(14) Phosphoric acid—allowed as an equipment cleaner, *Provided,* That, no direct contact with organically managed livestock or land occurs.

(b) * * *

(4) Lime, hydrated—as external pest control, not permitted to cauterize physical alterations or deodorize animal wastes.

* * * * *

(d) * * *

(1) DL-Methionine, DL-Methionine—hydroxy analog, and DL-Methionine—hydroxy analog calcium—for use only in organic poultry production until October 21, 2005.

(2) Trace minerals, used for enrichment or fortification when FDA approved.

* * * * *

■ 5. Section 205.605 is revised to read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

The following nonagricultural substances may be used as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s))'' only in accordance with any restrictions specified in this section.

(a) *Nonsynthetics allowed:*

Acids (Alginic; Citric—produced by microbial fermentation of carbohydrate substances; and Lactic).

Agar-agar.

Bentonite.

Calcium carbonate.

Calcium chloride.

Carageenan.

Colors, nonsynthetic sources only.

Dairy cultures.

Diatomaceous earth—food filtering aid only.

Enzymes—must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria.

Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative.

Kaolin.

Magnesium sulfate, nonsynthetic sources only.

Nitrogen—oil-free grades.

Oxygen—oil-free grades.

Perlite—for use only as a filter aid in food processing.

Potassium chloride.

Potassium iodide.

Sodium bicarbonate.

Sodium carbonate.

Tartaric acid.

Waxes—nonsynthetic (Carnauba wax; and Wood resin).

Yeast—nonsynthetic, growth on petrochemical substrate and sulfite waste liquor is prohibited (Autolysate; Bakers; Brewers; Nutritional; and Smoked—nonsynthetic smoke flavoring process must be documented).

(b) *Synthetics allowed:*

Alginates.

Ammonium bicarbonate—for use only as a leavening agent.

Ammonium carbonate—for use only as a leavening agent.

Ascorbic acid.

Calcium citrate.

Calcium hydroxide.

Calcium phosphates (monobasic, dibasic, and tribasic).

Carbon dioxide.

Chlorine materials—disinfecting and sanitizing food contact surfaces, *Except,* That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act (Calcium hypochlorite; Chlorine dioxide; and Sodium hypochlorite).

Ethylene—allowed for postharvest ripening of tropical fruit and degreening of citrus.

Ferrous sulfate—for iron enrichment or fortification of foods when required by regulation or recommended (independent organization).

Glycerides (mono and di)—for use only in drum drying of food.

Glycerin—produced by hydrolysis of fats and oils.

Hydrogen peroxide.

Lecithin—bleached.

Magnesium carbonate—for use only in agricultural products labeled ''made with organic (specified ingredients or food group(s)),'' prohibited in agricultural products labeled ''organic''.

Magnesium chloride—derived from sea water.

Magnesium stearate—for use only in agricultural products labeled ''made with organic (specified ingredients or food group(s)),'' prohibited in agricultural products labeled ''organic''.

Nutrient vitamins and minerals, in accordance with 21 CFR 104.20, Nutritional Quality Guidelines For Foods.

Ozone.

Pectin (low-methoxy).

Phosphoric acid—cleaning of food-contact surfaces and equipment only.

Potassium acid tartrate.

Potassium tartrate made from tartaric acid.

Potassium carbonate.

Potassium citrate.

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables.

Potassium iodide—for use only in agricultural products labeled ''made with organic (specified ingredients or food group(s)),'' prohibited in agricultural products labeled ''organic''.

Potassium phosphate—for use only in agricultural products labeled ''made with organic (specific ingredients or food group(s)),'' prohibited in agricultural products labeled ''organic''.

Silicon dioxide.

Sodium citrate.

Sodium hydroxide—prohibited for use in lye peeling of fruits and vegetables.

Sodium phosphates—for use only in dairy foods.

Sulfur dioxide—for use only in wine labeled ''made with organic grapes,'' Provided, That, total sulfite concentration does not exceed 100 ppm.

Tartaric acid.

Tocopherols—derived from vegetable oil when rosemary extracts are not a suitable alternative.

Xanthan gum.

(c)–(z) [Reserved]

■ 6. In § 205.607, paragraph (c) is revised to read as follows:

§ 205.607 Amending the National List.

* * * * *

(c) A petition to amend the National List must be submitted to: Program Manager, USDA/AMS/TMP/NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.

* * * * *

Dated: October 27, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–27415 Filed 10–30–03; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 141, 201, 260, 352, and 357

[Docket Nos. RM02–14–000 and RM02–14–001; Order No. 634–A]

Regulation of Cash Management Practices

October 23, 2003.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to implement reporting requirements for FERC-regulated entities that participant in cash

management programs. The Commission is also modifying certain aspects of the documentation requirements that became effective August 7, 2003.

EFFECTIVE DATE: This rule is effective December 1, 2003.

FOR FURTHER INFORMATION CONTACT:
Rosemary Womack (Technical Information), Office of the Executive Director, Division of Regulatory Accounting Policy, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8989.
Peter Roidakis (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8206.

SUPPLEMENTARY INFORMATION:

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I. Introduction

1. On June 26, 2003, the Federal Energy Regulatory Commission (Commission or FERC) issued an Interim Rule, which amended its regulations under 18 CFR parts 101, 201, and 352 of the Commission's Uniform Systems of Accounts by implementing documentation requirements for FERC-regulated entities that participate in cash management programs. Cash management or ''money pool'' programs typically concentrate affiliates' cash assets in joint accounts for the purpose of providing financial flexibility and lowering the cost of borrowing.

2. The regulations require that FERC-regulated entities subject to these rules place their cash management agreements in writing, specify the duties and responsibilities of cash management program participants and administrators, specify the methods for calculating interest and for allocating interest income and expenses, and specify any restrictions on deposits or borrowings by participants.

3. In the Interim Rule, the Commission also sought comments on new reporting requirements that would require FERC-regulated entities to file their cash management agreements with the Commission and notify the Commission when their proprietary capital ratios drop below 30 percent and when their proprietary capital ratios subsequently return to or exceed 30 percent. The reporting requirements were reflected in changes to 18 CFR parts 141, 260, and 357 of the Commission's regulations for public utilities and licensees, natural gas companies, and oil pipeline companies.

4. This Final Rule amends the Commission's regulations under 18 CFR parts 141, 260, and 357 of the Uniform System of Accounts for public utilities and licensees, natural gas companies, and oil pipeline companies by implementing the reporting requirements proposed in the Interim Rule, with some modifications. The modifications require FERC-regulated entities to compute their proprietary capital ratios quarterly (as compared to a proposed monthly computation) and to notify the Commission within 45 days after the end of each calendar quarter if their proprietary capital ratios drop below or subsequently exceed 30 percent (as compared to a proposed 15 day period for computation and 5 day notification deadline).

5. The Final Rule also modifies certain aspects of the documentation requirements that were implemented in the Interim Rule and became effective August 7, 2003. Specifically, the Commission is revising parts 101 and 201, Account 146 C, and part 352, Account 13(c), to require that FERC-regulated entities maintain documentation related only to the administrator and the FERC-regulated entity (rather than documentation related to all cash management participants). Account 146 B(1), (2) and (4) and Account 13(b)(1), (2) and (4) are also revised to require that FERC-regulated entities document the interest rates on deposits or borrowings in the cash management agreements, but not on the daily records for each deposit, withdrawal or borrowing. Additionally, the regulations are revised to require records showing the monthly balances of cash management programs, rather than daily balances.

6. The documentation and reporting requirements the Commission is adopting in this Final Rule directly address the deficiencies in cash management programs found by the Chief Accountant in audits conducted in 2002. At that time, FERC-regulated entities had $16 billion in cash management accounts. More recently, analysis indicates that FERC-regulated entities have $25.2 billion in cash management accounts. The documentation and reporting requirements the Commission is adopting are needed to ensure that rates paid by the customers of FERC-regulated entities are just and reasonable. The additional financial transparency required by these rules will also aid the Commission in meeting its oversight and market monitoring obligations and will benefit the investing public.

7. In sum, the Final Rule applies to all FERC-regulated entities that have not been granted waivers of the Commission's accounting regulations and the FERC Annual Report Forms 1, 1–F, 2, 2–A or 6 filing requirements.[1] Due to the nature of electric cooperatives, the Commission is exempting them from the requirement to notify the Commission when their proprietary capital ratios drop below 30 percent and when their proprietary capital ratios subsequently return to or exceed 30 percent.[2] Electric cooperatives must comply with the Final Rule except for the notification requirements stated above.

II. Background

8. An investigation by the Chief Accountant in March 2002 revealed that FERC-regulated entities had approximately $16 billion of assets in cash management accounts. The preliminary results of the investigation also revealed severe recordkeeping deficiencies:

- Cash management agreements generally were not formalized in writing.
- The terms of the programs and the interest associated with loans were not documented in writing.
- It was unclear whether interest had been paid to subsidiary companies by the parent companies.

9. The Commission issued a Notice of Proposed Rulemaking (NOPR) on August 1, 2002, 67 FR 51150 (Aug. 7, 2002), IV FERC Stats. & Regs. ¶ 32,561 (August 1, 2002), to amend its Uniform Systems of Accounts for public utilities

[1] Reporting requirements for the Annual Report Forms can be found at Section 141.1 for Form 1, Section 141.2 for Form 1–F, Section 260.1 for Form 2, Section 260.2 for Form 2–A and Section 357.2 for Form 6.

[2] Electric cooperatives that have paid off their debt to the Rural Utilities Services are subject to the Commission's regulations.

and licensees,[3] natural gas companies,[4] and oil pipeline companies.[5] The NOPR proposed to require that, as a prerequisite to a FERC-regulated entity participating in a cash management program, the FERC-regulated entity shall maintain a minimum proprietary capital ratio of at least 30 percent and the FERC-regulated entity and its parent shall maintain investment grade credit ratings. Also, the NOPR proposed new documentation requirements for cash management programs.

10. The Commission issued an interim rule on June 26, 2003, 68 FR 40500 (July 8, 2003), FERC Stats. & Regs. ¶ 31,145 (June 26, 2003), which amended its regulations under 18 CFR parts 101, 201, and 352 of the Commission's Uniform Systems of Accounts for public utilities and licensees, natural gas companies, and oil pipeline companies by implementing the documentation requirements proposed in the NOPR. The interim regulations required that FERC-regulated entities maintain their cash management agreements in writing, that the agreements specify the duties and responsibilities of cash management program participants and administrators, specify the methods for calculating interest and for allocating interest income and expenses, and specify any restrictions on deposits or borrowings by participants. The regulations became effective August 7, 2003 for all FERC-regulated entities that have not been granted waivers of the Commission's accounting regulations and the FERC Annual Report Forms 1, 1–F, 2, 2–A or 6 filing requirements.

11. The Commission decided not to adopt the financial prerequisites proposed in the NOPR. Instead, the Commission sought comments on new reporting requirements that require FERC-regulated entities participating in cash management programs to file agreements related to such programs with the Commission and to notify the Commission when their proprietary capital ratios drop below 30 percent, and when they subsequently return to or exceed 30 percent. These new reporting requirements were reflected in revisions to parts 141, 260, and 357 of the Commission's regulations. The Commission also concluded that the information collected through the new reporting requirements would be considered non-confidential in nature and be made available to the general public via FERC's eLibrary (formerly FERRIS) accessed from FERC's Home Page.[6] The Commission did not implement the new reporting requirements in the Interim Rule, but sought comments on these requirements.

12. Requests for stay of the Interim Rule were denied in an order dated August 21, 2003.[7]

III. Discussion

13. The Commission received twenty-five comments[8] in response to the new reporting requirements or comments asking clarification of the documentation requirements that became effective August 7, 2003. While commenters generally support the Commission's decision not to impose prerequisites to cash management program participation, some commenters question whether the Commission has authority to require utilities to file agreements associated with cash management programs. Other commenters ask whether the Commission has a statutory basis for cash management oversight of public utility affiliates of registered holding companies and of utilities whose money pools are regulated by state commissions.

14. Several commenters also suggested various changes to make compliance with the proposed regulations easier. The suggested changes principally involve the time period for performing the proprietary capital ratio calculation, the deadline for notifying the Commission when the proprietary capital ratio falls below, or subsequently returns to or exceeds 30 percent, and the requirement to file cash management agreements with the Commission.

15. After careful consideration of the comments received, the Commission is implementing the new reporting requirements with some modifications, as discussed below, and is modifying certain aspects of the documentation requirements that became effective August 7, 2003.

16. Consistent with the discussions below, the Commission also denies all requests for rehearing of the Interim Rule.

A. Statutory Basis for the Rule

17. The Interim Rule did not propose to regulate participation in cash management programs, nor did it establish any prerequisites for participation in cash management programs as the Notice of Proposed Rulemaking had originally proposed. Rather, the Interim Rule merely established documentation requirements and proposed reporting requirements. The Final Rule requires FERC-regulated entities subject to the rule to file their cash management agreements with the Commission, as well as notify the Commission when their proprietary capital ratios drop below 30 percent. The provisions in the Federal Power Act (FPA), Natural Gas Act (NGA), and Interstate Commerce Act (ICA) that authorize the Commission to require reports and documentation to administer these statutes provide ample authority for issuance of the Final Rule.[9]

18. Most commenters do not challenge the Commission's legal authority to set the documentation and reporting requirements of the Interim Rule.[10] A few commenters still raise such challenges, however, and we address their concerns here. EEI, for example, argues that the Commission lacks a legal or factual basis for the reporting requirements.[11] Southern California Edison Company (Edison) supports EEI's comments on the Interim Rule. Duke Energy asserts that the Commission lacks the statutory authority to regulate the financial transactions of Duke Energy's FERC-regulated entities, including their participation in cash management programs.

19. The short answer is that the Commission is not ''regulating'' cash management programs. Rather, the Final Rule implements reporting and documentation requirements, which are

[3] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. 18 CFR part 101 (2003).

[4] Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. 18 CFR part 201 (2003).

[5] Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR part 352 (2003).

[6] *http://www.ferc.gov/.*

[7] 104 FERC ¶ 61,217 (2003).

[8] Commenters on the Interim Rule are listed in the appendix to this final rule.

[9] *See* 15 U.S.C. 717g (2000); 15 U.S.C. 717i (2000); 16 U.S.C. 825 (2000); 16 U.S.C. 825c (2000); 49 App. U.S.C. 20(1) (1988); 49 App. U.S.C. 20(5) (1988).

[10] For example, the Interstate Natural Gas Association of America (INGAA), which had initially argued that the Commission does not have authority to establish prerequisites for money pool participation, does not argue that the Commission lacks the legal authority to set the Final Rule's reporting requirements. Others such as the American Public Gas Association (APGA) strongly confirm the Commission's legal authority to impose the needed reporting requirements in the Final Rule, consistent with the Commission's mandate to protect customers from unjust and unreasonable rates.

[11] The legal basis for the 30 percent proprietary capital reporting obligation and other reporting obligations is discussed here, while the choice of a 30 percent proprietary capital level for initiating the report is discussed *infra.*

amply justified by the enormous amount of assets of regulated entities in cash management programs. In 2002, the Commission found at least $16 billion of regulated entities' assets in such accounts and that amount has increased in 2003 to approximately $25 billion. This is an enormous, mostly unregulated, pool of money in cash management programs that may detrimentally affect regulated rates. The Final Rule properly requires that FERC-regulated entities document and report information to aid the Commission in monitoring cash management programs, but is not in the nature of a regulation governing participation in cash management programs. The reporting requirements allow the Commission to protect ratepaying customers of regulated entities by providing greater transparency of cash management activities.

20. AOPL and Chevron Pipeline Company, *et al.*, in their comments on the Interim Rule question the Commission's statutory authority for the record-keeping requirements, insofar as the Final Rule may intend to require such records of non-FERC-regulated entities. Shell Pipeline Company LP shares these concerns. The Final Rule does not require recordkeeping or reports from non-jurisdictional entities. Accordingly, the recordkeeping and reporting requirements of the NGA, FPA, and ICA provide express statutory authority for the reporting requirements of the Final Rule, which are imposed solely on FERC-regulated entities.

21. Specifically, NGA Section 8 provides that ''[e]very natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act * * *,'' [12] and NGA Section 10 provides that ''[e]very natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this act.'' [13] FPA Section 301 provides that ''[e]very licensee and public utility shall make, keep and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act * * *,'' [14] and FPA Section 304 provides that ''[e]very licensee and every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act.'' [15] Section 20(1) of the ICA provides that ''[t]he Commission is authorized to require annual, periodical, or special reports from [oil pipeline] carriers * * * and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary * * *,'' [16] and Section 20(5) of the ICA authorizes the Commission ''in its discretion, [to] prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers and their lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. * * *.'' [17]

22. In sum, the Commission is entrusted with the responsibility to ensure that rates are just and reasonable and that FERC-regulated entities provide the services to which they have committed.[18] The transparency-enhancing reporting requirements adopted in the Final Rule for cash management programs—in which over $25 billion of regulated entities' funds are deposited (and accessible to others in their corporate family)—will help ensure that both goals are achieved.

23. Requiring that FERC-regulated entities that participate in money pools file reports and maintain documents does not impermissibly extend the Commission's jurisdiction to unregulated parent companies (or other unregulated affiliates). The Commission is requiring jurisdictional entities to document cash management transactions and file cash management agreements to which the jurisdictional entities are parties. This is squarely within the ambit of the Commission's statutory authority.

B. Applicability of the Rule to Registered Holding Companies

24. The Interim Rule applied the documentation requirements to all FERC-regulated entities that have not been granted waivers of the Commission's accounting regulations and the FERC Annual Report Forms 1, 1–F, 2, 2–A or 6 filing requirements. This includes subsidiaries of registered holding companies that are regulated by the SEC pursuant to Public Utility Holding Company Act (PUHCA).[19]

25. In the Interim Rule, the Commission found that to protect ratepayers, the Commission needed to better understand the financial condition of the companies it regulates, including their cash management practices. And while the Commission agreed with many commenters that the SEC regulates some aspects of a registered holding company's cash management programs, the SEC's case-by-case analysis of these programs did not provide assurance that documentation adequate for this Commission's regulatory oversight would be maintained.

26. Therefore, the Interim Rule required that FERC-regulated entities that are also subject to PUHCA follow the documentation requirements adopted in the Commission's Uniform Systems of Accounts and proposed that FERC-regulated holding company subsidiaries follow the same reporting requirements as all other FERC-regulated entities subject to this rule.

Comments Received:

27. EEI requested rehearing and clarification of the applicability of the rule to subsidiaries of registered holding companies, asserting that regulation by the Commission is unnecessary and barred by Section 318 of the FPA.[20] While acknowledging that ''the documentation requirements the FERC is imposing differ somewhat from the SEC's requirements,'' EEI goes on to assert that any regulated holding company's cash management program ''already satisfies documentation requirements comparable to those that would be imposed in the interim rule.''

[12] 15 U.S.C. 717g (2000).

[13] 15 U.S.C. 717i (2000).

[14] 16 U.S.C. 825 (2000).

[15] 16 U.S.C. 825c (2000).

[16] 49 App. U.S.C. 20(1) (1988).

[17] 49 App. U.S.C. 20(5) (1988).

[18] *See* FPA Sections 205 and 206, NGA Sections 4 and 5, and ICA Title 49 App. Sections 1(5) and 15(1).

[19] 15 U.S.C. 79a *et seq.* (2000).

[20] Section 318 of the Federal Power Act provides as follows:

If, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or any other subject matter, such person is subject both to a requirement of [PUHCA] or of a rule, regulation or order thereunder and to a requirement of [the FPA], or of any rule, regulation, or order thereunder, the requirement of [PUHCA] shall apply to such person, and such person shall not be subject to the requirement of [the FPA] or of any rule, regulation, or order thereunder, with respect to the same subject matter, unless the Securities and Exchange Commission has exempted such person from such requirement of [PUHCA], in which case the requirements of [the Federal Power Act] shall apply to such person.

Thus, EEI asserts, there is ''no reason to create redundant requirements for registered holding company systems.'' EEI makes the same policy and legal arguments against the reporting requirements proposed in the Interim Rule.

28. FirstEnergy, while not requesting rehearing, reiterates many of EEI's comments. FirstEnergy also points out that the documentation the Interim Rule requires companies to maintain is different from the documentation that the SEC requires companies to maintain under PUHCA. Additionally, FirstEnergy echoes EEI's argument that the SEC has the sole and exclusive jurisdiction over the regulation of cash management programs. Finally, in regard to the proposed notification and filing requirements, FirstEnergy argues that ''in our view, there is no critical need for utilities to file this information with the Commission'' and that ''such information could then be made available to the Commission in connection with an audit or other Commission proceeding.''

Commission Response:

29. The Commission finds that to better ensure that rates for jurisdictional services are just and reasonable, it must examine the financial structure of the entities it regulates. As the Commission stated in the Interim Rule, regulated entities routinely place large quantities of funds (over $25 billion, at last count) into cash management accounts. As recent market events have shown, financial troubles may afflict both PUHCA and non-PUHCA companies. A highly leveraged company, with the accompanying fixed interest expense and future obligation to repay the principal, may be in a weakened financial position if there is an unfavorable change in the business climate. This event may result in an inadequate flow of cash which may have an adverse impact on the FERC-regulated entity's ability to remain solvent. As a result, it is vital to the Commission's statutory mission that it has on hand the necessary information to understand how regulated entities are accounting for their assets.

30. Section 318 of the FPA governs conflicts between the Commission's and the SEC's regulations.[21]

31. FirstEnergy and EEI mistakenly seem to believe that the Commission's requirements are in conflict with the requirements of the SEC, and are therefore barred by FPA Section 318. The Final Rule does not dictate the content of or terms for participating in a cash management program. And nothing in the regulations the Commission is adopting is incompatible with existing SEC requirements.

32. While the SEC sometimes requires the filing of cash management agreements and notification of changes in a holding company's capital equity, there is nothing that prevents a registered holding company from making one filing with the SEC and its subsidiary making another filing with FERC. Therefore, there is no conflict, and Section 318 does not bar the proposed regulations.

C. Applicability of the Rule to Utilities Regulated by State PUCs

33. The Interim Rule did not specifically address application of the rule to companies whose cash management programs are regulated by State Public Utility Commissions (PUCs).

Comments Received:

34. EEI and Duke Energy suggest that the Interim Rule should not apply to a public utility or licensee whose participation in cash management arrangements or whose securities and debts are regulated by the utility commission of the State in which the public utility or licensee is organized and operating. The commenters argue that those companies are subject to oversight similar to the oversight the Commission is imposing here. Second, EEI suggests that Section 204(f) of the FPA excludes such State-regulated public utility activities from further Commission regulation.[22] If a State utility commission already regulates a utility's participation in a cash management arrangement, or regulates the utility's securities and debt, EEI asserts that the Commission should defer to the state commission's regulation of those activities and not also apply the documentation and reporting requirements of the Final Rule to the utility.

35. National Grid, PacifiCorp, Edison, and others urge the Commission to avoid imposing cash management program requirements that either conflict with or inappropriately duplicate requirements of state commissions that may have existing regulatory oversight. PacifiCorp, for instance, states that it already receives regulatory permission for its cash management operations from six states and is loath to modify those agreements since any modification would require it to seek regulatory approval from each of those states, as well as the SEC. Both PacifiCorp and National Grid companies seek clarification that the new cash management rules pertain only to proper documentation, reporting, and notification, and not modification of their cash management programs. Edison believes that the proposed reporting requirements are unduly burdensome, considering that Edison is already regulated by both the California Public Utilities Commission (CPUC) and the SEC with respect to affiliate transactions. According to Edison, CPUC's rules and regulations already require it to comply with voluminous documentation and other requirements concerning its relationship with its affiliates.

Commission Response:

36. The Commission's Final Rule does not conflict with any requirement of any State PUC. The Final Rule does not require entities to alter their cash management agreements, nor will the Commission alter them after they are filed. Further, as mentioned earlier, the FPA gives the Commission broad authority to collect the information it needs to administer the FPA, NGA and ICA. The documentation and reporting requirements all fall within this broad grant of power.

37. EEI and Duke Energy's concern over Section 204(f)'s limitation on the Commission's authority over the issuance of securities regulated by a state commission is misplaced. Section 204 does not apply because the Commission is not regulating the issuance of any security by means of this Final Rule. Therefore, in response to EEI's concerns, none of the Final Rule's requirements regulates a public utility's ability to ''issue any security, or assume any obligation or liability.''

38. In response to other complaints about duplication of effort, the

[21] In the *Arcadia* case, *Arcadia, Ohio* v. *Ohio Power Co.,* 498 U.S. 73 (1990) (*Arcadia*), cited by both FirstEnergy and EEI, the Supreme Court declined to address the issue of whether Section 318 prohibits all Commission regulation of a subject matter regulated by the SEC or ''only such regulation as actually imposes a conflicting requirement.'' *Arcadia,* 498 U.S. at 77. Instead, the Court held that the Commission's actions at issue did not relate to one of the four subject matters laid out in Section 318 and concluded, therefore, that there was no conflict between the actions of the Commission and the actions of the SEC. The complete chronology of the *Arcadia* case is as follows: *Ohio Power Co.,* 39 FERC 61,098 (1987), *reh'g denied,* 43 FERC 61,046 (1988), *vacated sub nom. Ohio Power* v. *FERC,* 880 F.2d 1400 (D.C. Cir. 1989), *reh'g denied,* 897 F.2d 540 (D.C. Cir. 1989), *order on cert. Arcadia* v. *Ohio Power Co.,* 498 U.S. 73 (1990), *order on remand sub nom. Ohio Power Co.* v. *FERC,* 954 F.2d 779 (D.C. Cir. 1992), *cert. denied sub nom. Arcadia* v. *Ohio Power Co.,* 506 U.S. 981 (1992).

[22] 16 U.S.C. 824c(f). Section 204 of the FPA reads as follows:

''The provisions of this Section [204 dealing with Commission regulation of public utility securities and liabilities] shall not apply to a public utility organized and operating in a State under the laws of which its security issues are regulated by a State commission.''

Commission reiterates the need for this information in carrying out its statutory obligations to customers. The burden imposed on regulated entities by the Final Rule is extremely low while the benefits to the Commission and the public of documenting over $25 billion worth of regulated assets is high. The Commission would be remiss in its obligation to ensure just and reasonable rates if it were to ignore the effects on its jurisdictional entities of having these large sums in cash management programs.

D. Submission of Cash Management Agreements

39. The interim rule proposed requiring FERC-regulated entities subject to the rule to file their cash management agreements with the Commission, and to file any subsequent changes within 10 days from the date of change. The Commission is adopting this requirement in the Final Rule.

Comments Received:

40. Several commenters [23] argue that FERC-regulated entities should not be required to file cash management agreements with the Commission. A few commenters argue that doing so is unnecessary. For example, INGAA, Duke Energy and FirstEnergy assert that because the Interim Rule requires FERC-regulated entities to maintain documentation supporting their cash management agreements which are subject to audit, there is no compelling reason to have the agreements filed with the Commission. Duke Energy adds that the Commission's own annual reporting requirements require FERC-regulated entities to provide the Commission with a description of material terms of their agreements in footnotes to their annual reports.

41. Other commenters [24] suggest that the Commission should merely require companies to maintain documentation, subject to Commission review, without requiring companies to submit the information. EEI expresses the concern that filing cash management agreements would invite proceedings unintended by the Commission, and requests that the Commission clarify that the documents are for informational purposes only, and not subject to complaints or protests. Commenters [25] also argue that the new reporting requirement is excessively burdensome.

42. Additionally, Cinergy asks that the Commission clarify that the initial submission of the agreements for programs established prior to the effective date of the rule shall be within 10 days of the effective date of this rule.

Commission Response:

43. The underlying premise of this reporting requirement is that additional transparency of cash management activities between FERC-regulated entities and their affiliates will allow the Commission and other users of financial information to make decisions based on relevant and accurate information. The only way to achieve this transparency is to require FERC-regulated entities to file their cash management documents with the Commission, which will consequently make them available to the public. In addition, the requirement that any subsequent changes to an existing agreement be filed within 10 days of the date of the change is necessary to provide users of financial information with knowledge of when such decisions are being made. Since cash management agreements are altered infrequently and only after considerable planning, the 10 day notification deadline is reasonable.

44. Any cash management agreements established prior to the effective date of the rule must be filed within 10 days of the effective date of the rule.

45. With regard to the concern that the filing of cash management agreements will generate protests and complaints, these filings are for informational purposes and the Commission will not entertain public comments on them.

E. Notification Requirements

46. The Interim Rule proposed that FERC-regulated entities participating in cash management programs notify the Commission when their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent. The Interim Rule also required that FERC-regulated entities compute their proprietary capital ratios within 15 days after the end of each month and notify the commission within 5 days after making the calculation. In the Final Rule, the Commission is adopting the notification requirement, but is allowing FERC-regulated entities to compute their proprietary capital ratios quarterly and to notify the Commission within 45 days after the end of each calendar quarter if their proprietary capital ratios fall below 30 percent and when they subsequently return to or exceed 30 percent.

Comments Received:

47. Virtually all commenters expressed concerns about the Interim Rule's proposal that FERC-regulated entities notify the Commission when their proprietary capital ratios fall below 30 percent. Several commenters [26] argue that the choice of 30 percent seemed arbitrary, and that the 30 percent threshold was not necessarily an accurate indication of a company's health. Rather, the commenters argue, the 30 percent threshold has been overemphasized in the Interim Rule, since it is only one of many possible gauges of the financial health of a FERC-regulated entity. Gulf South adds that establishing a minimum equity threshold is inconsistent with the NGA since pipelines are not required to maintain any minimum capitalization level.

48. Cinergy, Duke Energy, Gulfterra and PacifiCorp expressed concerns about the requirement that the ratio be computed within 15 days after the end of the monitoring period. For example, Duke Energy argues that 15 days is insufficient to compute the proprietary capital ratio. Cinergy suggests that the Commission revise the date by which the ratio must be determined to the 15th business day rather than the 15th calendar day. Also, Gulfterra and PacifiCorp suggest extending the time period to 45 days.

49. Numerous commenters [27] object to the monthly monitoring requirement, stating that complying with the requirement would be unworkable or burdensome, and that calculations completed in such a short timeframe may be unreliable. PSEG Companies and FirstEnergy note that their capitalization reviews are not prepared on a monthly basis. FirstEnergy explains that while books are maintained on a monthly basis, utilities do not and are not required to close their books at the end of the month in a manner that would enable them to calculate their proprietary capital ratios.

50. EEI and Exelon ask that the Commission allow utilities to calculate the 30 percent equity ratio with transition bonds and other non-recourse debt eliminated from the calculation. They argue that these bonds were issued pursuant to state enabling legislation that allows the bonds to be repaid through a specifically authorized retail rate and, as such, the bonds are not the obligation of the utility or parent company but instead are non-recourse.

51. Also, EEI, Sierra Southwest Cooperative Services, Inc. and the PSEG Companies ask that the Commission clarify that 18 CFR part 141.500 B, C and D applies only to public utilities and licensees that are subject to the

[23] *E.g.,* INGAA, Duke Energy, and FirstEnergy.

[24] *E.g.,* EEI, PSEG Companies, and Edison.

[25] *E.g.,* Graham County Electric Cooperative and PSEG Companies.

[26] *E.g.,* Duke Energy, Exelon, AOPL.

[27] *E.g.,* Alliance, Duke Energy, EEI, Gulf South, WPC.

Commission's Uniform System of Accounts.

52. NRECA asserts that the local and continuous control and oversight of member-owners provides far more effective control over potential abuse of an electric cooperative's cash management programs and practices than the Commission could accomplish. It asks that the Commission give careful consideration to any request for waiver from the final rule.[28]

Commission Response:

53. Although a 30 percent proprietary capital threshold was not adopted as a prerequisite for participation in a cash management arrangement, the threshold remains a reasonable and important indicator of a company's financial health and the extent to which a FERC-regulated entity has taken on debt to finance its assets or operations. We considered the application of various proprietary capital percentages. Our analyses indicate that over 90 percent of FERC-regulated entities have at least 30 percent proprietary capital. In addition, the SEC utilizes a 30 percent proprietary capital percentage for its evaluations, albeit for broader purposes than monitoring a specific company's financial health.

54. The Commission agrees that a quarterly reporting requirement of proprietary capital ratios, rather than a monthly one as proposed in the Interim Rule, would be more appropriate since many companies do not currently prepare monthly financial analyses. Adopting a quarterly requirement would also ease the administrative burden of complying with the reporting requirement. Additionally, this will make the reporting requirement more consistent with the quarterly financial reports required by the SEC.

55. The Commission also agrees that it would be more consistent to require notification within 45 days after the end of each calendar quarter that a company's proprietary capital ratio has dropped below or subsequently exceeded 30 percent, rather than allowing only 15 days to make the computation and 5 days to make the filing as proposed in the Interim Rule. Changing the notification requirement to 45 days is more consistent with the SEC's requirement that financial information be disclosed 45 days after the end of each fiscal quarter, as well as with the change in the Final Rule from a monthly to a quarterly monitoring requirement. Lengthening the notification period will also ease the administrative burden on affected companies.

56. Additionally, the Commission will continue to require transition bonds and other non-recourse debt to be included in the proprietary capital ratio computation. If the proprietary capital ratio drops below 30 percent because of this inclusion, the documentation notifying the Commission may include a description of this fact.

57. The Commission is also revising parts 141.500 B, C and D, 260.400 B, C and D, and 357.5(b), (c) and (d) to apply only to public utilities and licensees, natural gas or oil pipeline companies that are subject to the Commission's Uniform Systems of Accounts. The language is revised to read, ''Public utilities and licensees or natural gas or oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts in part 101 and § 141.1 or § 141.2 or part 201 and § 260.1 or § 260.2, or part 352 and § 357.2 of this title that participate in cash management programs and are not electric cooperatives must determine, on a quarterly basis, the percentage of their capital structures that constitute proprietary capital.''

58. Parts 141.500 C, 260.400 C and 357.5(c) are revised to read, ''In the event that the proprietary capital ratio is less than 30 percent, public utilities and licensees, natural gas or oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts in part 101 and § 141.1 or § 141.2, or part 201 and § 260.1 or § 260.2 or part 352 and § 357.2 of this title that participate in cash management programs and are not electric cooperatives must notify the Commission within 45 days after the end of each calendar quarter.''

59. Parts 141.500 D, 260.400 D and 357.5(d) are revised to read, ''In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, public utilities and licensees, natural gas or oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts in part 101 and § 141.1 or § 141.2 or part 201 and § 260.1 or § 260.2 or part 352 and § 357.2 of this title that participate in cash management programs and are not electric cooperatives must notify the Commission within 45 days after the end of each calendar quarter.''

60. The Commission recognizes that electric cooperatives operate as not-for-profit organizations collecting only enough revenues in excess of operating expenses to meet mortgage requirements and would, therefore, not be able to meet the 30 percent proprietary capital requirement. It also recognizes that electric cooperatives generally do not accumulate profits for shareholders as in the case of investor owned utilities. After careful consideration of the comments and the structure of electric cooperatives, the Final Rule is revised to exempt electric cooperatives from the requirement to notify the Commission when their proprietary capital ratios drop below 30 percent and when their proprietary capital ratios subsequently return to or exceed 30 percent. However, the Commission is aware that electric cooperatives have themselves established subsidiaries that are engaged in diversified non-electric business activities. Placing cash management agreements in writing contributes to a stable environment in which rates are just and reasonable, and filing those agreements provides needed transparency for the Commission to understand the financial arrangements of the cooperatives it regulates.

61. The final rule applies to all FERC-regulated entities that have not been granted waivers of the Commission's accounting regulations and the FERC Annual Report Forms 1, 1–F, 2, 2–A or 6 filing requirements. Electric cooperatives must comply with the Final Rule except for the notification requirements related to the 30 percent proprietary capital ratio.

F. Public Disclosure of Information

62. The interim rule explained that all of the information contained in the required filings will be made public to provide for greater transparency of the cash management program activities of FERC-regulated entities.

Comments Received:

63. Several commenters[29] object to public disclosure of their cash management agreements. They claim that such agreements may contain competitively sensitive or proprietary information and urge the Commission to protect from disclosure agreements or supporting documents that contain competitively sensitive information. Gulf South argues that making cash management agreements public is anticompetitive because pipelines would be required to disclose their internal costs of capital, and that disclosure of sensitive proprietary information would create an uneven competitive playing field among regulated and unregulated market participants. AOPL, Duke Energy, and Edison suggest that the Commission should grant the agreements confidential treatment under the

[28] Graham County Electric Cooperative requested a waiver from the rule on August 7, 2003. Its request will be addressed in a separate order.

[29] *E.g.,* INGAA, AOPL, Edison, Gulfterra and Duke Energy.

Freedom of Information Act's confidential business information exemption.

64. The commenters also object to public notification when their proprietary capital ratios fall below 30 percent. Gulfterra and INGAA argue that such notifications should also be kept confidential to avoid stock volatility.

Commission Response:

65. As noted in the Interim Rule, the Commission considers the information to be collected to be non-confidential in nature and therefore it will be made available to the public. The Commission has determined that release of the information is ''necessary to carry out its jurisdictional responsibilities.'' *See* 18 CFR 388.112(c)(2003). The information will provide the Commission with relevant and accurate information on which to make decisions.

66. Allowing only the Commission and not the public to review the cash management agreements would not meet the goal of providing greater transparency for the protection of ratepaying customers. This transparency, in turn, will lessen the chance of an acute financial reversal that would harm utility ratepaying customers and energy markets. Entities that believe the information they submit should be withheld from public view on account of unique circumstances may still request confidential treatment pursuant to § 388.112 of our regulations, stating the rationale for their requests. However, general, unsubstantiated assertions that future harm will occur if information contained in cash management agreements is released will be insufficient for a specific company to acquire confidential status.

G. Clarification of Documentation Requirements

67. In the interim rule, the Commission implemented documentation requirements for cash management programs that became effective August 7, 2003. The regulations require that cash management agreements be in writing, that the agreements specify the duties and responsibilities of cash management program participants and administrators, specify the methods for calculating interest and for allocating interest income and expenses, and specify any restrictions on deposits or borrowings by participants. The regulations also require FERC-regulated entities to maintain documentation of all deposits into and borrowings from cash management programs, including the amount of the deposit or borrowing, the maturity date, if any, of the deposit or borrowing, and the interest earning rate on the deposit or borrowing, and the daily balance of the cash management program.

Comments Received:

68. Generally, commenters support the requirement to put all cash management agreements in writing. Exelon asserts that it continues to support the Commission's desires to protect customers of FERC-jurisdictional utilities from misuse of cash management accounts. INGAA agrees that cash management agreements should be documented and that FERC-regulated entities should maintain documentation as specified by the regulatory text of Account 146.

69. On the other hand, many commenters, including AOPL, EEI, INGAA and PacifiCorp seek clarification of the documentation requirements. Specifically, AOPL, INGAA, El Paso and PacifiCorp seek clarification of the requirements to document the duties and responsibilities of the administrator and the non-FERC-regulated participants in the program.

70. AOPL and El Paso argue that the regulated entity cannot be called upon to maintain documentation on third party participants. AOPL asserts that the terms of the cash management agreement between the administrator and individual participants can vary and are kept confidential. Cash management programs in which AOPL's member companies participate can have more than a thousand participants and that maintaining this information would prohibit some regulated entities from participating in a cash management program. INGAA also asserts that the regulated entity will not necessarily know the restrictions on deposits or borrowings by each of the other participants in the cash management agreement. PacifiCorp is unclear whether the Commission is also creating a requirement for regulated utilities to amend their existing cash management agreements.

71. Gulf South asks that the Commission clarify that the documentation requirement only applies to monies contributed into the cash management program by the pipeline and not by other participants. It argues that to require pipelines to maintain records on the activities of all cash management participants is not only burdensome, but requires pipelines to be more involved in its affiliates' daily businesses than traditionally has either been required or desired by the Commission.

72. AOPL and EEI urge the Commission to reconsider the requirement to document the interest rates on each deposit into or withdrawal from a cash management program. Both commenters assert that interest earnings on deposits or charges on borrowings typically cannot be determined for an individual deposit or borrowing; rather, interest rates fluctuate based on the average balance for the month or other relevant time period. AOPL also argues that the interest earned on a deposit or charged on a borrowing is both documented in the cash management agreement and reported on a monthly basis in the current statements.

73. Gulf South asks for clarification of what documentation would be required when a program is based solely upon bilateral loan agreements. It asserts that this arrangement is not a traditional money pooling or cash management arrangement and does not have an administrator, but appears to be subject to the requirements of the Final Rule.

Commission Response:

74. The Commission agrees that documentation related to the other participants might be unduly burdensome for FERC-regulated entities to maintain. Therefore, the Commission is requiring that FERC-regulated entities only maintain documentation related to the administrator and the FERC-regulated entity. To reflect this change, the Commission is revising the language in 18 CFR parts 101 and 201, Account 146 C and part 352, Account 13(c) to read, ''the public utilities or licensee, natural gas or oil pipeline company must maintain documents authorizing the establishment of cash management programs including the duties and responsibilities of the administrator and the public utility or licensee, natural gas or oil pipeline company in the cash management program.''

75. The Commission agrees that it may be difficult for some FERC-regulated entities to maintain documentation that includes the interest rate on each deposit, withdrawal and borrowing from the cash management program and to maintain records showing the daily balance of the cash management program. Therefore, the Commission is requiring that the documentation authorizing the cash management program include the interest rate but that the documentation supporting deposits, withdrawals and borrowings from the cash management program need not show the interest rate for each transaction. The Commission is modifying the daily balance documentation requirement of the Interim Rule. Rather than require daily balance documentation, the Final Rule is requiring FERC-regulated entities subject to the rule to maintain monthly

balances of their cash management program.

76. To reflect these changes, parts 101 and 201, Account 146 B(1), (2) and (4), and part 352, Account 13(b)(1), (2) and (4) are revised to read, ''the written documentation must include (1) For deposits with and withdrawals from the cash management program: the date of the deposit or withdrawal, the amount of the deposit or withdrawal, and the maturity date, if any, of the deposit; (2) For borrowings from a cash management program: the date of the borrowing, the amount of the borrowing, and the maturity date, if any, of the borrowing; * * * and (4) The monthly balance of the cash management program.''

77. Parts 101 and 201, Account 146 C(3), and part 352, Account 13(c)(3) are also revised to read, ''The interest rate, including the method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program.''

78. For cash management programs that are based upon bilateral loan agreements, documentation supporting the programs should include the documentation requirements adopted here. To the extent that certain information is not applicable to the arrangement, the FERC-regulated entity should so state in the information maintained by the entity and filed with the Commission.

IV. Regulatory Flexibility Act Statement

79. The Regulatory Flexibility Act (RFA) [30] requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.

80. The Commission concludes that this Final Rule would not have such an impact on small entities. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity, and the data required by this rule are already being captured by their accounting systems. However, if the recordkeeping requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the requirements from the Commission.

V. Environmental Analysis

81. 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.[31] The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental impact statement.[32] No environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect of legislation or regulations being amended.[33] This Final Rule updates parts 101, 141, 201, 260, 352 and 357 of the Commission's regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

VI. Information Collection Statement

82. The Office of Management and Budget's (OMB) regulations at 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the information collection requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

83. In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995,[34] the information collection requirements in the subject rulemaking were submitted to OMB for review.

84. *Public Reporting Burden:* FERC-regulated entities must file their cash management agreements and notify the Commission when their proprietary capital ratios fall below 30 percent and when their proprietary capital ratios subsequently return to or exceed 30 percent. In the Interim Rule the Commission estimated that 602 FERC-regulated entities will be submitting documents describing their cash management agreements and 34 will be submitting notifications. For each entity, the Interim Rule estimated it would require an average of 1.5 hours to file its cash management agreement and .75 hours to submit the notification for a total of burden estimate of 903 hours and 51 hours, respectively. The burden estimates below reflect the reporting requirements.

85. The Commission received over twenty-five comments on the Interim Rule. Several commenters [35] have indicated that the Interim Rule's proposed requirements would place a significant burden upon them. In particular, Edison asserts that the implementation of any rule takes much longer than the time it takes to file the document and/or notify FERC of any changes under the rule.

86. Companies were already familiar with the documentation and reporting requirements proposed by the Commission in the Interim Rule. The Commission is responding to comments and modifying what the Interim Rule proposed to ameliorate any additional burden. Sound business practices already require companies to keep adequate internal controls over cash management practices. Such internal controls include documenting and maintaining information to support cash management programs.

87. To reduce the burden on companies, the Commission has changed the reporting requirement in the Final Rule to quarterly and has extended the notification period. The Commission finds the burden associated with complying with this Final Rule is minimal and that its previous estimate was a reasonable one.

88. *Reporting Requirements:*

[30] 5 U.S.C. 601–612 (2000).

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

[32] 18 CFR 380.4 (2003).

[33] 18 CFR 380.4(a)(2)(ii) (2003).

[34] 44 U.S.C. 3507(d) (2000).

[35] Alliance Pipeline, Gulf South, NRECA, Gulfterra, First Energy, Graham County, NRECA, Chevron, Williams, Exelon, PSEG, EEI, AOPL, INGAA, Southern California Edison (Edison) and Duke.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total annual hours
FERC–555:				
(cash management agreement)	*602	1	1.5	903
(Notification)	34	2	.75	51
Totals				954

*(The number of respondents as identified in the Interim Rule that will be subject to submitting documents describing their cash management agreements.)

The total annual hours for reporting requirements for this rule are 954.

89. *Information Collection Costs:* The Commission estimates the costs associated with submitting cash management program documents and notifying the Commission when the proprietary capital ratio of a FERC-regulated entity subject to the rule falls below 30 percent and when its proprietary capital ratio subsequently returns to or exceeds 30 percent to be $53,681.[36]

90. The Commission has assured itself by means of its internal review that there is specific, objective support for the burden estimates associated with the information requirements.

Title: FERC–555 ''Records Retention Requirements'';

Action: Proposed information collection requirements.

OMB Control No.: 1902–0098.

Respondents: Public utilities and licensees; natural gas companies; oil pipeline companies (Business or other for profit, including small businesses.)

Frequency of the information: On occasion.

Necessity of the information: The final rule amends the Commission's regulations to revise parts 101, 141, 201, 260, 352 and 357 to provide information collection requirements for cash management activities.

91. The implementation of these requirements will help the Commission carry out its responsibilities under the FPA, the NGA and the ICA to protect ratepaying customers of FERC-regulated entities by providing greater transparency of cash management activities.

92. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED–30, (202) 502–8415, or *michael.miller@ferc.gov*] or by sending comments on the collections of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW, Washington, DC 20503. The Desk Officer can also be reached by phone at (202) 395–7856, or fax: (202) 395–7285.

VII. Document Availability

93. 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.

94. From FERC's Home Page on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and MSWord 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.

95. User assistance is available for eLibrary and the FERC's web site during normal business hours by contacting FERC Online Support by telephone at (866) 208–3676 (toll free) or for TTY, (202) 502–8659, or by e-mail at *FERCOnlineSupport@ferc.gov.*

VIII. Effective Date and Congressional Notification

96. These regulations are effective December 1, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this final rule is not a ''major rule'' as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[37] The Commission will submit the final rule to both houses of Congress and the General Accounting Office.[38]

[36] (954 hours for collection ÷ 2,080 hours) × $117,041 = $53,681.

[37] 5 U.S.C. 804(2) (2002).

[38] 5 U.S.C. 801(a)(1)(A) (2002).

List of Subjects

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ Accordingly, the Interim Rule amending parts 101, 141, 201, 260, 352, and 357 in Title 18 of the *Code of Federal Regulations*, which was published at 68 FR 40500 on July 8, 2003 is adopted as a final rule with the following changes:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

■ 2. In part 101, Balance Sheet Accounts, account 146, paragraphs B(1), B(2) and B(4) and C(1) through C(4) are revised to read as follows:

Balance Sheet Accounts

* * * * *

146 *Accounts receivable from associated companies.*

* * * * *

B. * * *

(1) For deposits with and withdrawals from the cash management program: the date of the deposit or withdrawal, the amount of the deposit or withdrawal, and the maturity date, if any, of the deposit;

(2) For borrowings from a cash management program: the date of the borrowing, the amount of the borrowing, and the maturity date, if any, of the borrowing;

* * * * *

(4) The monthly balance of the cash management program.

C. * * *

(1) The duties and responsibilities of the administrator and the public utilities or licensees in the cash management program;

(2) The restrictions on deposits or borrowings by public utilities or licensees in the cash management program;

(3) The interest rate, including the method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among public utilities or licensees in the program.

* * * * *

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

■ 3. The authority citation for part 141 continues to read:

Authority: 15 U.S.C. 79, 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 4. Section 141.500 is revised to read as follows:

§ 141.500 Cash management programs and financial condition reports.

(a) Public utilities and licensees subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 101 and § 141.1 or § 141.2 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of the effective date of the rule or entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Public utilities and licensees subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 101 and § 141.1 or § 141.2 of this title that participate in cash management programs and are not electric cooperatives must determine, on a quarterly basis, the percentage of their capital structure that constitutes proprietary capital. The proprietary capital ratio must be computed using a formula in which the total of the balances in the Proprietary Capital Accounts; Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, in part 101 of this title is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 221, Bonds, through Account 226, Unamortized discount on long-term debt—Debit, in part 101 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, the public utilities or licensees subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 101 and § 141.1 or § 141.2 of this title that participate in cash management programs and are not electric cooperatives must notify the Commission within 45 days after the end of each calendar quarter, and must describe the significant events or transactions causing their proprietary capital ratios to be less than 30 percent. The extent to which the public utilities or licensees have amounts loaned or money advanced to their parent, subsidiary, or affiliated companies through their cash management program(s) should also be reported, along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, public utilities or licensees subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 101 and § 141.1 or § 141.2 of this title that participate in cash management programs and are not electric cooperatives must notify the Commission within 45 days after the end of each calendar quarter.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

■ 5. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C.717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

■ 6. In part 201, Balance Sheet Accounts, account 146, paragraphs B(1), B(2) and B(4) and C(1) through C(4) are revised to read as follows:

Balance Sheet Accounts

* * * * *

146 *Accounts receivable from associated companies.*

* * * * *

B. * * *

(1) For deposits with and withdrawals from the cash management program: the date of the deposit or withdrawal, the amount of the deposit or withdrawal, and the maturity date, if any, of the deposit;

(2) For borrowings from a cash management program: the date of the borrowing, the amount of the borrowing, and the maturity date, if any, of the borrowing;

* * * * *

(4) The monthly balance of the cash management program.

C. * * *

(1) The duties and responsibilities of the administrator and the natural gas companies in the cash management program;

(2) The restrictions on deposits or borrowings by natural gas companies in the cash management program;

(3) The interest rate, including the method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among natural gas companies in the program.

* * * * *

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 7. The authority citation for part 260 continues to read:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 8. Section 260.400 is revised to read as follows:

§ 260.400 Cash management programs and financial condition reports.

(a) Natural gas companies subject to the provisions of the Commission's

Uniform System of Accounts prescribed in part 201 and § 260.1 or § 260.2 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of the effective date of the rule or entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Natural gas companies subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 201 and § 260.1 or § 260.2 of this title that participate in cash management programs must determine, on a quarterly basis, the percentage of their capital structure that constitutes proprietary capital. The proprietary capital ratio must be computed using a formula in which the total of the balances in the Proprietary Capital Accounts; Account 201, Common stock issued, through Account 219, Accumulated other comprehensive income, in part 201 of this title is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 221, Bonds, through Account 226, Unamortized discount on long-term debt—Debit, in part 201 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, natural gas companies subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 201 and § 260.1 or § 260.2 of this title that participate in cash management programs must notify the Commission within 45 days after the end of each calendar quarter, and must describe the significant events or transactions causing their proprietary capital ratios to be less than 30 percent. The extent to which the natural gas companies have amounts loaned or money advanced to their parent, subsidiary, or affiliated companies through their cash management program(s) should also be reported, along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, natural gas companies subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 201 and § 260.1 or § 260.2 of this title that participate in cash management programs must notify the Commission within 45 days after the end of each calendar quarter.

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

■ 9. The authority citation for part 352 continues to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 10. In part 352, Balance Sheet Accounts, account 13, paragraphs (b) introductory text, (b)(1), (b)(2) and (b)(4) and (c)(1) through (c)(4) are revised to read as follows:

Balance Sheet Accounts

* * * * *

13 *Receivables from affiliated companies.*

* * * * *

(b) An oil pipeline company participating in a cash management program must maintain supporting documentation for all deposits into, borrowings from, interest income from, and interest expense to such program. Cash management programs include all agreements in which funds in excess of the daily needs of the oil pipeline company along with the excess funds of the oil pipeline company's parent, affiliated and subsidiary companies are concentrated, consolidated, or otherwise made available for use by other entities within the corporate group. The written documentation must include the following information:

(1) For deposits with and withdrawals from the cash management program: The date of the deposit or withdrawal, the amount of the deposit or withdrawal, and the maturity date, if any, of the deposit;

(2) For borrowings from a cash management program: The date of the borrowing, the amount of the borrowing, and the maturity date, if any, of the borrowing;

* * * * *

(4) The monthly balance of the cash management program.

(c) * * *

(1) The duties and responsibilities of the administrator and the oil pipeline company in the cash management program;

(2) The restrictions on deposits or borrowings by oil pipeline companies in the cash management program;

(3) The interest rate, including the method used to determine the interest earning rates and interest borrowing rates for deposits into and borrowings from the program; and

(4) The method used to allocate interest income and expenses among oil pipeline companies in the program.

* * * * *

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

■ 11. The authority citation for part 357 continues to read:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1998).

■ 12. Section 357.5 is revised to read as follows:

§ 357.5 Cash management programs and financial condition reports.

(a) Oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 352 and § 357.2 of this title that participate in cash management programs must file these agreements with the Commission. The documentation establishing the cash management program and entry into the program must be filed within 10 days of the effective date of the rule or entry into the program. Subsequent changes to the cash management agreement must be filed with the Commission within 10 days of the change.

(b) Oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 352 and § 357.2 of this title that participate in cash management programs must determine, on a quarterly basis, the percentage of their capital structure that constitutes proprietary capital. The proprietary capital ratio must be computed using a formula in which the total of the balances in the Proprietary Capital Accounts; Account 70, Capital stock, through Account 77, Accumulated other comprehensive income, in part 352 of this title, is the numerator and the total proprietary capital plus the total of the Long-Term Debt Accounts; Account 60, Long-term debt payable after one year, through Account 62, Unamortized discount and interest on long-term debt, in part 352 of this title, is the denominator.

(c) In the event that the proprietary capital ratio is less than 30 percent, oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 352 and § 357.2 of this title that participate in cash management programs must notify the Commission within 45 days after the end of each calendar quarter and must describe the significant events or transactions

causing their proprietary capital ratios to be less than 30 percent. The extent to which the oil pipeline company has amounts loaned or money advanced to its parent, subsidiary, or affiliated companies through its cash management program(s) should also be reported, along with plans, if any, to regain at least a 30 percent proprietary capital ratio.

(d) In the event that the proprietary capital ratio subsequently meets or exceeds 30 percent, oil pipeline companies subject to the provisions of the Commission's Uniform System of Accounts prescribed in part 352 and § 357.2 of this title that participate in cash management programs must notify the Commission within 45 days after the end of each calendar quarter.

Note: This appendix will not be published in the *Code of Federal Regulations.*

Appendix

LIST OF COMMENTERS ON THE INTERIM RULE

Respondent	Abbreviation
Alliance Pipeline, LP	Alliance.
American Public Gas Association	APGA.
Association of Oil Pipe Lines	AOPL.
Chevron Pipe Line Company	CPL.
Cinergy Corporation	Cinergy.
Duke Energy Corporation	Duke Energy.
Edison Electric Institute	EEI.
El Paso Corporation's Pipeline Group	El Paso.
Exelon Corporation	Exelon.
First Energy Corporation	FirstEnergy.
Graham County Electric Cooperative, Inc	GCEC.
Gulf South Pipeline Company, LP	Gulf South.
Gulfterra Energy Partners, LP	Gulfterra.
Interstate Natural Gas Association of America	INGAA.
National Rural Electric Cooperative Association	NRECA.
National Grid USA	National Grid.
National Association of Regulatory Utility Commissioners	NARUC (late comment).
NiSource Inc	NiSource.
OKTex Pipe Line Co	OKTex.
PacifiCorp	PacifiCorp.
The PSEG Companies.	
Shell Pipeline Company LP	Shell.
Sierra Southwest Cooperative Services, Inc	SSW.
Southern California Edison Company	Edison.
Tucson Electric Power Company	Tucson.
Williams Pipe Line Company, LLP	WPL.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Implantation or Injectable Dosage Form New Animal Drugs; Sometribove Zinc Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Monsanto Co. The supplemental NADA provides for revised wording of the indication and precautionary labeling for sometribove zinc suspension used to increase the production of marketable milk in healthy lactating dairy cows. The regulations are also being amended to reflect a different drug labeler code (DLC) for Monsanto Co.

DATES: This rule is effective October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Suzanne J. Sechen, Center for Veterinary Medicine (HFV 126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0221, e-mail: *ssechen@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63167, filed a supplement to NADA 140–872 that provides for the use of POSILAC (sometribove zinc suspension) to increase the production of marketable milk in healthy lactating dairy cows. The supplemental NADA provides for revised precautionary labeling. The application is approved as of September 11, 2003, and the regulations are amended in 21 CFR 522.2112 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Monsanto Co. has changed their DLC. At this time, 21 CFR 510.600(c) is being amended to reflect this DLC change.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the