

129 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 131 and 292

(Docket No. RM09-23-000)

Revisions to Form, Procedures, and Criteria for Certification of
Qualifying Facility Status for a Small Power Production or Cogeneration Facility

(October 15, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission (Commission) proposes to revise its regulations, which currently provide the FERC Form No. 556 (Form 556) that is used in the certification of qualifying status for an existing or proposed small power production or cogeneration facility. The Commission proposes to revise its regulations to remove the contents of the Form No. 556 from the regulations, and, in their place, to provide that an applicant seeking to certify qualifying facility (QF) status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing. We propose to revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies that will reduce both the filing burden for applicants and the processing burden for the Commission. We also propose to exempt generating facilities with net power production capacities of 1 MW or less from the QF certification requirement, and to codify the Commission's authority to waive the

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QF certification requirement for good cause. Finally, we propose to clarify, simplify or correct certain sections of the regulations.

DATES: Comments must be filed on or before [insert date that is 60 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by Docket No. RM09-23-000, by one of the following methods:

Agency web site: <http://www.ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

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SUPPLEMENTARY INFORMATION

129 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Form, Procedures, and Criteria for
Certification of Qualifying Facility Status for a
Small Power Production or Cogeneration Facility

Docket No. RM09-23-000

NOTICE OF PROPOSED RULEMAKING

(October 15, 2009)

I. Introduction

1. The Commission proposes to revise § 131.80 of its regulations,¹ which currently sets forth the FERC Form No. 556 (Form 556) that is used in the certification of qualifying status for an existing or proposed small power production or cogeneration facility. Section 131.80 now contains Form No. 556 and general instructions for completing the form. The Commission proposes to revise § 131.80 of its regulations to remove the contents of the Form No. 556 and, in their place, provide that an applicant seeking to certify qualifying facility (QF) status of a small power production or cogeneration facility must complete and file the Form No. 556 that is in effect at the time of filing, which will be made available for download from the Commission's QF

¹ 18 CFR 131.80.

website.² The Commission also proposes to require that the Form No. 556 be submitted to the Commission electronically.

2. The Commission proposes to revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies that will reduce both the filing burden for applicants and the processing burden for the Commission.

3. The Commission also proposes revisions to the procedures, standards and criteria for QF status provided in Part 292 of its regulations to accomplish the following: (1) exemption of generating facilities with net power production capacities of 1 MW or less from the QF certification requirement; (2) codification of the Commission's authority to waive the QF certification requirement for good cause; (3) extension to all applicants for QF certification the requirement (currently applicable only to applicants for self-certification of QF status) to serve a copy of a filed Form No. 556 on the affected utilities and state regulatory authorities; (4) elimination of the requirement for applicants to provide a draft notice suitable for publication in the Federal Register; and (5) clarification, simplification or correction of certain sections of the regulations.³

4. Finally, the Commission proposes a change to the exemption of QFs from the Federal Power Act,⁴ and to the exemption of QFs from the Public Utility Holding

² <http://www.ferc.gov/QF>.

³ 18 CFR Part 292.

⁴ 18 CFR 292.601.

Company Act of 2005 (PUHCA) and certain State laws and regulations⁵ to make clear that certain small power production facilities that satisfy the criteria of section 3(17)(E) of the Federal Power Act qualify for those exemptions.

5. The Commission is proposing the revisions described above with the following goals: (1) making the Form No. 556 easier and less time consuming to complete and submit; (2) decreasing opportunities for confusion and error in completing the form; (3) improving consistency and quality of the data collected by the form; (4) decreasing Commission resources dedicated to managing errors and omissions in submitted forms; and (5) clarifying and correcting the regulations governing the requirements for obtaining and maintaining QF status.

6. The proposed revisions to the Form No. 556 and the procedures for filing the Form No. 556 are informed by the Commission's experience both with administering the Form No. 556 and with new technologies for electronic data collection that have become available since the Form No. 556 was first established by Order No. 575 in 1995.⁶ We believe that the proposed changes will increase the effectiveness of the Commission's policies encouraging cogeneration and small power production, as required by section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

⁵ 18 CFR 292.602.

⁶ Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978, Order No. 575, 60 FR 4831 (Jan. 25, 1995), FERC Stats. & Regs. ¶ 31,014, order on reh'g, Order No. 575-A, 71 FERC ¶ 61,121 (1995).

II. Background

7. When the Commission first implemented section 201 of PURPA, it provided two paths to QF status: self certification and Commission certification.⁷ The procedures for self-certification are contained in § 292.207(a) of the Commission's regulations.⁸ When a small power production facility or cogeneration facility self-certifies (or self-recertifies),⁹ it certifies that it satisfies the requirements for QF status. The Commission does not formally review the self-certification. Instead, the self-certification is assigned a docket number, and Commission staff looks at the filing to determine that the self-certifier has provided the information required by the regulations.

8. Self-certification was an essential part of the Commission's implementation of PURPA, and was intended, in part, to make the certification process quick and not unduly burdensome. Thus, when the Commission first implemented section 201 of PURPA in Order No. 70,¹⁰ the Commission rejected a proposal to adopt a case-by-case Commission

⁷ There is no fee for a self-certification; there is, however, a fee for Commission certification. 18 CFR 381.505. The Commission will not process an application for Commission certification without receipt of the applicable fee.

⁸ 18 CFR 292.207(a).

⁹ Because recertification is a type of certification, policies applicable to self-certification and application for Commission certification also apply to self-recertification and application for Commission recertification.

¹⁰ Small Power Production and Cogeneration Facilities -- Qualifying Status, Order No. 70, FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,134 (1980), order on reh'g, Order Nos. 69-A and 70-A, FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,160 (1980), aff'd in part and vacated in part, American Electric Power Service

(continued...)

certification requirement for all QFs, but instead provided that facilities that met the requirements for QF status need only furnish notice to the Commission of QF status.¹¹

This notice (the self-certification) was purely for informational purposes and to help the Commission monitor the market penetration of QFs. QF status, however, was established by meeting the requirements for such status and did not depend on the filing. Indeed, the Commission noted that QFs and purchasing utilities could agree that a generation facility met the requirements for QF status, and the facility would qualify for the benefits of PURPA without making any filing with the Commission.

9. The Commission recognized, however, that the self-certification process would not always satisfy all those interested in a particular facility's status. Accordingly, the Commission also established, in § 292.207(b) of the regulations,¹² the "optional procedure" for QF status. Under the optional procedure, an entity may file an application for a determination by the Commission that a facility meets the requirements for QF status. Such an application requires a filing fee.¹³ After receiving an application for Commission certification and the required fee, the Commission assigns the filing a

Corp. v. FERC, 675 F.2d 1226 (D.C. Cir. 1982), rev'd in part, American Paper Institute, Inc. v. American Electric Power Service Corp., 461 U.S. 402 (1983).

¹¹ Order No. 70, FERC Stats. & Regs. ¶ 30,134 at 30,954. As discussed below, the Commission, in 2005, added a requirement that a cogeneration facility or small power production facility either self-certify or receive Commission certification to have QF status. See 18 CFR 292.203(a)(3), (b)(2).

¹² 18 CFR 292.207(b).

¹³ 18 CFR 381.505.

docket number and notices the filing in the Federal Register, providing an opportunity for interventions and protests. The Commission's regulations provide that it will act on an application within 90 days of the filing (or of its supplement or amendment). The process gives those that need assurance of a facility's QF status (or lack of such status) a Commission order certifying (or denying) QF status. This optional procedure is commonly known as an application for Commission certification. In its original regulations, the Commission also provided that, once a facility was certified by the Commission, its qualifying status could be revoked by the Commission, upon the Commission's own motion, or upon the motion of any person.¹⁴ This combination of encouraging self-certifications, while providing for both Commission-certification and an opportunity to seek revocation of QF status, would assure, the Commission believed, that only those generation facilities that meet the criteria for QF status would receive and retain that status.

10. As noted above, the Commission, when it first enacted its regulations, had hoped that self-certifications would be the primary means for obtaining QF status, but

¹⁴ See 18 CFR 292.207(d)(ii). A similar opportunity for the Commission to revoke the QF status of a self-certified facility on the Commission's own motion, or on the motion of another party, was not expressly provided in the regulations; the Commission, however, allowed others to seek the revocation of a self-certified QF by filing a petition for declaratory order. In Order No. 671, infra note 18, the right to file a motion seeking revocation of a self-certification was added to the Commission's regulations. A motion seeking revocation requires a filing fee as a declaratory order. Chugach Electric Association, Inc., 121 FERC ¶ 61,287, at P 51-54 (2007). The filing fee for a declaratory order is provided in 18 CFR 381.302.

recognized that there would be instances in which a Commission ruling on QF status would be desirable. While the Commission later, in Order No. 575, required QFs to provide more detailed information about self-certifying QFs, in Form No. 556, the Commission continued to encourage self-certification, but also recognized that there would be reasons that a QF may want or need Commission certification (including the requirement of some lenders, electric utilities, or state regulators that a generator seeking QF status and the benefits of PURPA be Commission-certified). The Commission thus sought to make the self-certification process more informative about the nature of the self-certified QFs while keeping the process relatively simple. The Commission stated the following:

The Commission continues to believe that self-certification should be retained as an option; it is unnecessary to conduct a full review of each facility, even in instances where outside lenders and investors will be involved. However, in consideration of the various comments, and in recognition of the various other clarifications being made in this final rule, the Commission will not adopt the proposed affidavit requirement. Instead, the Commission will modify the self-certification process to: (a) incorporate the Form 556 information requirement that the Commission is also adopting for applications for Commission certification; and (b) require that cogenerators and small power producers provide copies of the notice of self-certification to each affected state commission and to each affected electric utility. The self-certifying cogenerator or small power producer must also specify the utility services that it intends to request (see item 3b of Form 556).^{15]}

¹⁵ Order No. 575, FERC Stats. & Regs. ¶ 31,014 at 31,275.

11. Following the enactment of the Energy Policy Act of 2005 (EPAAct 2005), which imposed new requirements for QF status for “new” cogeneration facilities,¹⁶ the Commission issued Order No. 671,¹⁷ which implemented those new requirements. As part of that implementation, for the first time, notices of self-certifications for new cogeneration facilities were required to be published in the Federal Register; self-certifications, other than for new cogeneration facilities, are not published in the Federal Register. In addition, as noted above, for the first time, the Commission required the filing of a notice of self-certification or an application for Commission certification as a requirement for QF status.¹⁸

III. Proposed Revisions to Regulations

A. Revisions to 18 CFR 131.80

12. Currently, § 131.80 of the Commission regulations contains the text of Form No. 556 as well as instructions on how to complete the form. We propose that § 131.80 of the Commission’s regulations will no longer contain Form No. 556. In place of the current

¹⁶ A “new” cogeneration facility is defined as any cogeneration facility that was either not 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 or Commission recertification as a qualifying cogeneration facility prior to February 2, 2006. 16 U.S.C. 824a-3(n)(2)(B); 18 CFR 292.205(d).

¹⁷ Revised Regulations Governing Small Power Production and Cogeneration Facilities, Order No. 671, 71 FR 7852 (Feb. 2, 2006), FERC Stats. & Regs. ¶ 31,203 (2006), order on reh’g, Order No. 671-A, 71 FR 30585 (May 22, 2006), FERC Stats. & Regs. ¶ 31,219 (2006).

¹⁸ See 18 CFR 292.203(a)(3), (b)(2).

language, we propose to require in § 131.80(a) that any person seeking to certify a facility as a QF must complete and file the Form No. 556 then in effect and in accordance with the instructions then incorporated in that form.

13. Revising § 131.80 as proposed will make it easier to clarify and correct the form, should such changes prove necessary or appropriate in the future. Future changes to the form would be reviewed by the Office of Management and Budget following a solicitation of comments from the public on proposed changes, but would not require a formal rulemaking. This treatment is consistent with how a number of other Commission information collections are managed, including FERC Form Nos. 1, 1-F, 3-Q, 60, 80, 423, 714, and 715, as well as the FERC Form No. 580 Interrogatory.¹⁹

14. We are also proposing to require, through proposed § 131.80(c), that applicants submit their QF applications (whether initial certifications or recertifications, and whether self-certifications or applications for Commission certification) electronically via the Commission's eFiling website. We make this proposal for several reasons. First, for most applicants, the electronic filing process will be faster, easier, less costly and less resource-intensive than hardcopy filing. An applicant filing electronically will receive an acknowledgement that the Commission has received their application and a docket number for their submittal much more quickly than they would by filing in hardcopy format. Also, electronic filing will allow the Commission to electronically process QF

¹⁹ 18 CFR 366.23.

applications, dramatically reducing required staff resources and human error, and allowing the Commission to identify patterns of reporting errors and noncompliance that would be difficult to detect through manual processing. Finally, electronic filing of QF applications would facilitate the compilation of QF data that could be made available to the public. Each year Commission staff field a number of requests for QF certification data from private organizations, researchers and other government agencies. Requiring applicants to file in electronic format would make it possible to respond to many more such requests, and/or to publish compiled QF data on the Commission's website.

15. While electronic filing of QF certifications has many benefits, we recognize that some of the parties submitting applications for certification of QF status are small entities that consider the cost of legal representation to be burdensome and/or that lack access to the computer facilities necessary to make an electronic filing.

16. To address this concern, we propose to amend § 292.203 to exempt the smallest applicants, those with a net power production capacity less than or equal to 1 MW, from the requirement to make any filing with the Commission in order to be a QF. Facilities larger than 1 MW represent a significant departure from residential power generation, and we would expect entities certifying such facilities to have access to the legal representation and the computer facilities needed to electronically file a Form No. 556. We seek comments on this proposal, and, in particular, on whether a 1 MW threshold is the appropriate threshold. We note that until the effective date of Order No. 671, no filing, either of a self-certification or an application for Commission certification, was needed for QF status. In instituting the filing requirement for QF status, the Commission,

among other things, explained that requiring a filing would help ensure that a “new” cogeneration facility would not be able to claim QF status without making a filing; the Commission believed that the Congressional mandate to tighten the standards for cogeneration facilities required that a filing, either a self-certification or an application for Commission certification, be made by an entity claiming QF status.²⁰ While, as discussed above, the data submitted on Form No. 556 are valuable, there may not be as compelling reasons for facilities that are very small, such as solar generation facilities installed at residences or other relatively small electric consumers such as retail stores, hospitals, or schools, to make filings with the Commission for QF status.

17. Alternatively, we could maintain a hardcopy filing requirement for small facilities instead of exempting small facilities from any certification requirement; however, such a policy would add considerably to the complexity of the Commission’s regulations. The very limited benefit of such a policy does not seem to justify this added complexity or the burden on the affected parties.

B. Revisions to 18 CFR 292.203

18. Section 292.203 of our regulations²¹ lists the general requirements for QF status. For a qualifying small power production facility, those requirements currently state that the facility must meet the maximum size criteria specified in § 292.204(a), meet the fuel

²⁰ Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 81.

²¹ 18 CFR 292.203.

use criteria specified in § 292.204(b), and must have filed a notice of self-certification or an application for Commission certification that has been granted. For a qualifying cogeneration facility, those requirements currently state that the facility must meet any applicable operating and efficiency standards provided in § 292.205(a) and (b), and that the facility must have filed a notice of self-certification or an application for Commission certification that has been granted.

19. We propose to correct an inadvertent error in § 292.203(b)(1) of our regulations.²²

Order No. 671 implemented additional technical requirements for certain cogeneration facilities in § 292.205(d), but § 292.203(b)(1) was not updated to reflect that a facility must comply with these new requirements (if applicable) in order to be a qualifying cogeneration facility. We propose to add the reference to § 292.205(d) in § 292.203(b). Because the technical requirements of § 292.205(d) are not “operating and efficiency standards,” we propose to amend § 292.203(b) to delete the phrase “operating and efficiency standards” and to replace it with the phrase “standards and criteria.”

20. Finally, as mentioned above, we seek comments on whether to add a § 292.203(d) which would exempt certain very small facilities from the requirement to make a filing for qualifying status and would make explicit the Commission’s authority to grant waiver

²² 18 CFR 292.203(b)(1).

of the filing requirement upon petition where good cause is shown.²³ As discussed above, certain very small facilities may find the filing requirement for obtaining QF status to be unduly burdensome. On the other hand, there is value to the data received in a self-certification, the self-certification process has been designed to be and is relatively easy, and we intend to make it easier with the adoption of an easier-to-use Form No. 556.

C. Revisions to 18 CFR 292.204

21. Section 3(17)(E) of the Federal Power Act provides that an “eligible solar, wind, waste or geothermal facility” is a facility which produces electric energy solely by the use, as a primary energy source, of solar energy, wind energy, waste resources or geothermal resources, but only if such facility meets certain criteria for dates of certification and construction. Section 3(17)(A) of the Federal Power Act provides that any eligible solar, wind, waste, or geothermal facility is a small power production facility, regardless of its size. The Commission implemented these sections of the Federal Power Act in § 292.204(a), including the statement that there are no size limitations for “eligible” solar, wind or waste facilities,²⁴ as defined by section 3(17)(E) of the Federal Power Act. The regulation then states that, for “a non-eligible facility,” the size limitation for a qualifying small power production facility is 80 MW.

²³ See Ashland Windfarm, LLC, 124 FERC ¶ 61,068 (2008) (Commission granted waiver of the filing requirement for QF status).

²⁴ “Geothermal” was inadvertently omitted when the regulation was written. The change we are proposing obviates the need to correct this omission.

22. The wording of § 292.204(a) has created confusion for many applicants.

Applicants not familiar with section 3(17)(A) or (E) of the Federal Power Act frequently confuse the statutory concept of “eligibility” with more general questions of whether their facility is eligible for QF status. They often assume that an “eligible facility” is any facility that is eligible for qualifying status. In an attempt to reduce such confusion, we propose to revise § 292.204(a) to be more clear while achieving the same regulatory outcome as the current § 292.204(a); the proposed revision avoids using the term “eligible.”

D. Revisions to 18 CFR 292.205

23. The text of § 292.205(d) of the Commission’s regulations²⁵ contains an error in the description of the new cogeneration facilities that are subject to the requirements of §§ 292.205(d)(1) and (2). Section 292.205(d) provides that the following facilities are subject to these requirements:

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 or Commission recertification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-1. [²⁶]

²⁵ 18 CFR 292.205(d).

²⁶ Id. (emphasis added).

24. From this language, the criteria for QF status include whether or not a cogeneration facility was “certified as” a qualifying cogeneration facility by August 8, 2005.²⁷ However, the text of section 210(n)(2) of PURPA states that the Commission’s prior cogeneration requirements shall continue to apply to any facility that “was a qualifying cogeneration facility on [August 8, 2005].”²⁸ Furthermore, at the time of enactment of EPAct 2005, the Commission’s regulations did not require that a facility that complied with the requirements for QF status be certified in order to be a QF.²⁹ As such, there were many facilities that were QFs on August 8, 2005, even though they were not certified as QFs by that date. To correct this error, we propose to strike the words “certified as” from the first sentence of § 292.205(d).

25. Section 210(n)(2) of PURPA also states that the Commission’s prior cogeneration requirements will continue to apply to any facility that “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 [February 2, 2006].”³⁰ The Commission implemented this provision in § 292.205(d) by not applying the new cogeneration

²⁷ The significance of August 8, 2005 is that it is the date on which the Energy Policy Act of 2005 was signed into law.

²⁸ 16 U.S.C. 824a-3(n)(2)(A) (emphasis added).

²⁹ See Revised Regulations Governing Small Power Production and Cogeneration Facilities, Order No. 671, 71 FR 7852 at P 81 (Feb. 2, 2006), FERC Stats. & Regs. ¶ 31,203, at P 81 (2006).

³⁰ 16 USC 824a-3(n)(2)(B).

requirements to any cogeneration facility that had filed “a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006.” Because any facility that had recertified (either by self-recertification or application for Commission recertification) prior to February 2, 2006 must necessarily have made its original certification prior to February 2, 2006, the inclusion of “self-recertification” and “application for Commission recertification” in this provision is unnecessary. We propose to simplify § 292.205(d) to state that the new cogeneration requirements will not apply to any facility that had filed “a notice of self-certification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006.” This proposed revision would achieve the same regulatory result while decreasing the complexity of the regulatory text, and thus the opportunities for confusion.

E. Revisions to 18 CFR 292.207

1. Elimination of Pre-Authorized Commission Recertification

26. We propose to eliminate the procedure for pre-authorized Commission recertification contained in § 292.207(a)(2).³¹ That procedure was established to give applicants for facilities that have been certified under the procedures for Commission certification in § 292.207(b) a list of insubstantial alterations and modifications that

³¹ 18 CFR 292.207(a)(2).

would not result in the revocation of QF status previously granted by the Commission. Section 292.207(a)(2)(ii) also requires those making the changes listed in § 292.207(a)(2)(i) to notify the Commission and each affected utility and State regulatory authority of each such change.

27. The pre-authorized Commission recertification process does not currently require the use of Form No. 556, and historically the very few applicants that have filed pre-authorized Commission recertifications have done so in the form of a letter describing the changes to their facilities. In this rulemaking, we are implementing procedures to require that self-certifications or applications for Commission certification be made through the electronic submission of a Form No. 556. Removing the pre-authorized recertification option ensures that all QF certification filings will be made electronically using Form No. 556. We could opt to revise the procedure for the pre-authorized Commission recertification to require such filings to be made electronically using a Form No. 556, but such a revised procedure would be essentially identical to the procedure for self-certification. Having such a duplicative procedure appears unjustified, particularly given the increase in complexity to the Form No. 556 and the Commission's regulations that would result.

28. Furthermore, we note that the types of changes listed in § 292.207(a)(2)(i) may be somewhat misleading, as a strict reading of that list may imply that almost any change to a QF, no matter how small, would require notice to the Commission and to the affected utilities and State regulatory authorities. In reality, changes falling below a certain level

of importance are not significant enough to justify the burden on the applicant of the recertification requirement.

2. Elimination of Procedures for Referring to Information From Previous Certifications

29. Section 292.207(a)(1)(iii) provides that subsequent notices of self-recertification for the same facility may reference prior notices or prior Commission certifications, and need only refer to changes which have occurred with respect to the facility since the prior notice or the prior Commission certification. We propose to delete this provision, and, as a result, to change the Commission's policy so that applicants are required to provide all of the information for their facility in each Form No. 556 they submit with a self-recertification or an application for Commission recertification. We believe this proposed change will result in greater transparency. During the processing of routine QF petitions and periodic compliance reviews of self-certifications, the Commission frequently finds that the original certification data for some facilities (particularly facilities originally certified in the 1980s) can be difficult to obtain. And requiring the provision of full data in a recertification would be a small, one-time burden for applicants, because applicants may, after their first recertification subsequent to a Final Rule implementing this proposal, simply download their previous electronically-filed Form No. 556 from eLibrary and update the relevant responses to generate their new Form No. 556. Given the significant benefit and the small, one-time burden, deletion of § 292.207(a)(1)(iii) appears appropriate.

3. Elimination of Requirement to Provide a Draft Notice Suitable for Publication in the Federal Register

30. Section 292.207(a)(1)(iv) of our regulations³² currently requires that notices of self-certifications and self-recertifications for new cogeneration facilities be published in the Federal Register. Similarly, § 292.207(b)(4) of our regulations³³ requires that notices of applications for Commission certification or recertification be published in the Federal Register. For these applications that require publication of notices in the Federal Register, §§ 292.207(a)(1)(iv) and (b)(4) require that applicants provide with their filing a draft notice suitable for publication in the Federal Register on electronic media.

31. We propose to continue to publish notices self-certification and self-recertification for new cogeneration facilities and applications for Commission certification and recertification in the Federal Register, and we include that requirement in the proposed § 292.207(c). However, we propose to delete §§ 292.207(a)(1)(iv) and (b)(4) in order to eliminate the requirement that applicants for those types of filings provide a draft notice suitable for publication in the Federal Register. We have found that there is a significant amount of confusion among many QF applicants—particularly smaller applicants—about exactly what a Federal Register notice is, and how to provide a draft of such a notice on

³² 18 CFR 292.207(a)(1)(iv).

³³ 18 CFR 292.207(b)(4).

electronic media. Furthermore, because under the proposed changes to § 131.80 applicants would file their Forms 556 electronically, the Commission can automatically generate Federal Register notices directly from the Form No. 556 data, without requiring a draft notice submitted by the applicant. We expect this proposed amendment will result in a decrease in the burden to small QF applicants.

4. Requirement to Serve a Copy of a Form No. 556 on Affected

Utilities and State Commissions

32. Currently applicants for self-certification are required to serve a copy of their QF self-certification filings on each electric utility with which they expect to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up and maintenance power from, and the State regulatory authority of each state where the facilities and each affected electric utility is located.³⁴ No such requirement currently exists for applications for Commission certification.

33. We propose to amend the regulations to require that any applicant filing a self-certification, self-recertification, application for Commission certification or application for Commission recertification must serve a copy of its filing on each affected electric utility and State regulatory authority. Specifically, we propose to make the following revisions: (1) delete § 292.207(a)(1)(ii); (2) rename § 292.207(c) “Notice requirements” instead of the current “Notice requirements for facilities of 500 kW or more”; (3) insert

³⁴ 18 CFR 292.207(a)(ii).

§ 292.207(c)(1) before the current first paragraph in § 292.207(c), that would establish that any applicant for self-certification, self-recertification, Commission certification or Commission recertification must serve on each affected utility and state regulatory authority a copy of its filing; and (4) revise the existing text of § 292.207(c), which will become § 292.207(c)(2), requiring facilities of 500 kW or more to provide that an electric utility is not required to purchase electric energy from a facility with a net power production capacity of 500 kW or more until 90 days after the facility meets the notice requirements in § 292.207(c)(1).

5. Other Proposed Changes

34. We propose to remove reference to “pre-authorized Commission recertification” in the title of § 292.207(a) and in the body text of § 292.207(d)(1)(i). We also propose to delete the current § 292.207(a)(1), and to replace it, in § 292.207(a), with a procedure for self-certification that incorporates clear reference to proposed § 131.80 and to the notice requirements in § 292.207(c).

F. Revisions to 18 CFR 292.601

35. We propose to amend § 292.601(a) of our regulations³⁵ to make clear the exemption from the specified Federal Power Act sections is applicable to any facility that meets the definition of an “eligible solar, wind, waste or geothermal facility” under section 3(17)(E) of the Federal Power Act. Section 4 of the Solar, Wind, Waste, and

³⁵ 18 CFR 292.601(a).

Geothermal Power Production Incentives Act of 1990 (Incentives Act)³⁶ provides that “eligible facilities” shall not be subject to the size limitations contained in § 292.601(b) of the Commission’s regulations, unless the Commission otherwise specifies. The Commission has found that the size limitation for eligibility for the exemptions contained in §§ 292.601 and 292.602, otherwise applicable to other small power production facilities, does not apply to “eligible facilities.”³⁷ We propose to amend § 292.601(a) to make that clear.³⁸

G. Revisions to 18 CFR 292.602

36. We propose to amend § 292.602(c)(1) to clarify that it is only the QFs described in paragraph (a) of that section that may take advantage of the exemptions provided in § 292.602, and to correct a typographical error. Finally, we propose to correct a typographical error in the title of § 292.602.

³⁶ Pub. L. No. 101-575, 104 Stat. 2834 (1990), as amended by Pub. L. No. 102-46, 105 Stat. 249 (1991).

³⁷ Cambria Cogen Co., 53 FERC ¶ 61,459, at 62,619 (1990).

³⁸ Because 18 CFR 292.602(a) states that the exemption from PUHCA and State laws and regulations provided in that section applies to any QF described in 18 CFR 292.601(a), and because the QFs described by 18 CFR 292.601(a) include all QFs other than those described by 18 CFR 292.601(b), the Incentives Act’s exemption of “eligible facilities” from the size limitation contained in 18 CFR 292.601(b) has the effect of making such facilities also eligible for the exemptions from PUHCA and State laws and regulations in 18 CFR 292.602.

IV. Proposed Revisions to the Form No. 556

A. General

37. We propose to make a number of changes to the content and organization of the Form No. 556. A proposed revised Form No. 556 is included as Attachment A to this document, and will be available for download from the Commission's QF website.³⁹ As discussed above, we are not proposing to include the content of the Form No. 556 in the Commission's regulations, however, the changed Form No. 556, once approved, will become "the Form No. 556 then in effect" for purposes of the proposed § 131.80. We are therefore giving notice of our proposed changes to Form No. 556, which after receiving and considering comments on those changes, we will submit for OMB approval pursuant to the provisions of the Paperwork Reduction Act of 1995.⁴⁰

38. In addition to the structure of the proposed Form No. 556, we propose to include (in the Final Rule version of the form) data controls, automatic calculations, error handling and other programmatic features to assist applicants and maintain data quality. We request comment on any specific features that interested persons would find useful, and that should be included in the form.

39. Most of the proposed changes to the Form No. 556 are intended to make use of new electronic data structuring. While, in most cases, we propose to collect the same

³⁹ <http://www.ferc.gov/QF>. The proposed revised Form No. 556 will not be attached to the Microsoft Word version of this document.

⁴⁰ 44 U.S.C. 3507(d).

data that is currently collected in the Form No. 556, the new form will allow the Commission to more efficiently administer the QF program. Commission staff spends a significant amount of time working with applicants that either misunderstand the current form, pay insufficient attention to the informational requirements on the current form, or both. By making Form No. 556 easier to understand, we will make the submission of Form No. 556 less burdensome to applicants.

40. Our experience has been that the open-ended nature of the current Form No. 556 data collection—where applicants are able to type any answer or no answer in response to an item—often results in applicants incorrectly answering or skipping items or portions of items that they mistakenly feel do not apply to them. Improved instructions, the use of a greater number of questions which are individually narrower in scope, and the use of certain electronic data controls and validation options, such as checkboxes and data entry fields that only accept data formatted in the appropriate way, are proposed to minimize these problems.

41. We seek comments on any aspect of the proposed form. While many of the changes to the form are self-explanatory, we discuss the more significant changes below.

B. Name of Form

42. In Order No. 575, the Commission adopted San Diego Gas and Electric Company's suggestion to title the Form No. 556 to make clear that it applies to proposed

as well as to existing facilities.⁴¹ We are not proposing to change the applicability of the form to proposed and existing facilities; however, as part of our attempt to make the Form No. 556 as simple and clear as possible, we propose to shorten the name of the form to “Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility.”

C. Geographic Coordinates

43. Over the years we have received a number of inquiries from the public seeking certain information about QFs. Many of these inquiries were from academics, research organizations or other government entities performing studies of the effectiveness of PURPA and the Commission’s regulations implementing PURPA. Often such inquiries have involved the dates that applications for different types of QFs were filed (particularly relative to certain changes in policies) and the locations of the QFs. Currently, location information is collected only through the street address of the facility, even though some facilities in rural or wilderness areas do not have a street address.

44. We believe it may be useful to researchers (as well as the public in general, and affected electric utilities and State regulatory authorities in particular) to have specific locational data for QFs, even for facilities that do not have street addresses. In addition to having value for researchers, such specific locational data would also provide a

⁴¹ Order No. 575, 60 FR 4831 (Jan. 13, 1995), FERC Stats. & Regs. ¶ 31,014, at 31,282 and 31,285.

transparent means of determining compliance with the size requirement for small power production facilities, which is based in part on the distance between adjacent generating facilities. As such, we propose to include a new line 3c that will require applicants for facilities without a street address to provide the geographic coordinates (latitude and longitude) of their facilities. The text of the proposed line 3c directs applicants to the Geographic Coordinates section of the instructions on page 4 which discusses several different ways through which applicants might obtain the geographic coordinates of their facilities: through certain free online map services (with links available through the Commission's QF website); a GPS device; Google Earth; a property survey; various engineering or construction drawings; a property deed; or a municipal or county map showing property lines. Applicants are directed in line 3c to provide their geographic coordinates to three decimal places, and are given a simple formula for how to convert degrees, minutes and seconds to decimal degrees. We solicit comments on the submission of locational information for facilities that do not have a street address.

D. Ownership

45. In Order No. 671, the Commission eliminated the limitation on electric utility and electric utility holding company ownership of QFs, but maintained the requirement that applicants provide ownership information in the Form No. 556.⁴²

⁴² Revised Regulations Governing Small Power Production and Cogeneration Facilities, Order No. 671, 71 FR 7852 (Feb. 2, 2006), FERC Stats. & Regs. ¶ 31,203

(continued...)

46. The wording of item 1c of the current Form No. 556 has proven confusing with respect to the collection of ownership information. In particular, item 1c does not specify the amount of equity interest in the facility above which the applicant is required to identify the owner. For facilities with many owners, this can prove burdensome, particularly if the ownership changes frequently.

47. Experience has also shown that the current wording of item 1c proves confusing to applicants with respect to which types of owners (direct or upstream) they are supposed to identify.

48. We propose to clarify both the level of ownership above which applicants are required to identify owners, and which information must be provided for direct and upstream owners. First, while maintaining the current requirement that applicants indicate the percentage of direct ownership held by any electric utility⁴³ or holding company,⁴⁴ we propose to clarify in line 5a of the proposed Form No. 556 that applicants need only provide information for direct owners that hold at least 10 percent equity interest in the facility.⁴⁵ Second, we propose to require in line 5b that applicants identify

(2006), order on reh'g, Order No. 671-A, 71 FR 30585 (May 22, 2006), FERC Stats. & Regs. ¶ 31,219 (2006).

⁴³ As defined in section 3(22) of the Federal Power Act. 16 U.S.C. 796(22).

⁴⁴ As defined in section 1262(8) of the Public Utility Holding Company Act of 2005. 42 U.S.C 16451(8)

⁴⁵ The 10 percent ownership threshold is proposed to be consistent with the 10 percent ownership thresholds used in the definition of a "holding company" in section 1262(8) of the Public Utility Holding Company Act of 2005, 42 U.S.C. 16451(8), and in

(continued...)

all upstream owners that both (1) hold at least a 10 percent equity interest in the facility and (2) are electric utilities or holding companies.

49. We seek comments on these changes to the ownership requirement. In particular, we seek comment on whether the 10 percent equity interest threshold is the proper threshold.

E. Fuel Use for Small Power Production Facilities

50. Section 292.204(b) of the Commission's regulations⁴⁶ allows small power production facilities to use oil, natural gas or coal in amounts up to and including 25 percent of the total energy input to the facility as calculated during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy. Such use of oil, natural gas or coal is limited to certain purposes specified in section 3(17)(B) of the Federal Power Act as implemented in § 292.204(b)(2) of the Commission's regulations.⁴⁷

51. Item 7 of the current Form No. 556 requires applicants to describe "how fossil fuel use will not exceed 25 percent of the total annual energy input limit," and "how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act

the definition of "affiliate" in 18 CFR 35.36(a)(9). However, we seek comments on whether a different threshold would be more appropriate in this context.

⁴⁶ 18 CFR 292.204(b).

⁴⁷ 18 CFR 292.204(b)(2).

Section 3(17)(B): ignition, start-up, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.” Experience with this item has indicated two problems. First, because applicants have significant latitude in how they respond, they often make statements which do not, on their face, commit themselves to fuel use that would meet the Commission’s requirements for qualifying small power production facilities. While these responses are unlikely to represent an intentional attempt on the part of applicants to circumvent the Commission’s regulations for fuel use,⁴⁸ the statements could make enforcement of the Commission’s regulations more difficult.

52. On the other hand, applicants who are very specific in their response to item 7 may feel that they have committed themselves to only engage in the particular uses they specified in their Forms 556, despite the fact that the Commission’s regulations may permit more flexibility in the use of fossil fuel.

53. We propose a simpler method of certifying compliance with the Commission’s fuel use requirements for small power production facilities that should avoid these problems. Rather than requiring applicants to describe how they will comply, we propose to simply state what the fuel use requirements are, and to require the applicant to

⁴⁸ Particularly since the wording of the current item 7 of the Form No. 556 states the fuel use requirements of the Commission’s regulations, we would find unconvincing any argument that an applicant was justified in violating the fuel use requirements of the Commission’s regulations by virtue of its statements in item 7.

certify, by checking a box next to each requirement, that they will comply. This proposal will, we believe, obligate the applicant to comply with the stated requirements, while not creating an impression that the applicant must limit its fuel use to some standard which is more stringent than that established in the Commission's regulations.

F. Mass and Heat Balance Diagrams for Cogeneration Facilities

54. Item 10 of the current Form No. 556 requires applicants for qualifying cogeneration facility status to provide a mass and heat balance diagram depicting average annual hourly operating conditions. As part of item 10, applicants are required to provide the following on their mass and heat balance diagrams: all fuel flow inputs in Btu/hr. specified using lower heating value, separately indicating fuel inputs for supplementary firing; average net electric output in kW or MW; average net mechanical output in horsepower; number of hours of operation used to determine the average annual hourly facility inputs and outputs; and working fluid flow conditions at input and output of prime mover(s) and at delivery to and return from each useful thermal application. Working fluid flow conditions required to be provided include the following: flow rates in lbs./hr.; temperature in °F; pressure in psia; and enthalpy in Btu/lb.

55. Some applicants have complained that, for relatively simple cogeneration facilities, some of the information required is meaningless or not known. For example, small diesel generators utilizing jacket water cooling systems to capture waste heat are often certified as qualifying cogeneration facilities. Such systems typically have no steam at any point in the system, and instead use pressurized water or an antifreeze solution to recover the waste heat and transport it to the useful thermal application. For

such systems, applicants have complained that specifying pressure has no significance, since the effect of pressure on enthalpy (a measure of thermal energy content) is negligible for liquids at standard conditions. Likewise, applicants have complained that, since pressure in all-liquid systems is not an important design variable, it is often not known to any degree of accuracy in such systems.

56. Some applicants have also pointed out that, in systems which are all liquid water, the extra work required to determine and specify enthalpy is not necessary. Since enthalpy in liquid water is a nearly linear function of temperature (because the specific heat of water does not vary significantly under standard conditions), specification of temperature at each required location and a specification of the specific heat of the working fluid (usually water) is all that is necessary to describe the energy balance of the cogeneration facility.

57. We agree. We propose to include language in new line 10b of the Form No. 556 indicating that, for systems where the working fluid is liquid only (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid is clearly indicated on the diagram or in the Miscellaneous section of the Form No. 556, only mass flow rate and temperature (not pressure and enthalpy) need be specified.

58. Our experience has shown that a relatively high level of deficiency and rejection letters for QF applications are a result of noncompliance with the requirements for the mass and heat balance diagram. This is likely due to a combination of the fact the requirements for the mass and heat balance diagram are long, technical and not always clear, and the fact that some applicants do not put sufficient effort and attention into

ensuring compliance. To improve reporting and to decrease future noncompliance, we propose to require applicants for qualifying cogeneration facility status to certify compliance with each of the requirements for the mass and heat balance diagram by checking a box next to each written requirement. We expect that, by requiring applicants to proceed box by box through the individual requirements, which will be stated more clearly than in the current Form No. 556, reporting will improve and noncompliance will drop dramatically.

G. EPAAct 2005 Cogeneration Facilities

59. In response to EPAAct 2005, the Commission implemented in Order No. 671 additional requirements for new cogeneration facilities selling power pursuant to section 210 of PURPA.⁴⁹ The Commission implemented the “productive and beneficial” and “fundamental use” requirements of EPAAct 2005 through the inclusion of a new section in the Form No. 556 that required applicants to respond to the text of the statute, providing applicants space to demonstrate compliance with EPAAct 2005’s requirements. In practice, Form No. 556 has not provided sufficient guidance to applicants through the determination of whether EPAAct 2005 applies to their facilities, whether their facilities

⁴⁹ Congress in EPAAct 2005, and the Commission in implementing EPAAct 2005, referred to the facilities subject to the EPAAct 2005 requirements as “new” cogeneration facilities. 16 U.S.C. 824a-3(n); 18 CFR 292.205(d). To avoid confusion that this “new” label will create as time passes and such facilities are not “new” anymore (except with respect to the date of the implementation of EPAAct 2005), we will refer in the proposed Form No. 556 to such facilities as “EPAAct 2005 cogeneration facilities.”

enjoy a presumption of compliance under § 292.205(d)(4) of the Commission's regulations, or whether such facilities fall within the safe harbor established by the "fundamental use test" in § 292.205(d)(3).

60. We note that, in implementing the "productive and beneficial" requirement of EPCAct 2005, the Commission essentially maintained its long-standing "usefulness" standard, except that what it deemed as presumptively useful was now rebuttable.⁵⁰ The current Form No. 556 requirement that applicants demonstrate compliance both with the "productive and beneficial" standard (in item 15) and the "useful" standard (in items 12, 13 and/or 14) can be condensed and streamlined without degrading the information provided or the level of Commission and public oversight of the QF program. We propose to consolidate these requirements into the portion of the proposed Form No. 556 where applicants demonstrate the "usefulness" of the thermal output (lines 12a, 12b, 14a, and 14b of the proposed form).

61. The "fundamental use" requirement for EPCAct 2005 cogeneration facilities, on the other hand, does involve data collection that is specific to EPCAct 2005 facilities. As such, we propose to implement a new section of the Form No. 556 entitled "EPCAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities." This section would replace the current "For New Cogeneration Facilities" section. We propose this new section to facilitate an applicant's determination (1) whether the EPCAct

⁵⁰ Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 17 (2006).

2005 cogeneration requirements apply to its facility, given the date on which the facility was originally a QF or originally filed for QF certification; (2) whether its pre-EPA 2005 facility (if applicable) is subject to EPA 2005 by virtue of changes to the facility which essentially make it a “new” EPA 2005 facility; (3) whether its facility is excluded from the “fundamental use” requirement by virtue of the fact that power will not be sold from the facility pursuant to section 210 of PURPA; (4) whether its facility enjoys a rebuttable presumption of compliance with the “fundamental use” requirement by virtue of its small electric output; and/or (5) whether its facility complies with the fundamental use requirement by virtue of meeting the fundamental use test established in § 292.205(d)(3) of the Commission’s regulations. If an applicant’s facility is found to be subject to the EPA 2005 requirements, but to fail the fundamental use test, then the applicant is instructed by line 11d of the proposed Form No. 556 to provide a narrative explanation of and support for why its facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPA 2005 cogeneration facility is used fundamentally for industrial, commercial, residential 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 QF to its host facility.

62. We seek comments on the proposed “EPA 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities” section. In particular, we seek comments on proposed line 11c. In the proposed line 11c, we seek information to be used in determining whether a modification to a pre-EPA 2005 cogeneration facility

might be so significant that the facility should be considered a new facility that would be subject to the additional requirements (if applicable) for EPCRA 2005 cogeneration facilities. In Order No. 671, the Commission established a rebuttable presumption that a pre-EPCRA 2005 cogeneration facility does not become an EPCRA 2005 cogeneration facility merely because it files for recertification; however, the Commission cautioned that “changes to an existing cogeneration facility could be so great (such as an increase in capacity from 50 MW to 350 MW) that what an applicant is claiming to be an existing facility should, in fact, be considered a ‘new’ cogeneration facility at the same site.”⁵¹ We will continue this rebuttable presumption, but also require that an applicant filing a self-recertification or an application for Commission recertification for a pre-EPCRA 2005 cogeneration facility provide sufficient information about any changes to the facility to evaluate whether in fact the changes are so significant that the facility should be considered an EPCRA 2005 cogeneration facility.

63. Thus an applicant for recertification of a pre-EPCRA 2005 cogeneration facility which intends to rely upon the rebuttable presumption that recertification of its existing facility does not make the facility subject to the EPCRA 2005 requirements must provide a description of the relevant changes to the facility, including the purpose of the changes, and an explanation why the facility should not be considered an EPCRA 2005 cogeneration facility.

⁵¹ Id. P 115.

64. We stress that we are not proposing a finding that every facility that has undergone a change should be considered an EPC Act 2005 cogeneration facility; rather, we are proposing to require that an applicant filing a self-recertification or an application for Commission recertification for a pre-EPC Act 2005 cogeneration facility provide enough information about any changes to the facility to allow the Commission and the public to evaluate the changes.

V. Information Collection Statement

65. The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995.⁵² The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

A. Estimated Annual Burden

66. The Commission has previously broken down its estimated annual burden for completing the Form No. 556 by filing type (self-certification or Commission certification). We believe that breaking down the filings by facility type (small power production facility or cogeneration facility) in addition to filing type will result in a

⁵² 44 U.S.C. 3507(d).

significantly improved burden estimate. Using this method, the total estimated annual time for the collection of information associated with the Form No. 556 is 2,156 hours, calculated as follows:

Facility Type	Filing Type	Number of Respondents	Hours per Respondent	Total Annual Hours
cogeneration facility > 1 MW	self-certification	100	8	800
cogeneration facility > 1 MW	application for Commission certification	3	50	150
small power production facility > 1 MW	self-certification	400	3	1200
small power production facility > 1MW	application for Commission certification	1	6	6

67. Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. As almost all of the regulation changes are intended to make seeking certification easier, and because we are proposing to exempt applicants for facilities not greater than 1 MW from the certification requirement, the Commission estimates that the collection costs associated with the new form will be less burdensome than with the existing form. Although the length of the form has increased, this is a result of the proposal to change the form to more effectively “walk” applicants through the certification and compliance determinations that they currently have to research and process on their own.

Title: FERC Form No. 556, “Certification of qualifying facility (QF) status for small power production or cogeneration facility.”

Action: Proposed information collection.

OMB Control No. 1902-0075.

Respondents: Residences, businesses or other for profit entities, and government agencies.

Frequency of responses: On occasion.

Necessity of the information: The Form No. 556 was established in Order No. 575 to allow an applicant to self-certify or to request the Commission to determine whether a facility meets the criteria for qualifying small power production or cogeneration status under the Commission’s regulations, and thus whether the applicant is eligible to receive the benefits available to it under PURPA.

Internal review: The Commission has reviewed its proposed changes to the requirements pertaining to the certification of qualifying small power production and cogeneration facilities and determined the proposed changes appear to decrease the existing burden on applicants. These proposed 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.

68. 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 Deputy Chief Information Officer, phone: (202) 502-8415, fax: (202) 273-0873, email: Michael.Miller@ferc.gov].

Comments concerning the collection of information and the associated burden estimates, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395-4638; fax (202) 395-7285].

VI. Environmental Analysis

69. 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.⁵³ No environmental consideration is needed for the promulgation of a rule that addresses information gathering, analysis, and dissemination.⁵⁴ These proposed rules, if finalized, involve information gathering, analysis, and dissemination. Consequently, neither an Environmental Impact Statement nor Environmental Assessment is required.

⁵³ See Regulations Implementing the National Environmental Policy Act of 1969, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

⁵⁴ See 18 CFR 380.4(a)(5).

VII. Regulatory Flexibility Act

70. The Regulatory Flexibility Act of 1980 (RFA)⁵⁵ requires rulemakings to contain either a description or analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. In this notice, we propose three different types of regulatory changes, and we address each in turn.

71. First, we propose to clarify and streamline the Form No. 556. These changes make the form easier for applicants, whether large or small, to complete, because the proposed form leads applicants step-by-step through the compliance determinations.

72. Second, we propose certain limited additional disclosures of information. In particular, we propose (1) to collect in line 3g of the proposed form the geographic coordinates of facilities that do not have a street address, and (2) to collect certain information used to determine applicability of the EPCRA 2005 cogeneration requirements that was not previously explicitly required to be included in Form No. 556.

73. The requirement to report geographic coordinates is applicable only to those facilities that do not have a street address and is therefore not generally applicable to all applicants. Moreover, in most cases, geographic coordinates can be obtained from a simple web search (with help provided by the instructions and the Commission's website); a GPS device (including some cellular phones); the use of free computer

⁵⁵ 5 U.S.C. 601-12.

programs (such as Google Earth); or the review of certain documents, such as a property survey, various engineering or construction drawings, a property deed, or a municipal or county map showing property lines.

74. The new information proposed to be collected from applicants for cogeneration facilities in lines 11a through 11f serves to guide the applicants through the determination whether the EAct 2005 cogeneration requirements apply to their facilities. The process of completing lines 11a through 11f replicates, but in a clearer and more concise manner, the process that such applicants already have to go through in completing the current form. Completing lines 11a through 11f should substantially decrease the burden of complying with the EAct 2005 cogeneration requirements for most or all applicants for cogeneration facilities. In the absence of this step-by-step guide proposed in lines 11a through 11f, applicants (particularly small applicants) must independently research the requirements and determine compliance with the relatively complex EAct 2005 cogeneration requirements.

75. Third, we propose to require applicants for certification of QF status to submit their Forms 556 electronically, via the Commission's eFiling website. We also propose, however, to exempt applicants for facilities with net power production capacities of 1 MW and smaller from any filing requirement. If both of these proposals are adopted, then the electronic filing requirement would not apply to applicants for small QFs. We believe that any applicant for a facility larger than 1 MW should have access to the resources needed to make an electronic filing.

VIII. Comment Procedures

76. 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 on or before [Insert date 60 days from publication in the **FEDERAL REGISTER**]. Comments must refer to Docket No. RM09-23-000, and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

77. The Commission encourages comments to 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.

78. Commenters who are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

79. All 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 notice of proposed rulemaking are not required to serve copies of their comments on other commenters.

IX. Document Availability

80. In addition to publishing the full text of this document (with the exception of the Form No. 556 itself – which will be available in eLibrary and posted at <http://www.ferc.gov/QF>) 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 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

81. From the Commission's home page on the Internet, this information is available in 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.

82. 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 202-502-6652 or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email at public.referenceroom@ferc.gov.

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List of subjects in 18 CFR Part 131

Electric power, Natural gas, Reporting and Recordkeeping requirements.

List of subjects in 18 CFR Part 292

Electric power, Electric power plants, Electric utilities

By direction of the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 131 and 292 of Title 18 of the Code of Federal Regulations, as set forth below:

**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 as follows:

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 revised to read as follows:

§ 131.80 FERC Form No. 556, Certification of qualifying facility (QF) status for a small power production or cogeneration facility.

(a) Who must file. Any person seeking to certify a facility as a qualifying facility pursuant to sections 3(17) or 3(18) of the Federal Power Act, 16 U.S.C. 796(3)(17), (3)(18), unless otherwise exempted or granted a waiver by Commission rule or order pursuant to § 292.203(d), must complete and file the Form of Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, FERC Form No. 556. Every Form of Certification of Qualifying Status must be submitted on the FERC Form No. 556 then in effect and must be prepared in accordance with the instructions incorporated in that form.

(b) Availability of FERC Form No. 556. The currently effective FERC Form No. 556 shall be made available for download from the Commission's website.

(c) How to file a FERC Form No. 556. All applicants must file their FERC Forms No. 556 electronically via the Commission's eFiling website.

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 Section 292.203 paragraphs (a) through (c) are revised and paragraph (d) is added 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);
- (2) Meets the fuel use criteria specified in § 292.204(b); and
- (3) Unless exempted by paragraph (d), has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

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

(1) Meets any applicable standards and criteria specified in §§ 292.205(a), (b) and (d); and

(2) Unless exempted by paragraph (d), has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

(c) Hydroelectric small power production facilities located at a new dam or diversion. (1) A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility if it meets the requirements of:

(i) Paragraph (a) of this section; and

(ii) Section 292.208.

(2) [Reserved]

(d) Exemptions and waivers from filing requirement. (1) Any facility with a net power production capacity of 1 MW or less is exempt from the filing requirements of paragraphs (a)(3) and (b)(2) of this section.

(2) The Commission may waive the requirement of paragraphs (a)(3) and (b)(2) of this section for good cause. Any applicant seeking waiver of paragraphs (a)(3) and (b)(2) of this section must file a petition for declaratory order describing in detail the reasons waiver is being sought.

3. In § 292.204, paragraph (a)(1) is revised and paragraph (a)(4) is added to read as follows:

§ 292.204 Criteria for qualifying small power production facilities.

(a) Size of the facility—(1) Maximum size. Except as provided in paragraph (a)(4) of this section, the power production capacity of a facility for which qualification is sought, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts.

* * * * *

(4) Exception. Facilities meeting the criteria in section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)) have no maximum size, and the power production capacity of such facilities shall be excluded from consideration when determining the maximum size of other small power production facilities within one mile of such facilities.

* * * * *

4. In § 292.205, paragraph (d) is revised 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 a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification or an application for Commission certification as a qualifying cogeneration

facility under § 292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-1, must also show:

* * * * *

5. In § 292.207, paragraphs (a) through (d)(1)(i) are revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

(a) Self-certification. The qualifying facility status of an existing or a proposed facility that meets the requirements of § 292.203 may be self-certified by the owner or operator of the facility or its representative by properly completing a Form No. 556 and filing that form with the Commission, pursuant to § 131.80 of this chapter, and complying with paragraph (c) of this section.

(b) Optional procedure—(1) Application for Commission certification. In lieu of the self-certification procedures in paragraph (a) of this section, an owner or operator of an existing or a proposed facility, or its representative, may file with the Commission an application for Commission certification that the facility is a qualifying facility. The application must be accompanied by the fee prescribed by part 381 of this chapter, and the applicant for Commission certification must comply with paragraph (c) of this section.

(2) General contents of application. The application must include a properly completed Form No. 556 pursuant to § 131.80 of this chapter.

(3) Commission action. (i) Within 90 days of the later of the filing of an application or the filing of a supplement, amendment or other change to the application, the Commission will either: inform the applicant that the application is deficient; or issue an order granting or denying the application; or toll the time for issuance of an order. Any order denying certification shall identify the specific requirements which were not met. If the Commission does not act within 90 days of the date of the latest filing, the application shall be deemed to have been granted.

(ii) For purposes of paragraph (b) of this section, the date an application is filed is the date by which the Secretary of the Commission has received all of the information and the appropriate filing fee necessary to comply with the requirements of this Part.

(c) Notice requirements—(1) General. An applicant filing a self-certification, self-recertification, application for Commission certification or application for Commission recertification of the qualifying status of its facility must concurrently serve a copy of such filing on each electric utility with which it expects to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up or maintenance power from, and the State regulatory authority of each state where the facility and each affected electric utility is located. The Commission will publish a notice in the Federal Register for each application for Commission certification and for each self-certification of a cogeneration facility that is subject to the requirements of § 292.205(d).

(2) Facilities of 500 kW or more. An electric utility is not required to purchase electric energy from a facility with a net power production capacity of 500 kW or more until 90 days after the facility meets the notice requirements in paragraph (c)(1) of this section.

(d) Revocation of qualifying status. (1)(i) If a qualifying facility fails to conform with any material facts or representations presented by the cogenerator or small power producer in its submittals to the Commission, the notice of self-certification or Commission order certifying the qualifying status of the facility may no longer be relied upon. At that point, if the facility continues to conform to the Commission's qualifying criteria under this part, the cogenerator or small power producer may file either a notice of self-recertification of qualifying status pursuant to the requirements of paragraph (a) of this section, or an application for Commission recertification pursuant to the requirements of paragraph (b) of this section, as appropriate.

* * * * *

6. In § 292.601, paragraphs (a) is revised to read as follows:

§ 292.601 Exemption to qualifying facilities from the Federal Power Act

(a) Applicability. This section applies to qualifying facilities, other than those described in paragraph (b) of this section. This section also applies to qualifying facilities that meet the criteria of section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)), notwithstanding paragraph (b).

* * * * *

7. In § 292.602, the title and paragraph (c)(4) are revised to read as follows:

§292.602 Exemption to qualifying facilities from the Public Utility Holding Company Act of 2005 and certain State laws and regulations.

* * * * *

(c) Exemption from certain State laws and regulations. (1) Any qualifying facility described in paragraph (a) of this section shall be exempted (except as provided in paragraph (c)(2) of this section) from State laws or regulations respecting:

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NOTE: The following Appendix will not be published in the Code of Federal Regulations or in the Microsoft Word version of this document.

Appendix A

Proposed FERC Form No. 556

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