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Âé¶¹´«Ã½R;gister I Vol. 44, No. 226 I Wednesday, November 21, 1979 I Rule!! and Regulations 66781

FEDERALTRADE COMMISSION

16 CFR Part 802

Premerger Notification; ReportIng and Wattfng Peri<xl RequIrements

AGENCY: Âé¶¹´«Ã½Trade Commission.

ACTlON:Promulgation offinal rules.

(b) to be eligible for financial
assistance under this part, a State shall submit an original ani! two copies to the Regional Representative of an annual
Stateapplicatlon executed by the
Governor. The first annual Stale
application shall be submiUed not later thanFebruary 19. 1980. Subsequent
annual State applications shall be
submitted on or before September 30 of the!ollowingyears.
tpRDoc. P1led 11-:IG-1ll; lbUUlI
BlWNG COOE USlHll-N

191 otseq., <lZ U.S.c. 7001 otseq.;Department of Energy Organization Act. Pub. L 9S-91

Stat.'965 etseq.. 4Z US.c. 7101 etseq., Fed~ Grant and Cooperative Agreement
Act of1971, Pub. 1.. 95-224. 92 Stat. 3 olseq., 41 US.c. 501 et 8lJf1..' EO 12009, 4Z FR 46257.
EO 12044. 43 FR12660.)

In consideration ofthe foregoing. Part
465 ofChaptern ofTitle 10 ofthe Code ofÂé¶¹´«Ã½Regulations is amended as
set forth below, effective December 21,
1979.

. Issued in Washington. D.c.. Novcmber14.
1979.

MaxineSavitz,
ActingAssistantSecretary. Consen'ation and SolarEnergy.

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

§ 455.7 Annual State appUcaUons.

SUIUlARY: The purpose of this document is formally to amend the minimum dollar value role containedin the
Commission'JJ premergernotification
rules by raising certain minimum dollar value figures which define exemptions
from the reporting and waiting
requirements ofTitle nofthe Hart-
Scott-Rodino Antitrust Improvements
Act of1976. This document consists of
the minimum dollar value rule as
amended anda statement of basis and
purpose. The amended rule will enlarge the class ofrelative1y.small transactions which are exemptfrom the requirement that Premerger Notification and Report Forms be.filed with the Âé¶¹´«Ã½Trade
Commission and the Antitrust Division

of the J;lepartment ofJustice and will be effective immediately.
EFFECTIVE DATE: Immediately November 21,1979.

FOR FURTHER IHFORMAnOH CONTACT:

Joan S. Truitt. Attorney. Premerger
Notification Office,Bureau of
Competition, Room SOl. Âé¶¹´«Ã½Trade
Commission, Washington, D.C. 20580.. telephone: (202J 523-3894.
SUPPLEMENTARY,m=ORMAnON: Section 7A ofthe ClaytonAct. 15U.S.C. 18a.
(Title nofthe Hart-Scalf-Rodino
Antitrust Improvements Act of1976).
requires that certain persons
contemplating certain acquisitions or
• mergers file Notification andReport
Forms with the Âé¶¹´«Ã½Trade
Commission and the Department of
Justice andwait designated periods of
time before consnmmating the
transactions. Specifically, transactions
between persons with $100 million or
more in sales or assets, andpersons
with $10 million ormore in sales or
assets. are reportable to both agencies, if, as a result ofthe transaction, the
acquiring person would hold 15percent or more ofthe assets or voting secmities ofthe acquiredperson orifthe acquiring person would hold an aggregate total
amount ofthe assets and securities of
the acquired person in excess of $1~
million. See Clayton-Act. section
7 A [a) (~ .

Statement ofBasis and Pw:pose of
Amended §802.20 ofthe Commission's Premezger Notification Rules

Section 802.20, as amended, exempts
certain acquisitions as a result ofwhich the acquiring personwill hold15 percent or more ofthe voting securities or15
percent ormore ofthe assets ofthe
acquired person, but the aggregate total amount ofvoting securities and assets
so held will be~5niill1onorless (ie.,
the 15-percent test ofsection 7a[a)(3)(A) will be satisfied, but the~5million test ofsection 7A(a)(3)[B) wifinot). This rule amends the previous § 802.20 so asto
exempt acquisitions as Iiresult ofwhich the acquiring person would nothold
either (a) assets ofthe acquired person valued at more than $15 million, or [b)
voting securities conferring control ofali issuer which, together with all entities
that it controls, has annual netsales or total assets ofS25 million or more.

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

• * • that certain relatively small transactions. (frequently involving only a portion ofthe
stock or usels ofthe acquired person) that

might be reportable under the act are sufficiently unlikely to havea significant

anticompetitive impact that imposition ofthe

* * * .. *

finding-and a briefstatement ofits
reasons in the final ruIemaking) that
notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth in the "BaCkgrourid" section of this preamble and, in particular.because this amendment is notlikely to affect
significantly States' implementation of
EES, we find that the section 553(b)
requirements are unnecessary in this
ruIemaking proceeding.
In view of this determination, the
prior notice requirement ofsubsection
(b) of-section 501 of the Department of
Energy Organization Act ("DOE Act") 42
· U.S.C.7101 etseq., Pub.L. 95-91, is·also
inapplicable. Therefore, we have
determined, for the reasons stated
above in support ofwaiving the APA
section 553(b)l'equirements, iliat no
substantial issue of}!iw or fact exists
with respect to this rulemaking and that the ruIemaking is unlikely to have
substantial impact·on the nation's
economy orlarge numbers {)findividuals or businesses. Ac~ordingl'y, the hearing requirements ofsubsections (c) and (d)
ofsection501 ofthe DOE Act are

~ a p p l i c a b l e .

B.Executive Order12044

Inaccordance with the DOE's. criteria
governing "significantTeguiations" set
forth in paragraph 6[a)(3) ofDOE Order 2030,44 FR1032, (January 3, 1979), the
regulation setforth at the end of this
preamble IS not a significantregulation. Accordingly, the sixty-day advance
· public comment period and other
rulemaking requirements specified in
Executive Order12044, entitled
"Improving GovernmentRegulations",
43FR12661 (March 23, 1978), and DOE's implementing procedures, DOE Order
2030, are inapplicab.le.

· C. NationalEnvironmentalPolicyAct

In accordance with DOE's obligations
under the NationalEnvironmental Policy Act of 1969 (NEPA),42U.S.C. 4321 et
seq., an evaluation of the potential
environmental impacts of the RES
regutation has been preparedbyDOE.
Based1)n the Environmental Assessment (DOE/EA-0042] ofthe comprehensive
EES program.DOE determinedthat the EES regulation does not constitute a
major Âé¶¹´«Ã½actionbaving a
significant effect1)n the quality of the
human environment. This amendment to the BES regulation does nolaffect this
determination. Accordingly, an
environmental impact statementwill not be prepared.

(The National EnergyExtensionService Act, enacted as titleV of thelmergyResearch and Development Adm1nistration Authorization
. 4ct of:l977. titleV oIPub.l.. 95-39,in Stat.

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I The nine comments received 8re Identified and
marked.by number following the Statement ofBasis
and Purpose.,

1 S/11119 Chadwell. Kayser, RUggles.
McGee & Hasllngs (Davld

A. Nelson, Esq.). 2 9/4119 Marathon Oil Co. (KentS.
Hamplon).
3 9/5119 Squibb Corp.' (J. Elliston

Murray). 4 911119 ' Edwards &Angell'.

5 9/10119...., Food Markellng Ins6fulo
(Kathleen Eo McDermot~
Esq,).
6 ' 9/10119........•........• CovInglon & Burling (Oanlol
M. Gribbon, Esq. and

Slephen calkln!!. Esq.). 1 9110119 Inlemal/onal Tolophono and

To!eg,aph Corp. (Rogot
Langsdorf. Esq.).
8 91"119 : McCormick & Co., Inc.'

(Jamos J. Harrison, Jr., ,. Esq,).
9 9/13119 Chamber 01 Commorce 01 tho, United Slatos • Fred Oysol).

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 reta,in them for further consideration in the event that changes in these sections, are proposEld at a later date.

Comments

Received.in response to August 10,
1979, publication of proposed
amendment to § 802.20 of the rules
implementing Title 11 of the Hart-Scott· Rodino Antitrust lmprovements Act of 1976 relating to premerger notification' (comment period Augus~ 10.1979 to
September 10, 197Q).

'This commont was rece~'od alter tho comment period.

The Âé¶¹´«Ã½Trade Commission
amends § 802.20 of title 16 CPR 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 1978, Pub. L. 94-
435. 90 Stat. 1390, to read as follows:

§ 802.20, MInImum dollar valuo
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 secUon
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 apquired person
valued at more than $15 million' or

(b) Voting securities which (f~nIer. 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 tlle Act,
15 U.S.C. 18a(d), the Âé¶¹´«Ã½Trade
Commission, with the concurrence of the Assistant Attorney General, hereby

No. Date 01 leUer Organlzatlon

act's requirements,would not represent an, the acquisition is $15 million or less,
appropriate use of public resources, remains the same.
Statement ofBasis and Purpose 'to Staff considered alternative dollar
Premerger Notification Rules. 43 FR yalues; however, the $15 million figure
33490 Uuly 31, 1978). . ' m the case of an assets acquisition and
Section 802.20 as originally the $25 million figure in the case of a,
promulgated exempted;'fll'st, those voijng securities acquisition were;
assets acquisitions where at least 15 'undoubtedly the most appropriate. All'of
percent ofthe acqUired person'will be the co~ents'approved the agencies'
held as a result of the- transaction, if attempt to exen;J.pt more transactions.
those assets are valued at $10 million or Commen~4,1 however, suggested raising
less. Second, subsection (b) exempted the floor m an assets acquisition to $20
acquisitions of 50 percent or more of the r.ai1lion, citing as its justification the
voting securities of an issuer, ifthe • observation that inflation has rendered

issuer has both sales imd assets ofless the $15 million figure "an unreasonably than $10 million and the resulting low".... benchmark for identifying
holdings are valued at $15 ~on or potentially anti-competitive

less. Finally, an acquisition ofless than acquisitions.". ' 50 percent of the voting securities of an Comment 8 recommended a $25

issuer is exempt without regard to the million floor in an assets'acquisition and
size of the issuer's sales or assets as a $50 million floor in a voting securities
long as the value of the holdings ' acquisition. It relied upon a stated belief

r e ~ultin g from thE! acquistlon is $15 "that these lower magnitude' _ million or less.,__ ": acquisitions usually involve lower level
The Commission scrutinized the technology, and these type companies
filings received during the 'firstnine tend to flourish regardless of acquisition

months of the preinerger program and' activity." Neither.comment offered foun~ tha!, even with the exemppons" factual support for its,recommendations.
prOVIded m § 802.20, there was a. The Commission has concluded that the
significant number ofrelatively small ' 50% increase in an assets.acquisition
transal!,tions with resp-ecno which and the 150% increase in a voting
neither'agency requested additional securities acquisition is sufficient at this
informationpursuant to section 7A(e) of. ' ear~y stage of the program. Continued
the Act. The Commission has concluded ~eV1ew of the filings reCl;ived may result
that it could raise somewhat the floors m a reassessment of the Commission's
in § 802.20 so as to exempt a larger. position with re?ard to these floors;
number of these small transactions however, a cautious approach seems
without impairing the effectiveness of more appropti,ate atthis time.
the program, while 'at the same time Comment 2 recommended a "uniform
reducing the b,urden on filing parties. exemp~on" for.b.0!h assetsiUld voting
The new minimum dollar value floors securltiell acqlllsltions so as to exempt
were selected only after careful analy.sis any acquisition of $15 milIiop. or less,
of the data derived from the filings. 'Staff reg~~ess ~f, the percentages involved.
formulated a proposal that. based on the A similar comment was addressed to.'
past data, maximized the ilUniber of / the C~~ssion during promulgation of
additional relatively small transactions the oogmal rules. As the Commission
exempted while minimizing the ' ' st~te'dthen.- "OOf Congress had intended
possibility,that, contrary to legi~lati~e ,such a result, the act could easilybave
i n t ~ n t , t r ~ s a c t i o n s , which might be of, been worded s~ ~s ~o.achieve it." ~3 FR
antItrust mterest to the agencies'would' at 334~. The diSjunctive formulation of
also be exempted. . the size-of-transaction test in section

The amended rule, therefore, exempts 7A(a)(3) "indicates a clear . assets acquisitions where'aUeast 15 Congressional ip,teption to reach at least
percent,of the acquired person will be some acquisitions that satisfy only the
held as a result of the transaction if perce!1tage test/'Id. Absent justification
those assets are valued at $15 million or as to' why!he clear intent of Congress
less (instead of the $10 millionformerly should?e 19nor~d, we will reject this

used). Second, amended subsection (b) suggestion.' '. ' exempts acquisitions of50 percent or Co~e,n,ts 6 ~d 9 recommended
!D0re of the voting securities of an ameI!-ding. the similar exemptions
Issuer, if the issuer has both sales and proV1?ed m ~~2.50 and § 802.51 for
assets ofless than $25 million (instead 'Certam acqmSltions by and offoreign
of the $10 million figure formerly used) person.s. ~omment 7 urged the

and the resulting holdings are valued at COmmlS~IOnto redefine "acquired. - $15 million or less. The third exemptio~' person" m § 801.1 (a)(l).in terms of oxily,
affecting acquisitions ofless than 50
percent of an is~uer's stock as long as
the value of the holdings resulting fro~

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'Section 271.803(a) delines recognized enhanced
n:covery technIque as follows: '"Recognized
Footnotes continued on next page

in, abandonment. or installation of
enhanced recovery techniques such as
compression.
Category C (intermittent production
wells): This category consists oflow-
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 oftime until the well can finally "burp up" a
measurable amount ofgas. Pressure
then drops again and the well produces no gas for another period oftime until it can build sufficient pressure once again. This cycle may con~ue on a regular or irregular basis. TheCommission 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 consistentwith
what we believe to be the scope and the intent ofsection 108.

n. Natme ofInterim..ReguIation

The Commission is amending
§ 271.803 by adding a new paragraph (eJ defining the term ''produced'' as follows:

Natural gas is produced. within the
meaning ofsection 108{b)(3) (A) and (B) of
the NGPA: (l) on any day during which there is measurable production ofnatural gas from well. and (2) on any day on which a well is
open to the line but is unable to produce
measurable quantities ofgas.

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 ifline pressure drops sufficiently or well pressure
increases sufficiently.
The new definition of''produced'' is
intended to encourage bothRenewed
production from wells which are
presently incapable ofproducing and
continued production from wells which

are presently producing on anirregular. basis. Once an applicant has the
. qualifying production date available the installation of a process or equipment
which increases the rate ofproduction
from the well will be eligible in most
cases to qualify as application of a
''recognized enhanced recovery
technique." 1 Ifthe recognized enhanced

November 9. 1979.

I GP79-16, GP79-1o. GP79-59. GP7~ GP19-7O,
GP71Hl4. GP19-103. GP19-100. GPi&-03. GP19-7O,
GP79-12.O.

I. Background

Section 501(b) of the Natural Gas
Policy Act of 1978 (NGPA), 92 Stat. 3350, authorizes the Âé¶¹´«Ã½EnetID'
Regulatory Commission (Commission)
"to define, by rule, accountiog, technical and trade terms" used in the NGPA, so
long as such deTmition is "consistent
with the definitions set forth in [the]
I Act." Pprsuant to this authority, the_
Commission is issuing an interim
interpretive regulation derming the term "produced" as it is used in portions of
section 108 of the NGPA. We nre also
clarifying our interpretation of the terms "production day" and "OO-day
production period."
This order arises out of deliberations
held in the course ofCommission 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.
CategoryA [shut-in wells): This
category consists ofwells 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
"l!roduction days."
CategoryB (open valve wells): This
category consists ofwells 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
proaucing gas did not qualify as
"proquction days" and could not make
up a "OO-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 ofsuch wells.. have three alternatives: contioued shut-

DEp'ARTMENT OF ENERGY

Âé¶¹´«Ã½Energy Regulatory
COl1)mission

18 CFR Part 271

[Docket No. RM79-73]

Interim Interpretive Regulation;
Definition of Term "Produced" as it
Relates to Stripper We!ls

AGENCY: Âé¶¹´«Ã½Energy 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 ofsection 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" ifthe 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, Âé¶¹´«Ã½Energy
Regulatory Commission, 825 North
Capitol Street, N.E., Washington. D.C.
20426. The hearing will be held at the
same location.

FOR FURTHER INFORMAnON.CONTACT:

Carol Lane, Office of the General
Counsel. Âé¶¹´«Ã½Energy Regulatory
Commission, Room 4001, 825 North
capitol Street, N:E., Washington, D.C.
20426 (202) 275-5928 or 357-8511.

formally amends § 802.20 of title 16 of
the Code of Âé¶¹´«Ã½Regulation,
.Chapter I.

Issued November 13. 1979.
By direction of the Commission.
CarolM. Thomas,
Secretary.
[F.R Doc. 7!l-35935 Flied 11-20-79: 8:45 am)

BIWNG CODE 6750-01-1&