated return year from any consolidated return year or separate return year, *taxpayer's taxable income* as used in section 172(b)(1)(H)(iv)(I) means consolidated taxable income (CTI) in the consolidated return year that is the fifth taxable year preceding the year of the loss. For purposes of the preceding sentence, CTI is computed without regard to any CNOL deduction attributable to the particular Five-Year Carryback or any NOL from any member's taxable year ending on the same date as the taxable year in which the Five-Year Carryback arises, or any taxable year thereafter.

(C) *Limitation on Five-Year Carrybacks to a consolidated group—(1) Annual limitation.* The aggregate amount of Five-Year Carrybacks from years ending on the same date (Testing Date) to any consolidated return year may not exceed the excess of 50 percent of the CTI for that year over the total of Five-Year Carrybacks to that consolidated return year from years ending before the Testing Date (Annual Limitation). For purposes of the preceding sentence, CTI is computed without regard to—

(i) Any CNOL deduction attributable to Five-Year Carrybacks to such year; or

(ii) Any NOL from any member's taxable year ending on the Testing Date or any taxable year thereafter.

(2) *Pro rata absorption of limited and non-limited losses.* Any Five-Year Carryback, and other net operating losses, from years ending on the same date that are available to offset CTI in the same year are absorbed on a pro rata basis. *See* § 1.1502-21(b)(1).

* * * * *

(E) * * *

Example 1. * * * (i) * * * There are no other NOL carrybacks into the X Group's 2004 consolidated taxable year.

* * * * *

(iii) * * * The Annual Limitation on Five-Year Carrybacks will be \$250 (\$500 × 50 percent), with CTI determined without taking into account the portion of P's 2008 CNOL carried back to the X Group's 2004 consolidated return year or the X Group's 2008 CNOL, which arises from a taxable year ending on the same date as the Five-Year Carryback. * * *

Example 2. * * *

(ii) * * * Because S is making the sole Five-Year Carryback to the X Group's 2004 consolidated return year, S will make a Five-Year Carryback of the full \$400. * * *

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel (Procedure and Administration).

[FR Doc. 2010-18677 Filed 7-29-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9495]

RIN 1545-BC61

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document removes the temporary regulations and provides final regulations that provide guidance to state and local governments that issue qualified zone academy bonds and to banks, insurance companies, and other taxpayers that hold those bonds on the program requirements for qualified zone academy bonds. The final regulations implement the amendments to section 1397E (discussed in this preamble) and provide guidance on the maximum term, permissible use of proceeds, and remedial actions for qualified zone academy bonds.

DATES: *Effective Date:* These regulations are effective on July 30, 2010.

Applicability Date: For dates of applicability, see § 1.1397E-1(m) of these regulations.

FOR FURTHER INFORMATION CONTACT: Zoran Stojanovic, (202) 622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has