

ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 18: Conservation of Power and Water Resources

[PART 366—BOOKS AND RECORDS](#)

[Subpart A—Definitions and Provisions Under PUHCA 2005, the Federal Power Act and the Natural Gas Act](#)

§366.7 Procedures for obtaining exempt wholesale generator and foreign utility company status.

(a) *Self-certification notice procedure.* An exempt wholesale generator or a foreign utility company, or its representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company (including stating the location of its generation); such notices of self-certification must be subscribed, consistent with §385.2005(a) of this chapter, but need not be verified. In the case of exempt wholesale generators, the person filing a notice of self-certification under this section must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located, and that person must also represent to this Commission in its submittal with this Commission that it has filed a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located. Notice of the filing of a notice of self-certification will be published in the FEDERAL REGISTER. Persons that file a notice of self-certification must include a form of notice suitable for publication in the FEDERAL REGISTER in accordance with the specifications in §385.203(d) of this chapter. A person filing a notice of self-certification in good faith will be deemed to have temporary exempt wholesale generator or foreign utility company status. If the Commission takes no action within 60 days from the date of filing of the notice of self-certification, the self-certification shall be deemed to have been granted; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a (c)) any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary (if such determinations are not necessary, the notice of self-certification should state so). The Commission may toll the 60-day period to request additional information, or for further consideration of the request; in such cases, the person's exempt wholesale generator or foreign utility company status will remain temporary until such time as the Commission has determined whether to grant or deny exempt wholesale generator or foreign utility company

status; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a (c)), any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary (if such determinations are not necessary, the notice of self-certification should state so). Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested notices of self-certification is delegated to the General Counsel or the General Counsel's designee.

(b) *Optional procedure for Commission determination of exempt wholesale generator status or foreign utility company status.* A person may file for a Commission determination of exempt wholesale generator status or foreign utility company status under §366.1 by filing a petition for declaratory order pursuant to §385.207(a) of this chapter, justifying the request for such status; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a (c)), a Commission determination of exempt wholesale generator status may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary. (If such determinations are not necessary, the petition for declaratory order should state so.) Persons that file petitions must include a form of notice suitable for publication in the FEDERAL REGISTER in accordance with the specifications in §385.203(d) of this chapter.

(c) *Procedure for notification of material change in facts.* If there is any material change in facts that may affect an exempt wholesale generator's or a foreign utility company's status as an exempt wholesale generator or a foreign utility company, the exempt wholesale generator or foreign utility company shall within 30 days of the material change in facts:

(1) Submit a new notice of self-certification or a new petition for declaratory order, pursuant to paragraphs (a) or (b) of this section, as appropriate;

(2) File a written explanation why the material change in facts does not affect its status; or

(3) Notify the Commission that it no longer seeks to maintain its exempt wholesale generator or foreign utility company status.

(d) *Revocation of status.* (1) If an exempt wholesale generator or a foreign utility company fails to conform to the criteria for such status or fails to conform with any material facts or representations presented in its submittals to the Commission, the notice of self-certification of the status of the facility or Commission order certifying the status of the facility may no longer be relied upon.

(2) The Commission may, on its own motion or on the complaint of any person, revoke the status of a facility or company, if the facility or company fails to conform to any of the criteria under this part for such status.

(e) An exempt wholesale generator shall not be subject to any requirements of this part other than §366.7, *i.e.*, procedures for obtaining exempt wholesale generator status. A foreign utility company shall not be subject to any requirements of this part other than §366.7, *i.e.*, procedures for obtaining foreign utility company status.

[Order 667-A, 71 FR 28457, May 16, 2006, as amended by Order 667-B, 71 FR 42756, July 28, 2006]

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