

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA-2005-23142; Directorate Identifier 2005-NM-154-AD.

### Comments Due Date

(a) The FAA must receive comments on this AD action by January 3, 2006.

### Affected ADs

(b) None.

### Applicability

(c) This AD applies to Airbus Model A319-131, -132, and -133 airplanes; Model A320-232 and -233 airplanes; and Model A321-131 and -231 airplanes; certificated in any category; as identified in Airbus All Operators Telex (AOT) A320-71A1036, Revision 1, dated June 28, 2005.

### Unsafe Condition

(d) This AD results from a report that, during modification of certain engine forward mount assemblies of the left and right engines done at an engine shop visit, an incorrect torque was applied to the attachment bolts. We are issuing this AD to prevent structural failure of the secondary load path of the forward engine mount, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane.

### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Note 1:** For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

### Inspection and Corrective Action

(f) Perform a detailed inspection for cracks or failure of the primary load path components of the engine forward mount by doing all the applicable actions in accordance with the procedures in AOT A320-71A1036, Revision 1, dated June 28, 2005. Do any corrective action before further flight in accordance with the procedures in the AOT. Perform the actions at the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model A321-131 and -231 airplanes: Do the inspection within 5 days after the effective date of this AD.

(2) For Model A319-131, -132, and -133 airplanes: Do the inspection within 10 days after the effective date of this AD.

(g) For all airplanes: At the applicable time specified in paragraph (g)(1) or (g)(2) of this

AD, remove, re-install, and re-torque each of the attachment bolts of the engine forward mount assembly in accordance with the procedures in AOT A320-71A1036, Revision 1, dated June 28, 2005.

(1) If the inspection specified in paragraph (f) of this AD was accomplished after the effective date of this AD: Do the actions within 2,250 flight cycles after accomplishing the inspection.

(2) If the inspection specified in paragraph (f) of this AD was accomplished before the effective date of this AD: Do the actions within 2,250 flight cycles after the effective date of this AD.

### Actions Accomplished Previously

(h) Inspections, adjustments or repairs done before the effective date of this AD in accordance with the procedures in AOT A320-71A1036, dated June 27, 2005, are acceptable for compliance with the corresponding actions required by this AD.

### No Reporting Required

(i) Although AOT A320-71A1036, Revision 1, dated June 28, 2005, recommends that inspection results be reported to the manufacturer, this AD does not include that requirement.

### Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

### Related Information

(k) French emergency airworthiness directive UF-2005-117, dated June 29, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on November 18, 2005.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-23513 Filed 11-30-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### 18 CFR Part 284

[Docket No. RM06-5-000]

## Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates

November 21, 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 regarding the blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce. Specifically, the Commission proposes to repeal sections of the Commission's regulations pertaining to codes of conduct with respect to certain sales of natural gas once we have issued final regulations implementing the anti-manipulation provisions of the Energy Policy Act of 2005 and have incorporated other aspects of such regulations in appropriate Commission orders, rules and regulations. The Commission seeks public comment on whether such regulations should be repealed as proposed herein.

**DATES:** Comments are due January 3, 2006. Reply comments are due January 17, 2006.

**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:** Frank Karabetsos, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8133, [Frank.Karabetsos@ferc.gov](mailto:Frank.Karabetsos@ferc.gov).

**SUPPLEMENTARY INFORMATION:****Introduction**

1. In this Notice of Proposed Rulemaking (NOPR), the Commission seeks comments on whether to repeal sections 284.288 and 284.403 of its regulations,<sup>1</sup> which requires that pipelines and all sellers for resale adhere to a code of conduct with respect to certain sales of natural gas, as implemented pursuant to Order No. 644.<sup>2</sup> The central purpose of sections

284.288 and 284.403 of the Commission's regulations is to prohibit market manipulation. In the Energy Policy Act of 2005 (EPA 2005),<sup>3</sup> Congress enacted new section 4A of the Natural Gas Act (NGA) which specifically bars manipulation in connection with the purchase or sale of natural gas or transportation services and authorizes the Commission to promulgate rules and regulations prohibiting market manipulation. In a Notice of Proposed Rulemaking issued October 20, 2005, the Commission has proposed rules to implement the new statutory anti-manipulation provisions.<sup>4</sup> We propose repealing sections 284.288 and 284.403 of the Commission's regulations once we have issued final regulations implementing the anti-manipulation provisions of EPA 2005 and have incorporated other aspects of sections 284.288 and 284.403 of the Commission's regulations in appropriate Commission orders, rules, and regulations. We are also requesting comment on whether sections 284.288 and 284.403 should be repealed prospectively.

**Background**

2. On November 17, 2003, acting pursuant to section 7 of the NGA, we issued a final rule, Order No. 644, amending blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and blanket marketing certificates held by persons making sales for resale of natural gas at negotiated rates in interstate commerce. This rule requires that pipelines that provide unbundled natural gas sales service and all sellers of natural gas for resale adhere to a code of conduct with respect to natural gas sales. The Commission determined that in order to protect and maintain the competitive natural gas market and to continue its light-handed regulation of the gas sales within its jurisdiction, it was necessary to place additional conditions on its grant of market-based sales certificates. In formulating such conditions to the market-based rate certificates the Commission was fulfilling its obligation to appropriately monitor markets and to ensure that market-based rates remain within the zone of reasonableness required by the NGA.<sup>5</sup>

appeal. See *Cinergy Marketing & Trading, L.P. v. FERC*, No. 04-1168 *et al.* (D.C. Cir., appeal filed April 28, 2004).

<sup>3</sup> Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

<sup>4</sup> *Prohibition of Energy Market Manipulation*, 113 FERC ¶ 61,067 (2005) (Prohibition of Energy Market Manipulation NOPR).

<sup>5</sup> 105 FERC ¶ 61,217 at P 91 (2003).

3. Under sections 284.288(a) and 284.403(a) of the Commission's regulations, a pipeline providing unbundled natural gas sales service under section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to section 284.402, "is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas." Prohibited actions or transactions include wash trades and collusion for the purpose of market manipulation.<sup>6</sup>

4. Sections 284.288(b) and 284.403(b) deal with reporting of transaction information to price index publishers. They require that if a seller reports transaction data, the data be accurate and factual, and not knowingly false or misleading, and be reported in accordance with the Commission's Policy Statement on price indices.<sup>7</sup> Sections 284.288(b) and 284.403(b) also require that sellers notify the Commission of whether they report transaction data to price index publishers in accordance with the Policy Statement, and to update any changes in their reporting status.

5. Sections 284.288(c) and 284.403(c) require that sellers retain for a minimum three year period all data and information upon which they billed the prices charged for natural gas sales made under their market-based sales certificates or in transactions the prices of which were reported to price index publishers.

6. Sections 284.288(d)-(e) and 284.403(d)-(e) of the Commission's regulations are largely procedural in nature. Specifically, sections 284.288(d) and 284.403(d) deal with remedies for violations of the codes of conduct requirements set forth in preceding paragraphs (a) through (c) of sections 284.288 and 284.403. Sections 284.288(e) and 284.403(e) deal with time limits on complaints and Commission enforcement of the codes of conduct requirements.

7. At the same time that Order No. 644 was adopted for pipelines that provide unbundled natural gas sales service and holders of blanket certificate authority that make sales for resale of natural gas, the Commission also issued an order to require wholesale sellers of electricity at market-based rates to

<sup>1</sup> 18 CFR 284.288 and 284.403 (2005). Sections 284.288 and 284.403 of the Commission's regulations are provided in Attachment A hereto.

<sup>2</sup> *Amendments to Blanket Sales Certificates*, Order No. 644, 105 FERC ¶ 61,217 (2003), *reh'g denied* 107 FERC ¶ 61,174; 68 FR 66,323 (Nov. 26, 2003); 18 CFR 284.288(a) and 284.403(a) (2003) (Order No. 644). Order No. 644 is currently on

<sup>6</sup> 18 CFR 284.288(a)(1)-(2) and 284.403(a)(1)-(2) (2005).

<sup>7</sup> *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003).

adhere to certain behavioral rules when making sales of electricity.<sup>8</sup>

### **EPAAct 2005 and Proposed New Rules**

8. As noted, section 315 of EPAAct 2005 amended the NGA to add a new section 4A, which prohibits the use or employment of “any manipulative or deceptive device or contrivance” in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission. In order to implement the anti-manipulation provisions of NGA section 4A, we issued the Prohibition of Energy Market Manipulation NOPR, proposing new regulations (proposed Part 159 regulations) to make it unlawful for any entity, directly or indirectly, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission (1) to use or employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.<sup>9</sup>

9. In the Prohibition of Energy Market Manipulation NOPR, we recognized that sections 284.288(a) and 284.403(a) of the Commission’s regulations also prohibit manipulative conduct. We noted that conduct that violates sections 284.288(a) or 284.403(a) and the proposed Part 159 regulations will be treated as one violation of anti-manipulation rules, and that we will not apply duplicative penalties for the same conduct in the event that conduct were to violate both sections 284.288(a) or 284.403(a) and the proposed Part 159 regulations. We also indicated that we would seek comment on whether sections 284.288(a) and 284.403(a) of the Commission’s regulations should be revised or repealed in light of the proposed Part 159 regulations.

### **Discussion**

10. Our goal is to provide firm but fair enforcement of the statutes, orders, rules, and regulations we administer. To do so, it is important that our rules be as clear as possible so that market

participants and entities subject to our rules and regulations understand what conduct is proscribed and can act accordingly.<sup>10</sup> We propose to repeal sections 284.288 and 284.403 in light of the proposed Part 159 regulations to implement the new anti-manipulation provisions contained in section 4A of the NGA and of the Commission’s other rules and regulations.<sup>11</sup> All market participants subject to sections 284.288 and 284.403 are “entities” subject to EPAAct 2005 and therefore will be subject to the new regulations prohibiting manipulation, deceit, and fraud in connection with wholesale natural gas transactions. Other aspects of sections 284.288 and 284.403 of the Commission’s regulations either reflect existing requirements or can be incorporated into other rules, making it unnecessary to retain the separate list of rules in sections 284.288(a)–(e) and 284.403(a)–(e) of the Commission’s regulations.

11. We think that repeal of sections 284.288 and 284.403 of the Commission’s regulations will simplify the Commission’s rules and regulations, avoid confusion, and provide greater clarity and regulatory certainty to the industry. At the same time, we think that the behaviors described in sections 284.288 and 284.403 of the Commission’s regulations will still be addressed through other rules and regulations. We emphasize our belief that repeal of sections 284.288 and 284.403 of the Commission’s regulations is intended to take into account the passage of EPAAct 2005, which has provided the Commission with expanded anti-manipulation authority, and to simplify and streamline the rules and regulations sellers must follow, not to eliminate beneficial rules governing market behavior.

12. The heart of sections 284.288 and 284.403 of the Commission’s regulations is subparagraph (a), prohibiting manipulation. We recognize that there is overlap between sections 284.288(a) and 284.403(a) of the Commission’s regulations and the proposed Part 159 regulations. We are concerned that this

could cause unnecessary confusion and regulatory uncertainty once the proposed Part 159 regulations are in place. It is our view that the scope of the new statutory prohibition on manipulation and the reach of the proposed Part 159 regulations eliminate the need for sections 284.288(a) and 284.403(a) of the Commission’s regulations.

13. We recognize there are some differences, but the differences do not seem to require keeping sections 284.288 and 284.403 of the Commission’s regulations once the new Part 159 regulations are final.<sup>12</sup> For instance, there is a difference in the standard of proof between sections 284.288(a) and 284.403(a) of the Commission’s regulations and the proposed Part 159 regulations. In new section 4A of the NGA, Congress used the terms “manipulative or deceptive device or contrivance” and directed that they be given the same meaning as used in section 10b of the Securities Exchange Act of 1934.<sup>13</sup>

Those terms have been interpreted to require a showing of scienter, that is, an intent to deceive, manipulate or defraud.<sup>14</sup> In other words, knowing, intentional, or reckless conduct is proscribed.<sup>15</sup> In contrast, sections 284.288(a) and 284.403(a) of the Commission’s regulations do not require a showing of scienter, as they prohibit actions or transactions that “foreseeably” could manipulate market prices, conditions, or rules. The “foreseeably” requirement has generated controversy and uncertainty, however. We believe the use of a scienter standard, given the precedent in other regulatory contexts, will draw a clearer line between acceptable and prohibited behavior.

14. We also note that the new authority granted to the Commission in section 4A of the NGA and our proposed Part 159 regulations governs more transactions and more entities

<sup>12</sup> The timing of proposed repeal is important. We do not intend to leave any gap in our regulations prohibiting manipulation of energy markets or other requirements of sections 284.288 and 284.403 of the Commission’s regulations.

<sup>13</sup> 15 U.S.C. 78j(b) (2005).

<sup>14</sup> *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 201 (1976).

<sup>15</sup> *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033 (7th Cir. 1977), cert. denied, 434 U.S. 875 (1977) (defining recklessness in the section 10(b) and Rule 10b–5 context as “a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.”); accord *In Re Silicon Graphics Securities Litigation*, 183 F.3d 970, 977 (9th Cir. 1999).

<sup>8</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, “Order Amending Market-Based Rate Tariffs and Authorizations,” 105 FERC ¶ 61,218 (2003), reh’g denied, 107 FERC ¶ 61,175 (2004) at Appendix A.

<sup>9</sup> The proposed Part 159 regulations are also provided in Attachment A hereto.

<sup>10</sup> As discussed in the Prohibition of Energy Market Manipulation NOPR (at P 14), section 4A of the NGA, as added by section 315 of EPAAct 2005, and the proposed implementing rules are patterned after section 10(b) of the Securities Exchange Act of 1934 and related regulations, which provides a level of certainty as to how the proposed rules will operate that is not typically available.

<sup>11</sup> Concurrently with this NOPR, we are issuing an order pursuant to section 206 of the Federal Power Act (FPA) in Docket No. EL06–16–000 to consider similar changes to the Market Behavior Rules, which are currently included in all public utility sellers’ market-based rate tariffs and authorizations.

than is the case for sections 284.288(a) and 284.403(a) of the Commission's regulations, which covers only certain natural gas sellers. More precisely, Congress made the anti-manipulation provisions of section 315 applicable to "any entity" and in connection with both the purchase and sale of natural gas, as well as the purchase or sale of transportation services subject to our jurisdiction. Sections 284.288(a) and 284.403(a) of the Commission's regulations, on the other hand, are applicable only to a pipeline providing unbundled natural gas sales service under section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to section 284.402, a smaller subset of the entities and types of transactions than those subject to EPCA 2005 section 315 prohibition of manipulation.

15. Additionally, it is our view that it is not necessary to retain the explicit prohibitions against certain conduct set forth in sections 284.288(a)(1)–(2) and 284.403(a)(1)–(2) (wash trades and collusion for the purpose of market manipulation). These are examples of prohibited manipulation, both of which are manipulative or deceptive devices or contrivances. Thus, both would be barred by the proposed Part 159 regulations. For example, wash trades would be devices or schemes to defraud (proposed section 159.1(a)(1)). It is our view that market participants are on notice that wash trades and colluding to manipulate are prohibited activities under the proposed Part 159 regulations, subject to penalty and remedial action.

16. Turning to the other subparagraphs of sections 284.288 and 284.403 of the Commission's regulations, it appears that the requirements imposed there either are duplicative of other rules or regulations or can be incorporated into other rules of general applicability. For instance, the first part of sections 284.288(b) and 284.403(b), requiring sellers to provide accurate data to price index publishers if the seller is reporting transactions to such publishers, calls for accurate and truthful representations. It is our view that failure to do so would be a violation of the proposed Part 159 regulations.

Sections 284.288(b) and 284.403(b) of the Commission's regulations also include a requirement that sellers notify the Commission of their price reporting status and any changes in that status. This does not appear elsewhere in our current or proposed regulations. We note, however, that price transparency is also addressed by EPCA 2005, which adds new section 23 to the NGA. Section 23 gives us authority to

promulgate rules and regulations necessary to facilitate price transparency. We intend to address market transparency issues in a separate proceeding, and anticipate that rules adopted in that proceeding will address the sections 284.288(b) and 284.403(b) requirements for providing transaction information to price index publishers and informing the Commission of price reporting status.

17. Sections 284.288(c) and 284.403(c) requires sellers to maintain certain records for a period of three years to reconstruct prices charged for natural gas. The Commission has a number of specific record retention requirements applicable to natural gas companies subject to the jurisdiction of the Commission in Part 225 of our regulations.<sup>16</sup> In many cases, these requirements are for time periods longer than three years. The Part 225 requirements are largely related to cost-of-service rate requirements, however. We believe it is important that all pipelines providing unbundled natural gas sales service and all persons holding blanket certificates making natural gas sales for resale in interstate commerce retain the data and information described in sections 284.288(c) and 284.403(c) of the Commission's regulations. We intend to address this retention requirement in the context of our rules under the NGA, such that there will be no gap in the retention requirement. We believe that doing so would eliminate the need to retain sections 284.288(c) and 284.403(c) of the Commission's regulations.

18. If the Commission decides to repeal sections 284.288(a)–(c) and 284.403(a)–(c) of its regulations, it is the Commission's view that sections 284.288(d) and 284.403(d) of the Commission's regulations, dealing with remedies, and sections 284.288(e) and 284.404(e), dealing with time limits on complaints and Commission enforcement, are largely procedural and would become superfluous without the underlying operative paragraphs and therefore should be deleted.

19. In addition to simplifying our codes of conduct rules, avoiding confusion, and providing more regulatory certainty, it is also our view that a smooth transition from the existing codes of conduct regulations to the proposed Part 159 regulations and other rules and regulations achieves our original goal in adopting sections 284.288 and 284.403 of the Commission's regulations, that is, to fulfill our obligation to ensure that market-based rates remain within the

zone of reasonableness required by the NGA. In EPCA 2005, Congress has provided broad and strong prohibitions of market manipulation, and reliance on rules implementing these statutory prohibitions will likewise assure that wholesale markets reflect competitive forces and produce just and reasonable rates.

20. We seek comment on whether sections 284.288 and 284.403 of the Commission's regulations should be repealed prospectively, including responses to the following questions:

A. Are there any aspects of sections 284.288 and 284.403 of the Commission's regulations that should be retained, or can all substantive provisions of sections 284.288 and 284.403 of the Commission's regulations be reflected in the proposed Part 159 regulations and other Commission rules and regulations?

B. Is there a need or basis for retaining existing sections 284.288(a) and 284.403(a) of the Commission's regulations in light of the anti-manipulation provisions set forth in the proposed Part 159 regulations?

C. Should the affirmative defense of "legitimate business purpose" in existing sections 284.288(a) and 284.403(a) of the Commission's regulations be retained in any form?

D. Is the requirement of sections 284.288(b) and 284.403(b) of the Commission's regulations to report transaction information accurately, to the extent a seller reports such information to price index publishers, necessary in light of the proposed Part 159 regulations?

21. We encourage responses to the specific questions above as well as additional relevant comments regarding whether sections 284.288 and 284.403 of the Commission's regulations should be repealed.

#### Information Collection Statement

22. This proposed rule implements the existing requirements as set forth in section 4A of the NGA and does not include new information requirements under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Environmental Analysis

23. 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.<sup>17</sup> The Commission has

<sup>17</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897

<sup>16</sup> 18 CFR Part 225 (2005).

categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>18</sup> The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.<sup>19</sup> Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

#### Regulatory Flexibility Act

24. The Regulatory Flexibility Act of 1980 (RFA)<sup>20</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.<sup>21</sup> The Commission is not required to make such analyses if a rule would not have such an effect.

25. The Commission does not believe that this proposed rule would have such an impact on small entities. The proposed rule merely repeals sections 284.288 and 284.403 of the Commission's regulations. Therefore, the Commission certifies that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

#### Comment Procedures

26. 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 January 3, 2006. Reply comments are due January 17, 2006. Comments must refer to Docket No. RM06-5-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments

may be filed either in electronic or paper format. 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 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.

27. 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 proposal are not required to serve copies of their comments on other commenters.

#### Document Availability

28. 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 FERC's Home Page (<http://www.ferc.gov>) and in FERC'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.

29. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both 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.

User assistance is available for eLibrary and the FERC's Web site during our normal business hours. For assistance contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

#### List of Subjects in 18 CFR Part 284

Continental Shelf, 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 part 284, chapter I, title 18, *Code of Federal Regulations*, as follows.

#### PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7532; 43 U.S.C. 1331-1356.

#### § 284.288 [Removed]

2. Remove § 284.288.

#### § 284.403 [Removed]

3. Remove § 284.403.

[FR Doc. 05-23405 Filed 11-30-05; 8:45 am]

BILLING CODE 6717-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 55

[OAR-2004-0091; FRL-8000-1]

#### Outer Continental Shelf Air Regulations Consistency Update for California

**AGENCY:** Environmental Protection Agency ("EPA").

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources by the State of California and South Coast Air Quality Management District (South Coast AQMD). The intended effect of approving the OCS requirements for the State of California and South Coast AQMD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations. **DATES:** Comments on the proposed update must be received on or before January 3, 2006.

**ADDRESSES:** Submit comments, identified by docket number OAR-2004-0091, by one of the following methods:

(Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>18</sup> 18 CFR 380.4 (2005).

<sup>19</sup> See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2005).

<sup>20</sup> 5 U.S.C. 601-12 (2000).

<sup>21</sup> 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 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (2004) (Section 22, Utilities, North American Industry Classification System, NAICS).