§ 292.204 Criteria for qualifying small power production facilities.

(a) Size of the facility—1) Maximum size. There is no size limitation for an eligible solar, wind, waste or facility, as defined by section 3(17)(E) of the Federal Power Act. For a non-eligible facility, the power production capacity for which qualification is sought, together with the power production capacity of any other non-eligible small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts.

(2) Method of calculation. (i) For purposes of this paragraph, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.

(ii) For purposes of making the determination in clause (i), the distance between facilities shall be measured from the electrical generating equipment of a facility.

(3) Waiver. The Commission may modify the application of paragraph (a)(2) of this section, for good cause.

(b) Fuel use. (1)(i) The primary energy source of the facility must be biomass, waste, renewable resources, geothermal resources, or any combination thereof, and 75 percent or more of the total energy input must be from these sources.

(ii) Any primary energy source which, on the basis of its energy content, is 50 percent or more biomass shall be considered biomass.

(2) Use of oil, natural gas and coal by a facility, under section 3(17)(B) of the Federal Power Act, is limited to the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and the minimum amounts of fuel required to allow unanticipated equipment outages, and emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages. Such fuel use may not, in the aggregate, exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy.

§ 292.205 Criteria for qualifying cogeneration facilities.

(a) Operating and efficiency standards for topping-cycle facilities—(1) Operating standard. For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must be no less than 5 percent of the total energy output during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy.


EFFECTIVE DATE NOTE: At 75 FR 15966, Mar. 30, 2010, §292.204 was amended by revising paragraph (a)(1) and adding paragraph (a)(4), effective June 1, 2010. For the convenience of the user, the added and revised text is set forth as follows:

§ 292.204 Criteria for qualifying small power production facilities.

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

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

§ 292.205 Criteria for qualifying cogeneration facilities.

(a) Operating and efficiency standards for topping-cycle facilities—(1) Operating standard. For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must be no less than 5 percent of the total energy output during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy.
which the facility first produces electric energy.

(2) **Efficiency standard.** (i) For any topping-cycle cogeneration facility for which any of the energy input is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility plus one-half the useful thermal energy output, during the 12-month period beginning with the date the facility first produces electric energy, and any calendar year subsequent to the year in which the facility first produces electric energy, must:

(A) Subject to paragraph (a)(2)(i)(B) of this section be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; or

(B) If the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas and oil to the facility.

(ii) For any topping-cycle cogeneration facility not subject to paragraph (a)(2)(i) of this section there is no efficiency standard.

(b) **Efficiency standards for bottoming-cycle facilities.** (1) For any bottoming-cycle cogeneration facility for which any of the energy input as supplementary firing is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility during the 12-month period beginning with the date the facility first produces electric energy, and any calendar year subsequent to the year in which the facility first produces electric energy must be no less than 45 percent of the energy input of natural gas and oil for supplementary firing.

(2) For any bottoming-cycle cogeneration facility not covered by paragraph (b)(1) of this section, there is no efficiency standard.

(c) **Waiver.** The Commission may waive any of the requirements of paragraphs (a) and (b) of this section upon a showing that the facility will produce significant energy savings.

(d) **Criteria for new cogeneration facilities.** Notwithstanding paragraphs (a) and (b) of this section, any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility under §292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1, must also show:

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

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

(3) **Fundamental use test.** For the purposes of satisfying paragraph (d)(2) of this section, the electrical, thermal, chemical and mechanical output of the cogeneration facility will be considered used fundamentally for industrial, commercial, or institutional purposes and not intended fundamentally for sale to an electric utility if at least 50 percent of the aggregate of such output, on an annual basis, is used for industrial, commercial, residential or institutional purposes. In addition, applicants for facilities that do not meet this safe harbor standard may present evidence to the Commission that the facilities should nevertheless be certified given state laws applicable to sales of electric energy or unique technological, efficiency, economic, and variable thermal energy requirements.

(4) For purposes of paragraphs (d)(1) and (d)(2) of this section, a new cogeneration facility of 5 MW or smaller will be presumed to satisfy the requirements of those paragraphs.

(5) For purposes of paragraph (d)(1) of this section, where a thermal host existed prior to the development of a new cogeneration facility whose thermal output will supplant the thermal source previously in use by the thermal
host, the thermal output of such new
cogeneration facility will be presumed
to satisfy the requirements of para-
graph (d)(1).

[45 FR 17972, Mar. 20, 1980, as amended by
Order 478, 52 FR 28367, July 30, 1987; Order
575, 60 FR 4857, Jan. 25, 1995; Order 671, 71 FR
7868, Feb. 15, 2006]

EFFECTIVE DATE NOTE: At 75 FR 15966, Mar.
30, 2010, §292.205 was amended by revising
paragraph (d), effective June 1, 2010. For the
convenience of the user, the revised text is
set forth as follows:

§ 292.205 Criteria for qualifying cogenera-
tion facilities.

* * * * *

(d) Criteria for new cogeneration facilities.
Notwithstanding paragraphs (a) and (b) of
this section, any cogeneration facility that
was either not a qualifying cogeneration fa-
cility on or before August 8, 2005, or that had
not filed a notice of self-certification or an
application for Commission certification as a
qualifying cogeneration facility under
§292.207 of this chapter prior to February 2,
2006, and which is seeking to sell electric en-
ergy pursuant to section 210 of the Public
Utility Regulatory Policies Act of 1978, 16
U.S.C. 824a–1, must also show:

* * * * *

§ 292.207 Procedures for obtaining
qualifying status.

(a) Self-certification and pre-authorized
Commission recertification—1) Self-certifi-
cation. (i) A small power production fa-
cility or cogeneration facility that
meets the applicable criteria estab-
lished in §292.203 is a qualifying facil-
ity.

(ii) The owner or operator of a facility
or its representative self-certifying
under this section must file with the
Commission, and concurrently serve on
each electric utility with which it ex-
pects to interconnect, transmit or sell
electric energy to or purchase supple-
mentary, standby, back-up and mainte-
nance power, and the State regulatory
authority of each state where the facility
and each affected utility is located,

a notice of self-certification which con-
tains a completed Form 556.

(iii) Subsequent notices of self-recer-
tification for the same facility may refer
to changes which have occurred
with respect to the facility since the
prior notice or the prior Commission
certification.

(iv) Notices of self-certification or
self-recertification, other than for new
cogeneration facilities, will not be pub-
lished in the FEDERAL REGISTER. No-
tices of self-certification or self-recer-
tification of new cogeneration facili-
ties will be published in the FEDERAL
REGISTER; such self-certifications and self-recertifications should include a
form of notice suitable for publication in the FEDERAL REGISTER.

(2) Pre-authorized Commission recer-
tification. (i) For purposes of paragraph (b)
of this section, the following alter-
ations or modifications are not consid-
ered substantial alterations or modi-
fications and will not result in revoca-
tion of qualifying status previously
granted by the Commission pursuant
to paragraph (b) of this section:

(A) A change which does not affect
the upstream ownership of the facility;

(B) A change in the installation or
operation date;

(C) A change in the manufacturer of
the power generation equipment se-
lected for the facility’s installation
when there is no change in capacity or
operating characteristics;

(D) A change in the location of a co-
generation facility, or a small power
 production facility, if the new location
would not cause the facility to violate
the 80 MW limitation of §292.204(a)(1);

(E) A decrease in the amount of nat-
ural gas or oil or any change in the
amount of other fuel used by a cogen-
eration facility, provided that the effi-
ciency value and the operating value
calculation for the facility remain at
or above the values in the certifica-
tion or recertification order
was issued;

(F) A decrease in the amount of fossil
fuel used by a small power production
facility;

(G) A change in the primary energy
source of a small power production fa-
cility, provided that the facility con-
tinues to comply with the require-
ments of §292.204;

(H) An additional use of a cogenera-
tion facility’s thermal output, if the
original uses are as stated when the
certification order was issued;