

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

18 CFR Parts 154, 201, 204, and 282

[Docket No. RM79-14; Order No. 49]

Regulations Implementing the  
Incremental Pricing Provisions of the  
Natural Gas Policy Act of 1978AGENCY: Federal Energy Regulatory  
Commission.

ACTION: Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission hereby adopts regulations that implement the incremental pricing provisions of the Natural Gas Policy Act of 1978. Under the incremental pricing program, large industrial facilities which burn natural gas as a boiler fuel will be priced for that gas at a level equivalent to the price they would pay for fuel oil which they could burn as an alternative to natural gas. Those regulations provide the regulatory framework for the calculation and billing of incremental pricing surcharges to facilities subject to the incremental pricing program. The regulations also set forth the procedures by which an industrial facility may obtain an exemption from the program.

**EFFECTIVE DATE:** November 1, 1979, provided that, the provisions of 18 CFR 282.201-206 shall be effective October 15, 1979.

**FOR FURTHER INFORMATION CONTACT:**  
Norman A. Pedersen, Office of Commission  
Hall, 825 North Capitol Street, N.E.,  
Washington, D.C. 20426, (202) 357-8377.  
Warren C. Edmunds, Office of Pipeline and  
Producer Regulation, 825 North Capitol  
Street, N.E., Washington, D.C. 20426,  
(202) 275-4415.

Nancy E. Williams, Office of General  
Counsel, 825 North Capitol Street, N.E.,  
Room 8100-F, Washington, D.C. 20426,  
(202) 357-8033.

Regulations Implementing the  
Incremental Pricing Provisions of the  
Natural Gas Policy Act of 1978.  
Issued: September 28, 1979.

## I. Background

Title II of the Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) requires

that interstate pipelines and local distribution companies pass through certain portions of their natural gas acquisition costs to industrial users in the form of surcharges. These surcharges may not, however, raise the ultimate cost of gas to the user above the cost of the fuel oil which could be used as an alternative to natural gas.

The incremental pricing program is to be implemented in two phases. The only facilities affected during the first phase will be those using natural gas as fuel for large industrial boilers. Title II requires that the regulations implementing this first phase be promulgated by November 9, 1979.

During the second phase of the program, incremental pricing may be extended to a broader class of industrial users than those affected by the first stage. The NGPA sets May 9, 1980, as the date for the regulations implementing the second phase and establishes that those regulations will be subject to Congressional review and possible disapproval by either House.

Two rulemaking dockets were established to promulgate the regulations needed to implement the first phase of incremental pricing. Docket Nos. RM79-14 and RM79-21. A companion document to this final rule is being issued in Docket No. RM79-21.<sup>1</sup> The background of the proceeding in Docket No. RM79-21 is described in the final rule in that docket.

A Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentations of Data, Views and Arguments in this docket was issued on June 5, 1979 (44 FR 33099, June 8, 1979) in order to propose regulations for the implementation of those provisions of Title II of the NGPA not encompassed by Docket No. RM79-21. These proposed regulations covered revisions to the Commission's historical method of calculating rate changes pursuant to purchased gas costs adjustment (PGA) clauses, the actual calculation and

<sup>1</sup>Regulations Implementing Alternative Fuel Cost Ceilings on Incremental Pricing Under the Natural Gas Policy Act of 1978. Docket No. RM79-21. Final Rule issued on September 28, 1979. See also in Docket No. RM79-21. Rule Exempting Industrial Boiler Fuel Facilities from Incremental Pricing Above the Price of No. 6 Fuel Oil, issued on September 28, 1979.

billing of incremental pricing surcharges, and the accounting provisions necessary for the implementation of the program. In addition, the proposed regulations set forth procedures to be utilized by facilities seeking to obtain exemptions from the incremental pricing program.

The approach set forth in the June 5th Notice for the calculation and billing of incremental pricing surcharges, the "surcharge mechanism," was developed after two informal conferences were held to give interested parties the opportunity to comment on preliminary proposals for the mechanism. Those conferences were held in February and April and were convened to discuss, respectively, a staff proposal issued January 12, 1979, (44 FR 6133, January 31, 1979) and several alternative proposals offered by various interested parties.

A public hearing on the June 5th proposal was held in Washington, D.C. on June 27, 1979. Nineteen interested parties presented comments at this hearing, including representatives of interstate pipelines, distribution companies, associations whose membership includes both pipeline companies and distribution companies, a consumer group and an industrial end-user group. A total of sixty-nine written comments were submitted in response to the June 5th Notice. The transcripts of the informal conferences, the June 27th hearing and all written comments submitted to the Secretary of the Commission in this docket have been made a part of the record in this proceeding. The Commission has reviewed all portions of this record in developing the final rule in this proceeding.

The regulations encompassed by this docket are lengthy and quite detailed. The comments submitted in this docket were generally excellent and very helpful. The discussion which follows seeks to fully explain how the regulations set forth below differ from those included in the June 5th proposal, as well as to respond to many of the suggestions that were raised in the comments submitted but which have not been incorporated in the final regulations.

## II. Commission Jurisdiction

Title II of the NGPA significantly expands the jurisdiction of this Commission in comparison to the authority vested in the Commission pursuant to the Natural Gas Act. Title II brings within the purview of this Commission's jurisdiction for the first time all local distribution companies that receive supplies of natural gas from interstate pipelines. A definition of "local distribution company" has been added to the definitions section of the regulations below, § 282.103, in order to clarify exactly which companies are governed by the provisions of the regulations. The definition below differs from the definition of "local distribution company" set forth in the NGPA. However, this definition is adopted so that the one term, "local distribution company" may apply, for purposes of the incremental pricing regulations, to all companies, other than interstate pipelines, to which Congress intended Title II should be applicable. The intent of Congress in this regard is set forth in the Statement of Managers on the NGPA:

The application of this rule is limited to boiler fuel facilities served by an interstate pipeline, and those served by a local distribution company that is served by an interstate pipeline. The term interstate pipeline is meant to include those pipelines which are subject to the jurisdiction of the Commission under the Natural Gas Act. "Hinshaw" pipelines, which are not subject to the Commission's jurisdiction under sec. 1(c) of the Natural Gas Act, are considered local distribution companies, for purposes of incremental pricing, to the extent that they are served by an interstate pipeline.<sup>2</sup>

Local distribution companies, as defined in § 282.103, as well as interstate pipeline companies, are required to comply with the regulations set forth below. The Commission anticipates that the Title II regulations will be enforced with equal emphasis as they apply to interstate pipelines and local distribution companies. In this regard, section 504 of the NGPA is noted. Under the provisions of section 504, violations of these regulations will be subject to civil and criminal penalties.

## III. The Basic Mechanism: The "Reduced PGA" Approach

The basic approach for the calculation and billing of the incremental pricing surcharges has received significant and detailed discussion in this proceeding since the issuance of the initial staff proposal of January 12th. That proposal

was structured so that incremental pricing surcharges would not be billed until 4 to 10 months after the actual incurrence of the costs to be passed through by way of surcharges. As a result of the February and April informal conferences, Commission staff determined to accept a recommendation made by the United Distribution Companies (UDC), Northern Natural Gas Company (Northern) and Natural Gas Pipeline Company of America (Natural) and to develop a mechanism which would allow for the recoupment of surcharges by suppliers at a time proximate to the time at which they must pay their own suppliers for gas deliveries which give rise to the surcharges.

The method suggested by UDC, Northern and Natural was to permit pipeline companies to estimate in advance their total gas acquisition costs and the portion of those costs which would ultimately be recovered by way of incremental pricing surcharges. The estimated surcharge recovery would be subtracted from the estimated total gas acquisition costs, and this "reduced" gas acquisition cost estimate would be recovered through the purchased gas costs adjustment (PGA) rate.

This reduced cost estimate would then form the basis of the PGA rate for all customers on a pipeline's system. Industrial customers included in the incremental pricing program would be billed on the basis of this reduced PGA rate, plus an incremental pricing surcharge.

An alternative to the "reduced PGA" approach was suggested by the Interstate Natural Gas Association of America (INGAA) at both the February and April informal conferences. This method would involve billing all customers on the basis of the normal PGA rate—which would reflect inclusion of all gas acquisition costs. Industrial customers included in the program would be billed an appropriate incremental pricing surcharge, while a corresponding credit would be extended to all other customers. The total of the credits would equal the amount recouped by way of surcharges.

The "INGAA method" received serious consideration by the Commission, but was not the approach eventually chosen and set forth in the June 5th proposed regulations. The Commission stated in the June 5th Notice that it believed that the "reduced PGA" approach would result in a "less burdensome regulatory program for all affected parties."

The Commission noted in the June 5th proposal, however, that it was continuing to consider the "INGAA

method" and invited further comments as to whether that method should be adopted.

The comments submitted in response to the June 5th Notice were overwhelmingly in favor of the "reduced PGA" approach. On the basis of the record, the Commission adopts as a final rule the "reduced PGA" method of calculating and billing incremental pricing surcharges.

The "reduced PGA" method embodied in the final regulations will operate as follows. Each interstate pipeline will, prior to filing its revised PGA tariff sheet for an upcoming PGA period, estimate the total amount of gas acquisition costs it will incur during the upcoming PGA period. A pipeline will be permitted to take into account, when projecting its total gas acquisition costs for a coming period, increased costs anticipated due to price increases permitted to producers under the provisions of the NGPA. A pipeline will not, however, be permitted to take into account when making this projection any volume of supply which would not be attached to the system as of the date the new rate will take effect. Each pipeline will also estimate the portion of its projected total gas acquisition costs that will be "incremental costs" and thus subject to being passed through as incremental pricing surcharges.

The pipeline will then project the total maximum surcharge absorption capability (MSAC) of the non-exempt industrial boiler fuel facilities which will be served, directly or indirectly, by the pipeline.

The MSAC is the key element of the incremental surcharge passthrough mechanism. In simplest terms, it is the total difference between the cost of gas to a facility and the ceiling on incremental pricing which is applicable to the facility, i.e., the total amount of incremental cost the facility can absorb before its price of gas will rise above the applicable ceiling.

In order for a pipeline to develop its projected MSAC, each local distribution company will estimate the MSAC of each of its incrementally priced customers and report a total projected MSAC to its supplying pipeline. The projected MSAC of an individual industrial boiler fuel facility will be calculated in accord with the formula set forth in § 282.503 of the regulations. In those cases where a local distribution company is supplied by more than one pipeline, the total projected MSAC of the distribution company will be prorated among its suppliers in accord with a formula set forth in the regulations.

<sup>2</sup>H.R. Rep. No. 95-1752, 95th Cong., 2d Sess. 96 (1978).

Each supplying pipeline, in turn, will add the projected MSAC's reported to it by the distribution companies it serves and add thereto the total projected MSAC of all non-exempt industrial boiler fuel users it serves directly. This pipeline will then report its total projected MSAC to its supplying pipelines on a prorated basis.

This reporting will continue until the most "upstream" pipeline has received reports from all the interstate pipelines and local distribution companies served by it. After adding to the reported MSAC's the projected MSAC's of its own direct sale customers, this pipeline will compare its total projected MSAC to its total projected gas costs subject to surcharge passthrough for the coming PGA period. The pipeline will use the lesser amount to reduce its total estimated gas acquisition costs for the coming PGA period in order to derive a "reduced PGA" rate for the period.

The pipeline will file this "reduced PGA" rate with the Commission and use this rate for the following PGA period. As a result, there will be an immediate flow-through of the estimated benefits of incremental pricing to the residential and small commercial customers, since their gas rates will reflect the pipeline's "reduced PGA" rate.

Non-exempt industrial boiler fuel users will be billed on the basis of the "reduced PGA" rate. In addition, however, they will be billed an incremental pricing surcharge. The surcharges will be based on actual usage and actual alternative fuel price ceilings established for the month in which usage occurs.

In order to determine surcharges for both individual customers and sale-for-resale customers, actual MSAC's will be calculated for each industrial facility, local distribution company, and interstate pipeline. All information will be passed from resale customers to suppliers until the most "upstream" pipeline supplier has received reports from all customers on its system. It will then compare the total MSAC of its system for the past month to the total incremental gas acquisition costs it incurred during that month.

If the total incremental acquisition costs are less than the total MSAC, the "upstream" pipeline will bill surcharges on the basis of each customer's pro-rata share of the incremental gas costs. Each customer, in turn, will bill its customers a pro-rata share of the amount it has been surcharged, until each end-user is ultimately billed a surcharge.

If, however, the total incremental acquisition costs are greater than the total MSAC, the "upstream" pipeline will bill surcharges in the amount of the

MSAC's. Each customer, in turn, will bill on the basis of its customers' MSAC's.

Any incremental acquisition costs which the "upstream" pipeline does not recover may be recovered in the following PGA period, just as under the present PGA system, since the unrecovered balance will be cleared to account 191, Unrecovered Purchased Gas Costs, following the billing of incremental pricing surcharges each month.

Incremental gas acquisition costs may be incurred directly by local distribution companies, as well as by interstate pipelines. To the extent that, due to the incremental pricing ceiling, those costs are not fully recovered through incremental pricing surcharges, they may be recovered in whatever manner is permitted by the appropriate State or local authority having jurisdiction.

#### IV. Billing Procedures

##### A. Meter Reading Cycles

In its June 5th Notice, the Commission proposed to require that the meters of incrementally priced industrial users be read on or about the 20th of each month. This aspect of the mechanism was intended to allow sufficient time for the communication of all information necessary for the calculation of surcharges between the end of the billing month and the normal date on which it was believed suppliers render bills to their industrial customers, i.e., the 10th of the following month. The 20th of the month billing period was based on representations made at the April conference with respect to the industry practice of billing industrial customers on a calendar month basis.

However, the majority of comments offered in response to the June 5th proposal criticized the proposed imposition of a uniform billing period ending on the 20th of the month. Many suppliers stated that industrial customers are billed on a cyclical basis in much the same manner as are high priority customers. Thus, to require the meters of all such customers to be read on the same day would disrupt present meter reading and billing practices.

In the course of analyzing the comments on this issue, Commission staff determined that the 20th of the month approach would effect another undesirable result. Under this method, the incremental pricing surcharges billed to many industrial customers for any given billing period would not reflect the acquisition costs incurred by their suppliers for the volumes delivered during the period for which the surcharge was calculated.

In order to avoid the imposition of one mandatory meter reading date and to address the problem identified by Commission staff, the following approach has been developed. The regulations set forth below treat a standard calendar month as a billing period. The regulations provide that meters of incrementally priced industrial users shall be read on or before the last day of a calendar month, but may not be read any more than 10 days prior to the end of the month. The limitation of meter readings to the last 10 days of any month carries out our goal of having incremental pricing surcharges reflect as closely as is administratively feasible a supplier's costs for the volumes delivered during the period for which the surcharge is calculated.

This approach will also, we believe, result in the least disruption of current meter practices that would be possible in order to achieve our goal of matching acquisition costs with surcharges. Under the approach, meters of incrementally priced industrial users may be read during a 10-day period of the month. Theoretically, at least one-third of the users on any system are already being read during this period of the month. Given the relatively small number of such users on a system, we believe the rescheduling of meter readings of at most two-thirds of those users should not be a significant burden.

To implement this approach, a provision has been added to § 282.501 which requires that the MSAC of an incrementally priced industrial user for any one calendar month be calculated on the basis of the meter reading made in the last ten days of that month. Meter readings made in the final ten days of any calendar month will be deemed to represent usage for that month. The alternative fuel price ceilings applicable for the calendar month will be utilized to calculate the MSAC's and surcharges applicable to volumes which are covered by the meter readings made in such period.

As set forth in the regulations promulgated in Docket No. RM79-21, the alternative fuel price ceilings applicable for a calendar month will be published no later than the 20th day of the preceding month. Thus, end-users will know the price they potentially will have to bear for their use of natural gas in any month prior to the beginning of that month.

It should be noted that the first meter readings made pursuant to the regulations below, in January, 1980, may reflect a few days of usage during December, 1979, which would not be subject to being incrementally priced. Any such readings should be pro-rated

in order to avoid pricing non-exempt users incremental surcharges for their use of gas prior to January 1, 1980.

#### *B. Time Permitted for Exchange of Information*

As noted above, the primary reason for the 20th of the month billing period proposal was to permit sufficient time for the exchange of information between suppliers and their customers in order to calculate surcharges by the normal billing date for pipeline suppliers. However, many commenters stated that even 20 days—from the 20th of one month to the 10th of the next—would not be adequate for the collection of all necessary information and the calculations needed to compute incremental pricing surcharges. This view was expressed primarily by suppliers that serve a large number of industrial facilities for which surcharges will have to be calculated and who themselves receive gas from several suppliers.

However, those suppliers which have a relatively small number of customers on their systems that will be subject to the first phase of the incremental pricing program and who themselves have a small number of suppliers typically stated that the exchange of information and calculation of surcharges could be accomplished within a 20-day time frame.

Two optional billing procedures are described below which will, we believe, provide adequate time for the exchange of all needed information. In addition, they will allow us to adopt the less disruptive "calendar month" approach described above. Either of the two procedures may be utilized in lieu of billing in accord with the time sequence set forth in the regulations, since the regulations will only provide 10 days for the exchange of information between the end of a month and the typical 10th of the month billing date.

INGAA was a primary spokesman for the position that 20 days would not be adequate for all needed communication and calculations to arrive at the actual surcharges which must be billed under the "reduced PGA" method. INGAA also suggested a solution to this timing problem which appears to be workable. The Commission has determined to adopt INGAA's proposal with respect to sales of natural gas made by interstate pipelines to sale-for-resale customers.

Under this method, an interstate pipeline will have the option of billing a sale-for-resale customer a surcharge for any one calendar month equal to the surcharge estimate which the pipeline used for the customer in order to derive the pipeline's currently effective reduced

PGA rate. In the following month, the bill rendered to that sale-for-resale customer will be adjusted by an amount to reflect the difference between the surcharge billed the previous month and what that surcharge should have been, as calculated from actual usage figures and actual alternative fuel price ceilings.

This method will have the effect of allowing a total of up to 40 days for the exchange of information and calculation of surcharges. The Commission believes this time period should be adequate for the passage of required information on even the most complex supply system covered by this Phase I rule.

The regulations below also incorporate the alternative feature which was included in the June 5th proposal with respect to billing by local distribution companies of industrial boiler fuel facilities. Under this alternative, a local distribution company may bill any non-exempt industrial boiler fuel facility at the level of the alternative fuel price ceiling which is applicable to the facility, and adjust the following month's billing for any resulting overrecovery.

With respect to this alternative, we have altered the final regulations below somewhat from the proposal in that the regulations require any overrecovery to be refunded to the facility from which it was collected. Our proposal indicated that state or local authorities would have jurisdiction as to these refundable amounts. We have been persuaded, however, by several comments submitted on this point that our regulations should require a refund to the party who paid the original amount. Otherwise, the optional billing procedure might result in inequitable treatment of some users. We believe that this requirement does not impinge on state or local jurisdiction, since incremental pricing surcharges are uniquely subject to Federal jurisdiction.

According to all estimates submitted to the Commission since it began considering implementation of Phase I of the incremental pricing program, from the inception and throughout Phase I, gas acquisition costs subject to passthrough by incremental pricing surcharges will exceed the aggregate surcharges which can be passed through to industrial end-users which are not exempt from the program. Thus, industrial users in most cases will be billed surcharges which bring the price of gas up to the level of the alternative fuel price ceilings. In all situations where this will be the case, the two optional billing procedures described above, as compared to billings based on actual data, should not result in any significant difference for affected end-

users with respect to the timing of payments.

Furthermore, for those systems as to which all calculations can be made on a current basis, the regulations provide the flexibility for billings to reflect actual data.

#### *V. Calculations Required Under the "Reduced PGA" Approach*

The two formulas required to calculate incremental pricing surcharges under the "reduced PGA" approach were set forth in the regulations proposed on June 5th. Each formula was set forth in a projected and actual variant, in §§ 282.503 and 282.504 of the regulations, respectively.

##### *A. MSAC Formula*

The formula for the calculation of the maximum surcharge absorption capability (MSAC) of an individual industrial facility was set forth in symbols in §§ 282.503 and 282.504. This formula will be utilized to determine the amount of surcharge which can be passed through to a particular facility before the price of natural gas delivered to the facility rises to the computed price of the alternative fuel which the facility can use.

Several commenters noted that the formula which was proposed on June 5th did not include a variable for state or local taxes which would be applicable to the surcharge. The proposed formula did encompass state or local taxes levied on the price paid for volumes of natural gas were it not for incremental pricing surcharges. However, the formula did not include a variable which would permit appropriate adjustment of the MSAC in those cases where a state or local tax will be levied on the additional amount which will be represented by the surcharge.

The Commission agrees with the comments which noted this point and has adopted the changes to the proposed MSAC formula suggested by these commenters. Therefore, the formulas for a projected MSAC set forth in § 282.503 below and for an actual MSAC, set forth in § 282.504, have been amended from those which were proposed by adding a denominator which will serve to reduce the MSAC by any tax which may be levied on the surcharge. Thus, the surcharge calculated on the basis of this MSAC will be of an amount that will not include the tax which will be added to the surcharge when it is billed to the industrial end-user. These formulas, as revised, will ensure that natural gas costs to non-exempt users will not exceed their alternative fuel costs.

### B. Prorating of MSAC

Many commenters disagreed with the formula which was proposed to allocate a total MSAC of a purchaser/supplier among its several suppliers. With respect to volumes of gas which it either purchases directly or produces itself, a pipeline company or distribution company could only take into account under the proposed prorating fraction, in prorating the MSAC on its system to its various suppliers, those volumes of gas which carry incremental gas acquisition costs. However, the formula would permit a pipeline or distributor to take into account in the prorating fraction all volumes of gas which it purchases from an interstate pipeline, irrespective of whether such volumes carry incremental acquisition costs.

Interstate pipelines argued that the supply purchased from sources other than interstate pipelines and that supply which is the pipeline's own production should not be limited to only those volumes which carry incremental costs. Several local distribution companies also argue that their total supply should be utilized in the calculations.

We have given careful consideration to all of the comments submitted on this question. We have, however, determined to adopt the prorating fraction as it was proposed, for the reasons discussed below.

We recognize that our proposed formula involves a different treatment of purchases from other pipelines as compared to direct purchases or production of the pipeline in question. Our determination to adopt this approach is a conscious one based on administrative feasibility.

Several commenters stated that the proposed formula would create a situation where, on a total system, the exempt and non-exempt customers of "downstream" pipelines would end up bearing more than their fair share of incremental gas costs as compared to the customers of "upstream" pipelines. Stated another way, these commenters argued that the proposed formula would result in a shifting of "upstream" pipeline incremental gas costs into "downstream" pipelines' PGA's.

We agree that the prorating set forth in the regulations below could effect such a situation in the case where the incremental costs on a system are less than the MSAC on that system. However, where the converse is true—and, as stated elsewhere in this preamble, the record in this proceeding indicates that the converse situation will be the norm—all non-exempt users on a system will be able to absorb a surcharge in the amount of their MSAC,

without absorbing all the incremental costs incurred by the suppliers on the system. Therefore, all such users will be surcharged at the level of the alternative fuel price ceiling from the outset of the program. Under our prorating fraction, no one pipeline or distributor will have to absorb a greater surcharge from each of its suppliers than it is able to pass on to its customers.

However, under the approach urged by the commenters, a pipeline or distributor would effectively shield a portion of the MSAC on its system. This result would occur because the MSAC prorating fraction is designed to result in an amount which, when multiplied by the total MSAC on a system, will represent the amount of the surcharge which a pipeline or local distribution company can absorb from a given supplier. If volumes were included in the denominator of that fraction with respect to which no incremental acquisition costs must be recouped, the larger denominator would result in a smaller MSAC to be reported to the supplier(s).

To the extent a pipeline or distributor could shield a portion of the MSAC on its system, it would be able to price its industrial users, on the average, below the applicable alternative fuel price ceilings.

The ideal approach would be to base the allocation of MSAC's strictly on incremental costs associated with the volumes delivered to any one pipeline or distribution company. This, however, would require a reporting burden of enormous complexity and magnitude. To avoid such a burden, we have opted for an approach which necessitates a certain degree of approximation. Specifically, this approximation involves the reporting "up" a system of supply the MSAC's of each level in the system, and the billing "down" the chain the incremental surcharges based on those MSAC's.

We believe the only alternative to the approach described here would be to adopt the approach to the billing of incremental pricing surcharges proposed in the original January 12th staff proposal—i.e., to compute surcharges on the basis of actual data. We believe that the comments submitted in this proceeding, and especially on the January proposal, have established that a mechanism based on actual data is undesirable and thus not a viable alternative.

The primary differences between the treatment of interstate pipelines and local distribution companies in the prorating fraction is that local distribution companies will not be permitted to include any volumes of its

own production of "new" gas therein. No portion of the prices or costs associated with such production are required to be booked into the incremental gas costs account and thus no portion of such costs is subject to passthrough as a surcharge to non-exempt industrial facilities.

One commenter suggested that local distribution company production be treated identically to interstate pipeline production—i.e., that incremental costs be imputed thereto which would then be passed through by way of surcharges. However, the Commission has found no provision in Title II which would lead it to believe or conclude that the Congress intended identical treatment of the production of the two different entities under the regulations implementing Title II.

Specifically, section 203(b)(2) of the NGPA requires that the Commission prescribe rules to determine the "first sale acquisition costs" of natural gas produced by an interstate pipeline. Such "first sale acquisition costs" are then used to determine the portion of the costs subject to being passed through as incremental pricing surcharges. The Congress did not, however, give the Commission similar authority with respect to the production of local distribution companies.

Thus, local distribution companies will include all supplies purchased from interstate pipelines and all supplies purchased from other sources which are within one of the categories described in paragraphs (a) through (k) of § 282.301 in calculating the volume to be used in the denominator of the prorating fraction.

It is appropriate to note here the requirement of section 204(c)(4) of the NGPA. This section states:

**Sec. 204(c)(4) LOCAL DISTRIBUTION COMPANY DIRECT PURCHASES.**—In any case in which a local distribution company directly incurs any first sale acquisition cost subject to the passthrough requirements of this title under section 203 or otherwise directly incurs any other cost subject to such requirements under sections 203(a)(8)(B), (9) or (10), such local distribution company shall, with respect to the natural gas involved, be treated for purposes of this title as if it were an interstate pipeline.

Pursuant to this section, any local distribution company that purchases natural gas the price of which is governed by Title I of the NGPA or makes certain other purchases, such as pursuant to the regulations which implement section 311 of the NGPA, is deemed to be an interstate pipeline with respect to those purchases for purposes of the incremental pricing program. Thus, such a company must book into its accounts the portion of the costs of such

gas which is subject to passthrough as a surcharge to non-exempt industrial users and must calculate surcharges in accord with the regulations set forth below.

### C. Estimated Alternative Fuel Price Ceilings

Several commenters urged that alternative fuel price ceilings be estimated and published at some point this fall for the use of suppliers in projecting MSAC's for individual non-exempt industrial boiler fuel facilities and thus total MSAC's for distribution systems. Pipelines will need these estimates in order to estimate the amount by which their total projected gas acquisition costs can be reduced for purposes of filing reduced PGA rates with this Commission by December 1, 1979.

The Commission is sympathetic to the request that an official estimate of alternative fuel price ceilings would be helpful for the initial estimates required by the regulations below. However, it is anticipated that, as set forth in Docket No. RM79-21, the Energy Information Administration (EIA) of the Department of Energy (DOE) will be the agency which will publish the alternative fuel price ceilings on a monthly basis. We have inquired of the EIA as to whether ceilings could be estimated and published prior to the publication of actual ceilings in mid-December for January, 1980. EIA has stated that it will not be possible to calculate actual ceilings—i.e., ceilings based on collected data—any earlier than mid-December. Further, EIA believes any estimates it might undertake to calculate would be very judgmental.

We believe that pipeline companies and distribution companies will be able to ascertain at least an approximation of fuel oil prices in their service areas which can be utilized for the first series of estimates. Thus, the solution which appears to be most equitable to all parties concerned is to place the discretion in every supplier subject to these rules to utilize estimates of its own choice for the first round of calculations. Furthermore, as explicitly set forth in the regulations, an interstate pipeline is required to provide assistance to any local distribution company it serves in making estimates on alternative fuel price ceilings, if the distribution company so requests.

### D. Flat Amount vs. Per Mcf Surcharge

Both the January staff proposal in this docket and the June proposed regulations provided for the calculation of incremental pricing surcharges in flat

dollar amounts, rather than on a cents-per-Mcf basis.

The Office of Oil and Gas Policy of the Office of the Assistant Secretary for Policy and Evaluation of the DOE submitted in this docket an analysis of the effect of the two differing methods on various users on a distribution system. That analysis concludes that the two methods do not have different effects once all non-exempt users reach their alternative fuel price ceilings.

During the interval in which some non-exempt industrial end-users are below their alternative fuel price ceilings, the two methods can result in differing effects. End-users which had been paying a lower rate, when compared to other users on the system, prior to establishment of the incremental pricing program would absorb a greater share of the incremental gas costs borne by its supplies under the flat-dollar amount method. These end-users would thus receive a comparatively greater per Mcf rate increase. Those users which had previously paid a higher rate would absorb a smaller portion of the incremental gas costs, or surcharge, borne by its supplier, and thus incur a lower per Mcf rate increase.

As noted by the DOE, however, this difference does not exist once all non-exempt users reach their alternative fuel price ceilings. And, the flat-dollar amount approach results in all users reaching that ceiling at the same time.

This Commission agrees with the DOE's analysis as presented. However, we maintain our original position with respect to this question. Specifically, we believe that a per Mcf approach would be unduly complex from an administrative point of view and that the benefits of that approach do not justify its burdens. The cents-per-Mcf approach would involve much more complex calculations than are required for the approach which has been adopted. Only one other comment in this docket discussed this point, and stated that a cents-per-Mcf approach could cripple the program.

As the DOE analysis indicates, the two methods differ only when incremental gas costs are less than the absorption capability of a particular system. As stated elsewhere in this preamble, all data submitted to date in this docket indicates that non-exempt industrial boiler fuel users will be priced at the alternative fuel price ceilings upon implementation and throughout Phase I of the program. If experience under the program indicates that the phenomenon analyzed by DOE is in practice a serious problem, we shall review the flat-dollar surcharge approach.

## VI. Exemptions

### A. In General

Pursuant to sections 206(a), (b) and (c) of the NGPA, natural gas used by small existing (as of November 9, 1978) industrial boiler fuel facilities, agricultural users, schools, hospitals and certain other facilities is exempt from being incrementally priced.

Although these exemptions are granted by the terms of the statute, there still remains the necessity of identifying precisely which facilities qualify under the categories set forth. The Commission proposed in the June 5th Notice to utilize a self-certification procedure for this purpose, similar to the self-certification procedure to be used for the establishment of the alternative fuel capability of an industrial facility, included in the regulations in Docket No. RM79-21.

No comments criticized this approach for the identification of exempt facilities. Thus, the exemption affidavit procedure that was proposed has been adopted in substance in the final regulations set forth below.

The procedure involves essentially two steps. To minimize the burden on industrial end-users, a natural gas supplier is required to first identify from its records which facilities served by it are industrial boiler fuel facilities—that is, industrial facilities which burn natural gas as boiler fuel. The supplier is then to identify from its records, if possible, which of these facilities meet the two-pronged test for an existing small boiler, or, in other words, an exemption pursuant to the terms of section 206(a)(1) of the NGPA. The statute prescribes that a small boiler facility is one which was in existence on the date of enactment of the NGPA—November 9, 1978—and which did not use more than an average of 300 Mcf per day of natural gas as boiler fuel during any month of a base period selected by the Commission. The Commission has determined to use calendar year 1977 as the appropriate base period for purposes of this so-called "interim exemption" for small boilers.

If a supplier can make the above determinations from its records, it need not send an exemption affidavit to a facility thus determined to be exempt. The natural gas supplier is required to send an exemption affidavit to all other industrial boiler fuel facilities which it has identified in reviewing its customer list.

### B. Exemption Affidavits

The exemption affidavit has been designed by Commission staff and must be used by suppliers in fulfilling their

responsibility under the regulations. Copies of the affidavit are available from the Commission's Washington, D.C. Office of Public Information at 825 North Capitol Street, N.E., Room 1000, Washington, D.C. 20426, or upon a telephone request. The telephone number of this office is (202) 357-8055. A copy of the final version of the exemption affidavit is appended to this preamble.

One commenter suggested that a question be added to the affidavit to permit an industrial user to certify that all of its natural gas is used for exempt commercial purposes. We agree with this comment and recognize that a supplier's records might not indicate what otherwise would appear to be an industrial boiler fuel facility is not such a facility.

Therefore, a question has been added to the affidavit which will permit a natural gas user to establish via the affidavit procedure that his facility is not an industrial facility, as defined in the regulations below, which burns natural gas as a boiler fuel.

One commenter suggested that the regulations require that all affidavits be returned to natural gas suppliers. We proposed to require return by only those users who are entitled to an exemption in whole or in part from the incremental pricing program. Users not eligible for a total or partial exemption would not return the affidavits to their suppliers.

The Commission has given careful consideration to this aspect of the exemption procedure and has determined to adopt the approach which was proposed. We believe this approach is consistent with that of other programs which provide for exemptions—that only those desiring the benefit of an exemption should be required to complete some form of an application.

Further, since we are eliminating the annual reaffirmation requirement with respect to exemptions (see discussion below), this approach should not place an undue burden on any natural gas user.

The June 5th proposal contained provisions which would have required natural gas suppliers to make copies of executed exemption affidavits available at their business offices. In addition, suppliers would have been required to make available to the public lists of non-exempt facilities which they are required to compile and file with the Commission.

Many commenters objected to any regulation which would require natural gas suppliers to make available to the public information on the exempt or non-exempt facilities served by that supplier. The Commission has been

persuaded by the comments submitted on this topic in both this docket and its companion, RM79-21, that this burden should not be placed on natural gas suppliers. Therefore, we have amended all provisions on public availability of such information.

Natural gas suppliers will be required, however, to send copies of the non-exempt lists required by § 282.204(e)(2) to state or local commissions, in addition to this Commission, in all those instances where such commissions exist having appropriate regulatory jurisdiction. These lists will be available for public inspection at the Commission's Washington, D.C. Office of Public Information. State or local commissions which receive such lists may also make them available for public inspection, if they so choose.

Some commenters also expressed concern about the divulgence of confidential business information if the exemption affidavits are open to public inspection. The Commission does not believe that any of the information which will be included on the exemption affidavits is of a confidential nature. However, if any party completing an affidavit believes differently, he may petition the Commission under the regulations which implement section 502(c) of the NGPA for an adjustment to the regulations governing public inspection of exemption information.

#### C. Reaffirmation Affidavits

The Commission proposed in the June 5th Notice to require that exemption affidavits be updated, or reaffirmed, on an annual basis, as a means of identifying those facilities which no longer use gas for a statutorily exempt purpose. The Commission believes such facilities should not be entitled to retain their exemptions from the incremental pricing program.

Although it was proposed to require that reaffirmation affidavits be filed on an annual basis, comments were specifically requested on an alternative approach of requiring end-users to inform their suppliers and the Commission of a change in circumstances which would disqualify a facility for an exemption.

The majority of comments addressing this issue stated that the annual reaffirmation procedure would be administratively burdensome. They further stated that requiring the end-user to notify its supplier and the Commission should the use of the facility change from an exempt to a non-exempt status would be sufficient to accomplish the desired goal. One commenter noted that natural gas suppliers are typically familiar with

their customers and would know if the owner of a facility was not conducting himself with candor.

The Commission is persuaded that the annual filing of a reaffirmation affidavit is not necessary for successful operation of this program and that it would place an unnecessary burden on industrial users of natural gas. Therefore, the regulations set forth below include a provision, § 282.205, which requires an industrial user of natural gas to inform its natural gas supplier and the Commission if the use of a previously exempt facility changes so that the facility should be incrementally priced with respect to its boiler fuel use of natural gas. Following such notification, of course, the facility will be billed incremental pricing surcharges in appropriate amounts.

Among the comments on this issue was a suggestion that, if a change of circumstances regulation was adopted in lieu of the reaffirmation requirement, the regulations include a sanction for non-compliance. We believe such a provision is unnecessary, but note again the civil and criminal penalties which may be levied under section 504 of the NGPA for noncompliance with regulations which implement the NGPA.

#### D. Agricultural Use

Section 206(b) of the NGPA requires that the Commission provide an interim exemption from the regulations adopted in Phase I of the incremental pricing program "to the extent of any agricultural use of natural gas" by an industrial facility. This interim exemption is to remain effective until such time as the statutorily required "permanent exemption" for agricultural use becomes effective.

The provision of the June 5th proposed regulations which provided for the agricultural use exemption was § 282.203(b). The definition of "agricultural use" was set forth in the proposed § 282.202(5). This definition was to be utilized in conjunction with the exemption affidavit. The definition proposed was as follows: "Agricultural use" means any use of natural gas which is certified by the Secretary of Agriculture under 7 CFR § 2900.3 as an essential agricultural use pursuant to section 401(c) of the NGPA."

Several commenters argued that this definition should be broadened to be consistent with the definition of "agricultural use" contained in section 206(b)(3) of the NGPA. The commenters pointed out that the 206(b)(3) definition is different from the definition of "essential agricultural use" set forth in section 401(f)(1) of the NGPA, in that the latter definition, while encompassing the

same end uses of natural gas, requires the Secretary of Agriculture to further define the agricultural uses of natural gas which are "necessary for full food and fiber production."

The commenters argue that the Secretary of Agriculture's rule, which determines essential agriculture uses, was intended to be used for curtailment priorities only, and not for purposes of determining "any agricultural use" under section 206(b) of the NGPA. One commenter noted that the Secretary of Agriculture, in the preamble to the final rule which certifies essential agricultural uses, expressly recognized that the rule "should not be construed as any indication of what is or is not an 'agricultural use' for purposes of other sections of the NGPA, notably section 206." (44 FR 28784, May 17, 1979.)

Furthermore, one comment pointed out that the language used in the statute, in the Statement of Managers, and in the floor debates consistently maintains a distinction between "any agricultural use" for purposes of incremental pricing and an "essential agricultural use" for purposes of curtailment priorities in section 401 of the NGPA.<sup>3</sup>

The American Textile Manufacturer's Institute (ATMI) argued that the use of natural gas as a boiler fuel in textile manufacturing operations should be considered an "agricultural use", since the manufacture of textiles (insofar as natural fibers are involved) is "natural fiber production and processing".

ATMI noted that, in the Department of Agriculture's final rule, the Secretary of Agriculture determined that the textile industry was not included as an essential agricultural use because, although it would be "eligible for consideration on the basis of being a use for natural fiber processing," such use is not "necessary for full food and fiber production." (44 FR 28784, May 17, 1979)

As ATMI pointed out, the initial stage of textile manufacturing involves the processing of fibers (including natural fibers) for the production of fabric by spinning and weaving or knitting. In the next stage, most textile fabrics move through finishing mills for purposes of adding characteristics such as color, napping, non-flammability, crease resistance, and water repellency. After this process fabrics are in a form such that they may be used in manufacturing other products.

We have carefully considered these comments and have determined that the definition of "agricultural use" proposed

in § 282.202(5) should be revised. Thus, the definition of "agricultural use" (§ 282.202(a) in the final regulations) has been revised to include, in addition to the "essential agricultural uses" set forth in 7 CFR 2900.3, the use of natural gas in textile operations to the extent it is used for the processing and finishing of natural fiber into a usable form. The revised regulations reflect the Commission's belief that the manufacture of end products should not be included as a stage of "natural fiber processing".

The regulations below and the exemption affidavit set forth the SIC codes applicable to the textile manufacturing operations which we have determined should be eligible for an interim agricultural use exemption from the incremental pricing program.

#### E. Interim Exemptions

As noted above, the exemptions herein described for small existing boilers and for agricultural users are, by the terms of the statute, "interim exemptions." Section 206 of the NGPA requires that no later than May 9, 1980, permanent exemptions with regard to these two categories of boiler fuel users be adopted by the Commission.

The permanent exemption for small boilers must be designed so that the entire class of boilers thereby exempted are those which were in existence on November 9, 1978, and whose total usage of natural gas as boiler fuel in 1977 represented only 5 percent of the total volume of natural gas transported by interstate pipelines and used in 1977 as boiler fuel.

The permanent exemption for agricultural use is not to be available to those agricultural users that the Commission determines have an alternative fuel or feedstock which is economically practicable or reasonably available.

It is self-evident that the regulations regarding permanent exemptions for small boilers and agricultural users may well alter the eligibility of users which may be able to obtain exemptions under the "interim rules". Thus, any user who obtains an exemption under the terms of the interim rules should not assume that the exemption will necessarily continue beyond May of 1980.

The Commission intends to begin its effort to implement the statutory provisions regarding the permanent exemptions in ample time to meet the May 9, 1980 statutory deadline.

#### F. Other Exemptions

In the June Notice, the Commission announced that it intended to issue within a few weeks a Notice of

Proposed Rulemaking to deal with boilers of the size granted a statutory exemption from the incremental pricing program—300 Mcf usage per day or less—which have been constructed since the date of enactment of the NGPA. (By its terms, the statute grants an exemption only to those "small" boiler facilities which were in existence on the date of enactment.)

It also was announced in the June Notice that three dockets had been established to receive comments on the question of whether a rulemaking proceeding should be instituted to address three other classes of exemptions: (1) for so-called "load-balancing" facilities which burn oil as their alternative fuel; (2) for "load-balancing" facilities that burn coal as their alternative fuel; and (3) for entire states whose ratemaking practices accomplish the same goals as the incremental pricing program hereby established.

Many commenters urged that all of these exemption questions be answered as soon as possible, so that pipelines and distributors can determine exactly which customers will be subject to the regulations below, and so that pipelines can accurately predict the amount of surcharges their non-exempt customers will absorb and thus calculate the amount by which their PGA rates should be reduced.

We are sympathetic to the requests of pipelines that they be able to enter into the calculations required for the new "reduced PGA" approach with some degree of certainty. We will proceed as rapidly as possible on all outstanding questions, but believe that some estimating will be required by both pipelines and distribution companies.

As announced, we are issuing the Notice of Proposed Rulemaking in Docket No. RM79-48 with respect to new small boiler facilities. We will, as stated in that notice, hold a public hearing on the proposal as part of the public comment procedure and anticipate promulgating a final rule early in November. That final rule will, as is set forth in the Notice of Proposed Rulemaking, be subject to Congressional review.

We also are issuing notices in Docket Nos. RM79-45 and RM79-46 stating that rulemaking proceedings will not be instituted in either of those dockets. The rationale for our determinations in each are set forth in the respective notices.

Finally, by notices of August 22, 1979 (44 FR 50063, August 27, 1979) and September 10, 1979 (44 FR 53178, September 13, 1979), we extended the comment period in Docket No. RM79-47. As we have stated previously, we

<sup>3</sup> See, e.g., H.R. Rep. No. 95-1752, 95th Cong., 2d Sess. 102-103, 112-113 (1978); 124 Cong. Rec. S14,957 (daily ed. Sept. 12, 1978) (remarks of Sen. Talmadge).



believe states cannot make informed comments on the question of state-wide exemptions until they know the details of the regulations adopted in this docket (RM79-14) and its companion, Docket No. RM79-21, both of which are issued today. A separate notice will be issued in the near future stating the date until which comments will be accepted in Docket No. RM79-47. We intend to move expeditiously on Docket No. RM79-47 once the period for receipt of comments has closed.

Many commenters urged that if all exemption questions could not be answered concurrently with adoption of regulations in Docket Nos. RM79-14 and RM79-21, provisions be included in the regulations in this docket (RM79-14) to permit interim exemptions. It was argued that such exemptions should be allowed until finalization of the Commission's position on outstanding exemption questions, provided the owner of the facility desiring the exemption filed a bond or undertaking in an amount established by the Commission to cover its liability should the facility ultimately be determined not to be eligible for an exemption.

We have given serious consideration to the concept of an interim exemption, but have determined not to incorporate such a procedure in the regulations hereby adopted. We believe an interim exemption procedure would create the potential for abuse and that high priority and exempt industrial users, as well as other non-exempt industrial users, might never be made whole if it were ultimately found that an interim exemption had been unjustifiably obtained.

As we have stated previously, any party may file for an adjustment of any of the regulations below under the procedures set forth in § 1.41 of the Commission's regulations in Title 18, Code of Federal Regulations. These regulations implement section 502(c) of the NGPA, as it relates to exceptions to certain NGPA regulations.

The Commission has the capability of processing § 1.41 petitions rapidly and believes that it will be able to handle any such petitions which arise due to the regulations below in an expeditious and equitable manner.

## VII. Submetering

### A. Proposed Treatment

The June 5th Notice described the background of the Commission proposal incorporated therein to require that volumes of natural gas used for exempt purposes within an industrial boiler fuel facility be measured by submeters in order not to be incrementally priced.

Under the proposed procedure, exempt volumes could be determined by submetering either exempt or nonexempt volumes, if the volume of exempt usage would thus be based on verifiable meter readings.

The submetering proposal was based on the following conclusions: that considerable in-plant submetering already is being done; that submeters can be purchased and installed at reasonable cost; and that the alternative of using estimates on a long-term basis, with verification of same performed by data verification committees, was not viable.

The June Notice also set forth the Commission's belief that end-users should own and bear the cost of submeters, since the end-users will benefit from submeters in that submeters will permit them to obtain an exemption from incremental pricing for a portion of their natural gas consumption. Further, the Commission concluded that ownership by end-users would maximize the tax benefits which would accrue from new installations of submeters.

As one aspect of its proposal, the Commission indicated that it might be necessary to rely on estimates in the short-term, in order to allow time for the installation of all submeters which would be required.

### B. Comments Received

Considerable comment on submetering was received both at the June 27, 1979, hearing in this docket and in the written comments submitted in response to the Notice of Proposed Rulemaking.

Numerous commenters set forth the argument that submetering should not be mandated until the regulations implementing Phase II of the incremental pricing program are finalized, since those rules may obviate the need for many submeters which would be installed for Phase I purposes.

Further, several parties expressed serious concern whether the number of meters required could be obtained and installed by the proposed incremental pricing implementation date of January 1, 1980.

Several commenters argued that natural gas used for a non-boiler fuel purpose is exempt from incremental pricing by the terms of the statute itself. Therefore, these commenters argue, end-users should not have to bear any cost in order to receive the exemption from higher prices.

The cost and administrative burden which would be imposed on the natural gas industry and industrial consumers by a submetering requirement was

discussed extensively. Several commenters provided statistical data and cost estimates for submetering in specific instances which indicate that on average, the unit cost per meter, including site preparation, related piping, etc., may be about \$10,000, or twice the estimate set forth in the June Notice.

Further, it was generally claimed that the extent of in-place submetering is not nearly as widespread as envisioned in the Notice. Some commenters alleged that requiring installation of submeters will impair efforts to market natural gas and may induce some boiler fuel users to forego using natural gas (where such use is a small fraction of total use).

Some commenters argued that requiring submeters (paid for by the users) would raise the cost of gas above alternate fuel costs. Commenters also stated that in some instances it is physically and/or economically impractical to install submeters, due to the configuration of the particular industrial facilities in question. Where by-product gases from other processes are mixed with natural gas in order to fuel a boiler, it was argued that it would be most difficult, if not impossible, to install a submeter which could measure the volume of natural gas thus being used.

Also, commenters argued that in the instances where the boiler output (steam and/or electricity) is used for both exempt (such as agricultural) and non-exempt purposes, submetering would be useless because other techniques must be employed to determine the exact exempt and non-exempt volumes.

Further comment was offered to the effect that even if submeters already exist, or are subsequently installed, it does not follow axiomatically that such meters are suitable for billing purposes. The customer and the supplier might have differing requirements on such factors as pressure, temperature and Btu corrections. Other problems which were noted included the problems attendant to regular verification of the meter, which party would be responsible for reading and upkeep of the meter, etc. A number of commenters opposed our tentative decision that end-users should bear the cost of submetering.

Many of the commenters who opposed a mandatory submetering requirement proposed in the alternative that exempt or non-exempt volumes be determined and attested to by qualified engineers on a monthly basis, or that such volumes be determined by agreement between the supplier and the purchaser. Those commenters which urged the use of estimates argued for certified submissions rather than the

formerly advocated use of data verification committees. Some commenters suggested that curtailment case data be used to determine the volumes of exempt and non-exempt purchases.

A few commenters believed that the proposal raised a "Catch 22" problem with respect to small boilers. These commenters interpreted the regulations to require installation of a submeter in order to obtain an "under 300 Mcf per day" exemption. Commenters noted that once the low usage was established, however, the submeter would no longer be needed, since the facility would be exempt from the program.

#### C. Treatment Adopted

Based on our current knowledge regarding submetering, the Commission believes the approach of requiring installation of submeters is the only one available to insure implementation of the program in the manner which was envisioned by the Congress.

We are persuaded, however, that it is appropriate to extend the submetering requirement until such time as the scope of the Phase II regulations of the incremental pricing program is established. We cannot now speculate on whether the yet-to-be written section 202 rule will reduce the need for submetering. That rule may even expand the need for submeters.

The Phase II regulations, required by section 202 of the NGPA, must be submitted to the Congress for its review. By the statute, the Congress must be allowed 30 days for review, which is to be 30 days of continuous session as defined in the statute. In order to allow ample time for 30 days of continuous session following May 9, 1980, and to allow for a period of time for the purpose described below following that date, we have determined to require installation of submeters by November 1, 1980, unless the Phase II regulations make alteration of that requirement appropriate.

If Congress should disapprove the Phase II regulations which the Commission must promulgate, boiler fuel users would have a period of at least 30 days, based on our calculations, in which to install needed submeters. As set forth in the regulations below, a purchase order for the required submeters would satisfy the November 1, 1980 installation requirement.

Therefore, the regulations below permit the use of estimates and/or supplier-customer agreements until November 1, 1980. Absent the installation of operational submeters by November 1, 1980, or the acquisition of a purchase order for submeters by that

date, all volumes sold to a non-exempt industrial boiler fuel facility on or after November 1, 1980, will be deemed subject to incremental pricing.

We accept that the estimate on the cost of a submeter which was included in the June 5th Notice may not have been illustrative of most situations and therefore may have been lower than what the cost generally will be. However, even accepting an estimate twice that of ours, and not taking into account the offsetting tax benefits, the payback term for such installations would be only about 100 days for a customer which thereby received a 10 cents per Mcf reduction in the cost of gas for exempt uses of approximately 1000 Mcf per day.

The generally short payback times which reasonably may be expected, and the advantage of having exempt and non-exempt volumes determined on a uniform basis to the greatest extent possible, in our opinion justify the requirement for installation of submeters.

We believe that the capital cost of submeter installations should be borne by the consumer, since submetering will serve to quantify the exempt volumes entitled to lower rates. We have not addressed the question of who should actually own the submeter, and thus leave this question to the consumer and supplier, or the regulatory body which has jurisdiction. We further believe that submeter installations should be subject to the natural gas supplier's accuracy and safety standards, security control and access as needed for reading and maintenance. To do otherwise would create the potential for undue discrimination against other consumers. However, none of the Commission's views on these questions have been included as mandatory requirements in the regulations. These questions are thus left to suppliers and customers to resolve as is appropriate and workable.

This Commission has determined that the long-term use of estimates would not be a viable regulatory approach for establishing volumes of gas used for non-exempt purposes. The primary weakness in the use of estimates is that a strong motivation would exist to estimate low for non-exempt consumption (and therefore high for exempt consumption). It is equally apparent that a multiplicity of estimating techniques would be employed, reflecting both the preferences of numerous individual estimators and a wide variety of individual fact situations.

Similarly, suppliers and their customers could be strongly motivated to agree to low non-exempt volume

figures, since by so doing costs that otherwise would be borne by non-exempt sales would be shifted to others, including customers of other distributors and other pipelines, and in other states.

Further, we foresee a large verification burden if either the engineering estimate or the seller-buyer agreement approach were adopted on a long-term basis. By requiring the installation of submeters, we believe questions of motivation will be largely avoided and verification burdens will be minimized.

The use of curtailment case data to determine exempt/non-exempt breakdowns would not be appropriate. In most instances, such data reflect past base period conditions and in our opinion should not be used as a basis for current billings.

As stated above, estimates or supplier/customer agreements will be utilized for the period January 1, 1980 through October 31, 1980. The regulations below provide that as of November 1, 1980, all volumes claimed to be used for exempt purposes must be based on appropriate submeter readings. We believe that even in those situations where a mixed stream is fed into a boiler, or where the output of a boiler is used for both non-exempt and exempt purposes, the installation of submeters would aid in arriving at a more accurate estimation of the non-exempt usage. We therefore encourage installation of submeters at strategic points which would allow for closer estimates than otherwise could be obtained. This aspect of the submetering problem will be discussed, however, in detail at the technical conference to be held in early November, as described below.

Those commenters which suggested a "Catch 22" problem with respect to small boilers perceived a problem which does not exist. The proposed regulations, and final regulations below, provide for the "under 300 Mcf" exemption on the basis of attestations for 1977.

#### D. Technical Conference

The above described approach for quantifying volumes which are consumed for boiler fuel in conjunction with volumes which qualify for exemption from the incremental pricing program represents the determination this Commission has reached following consideration of the entire record developed in this docket.

However, we are seriously concerned by several of the arguments which have been voiced in opposition to a mandatory submetering requirement. In particular, we are concerned about

imposing a disproportionately large cost on industrial end-users which would serve no purpose other than to meet the requirements of this program. We are also seriously concerned about those situations as to which it has been alleged submeters could not provide an indication of the volume of natural gas actually consumed as non-exempt boiler fuel.

The regulations set forth below will permit the use of estimates or supplier/customer agreements in order to calculate non-exempt usage for the period January 1, 1980 up until the required installation date of November 1, 1980. We believe it would be useful for all concerned parties and for this Commission to develop standardized methods by which such estimates will be made. It is our intention to issue guidelines on such standardized procedures prior to the date on which the first set of estimates will have to be made under the regulations below.

In order to aid us in the development of these guidelines, we will hold a technical conference on the topic of submeters. Further, if the information submitted at this conference should indicate that revisions should be made to our submetering requirement, we will propose to amend the regulations hereby adopted in an appropriate manner.

The technical conference will be held in Chicago, Illinois in early November. The exact date, time and location of the conference will be announced in the near future. The Commission technical staff will chair a panel, and it is hoped that a round-table discussion format can be used.

It is our hope that technical personnel representing industrial end-users will attend the conference and offer as much detailed information as possible to Commission staff on the many aspects of submetering which have been raised thus far in this proceeding. Additionally, we request detailed recommendations concerning the use of estimates for quantifying exempt and non-exempt volumes, in particular as to how such estimates could be standardized and verified. We also intend to invite representatives of meter manufacturing firms to attend this conference.

Natural gas suppliers which are included in the incremental pricing program are hereby requested to assist the Commission in the compilation of a list of industrial users and manufacturers of meters who should be invited to this technical conference. The Commission will send invitations to as many industrial end-users of natural gas and meter manufacturing firms as it is able to identify, and thus requests assistance in the identification effort.

The invitations which will be sent will specifically request that those representatives of end-users who attend the conference be persons who are familiar with day-to-day plant operations and who can offer comments based on actual experience as to the advantages and disadvantages, and attendant difficulties of installing submeters in industrial facilities.

Finally, the Commission hereby wishes to make clear its intention, should this technical conference result in the acquisition of no further information than it has at present on the subject of submeters, and should the Phase II regulations not obviate the need for submeters, to proceed with allowing the submetering requirement incorporated in the regulations below to become fully effective on November 1, 1980.

#### VIII. Direct Sales

The proposed regulations set forth in the June 5th Notice provided that the MSAC of an industrial user served directly by an interstate pipeline would be calculated as the difference between the contract price the user was paying and the alternative fuel price ceiling applicable to the facility. The Notice also, however, set forth five alternative formulas for the calculation of the MSAC of a direct sale customer of an interstate pipeline.

The Commission stated that it was soliciting comment on the question and the six alternatives proposed, and that it had not made a preliminary determination as to which approach was appropriate or whether there existed any jurisdictional questions with respect to any of the alternatives.

Many comments were submitted on this question. Pipeline companies that have direct sale non-exempt industrial customers argued that the Commission's regulations cannot utilize anything other than the contract rate for the calculation of surcharges as to such users. These commenters argued that incorporation of any of the five alternative formulas into the regulations would result in *de facto* rate setting, a function outside the ambit of Commission authority.

Commenters who opposed the choice of contract prices for MSAC calculations argued that the question is not one of rate-setting. These commenters argue that the Commission is required to prescribe a method whereby incremental gas costs will be passed through to industrial users who are served directly by interstate pipelines. These commenters assert that if the Commission were to adopt the "contract price" approach, incremental gas costs would not be passed through to direct

sale customers. Rather, these commenters allege that interstate pipelines would simply increase their contract prices to the applicable alternative fuel price ceilings, and any increase that would otherwise have represented an incremental pricing surcharge would then represent profit to the pipeline.

In such a scenario, incremental gas costs would first be passed through to industrial customers of sale-for-resale customers of the pipeline, and then to all customers when the non-exempt industrial customers could no longer absorb surcharges. This would result in exempt customers ultimately bearing costs which Congress intended should be borne by industrial users.

The Commission has given very serious consideration to this question. The Commission's deliberation has resulted in a determination that it has the authority to insure the passthrough of incremental gas costs to direct customers of interstate pipelines.

The Commission gives great weight to two provisions of Title II and believes such provisions make clear that Congress intended the Commission have authority to take such action as is necessary in order to insure that the full intent of Title II is carried out.

Section 204(c)(2)(B), as well as other provisions, states that surcharges are to be passed through to direct as well as indirect industrial customers:

(2) SURCHARGE PASSTHROUGH.—The rule required under section 201 (including any amendment under section 202) shall provide

(B) one or more methods for imposing such surcharge on the rates and charges of such pipeline applicable to any volume of natural gas delivered, during the calendar period involved, for industrial use to any incrementally priced industrial facilities served directly by such interstate pipeline and to incrementally priced industrial facilities served indirectly through any other interstate pipeline or any local distribution company.

In addition, Section 204(c)(2)(D) states as follows:

(D) EXCEPTION.—The methods prescribed under subparagraphs (B) and (C) need not require—

- (i) elimination or reduction under subparagraph (B) of the surcharge with respect to any specific deliveries of natural gas; or
- (ii) the increase under subparagraph (C) of the surcharge generally applicable due to any adjustment under subparagraph (B), if the Commission determines that to do so would be impracticable or unnecessary to carry out the purposes of this title.

The Commission interprets section 204(c)(2)(D) to place in it the authority to take whatever action may be necessary.

including not to permit a reduction in the surcharge to a particular industrial facility, in order to "carry out the purposes" of Title II.

The Commission thus believes that the statute does not state that the surcharge must always be reduced in order to bring the price of gas down to the alternative fuel price ceiling with respect to a particular user. The Commission takes this view because it believes that in a situation where the Commission determines that a surcharge of a certain magnitude should continue to be passed through to an industrial user, it would be within the power of the customer not to agree to a higher contract price.

The Commission agrees in theory with the comments which argued that Title II simply requires an alteration of the Commission's traditional cost-allocation methods between jurisdictional and non-jurisdictional customers. Pursuant to Title II, gas cost acquisition costs can no longer be allocated on a strictly volumetric basis. Title II significantly amends the manner in which gas acquisition costs are to be allocated, and requires that certain portions of those costs be allocated to industrial customers not exempted from the program, regardless of whether those customers are served by the pipeline indirectly through local distribution companies, or served directly by the pipeline itself.

The Commission's deliberation on the direct sales question has resulted in a determination to adopt the regulations which were proposed with respect to this area. Thus, the Commission envisions that the MSAC of a non-exempt industrial customer served by an interstate pipeline will be calculated as the difference between the contract price which has been negotiated by the customer and the pipeline and the alternative fuel price ceiling (with appropriate adjustments for taxes) applicable to the customer's facility.

The Commission has chosen this approach for several reasons. First, we have insufficient data on the direct sales market—due to the fact that this Commission did not have rate-setting jurisdiction with respect thereto under the Natural Gas Act—to allow us to conclude whether the potential for circumvention of the intent of Title II is real or merely theoretical. If real, we also lack data on the extent of the potential and thus whether the problem warrants adoption of a regulatory solution.

If a solution is warranted, the record in this proceeding clearly indicates that further information and discussion is needed before a regulation could be

promulgated which would be both administrable and equitable.

However, we intend to monitor the activity in the direct sales market over the next several months, and if it is found that contracts are being negotiated in an abnormal manner in order to eliminate potential surcharge absorption capability, the Commission may take action to prevent such a circumvention of the intent of Title II.

The Commission is also looking into whether a potential such as that described with regard to direct sale customers of interstate pipelines exists with respect to industrial customers of some local distribution companies. If such a situation should be found, the Commission will consider taking appropriate action with regard thereto.

## IX. Scope of the Regulations

### A. Definitions

Some commenters suggested that the definition of "industrial facility" which was proposed in the June 5th Notice was not broad enough to include all operations which are commonly considered to be industrial in nature. The definition proposed would have included only "any facility which primarily changes raw or unfinished materials into another form or product." It was noted that this definition would not include facilities engaging in extraction or processing activities which do not necessarily result in another "form" or a different "product."

We agree that our proposed definition was not sufficiently broad. Therefore, we have adopted the following definition of "industrial facility" for inclusion in § 282.103 of the regulations below:

"Industrial facility" means any facility engaged primarily in the extraction or processing of raw materials, or in the processing or changing of raw or unfinished materials into another form or product.

Several commenters also raised queries about the exact definition of a "facility". The NGPA does not set forth a definition of the term, nor did the proposed regulations endeavor to define the term. We believe, however, that it would be useful to include a definition of this concept so as to correct any confusion or misunderstanding that a single boiler could qualify as a facility. We believe a definition of "facility" will be especially helpful for the application of the rule proposed in Docket No. RM79-48 with respect to small boilers constructed since the date of enactment of the NGPA.

Therefore, we have included in § 282.103 of the regulations below a definition of facility as follows:

"Facility" means all buildings and equipment located at the same geographic site which are commonly considered to be part of one plant, mill, refinery, or other industrial complex.

### B. Exempt End-Uses

Several commenters discussed the point that Title II is drafted in a somewhat confusing manner with respect to its coverage and the exemptions granted thereto. Specifically, the provisions of Title II are only to apply to "boiler fuel use of natural gas by any industrial boiler fuel facility." The statute goes on, however, to set forth specific exemptions from the requirements of the statute for "any school, hospital, or other similar institution"—facilities which are not commonly thought of as industrial and thus would be outside the scope of the statutory provisions without the specific grant of an exemption.

Because the somewhat inconsistent treatment in the statute leads to a certain amount of confusion, several commenters urged us to set forth specifically that the regulations for the incremental pricing program are not applicable to the use of natural gas in facilities which are not industrial facilities.

We agree that the statutory structure can lead to confusion and that it would be helpful to clarify that the regulations below do not apply to the use of natural gas for uses other than boiler fuel use by industrial facilities. Thus, we have revised § 282.203 of the regulations below to include a provision stating that the incremental pricing regulations apply only to industrial facilities which use natural gas as a boiler fuel.

### C. Ignition Fuel and Flame Stabilization

Several commenters raised the question of whether gas consumed in boilers for ignition fuel and flame stabilization (IF&FS) purposes should be treated as boiler fuel under incremental pricing. The comments noted the pendency of IF&FS issues in other proceedings (e.g., El Paso Natural Gas Co., Docket No. RP78-2 (Ignition Fuel and Flame Stabilization)). The basic issues in those proceedings, however, differ from the issue here. Those proceedings are concerned mainly with whether such usage should be accorded high priority (process use) status, and with alternate fuel capability and conversion costs for curtailment purposes.

In those proceedings, it is argued that IF gas is used for one of three purposes: to achieve initial combustion of another fuel in pilot ignitions; to warm up the boiler to enable safe and complete

ignition of a less volatile primary fuel (usually oil or coal); and to maintain temperature in non-base load units.\* The first two uses are intermittent; the third is longer term, but it is not needed after firing by another fuel commences.

FS gas, by contrast, is used to avoid flameouts resulting from momentary breaks in the supply of another fuel, which can pose operational and safety problems. The use of gas for flame stabilization is a continuous use during boiler operation.<sup>6</sup>

The record in Docket No. RP72-8 (IF&FS) reveals generally that IF gas consumption is small by comparison to FS consumption. The latter, however, often is a significant fraction—25 percent or more—of total gas consumption.<sup>7</sup> The same record reveals that IF&FS gas was used by approximately 130 customers served directly and indirectly by El Paso Natural Gas Company. The preponderance of volume, however, was used in electric utility boilers.

We believe that regardless of our eventual resolution of the curtailment case issues, IF&FS gas should not be summarily exempted from incremental pricing when burned in industrial boiler fuel facilities in quantities, by persons, and for purposes which are not statutorily exempt. To treat IF&FS gas otherwise would lead us to similarly exempt warmup, temperature maintenance and pilot fuel in straight/natural gas fired boilers as well. Such a result would, we believe, be contrary to the letter and spirit of the statute. Furthermore, since FS gas contributes meaningfully to the total energy input to operating boilers, it should be regarded as boiler fuel.

Our conclusion with respect to these two uses of natural gas is, of course, a generalized one. Any user who believes that his situation merits special consideration may file a request for an adjustment to these regulations pursuant to § 1.41 of the Commission's regulations.

#### X. Refunds

One commenter noted that the proposed regulations did not address the question of how jurisdictional refunds attributable to periods prior to January 1, 1980, but which had not been paid as of that date, should be treated. The comment further noted that it appeared that non-exempt customers would not receive any benefit from such refunds under the "reduced PGA" approach.

This result would occur because non-exempt customers, according to the majority of data provided to us, will be priced at the applicable alternative fuel price ceiling for their use of natural gas from the inception and throughout Phase I of the program. If refund payments were simply used to reduce the 191 account (as has been done in the past) the PGA rate applicable to all customers would be reduced. Non-exempt customers, however, would then simply bear a larger surcharge and effectively not receive the benefit of the refund.

The Commission has determined that such a result would be inequitable to non-exempt customers and that, in contrast, non-exempt customers should receive the full amount of refunds to which they are entitled with respect to gas service purchased prior to implementation of the incremental pricing program.

Therefore, the Commission has included a provision in the regulations below to deal with the jurisdictional portion of refunds applicable to the period prior to January 1, 1980, which are ultimately determined to be payable for sales to non-exempt industrial users. One possible regulatory solution would have been to revise the formulas to be used for the calculation of MSAC's. This approach, however, would have resulted in further complexity in a formula which is already highly technical. Moreover, we believe the problem of refunds will be of limited duration and it would thus be inappropriate to solve the problem by amending regulations which will have a longer applicability.

Therefore, it appears that a separate regulatory provision to address this problem is most appropriate. Accordingly, a new § 282.506 is included in the regulations hereby adopted. This regulation requires that the jurisdictional portion of refunds applicable to non-exempt industrial facilities determined after December 31, 1979, to be applicable to periods prior to January 1, 1980, plus the interest applicable thereto, shall be paid in a lump-sum payment to the suppliers of the non-exempt facilities on the dates prescribed by the Commission orders which require the refunds.

The lump-sum payments are to be made to the sale for resale customers for the benefit of their non-exempt customers to whom the sales for which refunds are ordered were made. The amounts of the refunds thus payable will be calculated on the basis of the sales made to the non-exempt customers during the period when the supplier rates which give rise to the refund were in effect.

The treatment of the jurisdictional portion of all refunds applicable to periods after January 1, 1980, will be governed by section 154.38(d)(4)(vii) of the Commission's regulations.

#### XI. Filing Requirements

The proposed regulations contained a provision to require the filing of informational tariff sheets which would reflect the incremental pricing surcharges projected for non-exempt customers and used in calculating "reduced PGA" rates. The final regulations below incorporate this filing as a mandatory requirement (not limited to informational purposes) in § 282.602(a)(1)(ii). These filings will permit commission staff to audit billings which are calculated in accord with the optional billing procedure for pipelines described in section IV. B. above.

Several commenters objected to the provision set forth in proposed § 282.602(d)(2) which would require the filing of information as to each source of supply by API well identification number. The Commission recognizes that such a requirement will result in the filing of significantly more detailed information than is filed at present. However, the Commission believes that only this information will enable staff to audit the incremental gas costs which are used in calculating "reduced PGA's". Staff anticipates performing spot audits of the revised tariff sheets.

Pipelines are hereby informed that no specific format is prescribed for the submission of this well-by-well information, and that submission of a copy of a company's computer print-out with this information will satisfy this requirement.

Further, one change has been made to the regulations as proposed in that the well-by-well information is only required to be submitted if it is available. The Commission believes that this information is in fact in most instances kept as a matter of course.

#### XII. Environmental Issues

A few commenters continue to urge that a complete Environmental Impact Statement should be prepared with respect to these regulations. As stated in our June 5th Notice, an Environmental Assessment of these regulations was prepared and the conclusion was reached therein that the proposed regulations would not be a major Federal action significantly affecting the quality of the human environment.

None of the comments submitted in response to the June 5th Notice have led us to conclude that our original position on this issue warrants further consideration or a change in our original

\* See: Administrative Law Judge's September 15, 1978, Initial Decision, mimeo pp. 15-16.

<sup>6</sup> *Supra*.

<sup>7</sup> Exhibit No. 27; the consumption of other fuels is not shown.

conclusion. Thus, an Environmental Impact Statement with respect to these regulations will not be prepared.

### XIII. Special Circumstances

We have noted several times in this preamble and in its companion document in Docket No. RM79-21 that § 1.41 of the Commission's regulations provides procedures whereby individual parties may request an adjustment to the regulations below if it is believed these regulations will result in special hardship, inequity, or an unfair distribution of burdens.

We also note the recent adoption by the Commission of interim regulations which provide procedures whereby individual parties may seek an interpretation of the NGPA or any rule or order issued thereunder. These regulations appear at 18 CFR 1.42, and were issued on August 7, 1979 in Docket No. RM79-65 (44 FR 48171, August 17, 1979). Under these regulations, an interpretation will be issued only if the action which forms the basis for the request is completed or is likely to occur. Interpretations will generally not have precedential value and will be issued by the General Counsel of the Commission.

### XIV. Effective Date

In the June 5th Notice we proposed that the incremental pricing regulations included in Docket Nos. RM79-14 and RM79-21 would become effective September 1, 1979. We have determined, however, to make the regulations effective as of November 1, 1979. The regulations still require that incremental gas costs begin to be booked in by natural gas suppliers as of January 1, 1980, and that incremental surcharges commence being billed for usage during the month of January, 1980.

The effective date of the incremental pricing regulations governs the date on which the price of certain categories of high-cost natural gas will be decontrolled, as set forth in section 121(b) of the NGPA. Further, section 201(a) of the NGPA prescribes that regulations to implement Title II must be made effective no later than 12 months following enactment of the NGPA, i.e., November 9, 1979. We believe it is consistent with the scheme envisioned in the statute for establishment of the incremental pricing program and the decontrol of certain types of high-cost natural gas to make the regulations below effective as of the first day of the month in which the mandatory effective date falls.

The sections of the regulations below governing the obtaining of exemptions, sections 282.201 through 282.206, are

being treated in a manner different than the majority of the regulations and are being made effective October 15, 1979. It is necessary that exemption affidavits be mailed out by natural gas suppliers to their customers by that date in order that the "reduced PGA" rate can be calculated by December 1, 1979. As required by section 553(d) of Title V of the United States Code, the Commission thus finds that good cause exists to make these six sections of the regulations below effective October 15, 1979, less than 30 days subsequent to publication of the regulations.

### XV. Time Line

In our June 5th Notice, we included a summary time line of the events which would take place under the regulations in this docket and its companion, Docket No. RM79-21. A number of comments were submitted on various aspects of the time line and the suggestion made that more details should be included therein. Obviously, also, the new effective date for the regulations requires a significant revision of the time line which was proposed.

Set forth below are two separate time lines which we believe will be of aid to all parties in implementing these regulations in the most timely manner possible.

The first time-line is similar to that included in the June 5th Notice; it sets forth the major steps which must take place under the regulations. The second time-line describes the steps which must take place on a monthly basis in order to arrive at monthly surcharges pursuant to § 282.504 of the regulations.

#### A. Time Line for Implementation of Program

October 3, 1979—Exemption affidavits and alternative fuel price ceiling affidavits available through the Office of Public Information.

October 15, 1979—Sections 282.201-282.206 of the regulations become effective. Natural gas suppliers mail exemption affidavits to all industrial boiler fuel facilities which were not determined to be exempt from an examination of the natural gas supplier's own records.

November 1, 1979—Major portion of regulations become effective. In accordance with the natural gas suppliers' requests as contained in the suppliers' mailings of October 15, exemption affidavits are returned to natural gas suppliers by industrial boiler fuel facilities claiming an exemption in whole or in part.

November 1, 1979—Interstate pipelines file revised PGA provisions and incremental pricing surcharge provisions; pipelines and local distribution companies determine projected MSAC's.

November 15, 1979—Local distribution companies notify supplying pipelines of

their projected MSAC's for the period commencing January 1, 1980.

November 30, 1979—Interstate pipelines file reduced PGA tariff sheets and estimated incremental pricing surcharge tariff sheets for the period commencing January 1, 1980.

December 20, 1979—Incremental pricing ceilings for January, 1980 are published. January 1, 1980—Effective date of tariff sheet filed November 30, 1979. Incremental gas acquisition costs begin to be booked by natural gas suppliers.

January 15, 1980—Natural gas suppliers file lists of non-exempt industrial boiler fuel facilities with the Federal Energy Regulatory Commission and with state or local commissions having jurisdiction.

January 2, 1981—Natural gas suppliers review customer lists and list of non-exempt industrial boiler fuel facilities filed on January 15, 1980 to determine which facilities should be included on January 15, 1981 list.

January 15, 1981—Natural gas suppliers file updated lists of non-exempt industrial boiler fuel facilities with the Commission and with state or local commissions having jurisdiction.

#### B. Surcharge Billing Time Line

This time line assumes that needed information will be communicated by distributors to supplying pipelines and between pipelines by telephone, and that such information will later be confirmed in writing. In the outline, Months A, B, C and D are any four consecutive calendar months.

The time sequence set forth in items 1-14 does not reflect the additional time which will be available to pipeline and distribution companies if they choose to follow the two optional billing procedures included in the regulations. Items 15 and 16 do reflect the optional billing procedures.

1. Distributors read meters of non-exempts from the 21st day of Month B to the 31st day of Month B.

2. Distributors calculate MSAC for each non-exempt customer based on:

(a) Month B rates,

(b) Month B alternative fuel price ceilings published on the 20th of Month A, and

(c) consumption based on meter readings taken from the 21st to 31st day of Month B.

3. Distributor totals MSAC's of all non-exempt customers.

4. Distributor allocates MSAC between suppliers based on the Month B purchase volumes.

5. Distributor notifies supplier of Month B MSAC on or about the 4th of Month C.

6. Pipelines with direct sales will follow the same reading and MSAC calculation procedures listed in items Nos. 1 to 4.

7. Pipeline totals MSAC on its system for Month B.

8. Pipeline allocates the Month B MSAC between suppliers based on Month B purchase and production volumes.

9. Pipeline notifies its suppliers of their share of the Month B MSAC about the 6th of Month C.

10. Subsequent pipeline to pipeline upstream movement of data should take one day.

11. The most upstream pipeline totals all the MSAC on its system for Month B.

12. The most upstream pipeline compares this total MSAC for Month B to its total incremental costs for Month B.

13. The most upstream pipeline notifies its customers of the amount of surcharge each will be billed for Month B (based on the lesser of MSAC or incremental costs determined in #12).

14. This notification continues from pipeline to pipeline down to the most downstream pipeline. This information must reach the most downstream pipeline on or about the 8th of Month C in time for the regular Month B bill on or about the 10th of Month C.

15. On or about the 10th of Month C:

(a) Pipelines may either:

(1) render their regular bills for Month B along with the actual surcharge applicable to Month B; or

(2) in the case of sale-for-resale transactions, render their regular bills for Month B along with a surcharge which consists of the net of:

(i) the projected incremental surcharge for Month B which was filed with the Commission and which was used in determining the "reduced PGA", and

(ii) the net difference between:

(A) the projected surcharge billed for Month A, and

(B) the actual surcharge payable, as computed in accordance with the regulations, for Month A.

(b) Distributors may either:

(1) render their regular bills for Month B along with the actual surcharge applicable to Month B; or

(2) render their regular bills for Month B, along with a surcharge which consists of the net of:

(i) the alternative fuel price ceiling, plus applicable taxes, applicable to the facility for Month B, and

(ii) the net difference between:

(A) the alternative fuel price ceiling, plus taxes, billed, and

(B) the actual surcharge payable, as computed in accordance with the regulations, for Month A.

16. On or about the 10th of Month D:

(a) Pipelines will render their next bills, computed in the manner

prescribed above, and if they billed in the optional manner for sale-for-resale customers, they will net the difference between the estimated surcharge billed in Month C and the actual surcharge that should have been billed in Month C for Month B's consumption. This over or under amount billed in Month C will then be netted against the estimated surcharge billed in Month D.

(b) Distributors will render their next bills, computed in the manner prescribed above, and if they billed in the optional manner, they will net the difference between the alternative fuel price ceiling, plus taxes, billed in Month C and the actual surcharge that should have been billed in Month C for Month B's consumption. This over amount billed in Month C will then be netted against the alternative fuel price ceiling, plus taxes, billed on Month D.

(Natural Gas Act as amended, 15 U.S.C. 17 *et seq.*; the Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.*; the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Title 18 of the Code of Federal Regulations is amended by revisions in Parts 154, 201, 204 and by the addition of a new Part 282, to read, in part, as set forth below.

By Direction of the Commission.

Lois D. Cashell,  
Acting Secretary.

#### Appendix A

[Note.—This appendix will not appear in the Code of Federal Regulations.]

Federal Energy Regulatory Commission,  
Washington, D.C. 20426.

Exemptions From Incremental Pricing for Certain Categories of Industrial Boiler Fuel Use of Natural Gas.

Docket No. RM79-14.

Participation is Voluntary.

Copies of executed exemption affidavits filed with the Commission shall be available through the Office of Public Information, Room 1006, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Please Read Before Completing This Affidavit.

#### Purpose

The Natural Gas Policy Act of 1978 (NGPA) provides that natural gas used as boiler fuel by any industrial boiler fuel facility will be subject to incremental pricing surcharges unless exempted. The statute provides for certain exemptions from these incremental pricing surcharges. To be wholly or partially exempt from incremental pricing surcharges the boiler fuel must be consumed for one of the statutorily exempt uses. This affidavit serves the purpose of identifying those natural gas uses within your facility which are entitled to a full or partial statutory exemption from incremental pricing

surcharges but which could not be identified as exempt through review of the records of your natural gas supplier.

#### NOTICE

If you do not complete and return this affidavit setting forth your claim to a total or partial exemption, ALL gas sold to your facility will be subject to incremental pricing surcharges. Additionally, if circumstances or ownership change, you should immediately notify your natural gas supplier(s) of the change so that the correct amount of surcharge may be calculated as to your gas use or, if needed, you can complete a new exemption affidavit to obtain a new or changed exemption from the incremental pricing program. Failure to report changes can subject your facility to civil and criminal penalties under Section 504 of the Natural Gas Policy Act of 1978.

#### GENERAL INSTRUCTIONS

If you claim an exemption from incremental pricing surcharges for all, or a portion, of the gas used by your facility which has been identified by your natural gas supplier as a potentially non-exempt industrial boiler fuel facility, this affidavit should be completed and signed, under oath, by a responsible official associated with the facility. A separate affidavit must be filed for each facility for which a total or partial exemption from incremental pricing surcharges is claimed.

The original and five copies of this affidavit should be submitted to:  
Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Also, one copy must be submitted to your natural gas supplier. Additionally, each industrial facility must retain such records, documents and data which formed the basis for the exemption claimed on this affidavit. Definitions which may be helpful in completing this affidavit are provided below.

If you have any questions concerning this affidavit contact Ms. Alice Fernandez on (202) 275-4406.

#### DEFINITIONS

(1) "Natural gas supplier" means an interstate pipeline or a local distribution company.

(2) "Local distribution company" means any person other than an interstate pipeline that receives gas directly or indirectly from an interstate pipeline and which is engaged in the sale of natural gas for resale or for ultimate consumption. A person is not considered as having received gas directly or indirectly from an interstate pipeline if the only service performed by an interstate pipeline for the purchaser is a transportation service.

(3) "Boiler fuel use" means the use of any fuel for the generation of steam or electricity.

(4) "Facility" means all buildings and equipment located at the same geographic site which are commonly considered to be part of one plant, mill, refinery, or other industrial complex.

(5) "Industrial facility" means any facility engaged primarily in the extraction or

processing of raw materials, or in the processing or changing of raw or unfinished materials into another form or product.

(6) "Industrial boiler fuel facility" means any industrial facility which uses natural gas as a boiler fuel.

(7) "Non-exempt industrial boiler fuel facility" means any industrial boiler fuel facility other than any such facility which has been exempted from the incremental pricing program in accordance with Part 282 of the Commission's rules and regulations.

(8) "Agricultural use" means any use of natural gas (a) which is certified by the Secretary of Agriculture under 7 CFR 2900.3 as an "essential agricultural use" pursuant to section 401(c) of the NGPA; or (b) which is used in the following textile manufacturing operations, limited as set forth below to the production or processing of natural fiber, as set forth in the *Standard Industrial Classification Manual—1972*:

Industry Sic No. and Industry Description—

- 220—Broad Woven Fabric Mills, Cotton.
- 222—Broad Woven Fabric Mills, Man-made Fiber and Silk (natural fiber processing only).
- 223—Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing).
- 224—Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-made Fiber (natural fiber processing only).
- 2257—Circular Knit Fabric Mills (natural fiber processing only).
- 2258—Warp Knit Fabric Mills (natural fiber processing only).
- 226—Dyeing and Finishing Textiles, Except Wool Fabrics and Knit Goods (natural fiber processing only).
- 228—Yarn and Thread Mills (natural fiber processing only).
- 2291—Felt Goods, Except Woven Felts and Hats (natural fiber processing only).
- 2293—Paddings and Upholstery Filling (natural fiber processing only).
- 2294—Processed Waste and Recovered Fibers and Flock (natural fiber processing only).
- 2295—Coated Fabric, Not Rubberized (natural fiber processing only).
- 2297—Nonwoven Fabrics (natural fiber processing only).
- 2299—Textile Goods, Not Elsewhere Classified (natural fiber processing only).

(9) "School" means a facility the primary function of which is the delivery of instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and non-educational activities are not included under this definition unless the latter activities are merely incidental to the delivery of instruction.

(10) "Hospital" means a facility the primary function of which is the delivery of medical care to patients who remain at the facility. Outpatient clinics or doctor's offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

(11) "Similar institution" means a facility the primary function of which is the same as the primary function of the facility to which it is compared.

(12) "Qualifying cogeneration facility" means a cogeneration facility which meets the requirements prescribed by the Commission pursuant to section 201 of the Public Utility Regulatory Policies Act of 1978.

BILLING CODE 4810-01-M



1.0 Name of Company or Organization: \_\_\_\_\_

2.0 Name of Facility: \_\_\_\_\_

3.0 Address: \_\_\_\_\_  
Number Street

City/Town \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

4.0 Name of Natural Gas Supplier: \_\_\_\_\_

5.0 Is your facility an "industrial boiler fuel facility", as defined in the "Definitions" of this affidavit?

(a)  No ... Sign and return affidavit.

(b)  Yes ... Continue to 6.0.

6.0 Was your facility in existence on November 9, 1978, and did your facility, on the basis of records, documents or data in your possession, consume no more than an average of 300 Mcf per day as boiler fuel during any calendar month of calendar year 1977?

(a)  Yes ... Sign and return affidavit.

(b)  No ... Continue to 7.0.

7.0 Is all of the natural gas consumed as boiler fuel at your facility for an agricultural use?

(a)  Yes ... Sign and return affidavit.

(b)  No ... Continue to 8.0.

8.0 Is your facility, in its entirety, any of the following:

(a) A school, hospital, or similar facility?

Yes  No

(b) Used for generation of electricity by an electric generation station owned by an electric utility?

Yes  No

(c) A qualifying co-generation facility?

Yes  No

If the answer is "yes" to any of the above, sign and return this affidavit. If the answer is "no", continue to 9.0.

9.0 Is a portion, though not all, of the gas consumed at your facility used as boiler fuel for an agricultural use?

(a)  Yes ... See "NOTICE" below.

(b)  No ... Continue to 10.0.

10.0 Is your facility, in part, but not in its entirety, any of the following:

(a) A school, hospital, or similar facility?

Yes  No

(b) Used for the generation of electricity by an electric generation station owned by an electric utility?

Yes  No

(c) A qualifying co-generation facility?

Yes  No

If the answer is "yes" to any of the above, see "NOTICE" below, sign and return this affidavit. If the answer is "no" to all questions in items 6.0 through 10.0, you should not return this affidavit.

\* \* \*

NOTICE

If you have responded affirmatively to question 9.0, the volume of natural gas used in your facility which shall be exempt from incremental pricing: (1) for the period January 1, 1980, through October 31, 1980, may be determined on the basis of submetering determinations, monthly estimates which are certified by a responsible company official or on the basis of an agreement executed by you and your natural gas supplier; and (2) for the period beginning November 1, 1980, shall be determined on the basis of and to the extent there are submeter reading records for each calendar month, as signed under oath by a responsible company official, which show the extent to which gas is consumed for an agricultural use and which are furnished to the facility's natural gas supplier as required by the supplier. Certified monthly estimates or the agreement with your supplier may be utilized for a period following November 1, 1980, if you have obtained a purchase order for all submeters which will be needed in your facility by November 1, 1980, and expect installation within a reasonable time period.

If you have responded affirmatively to any part of question 10.0, the volume of natural gas which shall be exempt from incremental pricing: (1) for the period January 1, 1980, through October 31, 1980, may be determined on the basis of submetering determinations, monthly estimates which are certified by a responsible company official or on the basis of an agreement executed by you and your natural gas supplier; and (2) for the period beginning November 1, 1980,

BILLING CODE 6450-01-C

shall be determined on the basis of and to the extent there are submeters which permit determination of the volume of exempt usage and which are available to be read by the facility's natural gas supplier, or on the basis of and to the extent there are submeter reading records for each month, as signed under oath by a responsible company official, which show the extent to which gas is consumed for an exempt use and which are furnished to the facility's natural gas supplier as required by the supplier. Certified monthly estimates or the agreement with your supplier may be utilized for a period following November 1, 1980, if you have obtained a purchase order for all submeters which will be needed in your facility by November 1, 1980, and expect installations within a reasonable time period.

DATED: \_\_\_\_\_

Person completing this affidavit:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone number

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

### PART 154—RATE SCHEDULES AND TARIFFS

1. Section 154.38 is amended in paragraph (d) by revising subparagraph (1) and clause (iv)(a) of subparagraph (4) to read as follows:

#### § 154.38 Composition of rate schedule.

(d) *Statement of rate.* (1) Except as permitted in § 154.52, § 154.82 and Part 282, all rates shall be clearly stated in cents or in dollars and cents per unit. Only the rates and charges to be used in current billing shall be included in the rate schedules. \* \* \*

(4) \* \* \*  
(iv)(a) Rate changes which reflect both the projected cost of purchased gas and a revised surcharge to clear the amounts accrued in the deferred account for both producer and pipeline suppliers shall be computed and filed not more frequently than semi-annually. Pipeline companies may reflect in their rates such changes as are permitted to producers of natural gas under the Natural Gas Policy Act of 1978. Pipeline companies with semi-annual adjustment dates may not reflect in their purchased gas pattern any supply which is not attached to its system as of the effective date of the proposed rate change. \* \* \*

### PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS A AND CLASS B)

2. Part 201, account 191 is amended by revising paragraph A to read as follows:

#### 191 Unrecovered purchased gas costs.

A. This account shall include purchased gas costs related to Commission approved purchased gas adjustment clauses when such costs are not included in the utility's rate schedules on file with the Commission. This account shall also include such other costs as authorized by the Commission. Costs of purchased gas subject to passthrough under the incremental pricing requirements of the Commission shall be excluded from this account and included in account 192.1, Unrecovered Incremental Gas Costs. \* \* \*

3. Part 201 is amended to add a new account 192.1 to read as follows:

#### 192.1 Unrecovered incremental gas costs.

A. This account shall include the unrecovered costs of purchased gas which are subject to passthrough by means of an incremental pricing

surcharge. This account shall also include any other costs authorized by the Commission.

B. This account shall be debited and account 805.2, Incremental Gas Cost Adjustments, shall be credited for unrecovered costs of purchased gas subject to incremental pricing.

C. This account shall be credited and account 805.2 debited for those costs included in this account which are passed through by means of incremental pricing surcharges.

D. Those costs accumulated in this account for gas received during a calendar month which are not subject to passthrough by incremental pricing surcharges because of alternative fuel price ceilings shall be transferred to account 191, Unrecovered Purchased Gas Costs, no later than the end of the month in which the applicable surcharges are billed.

E. Separate subaccounts shall be maintained for the accumulation of incremental gas costs each calendar month and the passthrough or transfer of such costs so as to keep each period separate.

4. Part 201 is amended to add a new account 192.2 to read as follows:

#### 192.2 Unrecovered incremental surcharges.

A. This account shall include any incremental pricing surcharges passed through to the company by pipeline suppliers.

B. This account shall be debited and account 805.2, Incremental Gas Cost Adjustments, shall be credited with the amount of each incremental pricing surcharge as incurred.

C. This account shall be credited and account 805.2 shall be debited with the amounts included in this account which are passed through to customers.

5. Part 201 is amended to add a new account 805.2 to read as follows:

#### 805.2 Incremental gas cost adjustments.

A. This account shall be credited with the costs of purchased gas which are subject to passthrough by means of incremental pricing surcharges.

B. This account shall also be credited with any incremental pricing surcharges passed through to the company by pipeline suppliers.

C. This account shall be debited with amounts from account 192.1, Unrecovered Incremental Gas Costs, which are passed through by means of incremental pricing surcharges.

D. This account shall also be debited with amounts from account 192.2, Unrecovered Incremental Surcharges, which are passed through by means of incremental pricing surcharges.

### PART 204—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS C AND CLASS D)

6. Part 204, account 191 is amended by revising paragraph A to read as follows:

#### 191 Unrecovered purchased gas costs.

A. This account shall include purchased gas costs related to Commission approved purchased gas adjustment clauses when such costs are not included in the utility's rate schedules on file with the Commission. This account shall also include such other costs as authorized by the Commission. Costs of purchased gas subject to passthrough under the incremental pricing requirements of the Commission shall be excluded from this account and included in account 192.1, Unrecovered Incremental Gas Costs. \* \* \*

7. Part 204 is amended to add a new account 192.1 to read as follows:

#### 192.1 Unrecovered incremental gas costs.

A. This account shall include the unrecovered costs of purchased gas which are subject to passthrough by means of incremental pricing surcharges. This account shall also include any other costs authorized by the Commission.

B. This account shall be debited and account 731.2, Incremental Gas Cost Adjustments, shall be credited for unrecovered costs of purchased gas subject to incremental pricing.

C. This account shall be credited and account 731.2 debited for those costs included in this account which are passed through by means of incremental pricing surcharges.

D. Those costs accumulated in this account for gas received during a calendar month which are not subject to passthrough by incremental pricing surcharges because of alternative fuel price ceilings shall be transferred to account 191, Unrecovered Purchased Gas Costs, no later than the end of the month in which the applicable surcharges are billed.

E. Separate subaccounts shall be maintained for the accumulation of incremental gas costs each calendar month and the passthrough or transfer of such costs so as to keep each period separate.

8. Part 204 is amended to add a new account 192.2 to read as follows:

**192.2 Unrecovered incremental surcharges.**

A. This account shall include any incremental pricing surcharges passed through to the company by its pipeline suppliers.

B. This account shall be debited and account 731.2, Incremental Gas Cost Adjustments, shall be credited with the amount of each incremental pricing surcharge as incurred.

C. This account shall be credited and account 731.2 shall be debited with the amounts included in this account which are passed through to customers.

9. Part 204 is amended to add a new account 731.2 to read as follows:

**731.2 Incremental gas cost adjustments.**

A. This account shall be credited with the costs of purchased gas which are subject to passthrough by means of incremental pricing surcharges.

B. This account shall also be credited with any incremental pricing surcharges passed through to the company by its pipeline suppliers.

C. This account shall be debited with amounts from account 192.1, Unrecovered Incremental Gas Costs, which are passed through by means of incremental pricing surcharges.

D. This account shall also be debited with amounts from account 192.2, Unrecovered Incremental Surcharges, which are passed through by means of incremental pricing surcharges.

10. Subchapter I of Chapter I is amended by adding a new Part 282 to read as follows:

**PART 282—INCREMENTAL PRICING****Subpart A—General Rules and Definitions**

Sec.	
282.101	Purpose.
282.102	Applicability and effective date.
282.103	Definitions.

**Subpart B—Exemptions**

282.201	General rule.
282.202	Definitions.
282.203	Exempt end-uses.
282.204	Obtaining an exemption.
282.205	Change of circumstances.
282.206	Petitions for exemptions under section 206(d).

**Subpart C—Determination of Costs Subject to Incremental Pricing**

282.301	Costs subject to incremental pricing.
282.302	Gas qualifying under more than one provision.
282.303	First sale acquisition cost.
282.304	Incremental pricing threshold.

**Subpart D—[Set forth in Final Rule issued in Docket No. RM79-21]****Subpart E—Incremental Pricing Accounts and Surcharges**

282.501	General rule.
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**Sec.**

282.502	Accounting.
282.503	PGA reduction.
282.504	Incremental pricing surcharge.
282.505	Recovery of amounts in excess of maximum surcharge absorption capabilities.
282.506	Refunds.

**Subpart F—Reporting and Filing Requirements**

282.601	FERC gas tariff provisions.
282.602	Tariff sheets.
282.603	Informational filings.

Authority: This part is issued under the Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.*

**Subpart A—General Rules and Definitions****§ 282.101 Purpose.**

The purpose of this part is to set forth an incremental pricing rule in accordance with Title II of the Natural Gas Policy Act of 1978. The rule requires that certain costs of acquiring natural gas be passed through as a surcharge on sales of natural gas used as specified in the rule.

**§ 282.102 Applicability and effective date.**

(a) *Uses.* Natural gas used as boiler fuel in industrial boiler fuel facilities on and after January 1, 1980, shall be subject to incremental pricing under this part.

(b) *Costs.* Costs described in Subpart C and incurred by natural gas suppliers on or after January 1, 1980, shall be subject to this part.

(c) *Natural gas suppliers.* Interstate pipelines and local distribution companies shall be subject to this part.

(d) *Effective date.* The provisions of this part shall be effective November 1, 1979, provided that the provisions of §§ 282.201 through 282.206 shall be effective October 15, 1979.

**§ 282.103 Definitions.**

For purposes of this part: (a) "Natural gas supplier" means an interstate pipeline or a local distribution company.

(b) "Local distribution company" means any person other than an interstate pipeline that receives gas directly or indirectly from an interstate pipeline and which is engaged in the sale of natural gas for resale or for the ultimate consumption. A person is not considered as having received gas directly or indirectly from an interstate pipeline if the only service performed by an interstate pipeline for the purchaser is a transportation service.

(c) "Facility" means all buildings and equipment located at the same geographic site which are commonly considered to be part of one plant, mill, refinery or other industrial complex.

(d) "Industrial facility" means any facility engaged primarily in the

extraction or processing of raw materials, or in the processing or changing of raw or unfinished materials into another form or product.

(e) "Non-exempt industrial boiler fuel facility" means any industrial boiler fuel facility other than any such facility which has been exempted from the provisions of this part in accordance with Subpart B.

(f) "No. 2 fuel oil" means No. 2 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396-78.

(g) "No. 5 fuel oil" means either light or heavy No. 5 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396-78.

(h) "No. 6 fuel oil" means No. 6 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396-78.

(i) "Low sulfur fuel oil" means any oil containing 1 percent (1%) or less sulfur content by weight.

(j) "High sulfur fuel oil" means any oil containing more than 1 percent (1%) sulfur content by weight.

(k) "British thermal unit" or "Btu" shall have the meaning set forth in § 270.102.

**Subpart B—Exemptions****§ 282.201 General rule.**

(a) *Statutory exemptions.* Natural gas used for purposes described in § 282.203 shall be exempt from incremental pricing as provided in subsections 206 (a), (b) and (c) of the NGPA. Exemptions for such gas may be obtained in the manner prescribed in § 282.204.

Adjustments under authority of subsection 502(c) of the NGPA as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens may be obtained as provided in § 1.41.

(b) *Discretionary exemptions.* Petitions for an exemption under authority of subsection 206(d) of the NGPA may be filed in the manner prescribed in § 282.206.

**§ 282.202 Definitions.**

For the purposes of this subpart:

(a) "Agricultural use" means any use of natural gas:

(1) which is certified by the Secretary of Agriculture under 7 CFR § 2900.3 as an "essential agricultural use" pursuant to section 401(c) of the NGPA; or

(2) which is used in the following textile manufacturing operations limited as set forth below to the production or processing of natural fiber, as set forth

in the *Standard Industrial Classification Manual—1972*

Industry SIC No. and Industry Description

221	Broad Woven Fabric Mills, Cotton
222	Broad Woven Fabric Mills, Man-made Fiber and Silk (natural fiber processing only)
223	Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing)
224	Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-made Fiber (natural fiber processing only)
2257	Circular Knit Fabric Mills (natural fiber processing only)
2258	Warp Knit Fabric Mills (natural fiber processing only)
228	Dyeing and Finishing Textiles, Except Wool Fabrics and Knit Goods (natural fiber processing only)
228	Yarn and Thread Mills (natural fiber processing only)
2291	Felt Goods, Except Woven Felts and Hats (natural fiber processing only)
2293	Paddings and Upholstery Filling (natural fiber processing only)
2294	Processed Waste and Recovered Fibers and Flock (natural fiber processing only)
2295	Coated Fabric, Not Rubberized (natural fiber processing only)
2297	Nonwoven Fabrics (natural fiber processing only)
2299	Textile Goods, Not Elsewhere Classified (natural fiber processing only)

(b) "School" means a facility the primary function of which is the delivery of instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and non-educational activities are not included under this definition unless the latter activities are merely incidental to the delivery of instruction.

(c) "Hospital" means a facility the primary function of which is the delivery of medical care to patients who remain at the facility. Outpatient clinics or doctor's offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

(d) "Similar institution" means a facility the primary function of which is the same as the primary function of the facility to which it is compared.

(e) "Qualifying cogeneration facility" means a cogeneration facility which meets the requirements prescribed by the Commission pursuant to section 201 of the Public Utility Regulatory Policies Act of 1978.

§ 282.203 Exempt end-uses.

The incremental pricing provisions of this part shall only apply to industrial facilities which use natural gas as a boiler fuel. In addition, in accordance with the provisions of sections 206 (a), (b), and (c) of the NGPA, natural gas used for the following purposes shall be exempt from incremental pricing under this part:

(a) all gas used for boiler fuel by an industrial boiler fuel facility which was:

(1) in existence on November 9, 1978; and

(2) did not consume more than an average of 300 Mcf per day for boiler fuel during any calendar month of calendar year 1977;

(b) all gas used for an agricultural use;

(c) all gas used in a school, hospital, or similar institution;

(d) all gas used for the generation of electricity by an electric utility; and

(e) all gas used in a qualifying cogeneration facility.

§ 282.204 Obtaining an exemption.

(a) *General.* This section establishes procedures by which owners or operators of industrial boiler fuel facilities may obtain an exemption for natural gas used for the purposes described in § 282.203.

(b) *Determination of industrial boiler fuel facilities.* On or before October 15, 1979, each natural gas supplier shall determine which facilities served directly by it are industrial boiler fuel facilities.

(c) *Exemption on the basis of company records.* (1) On or before October 15, 1979, each natural gas supplier shall determine from an examination of its records which industrial boiler fuel facilities, as identified under paragraph (b), were in existence on November 9, 1978, and either:

(i) did not use more than an average of 300 Mcf per day during any calendar month of calendar year 1977; or

(ii) did not use more than an average of 300 Mcf per day for boiler fuel during any calendar month of calendar year 1977.

(2) The natural gas supplier shall treat an industrial boiler fuel facility for which an affirmative determination is made under subparagraph (1) as exempt from incremental pricing under this part without further action by the owner or operator of the facility.

(d) *Exemption on the basis of affidavit.* (1) *Commission to provide exemption affidavits.* On and after October 3, 1979, exemption affidavits as described in subparagraph (3) will be available to natural gas suppliers for purposes of subparagraph (2) and to any other interested person upon request from the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(2) *Availability from natural gas suppliers.* (i) *Initial service.* Not later than October 15, 1979, each natural gas supplier shall mail or otherwise supply an exemption affidavit, as described in

subparagraph (3), to the owner or operator of each industrial boiler fuel facility on such natural gas supplier's system which the natural gas supplier did not determine to be exempt pursuant to paragraph (c).

(ii) *Response date.* Natural gas suppliers which supply exemption affidavits under clause (i) shall request that executed affidavits be filed on or before November 1, 1979, in accordance with subparagraph (4).

(iii) *Ongoing availability.* After October 15, 1979, natural gas suppliers shall make exemption affidavits available at their principal place of business on an ongoing basis during regular business hours.

(3) *Contents of exemption affidavit.* (i) The exemption affidavit will provide the owner or operator of an industrial boiler fuel facility with the opportunity to respond to the following questions:

(A) Was the customer's facility in existence on November 9, 1978, and did the facility, on the basis of records, documents, or data in the customer's possession, consume no more than an average of 300 Mcf per day as boiler fuel during any calendar month of calendar year 1977?

(B) Is all of the natural gas consumed at the customer's facility used as boiler fuel for an agricultural use?

(C) Is the customer's facility, in its entirety, a school, hospital, or similar facility?

(D) Is the customer's facility, in its entirety, used for the generation of electricity by an electric utility?

(E) Is the customer's facility, in its entirety, a qualifying cogeneration facility?

(F) Is a portion, though not all, of the gas consumed at the customer's facility used as boiler fuel for an agricultural use?

(G) Is the customer's facility, in part but not in its entirety, a school, hospital, or similar facility?

(H) Is the customer's facility, in part but not in its entirety, used for the generation of electricity by an electric utility?

(I) Is the customer's facility, in part but not in its entirety, a qualifying cogeneration facility?

(ii) The exemption affidavit will notify the customer that, if he affirmatively responds to any of the questions (F) through (I) volumes of natural gas used in the customer's facility will be exempt from incremental pricing to the extent that:

(A) For the period prior to November 1, 1980, the customer provides submetering determinations or certified estimates on a monthly basis to his supplier or executes an agreement with

his supplier so as to establish the volumes of natural gas used in his facility which will be exempt from incremental pricing; and

(B) On and after November 1, 1980, the customer maintains submeters and records, or obtains a purchase order for submeters as required by subparagraph (6).

(iii) The exemption affidavit will indicate the record retention obligation which may be incurred by the customer under subparagraph (8) of this paragraph.

(iv) The exemption affidavit will contain such other information as may be necessary for completion and return of the affidavit.

(4) *Filing of exemption affidavits.* In order to obtain an exemption from incremental pricing, an owner or operator of an industrial boiler fuel facility shall file an executed exemption affidavit, signed and dated by a responsible official associated with the facility, under oath, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, and send a copy of the executed affidavit to the natural gas supplier serving the industrial boiler fuel facility.

(5) *Effect of filing an exemption affidavit.* (i) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (A) through (E), as set out in subparagraph (3), and files the affidavit in accordance with subparagraph (4), then natural gas used in the facility shall be exempt from incremental pricing under this part.

(ii) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (F) through (I) as set out in subparagraph (3), and files the affidavit in accordance with subparagraph (4), then natural gas used in the industrial boiler fuel facility shall be exempt from incremental pricing to the extent determined in accordance with the applicable provision of subparagraph (6).

(6) *Determination of extent of partial exemption.* (i) If the owner or operator of an industrial boiler fuel facility affirmatively responds to question (F) as set out in subparagraph (3):

(A) For the period January 1, 1980, through October 31, 1980, the volume of natural gas used in the facility which shall be exempt from incremental pricing may be determined monthly on the basis of:

(1) submetering determinations;

(2) estimates, as signed under oath by a responsible company official, that are furnished to the facility's natural gas

supplier as required by the supplier for billing purposes; or

(3) a supplier-customer agreement, signed by responsible officials of the supplier and the customer, as to the volume of natural gas which is consumed by the customer for an agricultural use.

(B)(1) Subject to clause (2), on and after November 1, 1980, the volume of natural gas used in the facility which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeter reading records for each month, as signed under oath by a responsible company official, that show the extent to which gas is consumed for an agricultural use and that are furnished to the facility's natural gas supplier as required by the supplier for billing purposes.

(2) Certified monthly estimates or a supplier-customer agreement may be utilized to determine the volume of natural gas consumed in the facility for an agricultural use which shall be exempt from incremental pricing for a period following November 1, 1980, provided that the owner or operator of the facility has obtained a purchase order for all submeters which will be needed in the facility by November 1, 1980, and such submeters will be installed within a reasonable period of time.

(ii) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (G) through (I):

(A) For the period January 1, 1980, through October 31, 1980, the volume of natural gas used in the facility which shall be exempt from incremental pricing may be determined monthly on the basis of:

(1) submetering determinations;

(2) estimates, as signed under oath by a responsible company official, for each month that are furnished to the facility's natural gas supplier as required by the supplier for billing purposes; or

(3) a supplier-customer agreement signed by responsible officials of the supplier and the customer, as to the volume of natural gas which is consumed by the customer for an exempt use.

(B)(1) Subject to clause (2), on and after November 1, 1980, the volume of natural gas used in the facility which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeters which permit determination of the volume of exempt usage and which are available to be read by the facility's natural gas supplier, or on the basis of and to the extent there are submeter

reading records for each month, as signed under oath by a responsible company official, that show the extent to which gas is consumed for an exempt use and that are furnished to the facility's natural gas supplier as required for billing purposes.

(2) Certified monthly estimates or a supplier-customer agreement may be utilized to determine the volume of natural gas consumed in the facility for an exempt use which shall be exempt from incremental pricing for a period following November 1, 1980, provided that the owner or operator of the facility has obtained a purchase order for all submeters which will be needed in the facility by November 1, 1980, and such submeters will be installed within a reasonable period of time.

(7) *Effective date of exemption.* (i) If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in accordance with subparagraph (4) on or before December 31, 1979, the facility shall be exempt from incremental pricing in accordance with this part as of January 1, 1980.

(ii) If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in accordance with subparagraph (4) on or after January 1, 1980, the facility shall be exempt from incremental pricing under this part as of the beginning of the first full month following the date the exemption affidavit is filed with the Commission and received by the facility's natural gas supplier.

(8) *Record retention.* If the owner or operator of an industrial boiler fuel facility obtains an exemption as a result of affirmatively responding to question (A) as set out in subparagraph (3), the owner or operator shall, for a period of at least three years from the date of filing the exemption affidavit, retain all records, documents or data which formed the basis of the response.

(e) *Public availability of exemption information.* (1) *Executed exemption affidavits.* Copies of executed exemption affidavits which are filed with the Commission shall be available for public inspection through the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(2) *Lists of non-exempt facilities.* (i) On or before January 15, 1980, each natural gas supplier shall file with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and with

each state or local regulatory authority having appropriate jurisdiction over the supplier, a list of all industrial boiler fuel facilities served directly by the supplier which did not qualify for an exemption under paragraph (c) or (d) as of December 31, 1979.

(ii) On or before January 15th of each year after 1980, each natural gas supplier shall file with the agencies specified in clause (i) a revised list of all non-exempt industrial boiler fuel facilities served directly by the supplier. A revised list shall indicate all additions or revisions to or deletions from the prior year's list.

(iii) Lists of non-exempt industrial boiler fuel facilities filed in accordance with clause (i) or (ii) shall indicate the alternative fuel capability of each facility thereon, as established in accord with the provisions of § 282.403.

(iv) Lists of non-exempt facilities filed in accordance with clause (i) or (ii) shall be available for public inspection through the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(f) *Protests.* (1) Any interested person may protest the exemption of an industrial boiler fuel facility from incremental pricing.

(2) The procedures set forth in § 1.10 shall govern the filing of such a protest, except that any person filing such a protest shall serve a copy of the protest on the affiant of the exemption affidavit.

(3) The affiant may file an answer to any protest. Such answer must be filed within 30 days of the service date of a protest. The affiant shall serve a copy of the answer on the party filing the protest.

#### § 282.205 Change of circumstances.

(a) *General rule.* (1) If circumstances change with respect to any facility which has been exempt in whole or in part from the provisions of this part such that the basis for the exemption has changed or no longer exists, the owner or operator of such facility shall promptly, in writing, under oath, notify the Commission and the natural gas supplier serving the facility that the basis for the exemption has changed or no longer exists. In such case, the natural gas used in the facility shall be subject to incremental pricing surcharges in accordance with and to the extent required by the provisions of this part.

(2) Such notification shall be marked, "Change of Exemption Status under Incremental Pricing Program" and shall be filed with the Federal Energy Regulatory Commission, 825 North

Capitol Street, N.E., Washington, D.C. 20426.

(3) A notification filed pursuant to subparagraph (1) shall be effective as of the beginning of the first full month of service after the notification is filed with the Commission and is received by the natural gas supplier serving the facility.

#### § 282.206 Petitions for exemptions under section 206(d).

(a) *General rule.* Any person may petition under authority of subsection 206(d) of the NGPA for the exemption, in whole or in part, of any non-exempt industrial boiler fuel facility or category thereof.

(b) *Filing requirements.* A petition for an exemption under authority of subsection 206(d) shall:

(1) conform to the requirements of § 1.7;

(2) contain sufficient information and data to permit review of the petition on the merits; and

(3) provide an analysis of any environmental issues which are relevant to the request for an exemption.

(c) *Notice.* Public notice of the filing of a petition for an exemption under authority of subsection 206(d) shall be given with opportunity for comment by interested persons.

(d) *Denial without prejudice.* A petition for an exemption under authority of subsection 206(d) which is not acted upon within 90 days of the date for submission of comments shall be deemed denied without prejudice.

#### Subpart C—Determination of Costs Subject to Incremental Pricing

##### § 282.301 Costs subject to incremental pricing.

The costs specified in this section are acquisition costs which shall be subject to the passthrough provisions of this part.

(a) *New natural gas.* In the case of new natural gas (as defined in section 102(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs shall be subject to this part.

(b) *Natural gas under intrastate rollover contract.* In the case of natural gas delivered under a rollover contract which was not committed or dedicated to interstate commerce on November 8, 1978, any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery occurs shall be subject to this part.

(c) *New, onshore production well gas.* In the case of natural gas produced from any new, onshore production well (as defined in section 103(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs shall be subject to this part.

(d) *LNG imports.* (1) Subject to the provisions in subparagraph (2), in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States shall be subject to this part.

(2) Costs of liquefied natural gas imported into the United States shall not be subject to this part if:

(i) the importation of the liquefied natural gas was authorized under section 3 of the Natural Gas Act on or before May 1, 1978;

(ii) an application for such authority was pending under section 3 of the Natural Gas Act on such date, except as set forth in subparagraph (3) below; or

(iii) in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the Department of Energy Organization Act (or any delegation or assignment thereunder), determines that a contract binding on the importer or other substantial financial commitment of the importer was made on or before such date, except as set forth in subparagraph (3) below.

(3) Clauses (ii) and (iii) of subparagraph (2) shall not apply with respect to any liquefied natural gas imports if, in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the portion of the costs of such imports as described in subparagraph (1) shall be subject to this part.

(e) *Natural gas (other than LNG) imports.* (1) Subject to subparagraph (2), in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 of the NGPA (relating

to new natural gas) for the month in which such natural gas enters the United States without regard to section 110 of the NGPA, shall be subject to this part.

(2) Subject to subparagraph (3), subparagraph (1) shall only apply to costs of volumes of natural gas (other than liquefied-natural gas) imported into the United States which exceed both:

(i) the maximum delivery obligations for the month in which such delivery of natural gas occurs, as specified by contracts entered into on or before May 1, 1978 and in effect when such delivery occurs; and

(ii) the volume of natural gas imported into the United States by the interstate pipeline involved during the corresponding month of calendar year 1977.

(3) Subparagraph (2) notwithstanding, subparagraph (1) shall apply to the portion of first sale acquisition costs, as described in subparagraph (1), of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceed the volume of natural gas imported into the United States by the interstate pipeline involved during calendar year 1977 if, in connection with the granting of any authority under the Natural Gas Act to import such natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that subparagraph (1) shall apply with respect to such natural gas imports.

(f) *Stripper well natural gas.* In the case of stripper well natural gas (as defined in section 108(b) of the NGPA) any portion of the first sale acquisition cost of such natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 of the NGPA (relating to new natural gas) for the month in which the delivery of such gas occurs without regard to section 110 of the NGPA, shall be subject to this part.

(g) *High-cost natural gas.* In the case of high-cost natural gas (as defined in section 107(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds 130 percent of—

(1) the weighted average per barrel cost of No. 2 fuel oil landed in the greater New York City metropolitan area, as published by the Energy Information Administration of the Department of Energy, during the month preceding the month in which delivery of such natural gas occurs, divided by,

(2) a Btu conversion factor of 5.8 million Btu's per barrel—shall be subject to this part.

(h) *Alaska Natural Gas Transportation System.* In the case of natural gas produced from the Prudhoe Bay Unit of Alaska (as defined in section 2 of the NGPA), and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976, the following amounts shall be subject to this part:

(1) any portion of the first sale acquisition cost of natural gas which is not described in subparagraph (2) and which exceeds the maximum lawful price, per million Btu's computed under section 108 of the NGPA (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs without regard to section 110 of the NGPA; and

(2) any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting of such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

(i) *Increased state severance taxes.* (1) Subject to the provisions of subparagraph (2), any portion of the cost of natural gas at any first sale attributable to any increase in the amount of state severance taxes (as defined in section 110(c) of the NGPA) which results from a provision of state law enacted on or after December 1, 1977, shall be subject to this part.

(2) Subparagraph (1) shall not apply to any increase in state severance taxes resulting from a change in the method of computation of such tax by reason of any provision of state law enacted on or after December 1, 1977, if:

(i) as of the effective date of such change in method of computation, such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such state, above the percentage of such average first sale price which such tax constituted on the day before such effective date; and

(ii) such provision of law is equally applicable to natural gas produced in the state and delivered to interstate commerce and to natural gas produced in the state and not so delivered.

(3) The price to be used in determining the weighted average first sale price for purposes of subparagraph (2) shall be the price paid at the first sale which is used by the state in administering such

tax (or an imputed value, if the state uses an event other than a first sale in administering such tax).

(j) *Transactions under section 311(b) of the NGPA.* In the case of any sale under section 311(b) of the NGPA by an intrastate pipeline to an interstate pipeline or a local distribution company, any portion of the amount paid, per million Btu's, by the purchaser to the intrastate pipeline which exceeds the incremental pricing threshold for the month in which the acquisition of the natural gas occurs shall be subject to this part.

(k) *Pipeline produced gas.* (1) In the case of any natural gas produced by an interstate pipeline which is priced in its overall cost of service, without regard to the cost of producing the gas, any portion of the first sale acquisition cost imputed under § 282.303 shall be subject to this part if it would have been subject to this part under paragraphs (a) through (h) had the gas been produced by an independent producer and purchased by the interstate pipeline at the imputed level.

(2) Gas produced by an interstate pipeline which is treated, for rate purposes, on a cost of service basis and which is not acquired by the interstate pipeline in a first sale shall not be subject to this part.

(3) Costs of gas produced by producers affiliated with interstate pipelines shall be treated as costs incurred for production by an independent producer and shall be subject to this part, except to the extent that sale of such gas is not treated as a first sale under the NGPA.

(1) *Surcharges paid to other pipelines.* The amount of any incremental pricing surcharge (described in § 282.504) paid by any interstate pipeline for natural gas acquired by such pipeline from another pipeline shall be subject to this part.

#### § 282.302 Gas qualifying under more than one provision.

If natural gas qualifies under more than one paragraph of § 282.301, the paragraph which reflects the highest threshold shall be applicable for purposes of determining the portion of the first sale acquisition costs of such natural gas which shall be subject to passthrough under this part.

#### § 282.303 First sale acquisition cost.

(a) *General rule.* For purposes of this part, the first sale acquisition cost of natural gas is:

(1) the price paid, per million Btu's, in any first sale of such natural gas, in the case of any natural gas produced in the United States and acquired in such first sale; or



(2) the price paid for such natural gas, per million Btu's, at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

(b) *State severance taxes.* Any amount of state severance taxes paid at any first sale shall not be included in determining the price paid for purposes of paragraph (a).

(c) *Pipeline produced gas.* A first sale acquisition cost shall be imputed to gas produced by an interstate pipeline which is acquired by the interstate pipeline in a transaction which is treated as a first sale for purposes of Title I of the NGPA. The imputed first sale acquisition cost shall be the applicable maximum lawful price under Title I of the NGPA.

#### § 282.304 Incremental pricing threshold.

(a) *General rule.* For purposes of this part, the incremental pricing threshold applicable for any month shall be:

(1) \$1.48 per million Btu's in the case of March 1978; and

(2) in the case of any month thereafter, the amount, per million Btu's determined under this section for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 101 (a) of the NGPA) applicable for such month.

(b) *Publication.* Not later than 5 days before the beginning of each month, commencing with January 1980, the Commission shall issue the incremental pricing threshold applicable for such month. As soon as possible thereafter, such incremental pricing threshold shall be published in the Federal Register.

#### Subpart D—[Set forth in Final Rule issued in Docket No. RM79-21]

#### Subpart E—Incremental Pricing Accounts and Surcharges

##### § 282.501 General Rule.

(a) Each natural gas supplier shall, on a monthly basis, accumulate in an unrecovered incremental gas costs account, as provided in § 282.502, the costs described in paragraph (a) through (k) of § 282.301 as being subject to passthrough under this part.

(b) Each interstate pipeline shall derive a reduced PGA rate for each PGA period, as provided in § 282.503.

(c) Each month, in accordance with § 282.504, each natural gas supplier shall bill incremental pricing surcharges to the sale-for-resale customers and the non-exempt industrial boiler fuel facilities on the supplier's system.

(1) Surcharges shall be calculated to recover the lesser of the total

incremental gas costs, as defined in § 282.504, which were incurred by the supplier during the prior month or an amount equivalent to the maximum surcharge absorption capability of the supplier's customers.

(2) The maximum surcharge absorption capability of a non-exempt industrial boiler fuel facility shall be the difference between the cost to the facility for its use of natural gas, calculated on the basis of the rates of its natural gas suppliers before inclusion of incremental pricing surcharges, and the cost of that same volume of natural gas priced at the alternative fuel price ceiling applicable to the facility. In the event that the rate of its natural gas supplier is in excess of the alternative fuel price ceiling applicable to the facility, the maximum surcharge absorption capability of the facility shall be deemed to be zero.

(3) The maximum surcharge absorption capability of a non-exempt industrial boiler fuel facility for any calendar month shall be determined on the basis of a meter reading made at the end of such month, provided that such meter reading may be made no earlier than 10 days prior to the last day of the month.

(d) Each month, in the case of interstate pipelines, the amount accumulated in the natural gas supplier's unrecovered incremental gas costs account which cannot be recovered by way of incremental pricing surcharges shall be transferred from that account to account 191, Unrecovered Purchased Gas Costs and recovered in accordance with § 282.505.

##### § 282.502 Accounting

(a) *General rule.* For purposes of incremental pricing, each natural gas supplier shall establish an unrecovered incremental gas costs account, an unrecovered incremental surcharges account and an incremental gas cost adjustments account.

(b) *Establishment of accounts.* (1) *Unrecovered incremental gas costs account.* Each natural gas supplier shall establish an unrecovered incremental gas costs account. Such account shall be designated account 192.1, Unrecovered Incremental Gas Costs, for interstate pipelines following the Uniform System of Accounts, Parts 201 and 204 of this chapter. The underlying records of such account shall be maintained to permit identification of:

(i) the volumes and cost of each purchase that gave rise to costs being charged to the account;

(ii) the paragraph of § 282.301 under which the costs associated with such

purchase qualify for inclusion in the account; and

(iii) any other charges to the account.

(2) *Unrecovered incremental surcharges account.* The unrecovered incremental surcharges account shall be designated account 192.2, Unrecovered Incremental Surcharges, for interstate pipelines following the Uniform System of Accounts, Parts 201 and 204 of this chapter. The underlying records of this account shall be maintained so as to permit identification of each incremental pricing surcharge debited to the account in accordance with paragraph (e).

(3) *Incremental gas cost adjustments account.* Each natural gas supplier shall establish an incremental gas cost adjustments account. Such account shall be designated account 805.2, Incremental Gas Cost Adjustments, for interstate pipelines following the Uniform System of Accounts, Part 201 of this chapter. Such account shall be designated account 731.2, Incremental Gas Cost Adjustments, for interstate pipelines following the Uniform System of Accounts, Part 204 of this chapter.

(c) *Debiting the unrecovered incremental gas costs account.* The unrecovered incremental gas costs account shall be debited and the incremental gas cost adjustments account shall be credited with:

(1) costs described in paragraphs (a) through (k) of § 282.301 which are incurred during each calendar month; and

(2) any other costs as permitted by order of the Commission;

(d) *Crediting the unrecovered incremental gas costs account.* (1) The unrecovered incremental gas costs account shall be credited and the incremental gas cost adjustments account shall be debited when costs included in the unrecovered incremental gas costs account are recovered by means of incremental pricing surcharges.

(2) The unrecovered incremental gas costs account shall be credited with any amount which was accumulated in the account for gas received during a calendar month but which, due to the alternative fuel price ceilings established pursuant to § 282.404, cannot be collected by way of incremental pricing surcharges to be billed during the subsequent month. Such amount may be transferred to account 191 immediately, but no later than the end of the month in which the applicable surcharges are billed.

(e) *Debiting the unrecovered incremental surcharges account.* A natural gas supplier's unrecovered incremental surcharges account shall be debited and the incremental gas cost

adjustments account shall be credited with any incremental pricing surcharge which is billed to it by its supplier in accordance with a tariff sheet filed by such supplier in accordance with § 282.602.

(f) *Crediting the unrecovered incremental surcharges account.* The unrecovered incremental surcharges account shall be credited and the incremental gas cost adjustments account shall be debited for those amounts which are recovered by means of incremental pricing surcharges.

#### § 282.503 PGA reduction.

(a) *General rule.* (1) An interstate pipeline company which files purchased gas adjustment (PGA) rate changes with the Commission under authority of § 154.38(d) shall, each PGA period, reduce its total projected gas acquisition cost by the amount which it projects it will recover during the next PGA period through incremental pricing surcharges. The total projected gas acquisition cost, as reduced, shall be used to derive the pipeline's PGA rate for the coming PGA period in the manner prescribed in the pipeline's effective PGA provision.

$$\hat{M} = \frac{[(\hat{A}_1 - \hat{R}_1) \hat{V}_1]}{1 + \hat{T}_1} + \frac{[(\hat{A}_2 - \hat{R}_2) \hat{V}_2]}{1 + \hat{T}_2} + \dots + \frac{[(\hat{A}_n - \hat{R}_n) \hat{V}_n]}{1 + \hat{T}_n}$$

where:

$\hat{M}$  = Projected MSAC of the non-exempt industrial boiler fuel facility.

$\hat{A}$  = Projected alternative fuel price ceiling for the non-exempt industrial boiler fuel facility, plus taxes, as determined in accordance with subparagraph (2).

$\hat{R}$  = Projected rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the non-exempt industrial boiler fuel facility will purchase natural gas, as determined in accordance with subparagraph (3).

$\hat{V}$  = Projected volume of natural gas (at 1,000 Btu's per cubic foot) that the non-exempt industrial boiler fuel facility will purchase from the natural gas supplier and use for boiler fuel, as estimated for each of the months "1" through "n" of the PGA period.

$\hat{T}$  = Projected total percentage tax rate reflecting any state and local taxes applicable to an incremental pricing surcharge.

n = Last month of the PGA period.

(2)(i) As a value for " $\hat{A}$ " for each of the months "1" through "n" of the coming PGA period, a natural gas supplier shall use the most recently established alternative fuel price ceiling applicable to the facility, plus taxes,

(2) The amount which an interstate pipeline projects it will recover through incremental pricing surcharges during a PGA period shall be the lesser of:

(i) the costs subject to incremental pricing, as described in paragraphs (a) through (l) of § 282.301, which the pipeline projects it will incur during the coming PGA period; or

(ii) the total of the projected maximum surcharge absorption capabilities (MSAC) of each of the non-exempt industrial boiler fuel facilities directly served by the pipeline, as computed in accordance with paragraph (b), plus the total of the projected MSAC's of the pipeline's sale-for-resale customers, as determined by each of the customers in accordance with paragraph (c) and reported to the pipeline in accordance with paragraph (d).

(b) *Projected MSAC of a non-exempt industrial boiler fuel facility.* (1) The projected MSAC of a non-exempt industrial boiler fuel facility for a coming PGA period shall be calculated by a natural gas supplier in accordance with the following formula, in which the symbol " $\hat{\phantom{x}}$ " indicates a projection:

unless the supplier elects to estimate the applicable alternative fuel price ceilings for each of the months of the PGA period. In that case, the estimated ceilings, plus taxes, may be used as values for " $\hat{A}$ ".

(ii) If a local distribution company desires assistance in estimating applicable alternative fuel price ceilings for each of the months of the coming PGA period, the interstate pipeline which supplies the local distribution company shall provide such assistance.

(3)(i) *Local distribution company.* As a value for " $\hat{R}$ " for each of the months "1" through "n" of the coming PGA period, a local distribution company shall use its effective rate per million Btu's at the time of projection, plus taxes but exclusive of any incremental pricing surcharges, unless the local distribution company elects to adjust such rate to reflect general rate changes which it is known will occur during the PGA period under authority of a state or local regulatory body. If the local distribution company elects to adjust the rate, the values used for " $\hat{R}$ " may reflect the adjustments for the months of the PGA period for which the adjustments are appropriate.

(ii) *Interstate pipeline.* As a value for " $\hat{R}$ " for each of the months "1" through "n" of the coming PGA period, an interstate pipeline shall use its effective contract rate per million Btu's at the time of projection, plus taxes but exclusive of any incremental pricing surcharges, unless the pipeline elects to adjust such rate to reflect rate changes which it is known will occur during the PGA period.

(c) *Projected MSAC of a sale-for-resale customer.* With respect to each of its natural gas suppliers, the projected MSAC of a sale-for-resale customer shall be derived by adding the sum of the projected MSAC's of the non-exempt industrial boiler fuel facilities served directly by the sale-for-resale customer, as determined in accordance with paragraph (b), to the sum of the projected MSAC's of the customer's own sale-for-resale customers, as reported in accordance with paragraph (d), and multiplying the resulting total by the percentage reflecting the ratio between:

(i) the volume of natural gas (at 1,000 Btu's per cubic foot) which the customer estimates it will purchase from the supplier during the coming PGA period; and

(ii) the total of:

(A) the volume of natural gas (at 1,000 Btu's per cubic foot) which the customer estimates it will purchase from interstate pipelines;

(B) the volume of natural gas (at 1,000 Btu's per cubic foot) which is included in any of the categories specified in paragraphs (a) through (k) of § 282.301 and which the customer estimates it will purchase from sources other than interstate pipelines; and

(C) if the sale-for-resale customer is an interstate pipeline, the estimated volume of pipeline produced natural gas (at 1,000 Btu's per cubic foot) to which a first sale acquisition cost will be imputed under paragraph (c) of § 282.303.

(D) *Reporting.* (1) *Pipeline to request information.* Prior to the beginning of each of its PGA periods, each interstate pipeline shall request that each of its sale-for-resale customers report to it the customer's projected MSAC in a timely fashion.

(2) *Pipeline customers to report.* Each natural gas supplier shall respond to the requests of interstate pipelines for projected MSAC's for a coming PGA period in a timely fashion.

(e) *Scheduling by the Commission.* In those instances where the Commission finds that natural gas suppliers have not arranged for the reporting of information in accordance with this section, the Commission shall prescribe by order an appropriate schedule for the expeditious

transmission of the information necessary for interstate pipelines to make their regular PGA filings with the Commission.

§ 282.504 Incremental pricing surcharge.

(a) *General rule.* Each natural gas supplier shall include an incremental pricing surcharge, stated as a dollar amount, in its monthly bills to the non-exempt industrial boiler fuel facilities and sale-for-resale customers on its system. Surcharges billed to non-exempt industrial boiler fuel facilities shall be determined in accordance with paragraph (c). Surcharges billed to sale-for-resale customers shall be determined in accordance with paragraph (d). Such surcharges shall recover, subject to the limitation of the alternative fuel price ceilings described in § 282.404, the total incremental gas costs as defined in paragraph (b), which were incurred by the natural gas supplier during the previous month.

(b) *Definitions.* For purposes of this section "total incremental gas costs" means the sum of the following:

- (1) the amount of the costs accumulated in a natural gas supplier's unrecovered incremental gas cost account for a period; and
- (2) any incremental pricing surcharges imposed on the natural gas supplier by its own supplier(s) for that period.

(c) *Surcharges on non-exempt industrial boiler fuel facilities.* (1) *General rule.* The incremental pricing surcharge to be billed for the previous month by a natural gas supplier for each of the non-exempt industrial boiler fuel facilities which it directly serves shall, subject to subparagraph (4), be the lesser of:

- (i) the MSAC of the non-exempt industrial boiler fuel facility for the previous month, as determined in the manner described in subparagraph (2); or
- (ii) the non-exempt industrial boiler fuel facility's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous month, as determined in the manner described in subparagraph (3) of this paragraph.

(2) *MSAC of a non-exempt industrial boiler fuel facility.* (i) The MSAC of a non-exempt industrial boiler fuel facility for the previous month shall be determined in accordance with the following formula:

$$M = \frac{(A - R)(V)}{1 + T}$$

where:

- M = MSAC of the non-exempt industrial boiler fuel facility.  
 A = Alternative fuel price ceiling applicable to the non-exempt industrial boiler fuel facility for the previous month, plus taxes.  
 R = Rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the non-exempt industrial boiler fuel facility purchased gas from the natural gas supplier during the previous month.  
 V = Volume of natural gas (at 1,000 Btu's per cubic foot) supplied by the natural gas supplier to the non-exempt industrial boiler fuel facility for boiler fuel use during the previous month, as determined in accordance with clause (ii).  
 T = Total percentage tax rate reflecting any state and local taxes applicable to an incremental pricing surcharge.

(ii)(A) For the period January 1, 1980, through October 31, 1980, the volume of natural gas supplied to a non-exempt industrial boiler fuel facility for boiler fuel use during a month may be determined on the basis of:

- (1) submetering determinations;
- (2) estimates, as signed under oath by a responsible company official, that are furnished to the facility's natural gas supplier as required by the supplier for billing purposes; or
- (3) a supplier-customer agreement, signed by responsible officials of the supplier and the customer.

(B)(1) Subject to clause (2), on and after November 1, 1980, the volume of natural gas supplied by a natural gas supplier to a non-exempt industrial boiler fuel facility for boiler fuel use during a month shall be deemed to be the total volume of natural gas supplied to the facility during the month, unless the natural gas supplier serving the facility distinguishes the volumes used for boiler fuel from the volumes not so used on the basis of submeter readings. If volumes used for boiler fuel are so identified, such volumes shall be used for purposes of determining the MSAC of the non-exempt industrial boiler fuel facility in accordance with clause (i).

(2) Certified monthly estimates or a supplier-customer agreement may be utilized to determine the volume of natural gas consumed in the facility for boiler fuel use for a period following November 1, 1980, provided that the owner or operator of the facility has obtained a purchase order for all submeters which will be needed in the facility by November 1, 1980, and such submeters will be installed within a reasonable period of time.

(3) *Pro rata share of total incremental gas costs.* A non-exempt industrial boiler fuel facility's pro rata share of the total incremental gas costs incurred by

its natural gas supplier during the previous month shall be determined by multiplying the total incremental gas costs by a percentage reflecting the ratio between:

- (i) the MSAC of the non-exempt industrial boiler fuel facility for the previous month, as determined in accordance with subparagraph (2); and
- (ii) the sum of the MSAC's of the non-exempt industrial boiler fuel facilities on the natural gas supplier's system, as determined for the previous month in accordance with subparagraph (2), plus the sum of MSAC's reported to the natural gas supplier by its sale-for-resale customers for the previous month.

(4) *Optional billing procedures for local distribution companies.* A local distribution company may elect to bill non-exempt industrial boiler fuel facilities served by it at the level of the alternative fuel price ceilings plus taxes which are applicable to such facilities.

(i) If a local distribution company bills a non-exempt industrial boiler fuel facility at the level of the applicable alternative fuel price ceiling for service during the previous month and the MSAC of the non-exempt boiler fuel facility for such month exceeds the facility's pro rata share of the total incremental gas costs incurred by the local distribution company during the previous month, then such local distribution company shall refund the excess to the facility in the next bill rendered to the facility.

(d) *Surcharges on sale-for-resale customers.*

(1) *General rule.* The incremental pricing surcharge to be collected by a natural gas supplier from each of its sale-for-resale customers shall be the lesser of:

- (i) the MSAC of the sale-for-resale customer for the previous month, as determined by the customer in the manner described in subparagraph (2) of this paragraph and reported to the natural gas supplier pursuant to paragraph (e); or
- (ii) the sale-for-resale customer's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous month, such share being determined in the manner described in subparagraph (3) of this paragraph.

(2) *MSAC of a sale-for-resale customer.* With respect to each of its natural gas suppliers, the MSAC of a sale-for-resale customer shall be derived by adding the sum of the MSAC's of the non-exempt industrial boiler fuel facilities served directly by the sale-for-resale customer, as determined for the

previous month in accordance with subparagraph (2) of paragraph (c), to the sum of the MSAC's of the customer's own sale-for-resale customers, as reported for the previous month in accordance with paragraph (e), and multiplying the resulting total by the percentage reflecting the ratio between:

(i) the volume of natural gas (at 1,000 Btu's per cubic foot) purchased by the customer from the natural gas supplier during the previous month; and

(ii) the total of:

(A) the volume of natural gas (at 1,000 Btu's per cubic foot) which the customer purchased from interstate pipelines during the previous month;

(B) the volume of natural gas (at 1,000 Btu's per cubic foot) which is included in any of the categories specified in paragraph (a) through (k) of § 282.301 and which the customer purchased from sources other than interstate pipelines during the previous month; and

(C) if the sale-for-resale customer is an interstate pipeline, the volume of pipeline produced natural gas (at 1,000 Btu's per cubic foot) to which a first sale acquisition cost has been imputed under paragraph (C) of § 282.303.

(3) *Pro rata share of total incremental gas costs.* A sale-for-resale customer's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous month shall be determined by multiplying the total incremental gas costs incurred by the percentage reflecting the ratio between:

(i) the MSAC reported to the natural gas supplier by the sale-for-resale customer for the previous month in accordance with paragraph (e); and

(ii) the sum of the MSAC's of the non-exempt industrial boiler fuel facilities on the natural gas supplier's system, as determined for the previous month, in accordance with subparagraph (2) of paragraph (c), plus the sum of the MSAC's reported to the natural gas supplier by its sale-for-resale customers for the previous month in accordance with paragraph (e).

(4) *Optional billing procedures for interstate pipelines.* An interstate pipeline company may elect to bill any sale-for-resale customer it serves by utilizing the projected surcharge of the customer for the previous month, as filed under § 282.602(a)(1)(ii).

(i) If an interstate pipeline bills a sale-for-resale customer at the level of the projected surcharge for service during the previous month and the projected surcharge of the sale-for-resale customer for such month exceeds the actual surcharge that should have been billed for that month, as calculated in accordance with paragraph (d)(2), then the interstate pipeline shall refund the

excess to the sale-for-resale customer in the next bill rendered to the customer.

(ii) If an interstate pipeline bills a sale-for-resale customer at the level of the projected surcharges for service during the previous month and the projected surcharge of the sale-for-resale customer for such month is less than the actual surcharge that should have been billed for that month, as calculated in accordance with paragraph (d)(2), then the interstate pipeline shall bill the difference to the sale-for-resale customer in the next bill rendered to the customer.

(e) *Reporting.* (1) *Pipeline to request information.* Each interstate pipeline shall request that, each month, each of its sale-for-resale customers report its MSAC to the pipeline in a timely fashion for the monthly billing of incremental pricing surcharges.

(2) *Pipeline customers to report.* Each month each natural gas supplier shall respond to the requests of interstate pipelines for its MSAC.

(3) *Suppliers to customers.* Each month each natural gas supplier shall inform each of its interstate pipeline sale-for-resale customers of the amount of the incremental pricing surcharge which will be billed to such customer. Such information shall be conveyed within sufficient time so as to enable the last customer in a chain of sale-for-resale interstate pipeline customers to bill incremental pricing surcharges to its customers in a timely fashion.

(f) *Scheduling by the Commission.* In those instances where the Commission finds that natural gas suppliers have not arranged for the reporting of information in accordance with this section, the Commission will prescribe by order an appropriate schedule for the transmission of the information necessary for the monthly billing of incremental pricing surcharges.

**§ 282.505 Recovery of amounts in excess of maximum surcharge absorption capabilities.**

In the case of interstate pipelines, the amount accumulated in the unrecovered incremental gas costs account for gas received during a month which, due to alternative fuel price ceilings, cannot be recovered through incremental pricing surcharges shall be collected under the Commission's provisions governing recovery of unrecovered gas costs as set forth in § 154.38(d)(4).

**§ 282.506 Refunds.**

The jurisdictional portion of any refund (including interest applicable thereto) which is attributable to service provided to non-exempt industrial boiler fuel facilities prior to January 1, 1980,

which has not been flowed through to such users as of December 31, 1979, shall be flowed through as a lump sum payment in appropriate amounts to each appropriate natural gas supplier for the benefit of such users. Such refunds shall be calculated on the basis of sales to such users during the period when the rates which give rise to the refund were in effect.

**Subpart F—Filing Requirements**

**§ 282.601 FERC gas tariff provisions.**

(a) *Incremental pricing surcharge provision.* Each interstate pipeline shall establish an incremental pricing surcharge provision in its FERC Gas Tariff. The incremental pricing surcharge provision shall provide for the passthrough of costs in accordance with the requirements of this part.

(b) *Revised PGA provision.* Each interstate pipeline shall revise its PGA provision, as established in accord with § 154.38(d), to provide for a reduced PGA rate in accordance with the requirements of this part.

(c) *Filing dates.* The incremental pricing surcharge provision and revised PGA provision shall be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and served on all parties by November 1, 1979. The provisions shall become effective on December 1, 1979, unless disapproved in whole or in part by the Commission.

**§ 282.602 Tariff sheets.**

(a) *General rule.* (1) On or before December 1, 1979, for the period January 1, 1980, to the effective date of the pipeline's next normally scheduled PGA filing, each interstate pipeline shall file concurrently:

(i) a tariff sheet reflecting a reduced PGA rate as determined in accordance with § 282.503; and

(ii) a tariff sheet reflecting the projected incremental pricing surcharges for each month, as determined on the basis of data used in deriving the reduced PGA rates referenced in clause (i), for each of the direct sale non-exempt industrial boiler fuel facilities and the aggregate amount applicable to each sale-for-resale customer on the pipeline's system.

(2) Revisions to the tariff sheets filed pursuant to subparagraph (1) shall be filed in accordance with each interstate pipeline's normal PGA schedule, as necessary to revise the previously effective tariff sheets.

(b) *Form and filing requirements.* Any tariff sheet filed pursuant to paragraph (a) shall be subject to the provisions and requirements of Part 154 of this chapter.

(c) *Service.* The interstate pipeline which files tariff sheets pursuant to paragraph (a) shall concurrently serve copies on each customer subject to the tariff sheets and each interested state commission.

(d) *Material to be submitted.* (1) Tariff sheets filed pursuant to paragraph (a) shall be accompanied by a report containing computations showing the derivation of the reduced PGA rate and the incremental pricing surcharges set forth in such tariff sheets.

(2) Beginning with the first filing subsequent to the effective date of this part, tariff sheets filed pursuant to paragraph (a) shall be accompanied by a supplement to the statement of a pipeline's current cost of purchased gas as required by § 154.38(d).

(i) Such supplement shall identify, for the prior PGA period, each source of supply which is within a category identified in paragraphs (a) through (k) of § 282.301 by API well identification number, if available, contract date and FERC rate schedule number. Where multiple wells are metered through a common delivery point or where production from multiple wells is sold under a single contract, the supplement shall identify each well that produces gas which is subject to this part. Such supplement shall identify the price paid for gas from each well identified in accordance with this paragraph.

(ii) Such supplement shall show for account 192.1 for the prior PGA period:

(A) total monthly debits to such account;

(B) total monthly credits to such account resulting from the recovery of costs by means of incremental pricing surcharges; and

(C) the monthly amount credited to clear the account to account 191 and the date the clearing entry was made.

(iii) Such supplement shall show for account 192.2 for the prior PGA period:

(A) the incremental pricing surcharges debited to the account each month by the pipeline; and

(B) the total monthly credits to the account resulting from the recovery of costs by means of incremental pricing surcharges.

(f) *Additional information.* The Commission may, upon receipt of a tariff sheet filed pursuant to this section, require the submission of additional information as it deems necessary and appropriate.

#### § 282.603 Informational filings.

(a) *General rule.* For informational purposes, each month commencing with March 1980, each interstate pipeline-company shall file with the Commission a statement setting forth the incremental

pricing surcharge actually billed to each non-exempt industrial boiler fuel facility and sale-for-resale customer on its system in the preceeding month.

(b) *Address.* The informational filings required by paragraph (a) shall be addressed to Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

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