The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meeting, the Committee considered alternatives to the increases. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 0 percent to 100 percent. The Committee reached its recommendations to increase the salable quantity and allotment percentage for Scotch and Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increases, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 24, 2005, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005–2006 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Scotch and Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2005; (2) the current quantity of Scotch and Native spearmint oil may be inadequate to meet demand for the remainder of the marketing year, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.224 paragraph (a) and (b) are revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.224 Salable quantities and allotment percentages—2005–2006 marketing year.

* * * * *

(a) Class 1 (Scotch) oil—a salable quantity of 1,062,898 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,019,600 pounds and an allotment percentage of 47 percent.

Dated: September 20, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–19084 Filed 9–21–05; 9:55 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 45

[Docket No. RM05–6–000; Order No. 664]

Commission Authorization To Hold Interlocking Positions

September 16, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to clarify the time frame within which individuals must file applications for authorization to hold interlocking positions, and the information provided in certain informational reports required for automatic authorization of certain interlocking positions.

EFFECTIVE DATE: The amended regulations will become effective October 24, 2005.

FOR FURTHER INFORMATION CONTACT:

James Akers (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8101.

Melissa Mitchell (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6038.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. In this final rule, to meet its responsibility under section 305(b) of the Federal Power Act (FPA),[1] the Commission amends part 45 of its regulations [2] to clarify that individuals seeking Commission authorization to hold interlocking positions must obtain such authorization from the Commission prior to holding that interlocking position. The Commission also clarifies the regulations to define

[1] 16 U.S.C. 825d(b).

[2] 18 CFR part 45.

the term ''holding'' as acting as, serving as, voting as, or otherwise performing or assuming the duties and responsibilities of the interlocking positions requiring Commission authorization.

2. The Commission also amends its regulations to require that individuals filing an informational report for automatic authorization under section 45.9 of the Commission's regulations [3] must file such informational report prior to holding that interlocking position and that the informational report must include a statement or affirmation that the individual has not yet assumed the duties or responsibilities of the position for which the automatic authorization is sought.

Discussion

3. Section 305(b) of the FPA prohibits individuals from concurrently holding positions as an officer or director of more than one public utility; or to hold the positions of officer or director of a public utility and of an entity authorized by law to underwrite or participate in the marketing of public utility securities [4]; or to hold the positions of officer or director of a public utility and a company supplying electrical equipment to that particular public utility, unless the holding of such positions has been authorized by the Commission upon a showing that neither public nor private interests will be adversely affected thereby.

4. The Commission implemented Congress' mandate in part 45 of the Commission's regulations.[5] Section 45.3 of the regulations currently states that:

> the holding of positions within the purview of [section 305(b)] shall be unlawful unless the holding shall have been authorized by order of the Commission. Nothing in this part shall be construed as authorizing the holding of positions prior to the order of the Commission on application therefore. Applications shall be filed within 30 days after election or appointment to any positions within the purview of section 305(b) of the Act.'' [6]

The Commission has stated in previous orders that it does not look favorably on late-filed applications for authorization to hold interlocking positions.[7]

5. In examining Congress' intent in enacting section 305(b) of the FPA, the Commission has explained that ''among the evils sought to be eliminated by the enactment of section 305(b)'' was ''the lack of arm's length dealings between public utilities and organizations furnishing financial services or electrical equipment.'' [8] In this regard, the legislative history indicates that, with respect to section 305(b) of the FPA, ''Congress exhibited a relentless interest in, bordering on an obsession with, the evils of concentration of economic power in the hands of a few individuals. It recognized that the conflicts of interest stemming from the presence of the same few persons on boards of companies with intersecting interests generated subtle and difficult-to-prove failures in the arm's length bargaining process.'' [9]

6. While the statute requires prior authorization to hold otherwise proscribed interlocking positions, the regulations allow for applications to be filed up to 30 days after election or appointment to the interlocking position and also do not expressly address how applications filed more than 30 days late should be treated. The regulations do not allow for serving in the covered positions before receiving Commission authorization. Therefore, in a Notice of Proposed Rulemaking (NOPR) issued on March 25, 2005, the Commission proposed to clarify section 45.3 of the Commission's regulations, to provide that an application must be filed, and authorization granted, before a person may hold otherwise proscribed interlocking positions, and that late-filed applications will be denied.[10]

7. In addition to clarifying section 45.3, the Commission also proposed to clarify section 45.9, which governs automatic authorization for certain interlocking positions. Section 45.9 of the Commission's regulations provides that a person seeking to hold the positions of (1) an officer or director of a public utility and officer or director of another public utility (or utilities), where the same holding company owns, directly or indirectly, wholly or in part, the other public utility, (2) an officer or director of two public utilities, if one utility is owned, wholly or in part, by the other or (3) an officer or director of more than one public utility, if such person is already authorized under part 45 to hold different positions where the interlock involves affiliated public utilities, may apply for ''automatic authorization'' to hold the interlocking positions.[11] The regulations require that, as a condition of such authorization, persons seeking such authorization under section 45.9 must file with the Commission an informational report containing the full name and business address of the person requesting the authorization, the names of all public utilities that the person holds or seeks to hold positions with, the names of any other entity that the person serves as an officer or director of and a brief description of those positions, and an explanation of the corporate relationship between or among the public utilities involved. The informational report is required to be filed ''not later than 30 days after assuming the duties of the position.'' [12]

8. The NOPR proposed to clarify section 45.9 of the Commission's regulations, to require that the informational reports required for automatic authorization under section 45.9 must be filed with the Commission prior to an officer or director assuming the duties and responsibilities of the requested interlocking positions. The NOPR proposed that individuals who file informational reports late will not be entitled to automatic authorization under section 45.9, as the individual will not have satisfied the condition of timely submission of an informational report.

9. Finally, the Commission requested, in the NOPR, comments on the possibility of no longer granting entities (or individuals who serve as officers or directors of entities) that have market-based rate authority a waiver of the full requirements of part 45.

10. The NOPR was published in the **Federal Register** [13] on April 5, 2005. Comments were due on or before June 5, 2005.

A. Prior Filing and Approval for Section 45.3 Applications

(i) Comments

11. The California Electricity Oversight Board (CEOB) supports the proposed rule and states that the proposed rule comports completely with the Congressional intent behind

[3] 18 CFR 45.9.

[4] However, section 305(b)(2) of the FPA exempts from this prohibition certain interlocks between public utilities and securities underwriters and marketers.

[5] 18 CFR part 45.

[6] 18 CFR 45.3.

[7] *William T. Coleman*, 21 FERC ¶ 61,242 at 61,535 n.3 (1982).

[8] Paul H. Henson, 51 FERC ¶ 61,104 at 61,231 (1990), *citing John Edward Aldred*, 2 FPC 247, 261 (1940).

[9] *Hatch* v. *FERC*, 654 F.2d 825, 831 (D.C. Cir. 1981) (*Hatch*), *citing, e.g.* 79 Cong. Rec. 10379 (1935) (remarks of Representative Lea), 79 Cong. Rec. 8524 (1935) (remarks of Sen. Norris), and 15 U.S.C. 79a(b)(2) (2000); *see also Paul H. Henson*, 51 FERC ¶ 61,104 at 61,230 n.5 (1990) (discussing this quotation).

[10] *See Commission Authorization to Hold Interlocking Positions*, Notice of Proposed Rulemaking, 70 Fed. Reg. 17,219 (April 5, 2005) FERC Stats. & Regs. ¶ 32,580 (2005).

[11] Automatic authorization is only for interlocking positions between two or more public utilities; it does not authorize a person to hold an interlocking position with, for example, an electrical equipment supplier. For those interlocking positions, an application under section 45.3 is required.

[12] 18 CFR 45.9(b).

[13] 70 FR 17,219 (April 5, 2005).

section 305(b) of the FPA and the public policy of preventing abuses due to conflicts of interest. The CEOB argues that, under the language of section 305(b), individuals who seek to hold interlocking positions are prohibited from holding interlocking positions until the Commission determines that ''neither public nor private interests will be adversely effected.'' Based on this language, the CEOB supports the Commission's proposed rule to require applicants to file with the Commission prior to holding interlocking positions.

12. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) supports the proposed rule and states that requiring applicants for interlocking positions to file for Commission authorization prior to holding the interlocking positions will ensure greater transparency in the nation's utility industry and promote and preserve independence. The Midwest ISO also comments that the Commission should expand the scope of the proposed rule to include officers of non-jurisdictional utilities seeking to serve on the Board of Directors of a regional transmission organization (RTO) or independent system operator (ISO). The Midwest ISO states that allowing officers of non-jurisdictional utilities to serve on the Boards of Directors of RTOs and ISOs without prior Commission authorization ''opens the door to partial stakeholder Boards, and calls into question a public utility's true independence.'' [14] For these reasons, the Midwest ISO supports the proposed rule and requests that the Commission expand the scope of the existing rules.

13. The Edison Electric Institute (EEI) opposes the proposed rule and states that the existing rules adequately meet the requirements of section 305(b).[15] EEI argues that the existing rules strike a reasonable balance between the requirements of section 305(b) and the burden those requirements place on individuals and companies. While EEI agrees that officers and directors need to comply with the Commission's regulations, they ''are not aware of a widespread failure to comply'' with the regulations.[16] EEI also states that it is important that the Commission retain the 30-day window to file interlock applications since requiring individuals to file for authorization prior to holding interlocking positions would ''pose significant practical difficulties and would disrupt the ability of public utilities and their affiliates to maintain functioning boards of directors and officer corps in a timely and effective manner.'' [17] EEI argues that the danger of harm from interlocks is small, and that other entities provide oversight of corporate officers, including the Securities and Exchange Commission and the New York Stock Exchange.[18] In addition to arguing that the 30-day post-election timeframe is consistent with the statute, EEI requests that the Commission extend the window within which an individual may file from 30 days to 60 days after election or appointment to a covered position.[19]

14. AEP, NUSCO, Reliant Energy Inc. (Reliant) and Consumers Energy filed comments opposing the proposed rules. They state that requiring applications prior to holding a covered position will make it difficult for companies to fill officer or director vacancies in a timely fashion and lead to an inefficient selection process with the likely result of not selecting the most qualified individuals for the positions. This is exacerbated, they claim, by the fact that the companies and individuals often do not know in advance of election or appointment who will be selected to serve as an officer or director.

(ii) Commission Determination

15. The Commission will adopt the proposed regulations with one modification. We revise the proposed section 45.3 to reflect that the definition of the term ''holding'' applies throughout part 45 and not just to section 45.3.

16. The proposed regulations requiring that individuals apply for and receive authorization to hold interlocking positions before holding the positions will make the Commission's regulations consistent with the statute. Section 305(b) states that no person may hold interlocking positions ''unless the holding of such positions shall have been authorized by order of the Commission * * *'' [20]

17. The Commission disagrees that requiring such prior authorization will make it difficult for companies to fill vacancies or disrupt utilities' ability to maintain functioning boards. We find the possibility that a board or officer corps would be faced with so many vacancies at one time as to adversely effect a company's ability to function very unlikely. While, as stated by EEI, the Commission may not be the only entity that requires filing and approval of corporate officers and directors to maintain corporate oversight, the Commission was expressly charged by Congress with the responsibility to oversee officers and directors of public utilities and we will not and cannot delegate that responsibility to another entity.

18. In response to EEI's comment that it ''is not aware of a widespread failure to comply'' [21] with section 305(b), section 305(b) was intended to be prophylactic in nature and to prevent any abuse of corporate positions and control. Furthermore, the fact that EEI may not be ''aware of a widespread failure to comply'' [22] with the statute and regulations does not speak to the need to clarify the regulations and bring them into conformity with the statute. The statute speaks of *prior* authorization and that is what the regulations should require; *prior* authorization, not 30 days and not 60 days after the fact.

19. In response to Midwest ISO's comments that the Commission should expand the scope of the proposed regulations to include officers of non-jurisdictional utilities seeking to serve on RTO or ISO boards, the Commission finds that section 305(b) only limits interlocking directorates involving public utility boards and does not authorize the Commission to bar interlocking directorates involving non-public utility boards of directors. The Midwest ISO request goes to the issue of the independence of RTO and ISO boards. That issue is not within the purview of section 305(b) or part 45 of the Commission's regulations, and thus of this proceeding.

B. Prior Filing of Section 45.9 Informational Reports and Affirmation

(i) Comments

20. EEI opposes the proposed change to section 45.9, requiring individuals seeking automatic authorization to file their informational report prior to holding the interlocking position, for the same reasons explained above. Additionally, EEI requests that the Commission not require an informational report in deference to the information required on the annual Form 561.[23] Furthermore, EEI requests that the Commission clarify that section 45.9 applies to both registered and exempt holding companies.[24]

[14] Midwest ISO Comments at 6.

[15] American Electric Power Company (AEP), Northeast Utilities Service Company (NUSCO), Pepco Holdings, Inc. (PHI Companies), Consumers Energy Company (Consumers Energy) and Exelon Corporation (Exelon) all support the comments filed by EEI.

[16] EEI Comments at 3.

[17] *Id.* at 14.

[18] *Id.* at 10–11.

[19] *Id.* at 16, 25.

[20] 16 U.S.C. 825d(b)(1).

[21] EEI Comments at 14.

[22] *Id.*

[23] *Id.* at 5; *see* 18 CFR part 46.

[24] *Id.* at 21.

21. Keyspan Corporation (Keyspan), AEP, Sempra Energy (Sempra), NUSCO, Reliant, NiSource, Inc. (NiSource), PHI Companies and Exelon filed comments opposing the proposed rules requiring individuals seeking automatic authorization under section 45.9 of the regulations to file their informational reports prior to holding the interlocking positions and also requiring information on the dates the individual assumed the interlocking positions. They state that requiring informational reports prior to holding the positions would unduly restrict corporate and personnel options and jeopardize companies' effective participation in energy markets because changes on corporate boards often occur suddenly and without prior notice. Therefore, they argue that a requirement that individuals must file their informational reports prior to holding interlocking positions would be unduly burdensome. Sempra, Keyspan and NiSource state that the proposed rules are inconsistent, requiring informational reports for automatic authorization prior to holding interlocking positions and also requiring additional information on when the individual assumed the positions for which authorization is granted.[25] NUSCO and AEP state that additional information is not necessary as the currently required informational report, together with the information required on Form 561, is sufficient.[26] Exelon argues that the informational report is duplicative of the information provided in Form 561 and therefore, the informational report should be eliminated in lieu of Form 561.

(ii) Commission Determination

22. The Commission will adopt the proposed regulations, with two exceptions, discussed below.

23. Section 45.9 of the Commission's regulations requires that individuals seeking automatic authorization need only file with the Commission, in lieu of the application otherwise required, an informational report stating the individual's name and business address, the names of all public utilities with which the person currently holds or will hold the positions of officer or director and a description of those positions, the names of any other entity of which the person serves as officer or director and a description of those positions and a brief explanation of the corporate relationship between or among the interlocking public utilities.[27] Upon the filing of a completed informational report under section 45.9, the individual is automatically authorized to hold the interlocking positions listed in the informational report. Form 561, in contrast, is an annual report required by the Commission, and does not contain the same information. The annual Form 561 is not intended nor could it be an appropriate substitute for the need to make a contemporaneous filing to comply with the requirements of part 45 of the Commission's regulations. Therefore, the Commission finds that the informational reports filed under section 45.9 are not duplicative of Form 561 and it would not be appropriate to rely solely on Form 561.

24. Moreover, since the automatic authorization is granted upon receipt of filed, completed informational reports, we do not agree that requiring the informational report prior to holding interlocking positions would be unduly burdensome or restrict a companies' corporate and personnel options. Additionally, for those interlocking positions covered by section 45.9, *e.g.,* officers or directors of two or more affiliated public utilities,[28] it is a one-time filing requirement and, once authorization has been given, no further filings are required to hold further interlocking positions of the same type.[29] Again, therefore, the obligation to make such a filing is not unduly burdensome.

25. In response to several comments that the proposed regulations are inconsistent by requiring the identification of the date the individual assumed the positions at issue in an informational report filed prior to holding such positions, we agree. The intent behind the proposed language was to provide the Commission with information to assist in determining whether the informational report was timely filed or not. Therefore, we will not require identification of the date the individual assumed the positions at issue. Instead, we will require a statement or affirmation that the individual has not yet performed or assumed the duties or responsibilities of the position which necessitated the filing of the informational report as of the date of such report. We believe this requirement will provide the Commission with the information it needs with the least burden upon the applicants.

26. We also provide additional clarifying language in section 45.9, explaining that the informational report shall be filed prior to performing or assuming the duties and responsibilities of the interlocking position. Furthermore, we clarify that the informational reports must also comply with the filing requirements outlined in section 45.7.

C. Treatment of Existing Applications and of Late-Filed Applications

(i) Comments

27. Many commentors state that the proposal to automatically deny any late filed applications is unduly harsh.[30] Exelon states that automatic denial of late applications is ''draconian'' and urges the Commission to consider another penalty for untimely applications, such as a fine.[31] Many commentors urge the Commission to continue evaluating applications on a case-by-case basis, and to permit late applications where the applicant made a good faith effort to file on time.

28. EEI also argues that the Commission should not institute a rule that automatically denies late-filed applications; rather, the Commission should continue to evaluate late-filed applications on a case-by-case basis, and also provide an amnesty period to allow individuals to file applications under the current regulations and further assure all individuals currently holding Commission authorized interlocking positions that they will not need to refile under the new rules.[32]

(ii) Commission Determination

29. The Commission will adopt the proposed regulations.

30. While many commentors stated that automatic denial of late-filed applications is unduly harsh, the statute provides that individuals seeking to hold interlocking positions must receive Commission authorization prior to assuming the interlocking positions.[33] To permit individuals to hold interlocking positions before receiving Commission authorization would frustrate section 305(b) and the prophylactic nature of section 305(b). Therefore, the Commission will automatically deny all late-filed applications for authorization to hold interlocking positions. As for an amnesty period, we have long stressed the need to timely file,[34] we repeated

[25] Sempra Comments at 3; Keyspan Comments at 3; NiSource Comments at 5–6.

[26] AEP Comments at 5; NUSCO Comments at 3.

[27] *See* 18 CFR 45.9(c).

[28] *See* 18 CFR 45.9(a); *accord* NOPR at P 8.

[29] *See* 18 CFR 45.9(b).

[30] Sempra Comments at 4; Reliant Comments at 7.

[31] Exelon Comments at 3.

[32] EEI Comments at 23.

[33] Indeed, section 305(b) provides that ''it shall be unlawful for any person to hold'' interlocking positions ''unless the holding of such positions shall have been authorized by order of the Commission.''

[34] *See supra* note 7.

the need to timely file in June 2004, [35] and this NOPR has been pending since March 25, 2005, and the regulations adopted here will not become effective until 30 days from the date of publication in the **Federal Register**. That is amnesty enough.

31. Regarding any currently pending applications for Commission authorization to hold interlocking positions, the Commission intends to act on these applications on a case-by-case basis. Regarding individuals already authorized to hold interlocking positions, those individuals need not refile under the new regulations to continue to hold their previously authorized interlocking positions (unless and until, of course, they seek to assume additional interlocking positions).

D. Waiver of Full Requirements of Part 45 for Officers and Directors of Sellers With Market-Based Rate Authority

(i) Comments

32. EEI opposes any change that would cease waivers of the full requirements of part 45 for persons who are officers of directors of entities authorized to charge market-based rates, and to the contrary requests that the Commission include such waivers in the regulations rather than granting them on a case-by-case basis.[36] EEI argues that entities with market-based rates have already passed the Commissions screens for market power and affiliate transactions, and therefore, should not need to go through the duplicative process of having their officers and directors file a full application under part 45 of the Commission's regulations.[37]

33. Sempra, NUSCO, Reliant, Edison Mission Energy and Morgan Stanley Capital Group, Inc. (Morgan Stanley) all filed comments opposing the possibility that the Commission may cease granting waivers of the full requirements of Part 45 in orders granting market-based rate authority. They all state that companies that receive market-based rate authority undergo significant scrutiny and must pass the Commission's market power and affiliate abuse screens to ensure that entities with market-based rate authority will not abuse any power they may have. Morgan Stanley requests that the Commission clarify aspects of the waivers, such as specifying the information required when filing the abbreviated application and develop a standardized format to submit the information to the Commission.[38] Morgan Stanley also states that the Commission should clarify that the abbreviated filings may be made within 30 days of holding the interlocking positions.[39] Finally, Morgan Stanley states that, if the Commission eliminates the practice of granting waivers of the full requirements of part 45, the Commission should apply section 45.9 to power marketers.[40]

(ii) Commission Determination

34. The purpose of an application for authorization to hold interlocking positions under part 45 is to allow the Commission to review an individual officer or director's proposed interlock in order to find that such individual's service with more than one company will not adversely affect either public or private interests. The fact that a particular company may have ''passed'' the Commission's market-based rate screens says little about whether to grant authorization for an individual officer or director to hold interlocking positions under section 305(b). The Commission, moreover, does not consider part 45 to be a burdensome regulation. Individuals that are officers or directors of entities that do not have market-based rate authority must fulfill the full requirements of part 45. The Commission sees no reason to continue to treat these entities differently and, as a result, we intend to no longer grant waivers of the full requirements of part 45 in our orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of part 45. Since we intend to no longer grant such waivers, there is no need to address Morgan Stanley's request for clarification.

35. In response to Morgan Stanley's request that the Commission should permit power marketers to apply for automatic authorization under section 45.9, we do not grant the request. Allowing persons who are officers or directors of power marketers to seek automatic authorization under section 45.9, simply because such entities are power marketers, would frustrate the prophylactic nature of section 305(b). Therefore, we will deny the request to permit individuals who are officers or directors of power marketers to file for automatic authorization under section 45.9 simply because such entities are power marketers.

36. With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of part 45 to continue to hold such interlocking positions (unless and until, of course, that individual assumes different or additional interlocking positions).

E. Miscellaneous

(i) Comments

37. EEI requests that the Commission ''indicate that an application will be deemed approved if not acted on or flagged for Commission action within 30 or 60 days after the application is filed.'' [41] EEI also requests that the Commission provide clarity and guidance as to the factors it considers in reviewing interlocking position applications, to further assist companies in their search for appropriate and qualified officers and directors.[42] To address all of the concerns raised by EEI, it requests the Commission hold a technical conference with industry members.[43]

(ii) Commission Determination

38. The Commission will amend the proposed regulatory text to provide that absent Commission action within 60 days of filing a completed application to hold interlocking positions, an application will be deemed granted. However, the Commission will reserve the right to revoke such authorization or require further proof that such interlocking position will not adversely affect public nor private interests.

39. In response to EEI's request for clarity and guidance as to the factors the Commission seeks to address in reviewing applications for authorization to hold interlocking positions, the Commission directs EEI, and all other interested parties, to the extensive case law on this subject developed over the past 70 years.

40. Finally, as we have answered all parties' comments and concerns, we see no need to hold a technical conference to address such matters.

Information Collection Statement

41. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[44] The information collection requirements in this final rule are identified under the Commission's data collection, FERC–

[35] Order Advising Public Utilities and their Officers and Directors of Federal Power Act Section 305(b) Obligations, 107 FERC ¶ 61,290 (2004).

[36] EEI Comments at 20.

[37] *Id.* at 8.

[38] Morgan Stanley Comments at 18.

[39] *Id.*

[40] *Id.* at 20.

[41] *Id.* at 18.

[42] *Id.* at 19.

[43] *Id.*

[44] 5 CFR 1320.11.

520, ''Application for Authority to Hold Interlocking Positions.'' Under section 3507(d) of the Paperwork Reduction Act of 1995,[45] the reporting requirements in the subject rulemaking will be submitted to OMB for review.

42. Respondents subject to the filing requirements of this final rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number. ''Display'' is defined as publishing the OMB control number in regulations, guidelines, forms or other issuances in the **Federal Register** (for example, in the preamble or regulatory text for the final rule containing the information collection.)[46]

Public Reporting Burden: In the NOPR, the Commission estimated that requiring the additional information would have a minimal effect on respondents but sought comments about the time and costs to comply with the requirements. The Commission received fourteen comments on its NOPR but none specifically addressing its estimates. Therefore, the Commission will retain its initial estimates. However, several commentors stated that requiring informational reports prior to persons holding positions would be a burdensome task. Other commentors believe that the information required in the informational reports duplicates the information reported on the Commission's FERC Form 561. The Commission has addressed these concerns elsewhere in the preamble of this final rule. The Commission is submitting a copy of this final rule to OMB for review and approval. In their notice of August 16, 2005, OMB took no action on the NOPR, instead deferring their approval until review of the final rule.

Title: FERC–520 ''Application for Authority to Hold Interlocking Positions''.

Action: Proposed Data Collection.

OMB Control Nos. 1902–0083.

Respondents: Business or other for profit.

Necessity of the Information: The information collected under the requirements of FERC–520 is used by the Commission to implement the statutory provisions of section 305(b) of the FPA and implemented by the Commission in the Code of Federal Regulations under 18 CFR part 45. Under part 45, each person that desires to hold interlocking position(s) must submit an application to the Commission or, if qualified, comply with the requirements for automatic authorization. Section 305(b) of the FPA makes the holding of certain defined interlocking positions unlawful unless the Commission has authorized the holding of such interlocks, and requires the applicant to show, in a form and manner as prescribed by the Commission, that neither public nor private interests will be adversely affected by the holding of the positions.

43. The final rule clarifies: (1) The time at which a person must apply for authorization to hold interlocking positions under section 305(b) of the FPA and part 45 of the Commission's regulations; (2) clarifies automatic authorizations for certain interlocking positions for which authorization is requested; and (3) requires a statement or affirmation that an individual has not yet assumed the duties or responsibilities of the position which necessitated the filing of an informational report under section 45.9. It is necessary to make these clarifications and have this statement or affirmation to ensure the Commission receives timely submissions and also has sufficient information to make a determination as to the appropriateness of holding the interlocking positions.

44. Interested persons may obtain information on this information collection by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Officer of the Executive Director, phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*.

45. Comments concerning this information collection can be sent 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) 395–4650, fax: (202) 395–7285.]

Environmental Analysis

46. 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.[47] As we stated in the NOPR, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are procedural, ministerial, or internal management programs or decisions,[48] as well as actions under section 305(b) of the FPA.[49] This Final Rule clarifies the time when, and information which, an individual seeking Commission authorization to hold interlocking positions must file. Therefore, this rule falls within the categorical exemptions provided in the Commission's regulations, and, as a result, neither an environmental impact statement nor an environmental assessment is required.

Regulatory Flexibility Act Analysis or Certification

47. The Regulatory Flexibility Act of 1980 (RFA)[50] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[51] The Commission is not required to make such analyses if a rule would not have such an effect.

48. The Commission does not believe that this final rule would have such an impact on small entities. Most persons affected by this final rule are officers or directors of companies that do not fall within the RFA's definition of a small entity. Further, this final rule does not substantially change the current requirements and regulations that persons who are officers and directors must comply with. Therefore, the Commission certifies that this rule will not have a significant impact on a substantial number of small entities.

Document Availability

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

50. From the Commission's Home Page on the Internet, this information is available in the Commission's document

[45] 44 U.S.C. 3507(d).

[46] *See* 1 CFR 21.35; 5 CFR 1320.3(f)(3).

[47] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[48] 18 CFR 380.4(a)(1).

[49] 18 CFR 380.4(a)(16).

[50] 5 U.S.C. 601–12.

[51] 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. 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 MWh. 13 CFR 121.201.

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.

51. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (email at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

Effective Date and Congressional Notification

52. This Final Rule will take effect October 24, 2005. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[52] The Commission will submit this final rule to both houses of Congress and the General Accountability Office.[53]

List of Subjects in 18 CFR Part 45

Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 45, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 45—APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

■ 1. The authority citation for part 45 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 3 CFR 142.

■ 2. Section 45.3 is revised to read as follows:

§ 45.3 Timing of filing application.

(a) The holding of positions within the purview of section 305(b) of the Act shall be unlawful unless the holding shall have been authorized by order of the Commission. Nothing in this part shall be construed as authorizing the holding of positions within the purview of section 305(b) of the Act prior to order of the Commission on application therefor. Applications must be filed and authorization must be granted prior to holding any interlocking positions within the purview of section 305(b) of the Act; late-filed applications will be denied. The term ''holding'', as used in this part, shall mean acting as, serving as, voting as, or otherwise performing or assuming the duties and responsibilities of officer or director within the purview of section 305(b) of the Act.

(b) Absent Commission action within 60 days of a completed application to hold interlocking positions, an application will be deemed granted. Such authorization is subject to revocation by the Commission after due notice to applicant and opportunity for hearing. In any such proceeding, the burden of proof shall be upon the applicant to show that neither public nor private interests will be adversely affected by the holding of such positions.

■ 3. In § 45.9, paragraph (b) is revised and paragraph (c)(5) is added to read as follows:

§ 45.9 Automatic authorization of certain interlocking positions.

* * * * *

(b) *Conditions of authorization.* As a condition of authorization, any person authorized to hold interlocking positions under this section must submit, prior to performing or assuming the duties and responsibilities of the position, an informational report in accordance with paragraph (c) of this section, unless that person is already authorized to hold interlocking positions of the type governed by this section. Failure to timely file the informational report will constitute a failure to satisfy this condition, and will constitute automatic denial.

(c) *Informational report.* * * *

(5) A statement or an affirmation that the applicant has not yet performed or assumed the duties or responsibilities of the position which necessitated the filing of this informational report.

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BILLING CODE 6717–01–P

[52] *See* 5 U.S.C. 804(2).

[53] *See* 5 U.S.C. 801(a)(1)(A).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM05–33–000; Order No. 663]

Revision of Rules of Practice and Procedure Regarding Issue Identification

Issued September 16, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations regarding filings. The regulations are revised to clarify that any issues that the movant wishes the Commission to address must be specifically identified in a section entitled ''Statement of Issues.'' This change will benefit the Commission by clarifying issues raised, and benefit movants by ensuring issues are addressed promptly and preserved for appeal.

EFFECTIVE DATE: The rule will become effective September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, GC–13, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8521.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. The Federal Energy Regulatory Commission (Commission) is revising its rules of practice and procedure to clarify that any issues a movant wishes the Commission to address must be clearly set forth in a section entitled ''Statement of Issues,'' that will reference representative Commission and court precedent on which the participant is relying. While the current rules require that pleadings include ''[t]he position taken by the participant filing any pleading * * * and the basis in fact and law for such position,'' the Commission has found that movants sometimes fail to specify the issues they want the Commission to address, or the case law supporting their position. 18 CFR 385.203(a)(7). This revision will benefit movants, and other parties to the proceeding, as well as the Commission.

2. The way to ensure that an issue is addressed is for a movant to place it squarely before the Commission in a filing. Under the Administrative