finding and a brief statement of its reasons in the final rulemaking) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth in the "Background" section of this preamble and, in particular, because this amendment is not likely to affect significantly States' implementation of EES, we find that the section 553(b) requirements are unnecessary in this rulemaking proceeding.

In view of this determination, the prior notice requirement of subsection (b) of section 501 of the Department of Energy Organization Act ("DOE Act") 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91, is also inapplicable. Therefore, we have determined, for the reasons stated above in support of waiving the APA section 553(b) requirements, that no substantial issue of law or fact exists with respect to this rulemaking and that the rulemaking is unlikely to have substantial impact on the nation's economy or large numbers of individuals or businesses. Accordingly, the hearing requirements of subsections (c) and (d) of section 501 of the DOE Act are inapplicable.

B. Executive Order 12044

In accordance with the DOE's criteria governing "significant regulations" set forth in paragraph 6(a)(3) of DOE Order 2030, 44 FR 1032, (January 3, 1979), the regulation set forth at the end of this preamble is not a significant regulation. Accordingly, the sixty-day advance public comment period and other rulemaking requirements specified in Executive Order 12044, entitled "Improving Government Regulations", 43 FR 12661 (March 23, 1978), and DOE's implementing procedures, DOE Order 2030, are inapplicable.

C. National Environmental Policy Act

In accordance with DOE's obligations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, an evaluation of the potential environmental impacts of the EES regulation has been prepared by DOE. Based on the Environmental Assessment (DOE/EA-0042) of the comprehensive EES program, DOE determined that the EES regulation does not constitute a major Federal action having a significant effect on the quality of the human environment. This amendment to the EES regulation does not affect this determination. Accordingly, an environmental impact statement will not be prepared.

(The National Energy Extension Service Act, enacted as title V of the Energy Research and Development Administration Authorization Act of 1977, title V of Pub. L. 95-39, 91 Stat. 191 *et seq.*, 42 U.S.C. 7001 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91 Stat. 965 *et seq.*, 42 U.S.C. 7101 *et seq.*, Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, 92 Stat. 3 *et seq.*, 41 U.S.C. 501 *et seq.*; EO 12009, 42 FR 46267; EO 12044, 43 FR 12660.)

In consideration of the foregoing, Part 465 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective December 21, 1979.

Issued in Washington, D.C., November 14, 1979.

Maxine Savitz,

Acting Assistant Secretary, Conservation and Solar Energy.

Section 465.7 is amended by revising paragraph (b) to read as follows:

§ 465.7 Annual State applications.

* * * * *

(b) to be eligible for financial assistance under this part, a State shall submit an original and two copies to the Regional Representative of an annual State application executed by the Governor. The first annual State application shall be submitted not later than February 19, 1980. Subsequent annual State applications shall be submitted on or before September 30 of the following years.

[FR Doc. 79-35004 Filed 11-20-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 802

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Promulgation of final rules.

SUMMARY: The purpose of this document is formally to amend the minimum dollar value rule contained in the Commission's premerger notification rules by raising certain minimum dollar value figures which define exemptions from the reporting and waiting requirements of Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976. This document consists of the minimum dollar value rule as amended and a statement of basis and purpose. The amended rule will enlarge the class of relatively small transactions which are exempt from the requirement that Premerger Notification and Report Forms be filed with the Federal Trade Commission and the Antitrust Division of the Department of Justice and will be effective immediately.

EFFECTIVE DATE: Immediately November 21, 1979.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, telephone: (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a (Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976), requires that certain persons contemplating certain acquisitions or mergers file Notification and Report Forms with the Federal Trade Commission and the Department of Justice and wait designated periods of time before consummating the transactions. Specifically, transactions between persons with $100 million or more in sales or assets, and persons with $10 million or more in sales or assets, are reportable to both agencies, if, as a result of the transaction, the acquiring person would hold 15 percent or more of the assets or voting securities of the acquired person or if the acquiring person would hold an aggregate total amount of the assets and securities of the acquired person in excess of $15 million. *See* Clayton Act, section 7A(a)(3).

Statement of Basis and Purpose of Amended § 802.20 of the Commission's Premerger Notification Rules

Section 802.20, as amended, exempts certain acquisitions as a result of which the acquiring person will hold 15 percent or more of the voting securities or 15 percent or more of the assets of the acquired person, but the aggregate total amount of voting securities and assets so held will be $15 million or less (*i.e.*, the 15-percent test of section 7a(a)(3)(A) will be satisfied, but the $15 million test of section 7A(a)(3)(B) will not). This rule amends the previous § 802.20 so as to exempt acquisitions as a result of which the acquiring person would not hold either (a) assets of the acquired person valued at more than $15 million, or (b) voting securities conferring control of an issuer which, together with all entities that it controls, has annual net sales or total assets of $25 million or more.

Section 802.20 was originally promulgated to eliminate reporting and waiting period requirements with respect to certain relatively small acquisitions that are clearly reportable under the Act. It resulted from the Commission's belief

* * * that certain relatively small transactions (frequently involving only a portion of the stock or assets of the acquired person) that might be reportable under the act are sufficiently unlikely to have a significant anticompetitive impact that imposition of the

act's requirements would not represent an appropriate use of public resources.

Statement of Basis and Purpose to Premerger Notification Rules, 43 FR 33490 (July 31, 1978).

Section 802.20 as originally promulgated exempted, first, those assets acquisitions where at least 15 percent of the acquired person will be held as a result of the transaction, if those assets are valued at $10 million or less. Second, subsection (b) exempted acquisitions of 50 percent or more of the voting securities of an issuer, if the issuer has both sales and assets of less than $10 million and the resulting holdings are valued at $15 million or less. Finally, an acquisition of less than 50 percent of the voting securities of an issuer is exempt without regard to the size of the issuer's sales or assets, as long as the value of the holdings resulting from the acquistion is $15 million or less.

The Commission scrutinized the filings received during the first nine months of the premerger program and found that, even with the exemptions provided in § 802.20, there was a significant number of relatively small transactions with respect to which neither agency requested additional information pursuant to section 7A(e) of the Act. The Commission has concluded that it could raise somewhat the floors in § 802.20 so as to exempt a larger number of these small transactions without impairing the effectiveness of the program, while at the same time reducing the burden on filing parties.

The new minimum dollar value floors were selected only after careful analysis of the data derived from the filings. Staff formulated a proposal that, based on the past data, maximized the number of additional relatively small transactions exempted while minimizing the possibility that, contrary to legislative intent, transactions which might be of antitrust interest to the agencies would also be exempted.

The amended rule, therefore, exempts assets acquisitions where at least 15 percent of the acquired person will be held as a result of the transaction, if those assets are valued at $15 million or less (instead of the $10 million formerly used). Second, amended subsection (b) exempts acquisitions of 50 percent or more of the voting securities of an issuer, if the issuer has both sales and assets of less than $25 million (instead of the $10 million figure formerly used) and the resulting holdings are valued at $15 million or less. The third exemption, affecting acquisitions of less than 50 percent of an issuer's stock as long as the value of the holdings resulting from the acquisition is $15 million or less, remains the same.

Staff considered alternative dollar values; however, the $15 million figure in the case of an assets acquisition and the $25 million figure in the case of a voting securities acquisition were undoubtedly the most appropriate. All of the comments approved the agencies' attempt to exempt more transactions. Comment 4,[1] however, suggested raising the floor in an assets acquisition to $20 million, citing as its justification the observation that inflation has rendered the $15 million figure "an unreasonably low * * * benchmark for identifying potentially anti-competitive acquisitions."

Comment 8 recommended a $25 million floor in an assets acquisition and a $50 million floor in a voting securities acquisition. It relied upon a stated belief "that these lower magnitude acquisitions usually involve lower level technology, and these type companies tend to flourish regardless of acquisition activity." Neither comment offered factual support for its recommendations. The Commission has concluded that the 50% increase in an assets acquisition and the 150% increase in a voting securities acquisition is sufficient at this early stage of the program. Continued review of the filings received may result in a reassessment of the Commission's position with regard to these floors; however, a cautious approach seems more appropriate at this time.

Comment 2 recommended a "uniform exemption" for both assets and voting securities acquisitions so as to exempt any acquisition of $15 million or less, regardless of the percentages involved. A similar comment was addressed to the Commission during promulgation of the original rules. As the Commission stated then, "[I]f Congress had intended such a result, the act could easily have been worded so as to achieve it." 43 FR at 33491. The disjunctive formulation of the size-of-transaction test in section 7A(a)(3) "indicates a clear Congressional intention to reach at least some acquisitions that satisfy only the percentage test." *Id.* Absent justification as to why the clear intent of Congress should be ignored, we will reject this suggestion.

Comments 6 and 9 recommended amending the similar exemptions provided in § 802.50 and § 802.51 for certain acquisitions by and of foreign persons. Comment 7 urged the Commission to redefine "acquired person" in § 801.1 (a)(1) in terms of only the issuer to be acquired along with all entities which the issuer controls. The Commission rejects these suggestions as being outside the scope of the published notice of proposed rulemaking, but will retain them for further consideration in the event that changes in these sections are proposed at a later date.

[1] The nine comments received are identified and marked by number following the Statement of Basis and Purpose.

Comments

Received in response to August 10, 1979, publication of proposed amendment to § 802.20 of the rules implementing Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 relating to premerger notification (comment period August 10, 1979 to September 10, 1979).

No.	Date of letter	Organization
1	8/17/79	Chadwell, Kayser, Ruggles, McGee & Hastings (David A. Nelson, Esq.).
2	9/4/79	Marathon Oil Co. (Kent B. Hampton).
3	9/5/79	Squibb Corp.* (J. Elliston Murray).
4	9/7/79	Edwards & Angell*.
5	9/10/79	Food Marketing Institute (Kathleen E. McDermott, Esq.).
6	9/10/79	Covington & Burling (Daniel M. Gribbon, Esq. and Stephen Calkins, Esq.).
7	9/10/79	International Telephone and Telegraph Corp. (Roger Langsdorf, Esq.).
8	9/11/79	McCormick & Co., Inc.* (James J. Harrison, Jr., Esq.).
9	9/13/79	Chamber of Commerce of the United States * Fred Bysel).

*This comment was received after the comment period.

The Federal Trade Commission amends § 802.20 of title 16 CFR pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390, to read as follows:

§ 802.20 Minimum dollar value

An acquisition which would be subject to the requirements of the act and which satisfies section 7A(a)(3)(A), but which does not satisfy section 7A(a)(3)(B), shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would not hold:

(a) Assets of the acquired person valued at more than $15 million; or

(b) Voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of $25 million or more.

Pursuant to section 7A(d) of the Act, 15 U.S.C. 18a(d), the Federal Trade Commission, with the concurrence of the Assistant Attorney General, hereby

formally amends § 802.20 of title 16 of the Code of Federal Regulation, Chapter I.

Issued November 13, 1979.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-35935 Filed 11-20-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-73]

Interim Interpretive Regulation; Definition of Term "Produced" as it Relates to Stripper Wells

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim Regulation.

SUMMARY: The Commission is issuing an interim regulation defining the term "produced" as it relates to stripper wells under the Natural Gas Policy Act of 1978. The regulation provides that natural gas is produced within the meaning of section 108(b)(3) (A) and (B) of the NGPA (1) on any day during which there is measurable production of natural gas from a well, and (2) on any day during which a well is open to the line but is unable to produce measurable quantities of gas.

The order also provides that days on which a well operator must shut the well in to build up pressure may qualify as "production days" if the jurisdictional agency makes a finding that conservation practice requires such shut-in.

DATES: The regulation is to be effective November 9, 1979. Comments are due on or before January 8, 1980. A public hearing will be held on January 3, 1980. Requests to participate should be received on December 27, 1979.

ADDRESSES: Send comments and requests to participate at the hearing to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The hearing will be held at the same location.

FOR FURTHER INFORMATION CONTACT: Carol Lane, Office of the General Counsel, Federal Energy Regulatory Commission, Room 4001, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275-5928 or 357-8511.

November 9, 1979.

I. Background

Section 501(b) of the Natural Gas Policy Act of 1978 (NGPA), 92 Stat. 3350, authorizes the Federal Energy Regulatory Commission (Commission) "to define, by rule, accounting, technical and trade terms" used in the NGPA, so long as such definition is "consistent with the definitions set forth in [the] Act." Pursuant to this authority, the Commission is issuing an interim interpretive regulation defining the term "produced" as it is used in portions of section 108 of the NGPA. We are also clarifying our interpretation of the terms "production day" and "90-day production period."

This order arises out of deliberations held in the course of Commission review of certain jurisdictional agency determinations[1] made under section 108 of the NGPA (stripper well natural gas). These determinations generally fall into three categories, which are described below. Wells in these categories had been preliminarily determined by the Commission not to qualify as stripper wells. In a number of these cases, however, the Commission noted that these Preliminary Findings were tentative conclusions which would be re-examined in a forthcoming rulemaking.

Category A (shut-in wells): This category consists of wells which are manually shut-in due to their inability to meet line pressure. For reasons which will be explained below, the Commission had preliminarily found that days on which a well was shut in for this reason did not qualify as "production days."

Category B (open valve wells): This category consists of wells which are open to the line but are unable to meet line pressure. For reasons which will be explained below, the Commission had preliminarily found that days on which a well was open to the line but not producing gas did not qualify as "production days" and could not make up a "90-day production period."

Wells in categories A and B, are generally low-production gas wells which were in production prior to passage of the NGPA (some for many years). These wells have experienced a drop in pressure to the point where they are incapable of producing against the line without compression or the application of enhanced recovery techniques. Producers of such wells have three alternatives: continued shut-in, abandonment, or installation of enhanced recovery techniques such as compression.

Category C (intermittent production wells): This category consists of low-production gas wells which are open to the line and produce natural gas at irregular intervals. In such cases, pressure builds up over a period of time until the well can finally "burp up" a measurable amount of gas. Pressure then drops again and the well produces no gas for another period of time until it can build sufficient pressure once again. This cycle may continue on a regular or irregular basis. The Commission had found preliminarily that days in the cycle on which the well did not produce measurable amounts of gas were not "production days."

The regulation we adopt today changes these preliminary conclusions by defining the term "produced" as it applies to wells in categories (A), (B) and (C), in a manner consistent with what we believe to be the scope and the intent of section 108.

II. Nature of Interim Regulation

The Commission is amending § 271.803 by adding a new paragraph (e) defining the term "produced" as follows:

> Natural gas is produced, within the meaning of section 108(b)(3) (A) and (B) of the NGPA: (1) on any day during which there is measurable production of natural gas from well, and (2) on any day on which a well is open to the line but is unable to produce measurable quantities of gas.

The phrase "open to the line" is intended to describe a situation in which there is no physical impediment to production. For example, a well may have a one-way or back-flow valve which will automatically close when line pressure is greater than well pressure, but there will exist no physical impediment which will prevent the valve from opening again if line pressure drops sufficiently or well pressure increases sufficiently.

The new definition of "produced" is intended to encourage both Renewed production from wells which are presently incapable of producing and continued production from wells which are presently producing on an irregular basis. Once an applicant has the qualifying production date available the installation of a process or equipment which increases the rate of production from the well will be eligible in most cases to qualify as application of a "recognized enhanced recovery technique."[2] If the recognized enhanced

[1] GP79-46, GP79-48, GP79-59, GP79-65, GP79-70, GP79-84, GP79-103, GP79-106, GP79-63, GP79-76, GP79-120.

[2] Section 271.803(a) defines recognized enhanced recovery technique as follows: "Recognized

Footnotes continued on next page