TABLE 5.—RELATED ALERT COMMERCIAL ENGINE BULLETINS

CEB–A–313	CEB–A–73–5029.
CEB–A–73–2075	CEB–A–73–6041.
CEB–A–1394	TP CEB–A–183.
CEB–A–73–3118	TP CEB–A–1336.
CEB–A–73–4056	TP CEB–A–73–2032.

Issued in Burlington, Massachusetts, on October 11, 2005.

Ann C. Mollica,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–20779 Filed 10–17–05; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC63

NASA Grant and Cooperative Agreement Handbook—Research and Development Abstracts

AGENCY: National Aeronautics and Space Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws the proposed rule published Friday, October 31, 2003 (68 FR 62031–62033). NASA will issue internal guidance to automate the collection and transfer of Research and Development (R&D) abstracts to an appropriate central repository where they will be available for use by government agencies and other users.

DATES: October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Monique Sullivan, NASA Headquarters, Contract Management Division, Washington, DC, (703) 553–2560, e-mail: *Monique.sullivan-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In the proposed rule published Friday, October 31, 2003 (68 FR 62031–62033), NASA proposed to amend the NASA Grant and Cooperative Agreement Handbook to include a requirement for the electronic submission of abstracts of the planned research to be conducted under grants and cooperative agreements containing research and development (R&D) effort valued at over $25,000.

The proposed rule added a new provision, 1260.40, NASA Research and Development (R&D) Abstracts, and related instructions, 1260.18, NASA Research and Development (R&D) Abstract Collection, to the Grant and Cooperative Agreement Handbook. The new provision provided for the collections of abstracts or summaries for NASA-funded-awards with R&D effort greater than $25,000. The requirements of section 207(g) of the E-Government Act of 2002 (Pub. L. 107–347) provide the basis for this change. Section 207(g) mandates the development and maintenance of a repository that integrates information on research and development funded by the FederalGovernment. In furtherance of this requirement, NASA established a Web-based database system to collect summaries or abstracts for all the Agency's procurements containing research and development effort valued over $25,000. A NASA Web site was also established for recipients of NASA R&D grants and cooperative agreements to enter their abstract data. The proposed rule is withdrawn because the automation of the requirements of section 207(g) of the E-Government Act of 2002 (Pub. L. 107–347) voids the need for the proposed rule.

James A. Balinskas,

Acting Assistant Administrator for Procurement.

[FR Doc. 05–20845 Filed 10–17–05; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 131 and 292

[Docket No. RM05–36–000]

Revised Regulations Governing Small Power Production and Cogeneration Facilities

October 11, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing small power production and cogeneration pursuant to section 1253 of the Energy Policy Act of 2005 (EPAct 2005), and section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Specifically, the Commission is proposing to (1) issue a rule ensuring that new qualifying cogeneration facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of the new qualifying cogeneration facilities is used fundamentally for industrial, commercial or institutional purposes; and that there is continuing progress in the development of efficient electric energy generating technology; (2) amend Form 556 to reflect the criteria for new qualifying cogeneration facilities, (3) issue a rule eliminating ownership limitations for qualifying cogeneration and small power production facilities; and (4) amend the exemptions available to qualifying facilities from the requirements of the Federal Power Act and the Public Utility Holding Company Act of 1935.

DATES: Comments are due November 8, 2005. Reply Comments are due November 15, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Daniel Hedberg (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6243.

Samuel Higginbottom (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8561.

Eric D. Winterbauer (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8329.

SUPPLEMENTARY INFORMATION:

Introduction

1. Pursuant to section 1253 of the Energy Policy Act of 2005 (EPAct 2005),[1] the Commission is proposing to amend its regulations governing qualifying cogeneration and small power production facilities. Specifically, the Commission is proposing to (1) issue a rule ensuring that new qualifying cogeneration facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial or institutional purposes; and that there is continuing progress in the development of efficient electric energy generating technology; (2) amend Form 556 [2] to reflect the criteria for new qualifying cogeneration facilities, (3) issue a rule eliminating ownership limitations for qualifying cogeneration and small power production facilities; and (4) amend the exemptions available to qualifying facilities (QFs) from the requirements of the Federal Power Act (FPA) [3] and the Public Utility Holding Company Act of 1935 (PUHCA).[4] Consistent with the requirements of section 1253(a) of EPAct 2005, the Commission intends to issue a final rule by February 4, 2006, which is 180 days after enactment of EPAct 2005.

Background

2. Section 1253(a) of EPAct 2005 amends section 210 of PURPA [5] by adding subsection (n). New section 210(n) of PURPA requires the Commission to revise 18 CFR 292.205 to add criteria for new qualifying cogeneration facilities in order to ensure (1) that the thermal energy output of any new qualifying cogeneration facility is used in a productive and beneficial manner; (2) the electrical, thermal, and chemical output of any new qualifying cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and (3) continuing progress is made in the development of efficient electric energy generating technology. We propose regulations implementing section 210(n) of PURPA below.

3. Section 1253(b) of EPAct 2005 amends the FPA to eliminate ownership limitations for qualifying cogeneration and small power production facilities. PURPA, as originally enacted in 1978, limited ownership of qualifying cogeneration and small power production facilities to individuals not primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration or small power production facilities. Section 1253(b) of EPAct 2005 eliminates that limitation on ownership. We propose to revise our regulations to implement this provision of EPAct 2005 below.

Proposed Revisions to Regulations

I. Section 292.205 Criteria For Qualifying Cogeneration Facilities

4. Section 1253(a) of EPAct 2005 adds section 210(n) to PURPA. Section 210(n) of PURPA directs the Commission to revise the criteria in 18 CFR 292.205 for new qualifying cogeneration facilities.[6] Specifically, new section 210(n)(1)(A) of PURPA requires that section 292.205 of the Commission's regulations be revised to ensure:

(i) That the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

(ii) The electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(iii) Continuing progress in the development of efficient electric energy generating technology.

5. The Commission proposes to revise section 292.205 of its regulations by adding section 292.205(d), which will incorporate the language of sections 210(n)(1)(A)(i), 210(n)(1)(A)(ii) and 210(n)(1)(A)(iii) of PURPA as sections 292.205(d)(i), (ii) and (iii). We propose to apply this language on a case-by-case basis to determine whether a new cogeneration facility can be considered a qualifying cogeneration facility. As guidance to applicants, we will discuss below what we believe the language of section 210(n), and the language of the regulations proposed here, require a new cogeneration facility to show for certification.

6. We solicit comments on whether further or different language than that proposed here should be incorporated in our regulations.

A. Section 210(n)(1)(A)(i) of PURPA

7. Section 210(n)(1)(A)(i) of PURPA requires that the thermal output of a new qualifying cogeneration facility be used in a ''productive and beneficial manner.'' The Commission proposes to incorporate this standard into new section 292.205(d)(i) of its regulations. Prior to EPAct 2005's enactment, the Commission, in deciding whether to grant certification, traditionally relied on an essentially irrebuttable ''presumptively useful'' standard in determining whether a cogeneration facility's thermal output is useful. Explaining that standard, in *Brooklyn Navy Yard Cogeneration Partners, L.P.*, the Commission stated, ''[i]f the use of a cogeneration facility's thermal output constitutes a common industrial or commercial application, it is presumptively useful and the Commission performs no further analysis of thermal use.'' [7] However, there has long been concern that an irrebuttable ''presumptively useful'' standard has led to situations where cogeneration facilities have qualified even where there was no real need for the thermal output, and the sole reason for the thermal use was to satisfy the Commission's requirement for QF status and nothing more. An example of such a thermal use was the production of distilled water where there is no market for the distilled water.[8]

[1] Pub. L. No. 109–58, § 1253, 119 Stat. 594 (2005).

[2] Form 556 is set forth in 18 CFR 131.80.

[3] 16 U.S.C. 824 *et seq.*

[4] 15 U.S.C. 79a *et seq.*

[5] 16 U.S.C. 824a–3.

[6] EPAct 2005 provides that the Commission's pre-existing criteria for qualifying cogeneration facilities shall remain in effect for any cogeneration facility that: (A) was a qualifying cogeneration facility on the date of enactment of section 210(m) of PURPA, *i.e.*, on August 8, 2005, or (B) had filed with the Commission a notice of self-certification, self-recertification, or an application for Commission certification under 18 CFR 292.207 prior to the date on which the Commission issues the final rule in this proceeding.

[7] 74 FERC ¶ 61, 015 (1996).

[8] *Brazos Electric Power Cooperative* v. *Tenaska IV Texas Partners, Ltd.*, 83 FERC ¶ 61,176 at 61,727, *reh'g denied*, 85 FERC ¶ 61,097 (1998), *aff'd, Brazos Electric Power Cooperative, Inc.* v. *FERC*, 205 F.3d 235 (5th Cir. 2000), *reh'g denied en banc*, 214 F.3d 214 (5th Cir. 2000), *cert. denied*, 531 U.S. 957 (2000 (*Brazos*). *Accord Wilbur Power LLC*, 103 FERC ¶ 61,183, *clarified*, 104 FERC ¶ 61,055 at 61,201 (2003); *Brooklyn Navy Yard Cogeneration Partners, L.P.*, 74 FERC ¶ 61,015 at 61,046 (1996); *EcoEléctrica*, L.P., 108 FERC ¶ 61,249 at P 25 (2004).

In the *Brazos* case, the cogeneration facility produced distilled water that was, for a time, used to wash a city's sewers. The purchaser of the electric power from the facility asked the Commission to decertify the facility. The Commission, using the ''presumptively useful''

Continued

8. The Commission, in applying its new section 292.205(d)(i), will now consider whether a new cogeneration facility's proposed use of its thermal output is for a genuine and legitimate industrial, commercial, or institutional purpose or whether, in reality, the use serves merely to allow the applicant to achieve qualifying status under PURPA. We believe that this approach will allow us to determine whether the thermal output is being used in a ''productive and beneficial manner,'' as the statute requires.

9. In the future, therefore, we will not consider any presumption of usefulness to be irrebuttable, as we have in the past, but we will consider the presumption to be rebuttable and we will scrutinize the use a cogeneration facility makes of its thermal output to assure that the use is not a ''sham'', and that the thermal output is used in a ''productive and beneficial manner''. In this regard, in determining whether the thermal output of a cogeneration facility is ''useful'' for purposes of certification as a qualifying facility, we will also consider the uses to which the product produced by the thermal output is put, including such factors as whether the product is needed and whether there is a market. In the case of distilled water, in some geographic areas water distilled with cogenerated thermal output can be and is used in a productive and beneficial manner, while in other geographic areas it is not.

B. Section 210(n)(1)(A)(ii) of PURPA

10. Section 210(n)(1)(A)(ii) of PURPA requires that the Commission must ensure that the electrical, thermal, and chemical output of a new cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. We propose to implement section 210(n)(1)(A)(ii) of PURPA by adopting the language of the statute. In addition, the Commission will add the term ''mechanical'' output to the statutory criteria, because this has traditionally been a part of the Commission's analysis of cogeneration output, and is consistent with the statutory language.

11. There was long concern over what were known as ''PURPA machines.'' PURPA machines were facilities that were intended fundamentally to produce electric power for sale to an electric utility. PURPA machines differed from cogeneration facilities intended fundamentally to serve the thermal, electrical or other needs of the cogeneration facility's host.

12. Facilities that are intended primarily to meet the needs of the cogeneration facility's host are sized for that purpose. The useful energy output of such a cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and only the remaining energy is available for sale to electric utilities. We will require that applications for certification under new section 210(n) of PURPA, and new section 292.205(d)(ii) of our regulations, provide a detailed explanation of how the cogeneration facility meets the requirement that the electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. We seek comment on whether we should adopt this general case-by-case approach for determining the ''fundamental'' use of a facility, or whether we should adopt a specific standard, *e.g.*, requiring some specified percentage of the total energy output to be used for industrial, commercial, or institutional purposes, rather than for sale to electric utilities.

13. It has been our experience in reviewing applications for certification that cogeneration facilities designed to minimally meet the pre-existing operating standard, *i.e.*, those whose thermal output constitutes only 5 percent of the total energy output of the facility, are the facilities most likely to be designed fundamentally to sell electric output to electric utilities rather than being designed fundamentally to provide electrical, thermal, and other output for industrial, commercial, or institutional purposes. On the other hand, our experience has been that facilities with higher operating standards are much more likely to be designed fundamentally to provide electrical, thermal, and other output for industrial, commercial, or institutional purposes. To help assure that new qualifying cogeneration facilities are intended fundamentally to provide electrical, thermal, chemical and mechanical output for industrial, commercial or institutional purposes, we will pay particular attention to those facilities that only minimally satisfy the Commission's operating standard.

C. Section 210(n)(1)(A)(iii) of PURPA

14. New section 210(n)(1)(A)(iii) of PURPA requires the Commission to issue rules to ensure ''the continuing progress in the development of efficient electrical energy generating technology.'' The Commission's proposed implementation of this requirement will be by a verbatim recitation of the statute. In an application for certification of new cogeneration facilities, the Commission will require a description of how the technology used by an applicant for certification satisfies this requirement. In general, we believe new section 210(n)(1)(A)(iii) of PURPA requires that all new cogeneration applicants demonstrate their employment of efficient, modern technologies, but all such applicants that request the Commission to exercise any of the limited discretion given under section 210(n)(1)(A)(ii) to ''[take] into account technological, efficiency, economic and variable thermal energy requirements * * *'' should be particularly prepared to make such a demonstration.

15. In addition, to ensure continuing progress in the development of efficient electric energy technology, the Commission proposes to apply an efficiency standard to new coal-burning cogeneration facilities similar to that applied to natural gas and oil-burning cogeneration facilities. Currently, section 292.205(a)(2) of the Commission's regulations establishes an efficiency standard for topping-cycle cogeneration facilities for which any of the energy input is natural gas or oil. Under this efficiency standard, the useful power output of the facility plus one-half the useful thermal energy output during the applicable period must be no less than 42.5 percent of the total energy input of natural gas or oil. If the useful thermal energy output is less than 15 percent of the total energy output of the facility, the useful power output of the facility plus one-half of the useful energy output must be no less

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standard, found that the use that an unaffiliated party makes of the distilled water purchased at arms' length was irrelevant to whether the facility qualified under the standard.

The Commission, earlier this year, however, determined that an unaffiliated purchaser of steam from a cogeneration facility could not distill water with that steam and then sell the distilled water to the cogeneration facility to be used in the power production process. The Commission labeled the proposed transaction a ''sham,'' in that the distilled water was being produced not to serve a legitimate industrial, commercial, heating, or cooling purpose but rather to help the applicant gain qualifying status under PURPA. *Calpine King City Cogen, LLC*, 111 FERC ¶ 61,174 (2005), *reh'g denied*, 112 FERC ¶ 61,088 (2005).

than 45 percent, rather than 42.5 percent. The Commission's current efficiency standard ensures that the facility operates at or above a certain level of performance when it uses natural gas or oil.

16. Given advances in electric generating technology, it now appears appropriate to implement an efficiency standard for coal-fired cogeneration facilities. For example, there is the potential for efficiency improvements at pulverized coal-fired plants using existing technology through operational changes and equipment upgrades. There is also the potential for improved thermal efficiencies through the use of pulverized coal-fired plants built with newer technologies and by the utilization of supercritical steam. Under Department of Energy research and development programs, two new technologies—Pressurized Fluid Bed Combustion and Integrated Gasification Combined Cycle—have created combined cycle operations within coal-fired facilities. These two types of facilities have improved thermal efficiencies as compared to conventional pulverized coal-fired facilities and are currently in commercial use. The Commission would like to know what methods of quantifying efficiency the Commission should consider. The Commission requests comments on what the minimum efficiency for such new coal-fired cogeneration facilities should be.

17. The Commission invites comments on this as well as on other ways by which it can ''ensure continuing progress in the development of efficient electrical energy generating technology.''

D. Section 292.207 Procedures for Obtaining Qualifying Status

18. In light of the criteria for new cogeneration facilities, we invite comments on whether the self-certification procedures contained in section 292.207 should be available to new cogeneration facilities.

II. Section 292.601 Exemption of Qualifying Facilities From the Federal Power Act.

19. Section 210(e)(1) of PURPA states that the Commission shall prescribe rules under which qualifying facilities are exempt, in whole or in part, from the FPA, from PUHCA, from state laws and regulations respecting the rates or respecting the financial or organization regulation of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production. Section 210(e)(2) of PURPA provides that the Commission is not authorized to exempt small power production facilities of 30 to 80 megawatt capacity from these laws, except for geothermal small power production facilities. Such facilities between 30 and 80 megawatts may be exempted from PUHCA and from state laws and regulations, but may not be exempted from the FPA.

20. In Order No. 69,[9] the Commission first implemented section 210(e) of PURPA. The Commission at that time stated that a broad exemption was then appropriate to remove the disincentive of utility-type regulation from QFs, including sections 203, 205, 206, 208, 301 and 304 of the FPA. In section 292.601 of its regulations, the Commission exempted QFs (other than non-geothermal small power production facilities between 30 and 80 megawatts) from sections 203, 205, 206, 208, 301 and 304 of the FPA.

21. The Commission has traditionally interpreted this exemption broadly. For instance, in *Pine Bluff Energy, LLC*[10] and *Carville Energy LLC*,[11] the Commission dismissed filings proposing rates for reactive power filed by two QFs on the ground that, as QFs, the facilities were exempt from section 205 of the FPA, and their rates were thus not subject to Commission review under section 205 of the FPA. Similarly, in *SP Newsprint Co.*,[12] the Commission dismissed an application for market-based rate authority filed by a QF, saying that because a QF is exempt from section 205 of the FPA, it does not need Commission authority to make market-based rate sales.

22. In the context of this rulemaking, the Commission finds that it is appropriate to reexamine the broad exemptions from the FPA granted to QFs. First, roughly 25 years after the enactment of PURPA, we do not believe that all of the exemptions from the FPA are still necessary to encourage the development of cogeneration facilities and small power production facilities. Second, we are concerned that the broad nature of the exemptions currently set forth in section 292.601 remove a large number of generation sales from *any* regulatory oversight.

23. For purposes of evaluating exemptions, it is important to distinguish between different types of sales made by QFs. Those sales made pursuant to the must purchase obligation contained in section 210 of PURPA have typically been referred to as ''PURPA sales''. Those sales are subject to state regulatory commission oversight and the avoided cost rates for those sales are set by the states pursuant to our regulations. However, a large number of QFs make market-based sales, which are often referred to as ''non-PURPA sales''. Many QFs are large units and their non-PURPA sales could potentially have a significant market effect. Nevertheless, under our current regulations, these QFs are not required to file for market-based rate authority under section 205 of the FPA. Moreover, if there were allegations of any type of market misconduct by these QFs, the Commission might not be able to effectively investigate and remedy the misconduct because our current regulations exempt these QFs from section 206 of the FPA.

24. Our concern is heightened by the fact that, in section 1253(b) of EPAct 2005, Congress has eliminated the ownership requirements for QF status, and, consistent with the new provision, we are proposing to eliminate the ownership requirements currently contained in sections 292.203(a)(3), 292.203(b)(2) and 292.206 of our regulations. Therefore, traditional utilities will now be able to own up to 100 percent of a QF. We believe that QFs, which now may be largely or wholly-owned by traditional utilities, generally should not be exempt from regulation under the FPA.

25. The elimination of the ownership requirements for QF status also will permit QFs to sell electric energy ''other than electric power solely from cogeneration facilities or small power production facilities.'' The Commission previously has interpreted this language to prohibit a QF from selling more than its net output.[13] The elimination of the ownership requirements will now permit a qualifying facility to sell electric energy other than electric energy produced by itself or another qualifying facility and still retain QF status. However, such sales should not be entitled to exemptions from the FPA; nor should qualifying facilities that

[9] *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, 45 FR 12,214 (Feb. 25, 1980), FERC Stats. & Regs. ¶ 30,128 (1980).

[10] 104 FERC ¶ 61,227, *reh'g denied*, 105 FERC ¶ 61,152 (2003).

[11] 104 FERC ¶ 61,832, *reh'g denied*, 105 FERC ¶ 61,152 (2003).

[12] 103 FERC ¶ 61,186 (2003).

[13] *Connecticut Valley Electric Company, Inc.* v. *Wheelabrator Claremont Company, Inc.*, 82 FERC ¶ 61,116 (1998), *reh'g denied*, 83 FERC ¶ 61,136 (1998).

make such sales be entitled to exemptions from the FPA.[14]

26. We propose to eliminate, among other things, the exemptions from sections 205 and 206 of the FPA that the Commission previously granted in section 292.601 of our regulations, except the exemption from sections 205 and 206 of the FPA for sales that are governed by state regulatory authorities pursuant to section 210(f) of PURPA. These latter sales are at rates pursuant to contracts or obligations approved by state regulatory authorities. Since such sales are pursuant to the regulatory oversight set forth in section 210(f) of PURPA, an exemption from sections 205 and 206 of the FPA remains appropriate for those sales.

27. A QF which sells electric energy pursuant to a state regulatory authority avoided-cost ratemaking regime would remain exempt from section 205, however, and therefore would not make a section 205 filing with the Commission (unless it also makes sales of electric energy that are not pursuant to a state regulatory authority avoided-cost ratemaking regime). But a QF that, on the other hand, plans to make market-based rate sales, *i.e.*, sales that are not pursuant to the state regulatory authority's avoided-cost ratemaking regime, must have a Commission-accepted market-based rate tariff for such sales.[15]

28. We recognize that the removal of exemptions might create a hardship for smaller QFs, particularly those owned by individuals or small businesses. We would consider suggestions that at least some of the exemptions previously granted in section 292.601 should remain in effect for smaller QFs, such as those under 5 MW. Another key element to consider in the granting of exemptions, as suggested above, is whether the QF is independent of traditional utilities, transmission providers and other power producers; we invite comments on whether exemptions previously granted under section 292.601 (and continued here) should remain in effect only for those QFs that are independent of traditional utilities, transmission providers and other power producers.

29. In addition, EPAct 2005, in sections 1281 (Electric Market Transparency), 1282 (False Statements) and 1283 (Market Manipulation), has added new provisions, sections 220, 221 and 222, to the FPA. We propose that QFs will not be exempt from those provisions of the FPA.

30. We invite comments on whether the Commission should eliminate or retain exemptions from other sections of the FPA that are granted by our current regulations. Currently, most QFs (except for non-geothermal small power production facilities that exceed 30 megawatts) are exempt from all provisions of the FPA except sections 1–18, and 21–30; sections 202(c), 210, 211, 212, 213 and 214; section 305(c); and any necessary enforcement provisions with regard to the listed provisions.

31. We also propose to eliminate the exemptions from PUHCA contained in section 292.602 of our regulations. PUHCA has been repealed and the new Public Utility Holding Company Act of 2005 (PUHCA 2005) provides specific authority under which the Commission is to grant exemptions from PUHCA 2005 for entities that are holding companies by virtue of owning QFs. We will retain the exemptions from certain state laws and regulations contained in section 292.602 of our regulations; section 292.602(c)(3), which provides that the Commission will consider the requests of state regulatory authorities or nonregulated utilities to limit the exemptions from state law or regulation, will be retained as section 292.602(b)(3). We invite comments on these proposals.

III. Section 292.203 General Requirements for Qualification and Section 292.206 Ownership Criteria

32. Section 1253(b) of EPAct 2005 amends sections 3(17)(C) and 3(17)(B) of the Federal Power Act by eliminating the ownership limitations for QFs currently contained in those sections. Section 292.206 of the Commission's regulations was designed to implement the statutory requirement that a qualifying cogeneration or small power production facility must be owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities). The Commission proposes to implement section 1253(b) of EPAct 2005 by eliminating section 292.206 from its regulations, and thus eliminating the ownership limitations for all QFs—both existing and new.

33. Section 292.203 lists the general requirements for qualification status. Section 292.203(a)(3) requires that a small power production facility must ''[m]eet[] the ownership criteria specified in § 292.206.'' Section 292.203(b)(2) requires that a cogeneration facility must ''[m]eet[] the ownership criteria specified in § 292.206.'' In light of the elimination of the ownership limitations for all QFs and the Commission's proposal to delete section 292.206, the Commission proposes to delete from section 292.203 these references to the ownership limitation from the requirements for qualifying small power production facilities and qualifying cogeneration facilities. Therefore, the Commission proposes to delete sections 292.203(a)(3) and 292.203(b)(2) from its regulations.

IV. Section 131.80, Form 556

34. The new criteria proposed herein for new qualifying cogeneration facilities require changes in Form 556, found at 18 CFR 131.80, which is used by those seeking qualifying facility status, whether by Commission application or by self-certification. We propose to amend 18 CFR 131.80 to incorporate the new criteria for new cogeneration facilities.

35. In addition, section 292.206 is being removed to implement section 1253(b) of EPAct 2005, which eliminates the ownership limitations for QFs currently contained in sections 3(17)(A) and 3(17)(B) of the FPA. The removal of section 292.206 requires amendment of Form 556 to reflect the new criteria for QF status. We thus propose to eliminate references in Form 556 to the necessity of showing that a QF is not owned more than 50 percent by certain entities and we propose to eliminate the requirements designed to help the Commission enforce that 50 percent ownership limitation. Nevertheless, the Commission proposes to retain a requirement that a QF provide in Form 556 ownership information including the percentage of ownership held by any electric utility or electric utility holding company, or by any person owned by either. While ownership limitations are no longer part of the criteria for QF status, the Commission nevertheless believes that an applicant for QF status should inform the Commission of the identity of its owners, and their percentage interests. The Commission believes that this information will help the Commission determine whether in the future, as it gains experience subsequent to the enactment of EPAct 2005, the exemptions from the FPA and state laws should continue to be available to all QFs, especially those affiliated with traditional utilities, transmission providers and other power producers. It will also allow the Commission to better monitor for undue discrimination or preference both in the provision of

[14] Ownership information provided in Form 556, discussed further below, would help the Commission to better monitor those circumstances where such sales may be more likely, *i.e.*, where the qualifying facility is affiliated with other market participants and where there may be an incentive for electric energy to be purchased by a QF and then resold to an affiliated traditional utility as QF-generated electric energy.

[15] *See, e.g., AEP Power Marketing, Inc.,* 107 FERC ¶ 61,018, *order on reh'g,* 108 FERC ¶ 61,026 (2004).

transmission service and sales for resale in interstate commerce. We ask commenters to provide comments addressing this matter.

Information Collection Statement

36. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[16] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission proposes amending its regulations to implement section 1253 of the EPAct 2005; specifically, its regulations governing qualifying small power production and cogeneration facilities and the exemptions available to qualifying facilities from the requirements of the FPA and PUHCA. The Commission's regulations, in 18 CFR Parts 131 and 292, specify the certification procedures that must be followed by small power production and cogeneration facilities seeking QF status; specify the criteria that must be met; specify the information which must be submitted to the Commission in order to obtain QF status; specify the benefits which are available to QFs; and specify the transaction obligations of electric utilities with respect to QFs. The information provided the Commission under Parts 131 and 292 is identified as Form 556.

37. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[17] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

Burden Estimate: The Public Reporting burden for the requirements proposed here are as follows:

Data Collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC Form 556:				
FERC Certification	27	1	4	108
Public Utilities	270	1	38	10,260
Totals	297	1	38	10,388

Total Annual hours for Collection: (Reporting + recordkeeping, (if appropriate)) = 10,388 hours.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the costs to be: $3,488,800 (2080 total work hours in a year times $350) + $478,880 (Commission certification) = $3,967,680. Cost per respondent for self-certification is $12,921. (The hourly rate includes attorney fees, engineering consultation fees and administrative support.)

Title: FERC Form 556 ''Cogeneration and Small Power Production''.

Action: Proposed Collections.

OMB Control No: 1902–0075.

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: This proposed rule, if adopted, would implement the Congressional mandate of the EPAct 2005 to implement the following: establishment of criteria for new qualifying cogeneration facilities; elimination of ownership limitations; and amending the exemptions available to QFs from the FPA and from PUHCA. By amending its regulations, the Commission is satisfying the statutory mandate and satisfying its continuing obligation to review its policies encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for energy customers. The information collected under 18 CFR Parts 131 and 292 is used by the Commission to determine whether an application for certification (Commission certification or self-certification) meets the criteria for a qualifying small power production facility or a qualifying cogeneration facility under its regulations and eligible to receive the benefits available to it under PURPA.

Internal review: The Commission has reviewed the requirements pertaining to qualifying small power production and cogeneration facilities and determined the proposed requirements are necessary to meet the statutory provisions of the EP Act 2005.

These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.* Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

Environmental Analysis

38. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. As explained above, this proposed rule is clarifying in nature. It interprets several amendments made to PURPA and to the FPA by EPAct 2005, and clarifies the applicability of these amendments to QFs; it does not substantially change the effect of the legislation. Accordingly, no environmental consideration is necessary.[19]

[16] 5 CFR 1320.13.

[17] 44 U.S.C. 3507(d).

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

[19] 18 CFR 380.4(a)(2)(ii).

Regulatory Flexibility Act Analysis

39. The Regulatory Flexibility Act of 1980 (RFA) [20] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. Many, if not most, QFs to which this rule would apply do not fall within the definition of small entities.[21] In addition, to the extent the proposed regulations remove now-unnecessary regulations such as ownership limitations for qualifying cogeneration and small power production facilities, the proposed regulations will be beneficial to QFs. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

Comment Procedures

40. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 8, 2005. Reply comments are due November 15, 2005. Comments and reply comments must refer to Docket No. RM05–36–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments and reply comments may be filed either in electronic or paper format.

41. Comments and reply comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments and reply comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

42. All comments and reply comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments and reply comments on other commenters.

Document Availability

43. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

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

45. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or (202) 502–8222 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects in 18 CFR Parts 131 and 292

Electric power, Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 131 and 292, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

Subchapter K—Regulations Under the Public Utility Regulatory Policies Act of 1978

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation for part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 292.205, paragraph (d) is added to read as follows:

§ 292.205 Criteria for qualifying cogeneration facilities.

* * * * *

(d) *Criteria for new cogeneration facilities*—Notwithstanding paragraphs (a) and (b) of this section, any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to [the date the Commission issues a final rule], must also show:

(1) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner;

(2) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(3) Continuing progress in the development of efficient electric energy generating technology.

3. In § 292.601, paragraph (c) is revised to read as follows:

§ 292.601 Exemption of qualifying facilities from the Federal Power Act.

* * * * *

(c) *General Rule.* Any qualifying facility described in paragraph (a) of this section shall be exempt from all sections of the Federal Power Act, except:

(1) Sections 205 and 206; however, sales of energy or capacity made pursuant to a state regulatory authority avoided-cost regime shall be exempt from scrutiny under sections 205 and 206;

(2) Section 1–18, and 21–30 and sections 202(c), 210, 211, 212, 213, 214, 220, 221 and 222;

(3) Sections 305(c); and

(4) Any necessary enforcement provision of Part III of the Federal Power Act (including but not limited to sections 306, 307, 308, 309, 314, 315, 316 and 316A) with regard to the sections listed in paragraphs (c)(1), (2) (3) and (4) of this section.

4. In § 292.602, paragraph (b) is removed and paragraph (c) is

[20] 5 U.S.C. 601–12.

[21] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632.

redesignated as newly revised paragraph (b) to read as follows:

§ 292.602 Exemption of qualifying facilities from certain State law and regulation.

* * * * *

(b) Exemption from certain State laws and regulations.

(1) Any qualifying facility shall be exempted (except as provided in paragraph (b)(2)) of this section from state laws or regulations respecting:

(i) The rates of electric utilities; and

(ii) The financial and organizational regulation of electric utilities.

(2) A qualifying facility may not be exempted from state laws and regulations implementing subpart C.

(3) Upon request of a state regulatory authority or nonregulated electric utility, the Commission may consider a limitation on the exemptions specified in paragraph (b)(1) of this section.

(4) Upon request of any person, the Commission may determine whether a qualifying facility is exempt from a particular state law or regulation.

5. In § 292.203, paragraphs (a) and (b) are revised to read as follows:

§ 292.203 General requirements for qualification.

(a) *Small power production facilities.* Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it:

(1) Meets the maximum size criteria specified in § 292.204(a); and

(2) Meets the fuel use criteria specified in § 292.204(b).

(b) *Cogeneration facilities.* A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:

(1) Meets any applicable operating and efficiency standards specified in § 292.205(a) and (b).

(2) [Reserved]

* * * * *

§ 292.206 [Removed]

6. Section 292.206 is removed.

Subchapter D—Approved Forms, Federal Power Act and Public Utility Regulatory Policies Act of 1978

PART 131—FORMS

1. The authority citation for part 131 continues to read:

Authority: 16 U.S.C. 791a–825r. 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 131.80 is amended by revising paragraphs 1a, 1b, and 1c of Part A and by adding a new heading and paragraph 15 of Part C to read as follows:

§ 131.80 FERC Form No. 556, Certification of qualifying facility status for an existing or a proposed small power production or cogeneration facility.

(See § 292.207 of this chapter.)

FERC Form 556, OMB No. 1902–0075

Expires_____

Certification of Qualifying Facility Status for an Existing or a Proposed Small Power Production or Cogeneration Facility

(To be completed for the purpose of demonstrating up-to-date conformance with the qualification criteria of Section 292.203(a)(1) or Section 292.203(b), based on actual or planned operating experience)

General instructions: Part A of the form should be completed by all small power producers or cogenerators. Part B applies to small power production facilities. Part C applies to cogeneration facilities. All references to sections are with regard to Part 292 of Title 18 of the Code of Federal Regulations, unless otherwise indicated.

Part A—General Information To Be Submitted by All Applicants

1a. Full name:

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any: QF ____–____–____

Purpose of instant filing (self-certification or self-recertification [Section 292.207(a)(1)], or application for Commission certification or recertification [Sections 292.207(b) and (d)(2)]):

1b. Full address of applicant:

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

* * * * *

Part C—Description of the Cogeneration Facility

* * * * *

For New Cogeneration Facilities

15. For any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification under section 292.207 prior to [the date the Commission issues a final rule], also show:

(i) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner;

(ii) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(iii) Continuing progress in the development of efficient electric energy generating technology.

[FR Doc. 05–20695 Filed 10–17–05; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AG10

Rules for the Issuance of Work Report Receipts, Payment of Benefits for Trial Work Period Service Months After a Fraud Conviction, Changes to the Student Earned Income Exclusion, and Expansion of the Reentitlement Period for Childhood Disability Benefits

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to amend our rules to reflect and implement sections 202, 208, 420A, and 432 of the Social Security Protection Act of 2004 (the SSPA). Section 202 of the SSPA requires us to issue a receipt each time you or your representative report a change in your work activity or give us documentation of a change in your earnings if you receive benefits based on disability under title II or title XVI of the Social Security Act (the Act). Section 208 changes the way we pay benefits during the trial work period if you are convicted by a Federal court of fraudulently concealing your work activity. Section 420A changed the law to allow you to become reentitled to childhood disability benefits under title II at any time if your previous entitlement to childhood disability benefits was terminated because of the performance of substantial gainful activity. Section 432 changes the way we decide if you are eligible for the student earned income exclusion. We also propose to change the SSI student policy to include home schooling as a form of regular school attendance. Additionally, we are proposing to apply the student earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent.

DATES: To be sure that your comments are considered, we must receive them by December 19, 2005.