

148 FERC ¶ 61,197
DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

18 CFR Part 4, Part 380

[Docket No. RM14-22-000; Order No. 800]

Revisions and Technical Corrections to Conform the Commission's Regulations to the
Hydropower Regulatory Efficiency Act of 2013

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this Final Rule to amend its regulations to conform to the enacted Hydropower Regulatory Efficiency Act of 2013 (Hydropower Efficiency Act). Although the Commission has been complying with the Hydropower Efficiency Act, and made its compliance procedures available on its website, this Final Rule now formalizes the Commission's compliance procedures in its revised regulations on preliminary permits, small conduit hydroelectric facilities, and small hydroelectric power projects, and in a new subpart on qualifying conduit hydropower facilities. In addition, this Final Rule corrects grammatical and typographical errors. All revisions in this Final Rule are intended to be ministerial in nature.

EFFECTIVE DATE: This rule will become effective February 23, 2015.

FOR FURTHER INFORMATION CONTACT:

Carolyn Clarkin (Legal Information)
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426
(202) 502-8563
Carolyn.Clarkin@ferc.gov

Christopher Chaney (Technical Information)
Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426
(202) 502-6778
Christopher.Chaney@ferc.gov

Shana Murray (Technical Information)
Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426
(202) 502-8333
Shana.Murray@ferc.gov

SUPPLEMENTARY INFORMATION:

148 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Revisions and Technical Corrections to Conform the
Commission's Regulations to the Hydropower
Regulatory Efficiency Act of 2013

Docket No. RM14-22-000

ORDER NO. 800

FINAL RULE

(Issued September 18, 2014)

I. Background and Discussion

1. By this Final Rule, the Commission is amending Parts 4 and 380 of its regulations to conform to the Hydropower Regulatory Efficiency Act of 2013 (Hydropower Efficiency Act or Act).¹ On August 9, 2013, Congress enacted the Hydropower Efficiency Act to encourage the hydropower industry to utilize non-power dams for electric generation, noting that roughly 97 percent of the 80,000 dams in the United States do not generate electricity. Congress recognized that it could encourage hydropower development by reducing costs and regulatory burden during the project

¹ Pub. L. 113-23 (2013).

study and licensing stages. To that end, the Hydropower Efficiency Act amends statutory provisions pertaining to preliminary permits and projects that are exempt from licensing.

A. Amendment Pertaining to Preliminary Permits

2. Under section 5 of the Federal Power Act (FPA),² the Commission can issue preliminary permits with maximum three-year terms. A preliminary permit preserves the right of the permit holder to have the first priority in applying for a license or exemption for the project site. During the preliminary permit term, permittees conduct investigations and secure necessary data to determine the feasibility of a proposed project and to prepare a development (i.e., license or exemption) application.

3. Before the new law, upon expiration of its permit, a permittee could apply for a successive preliminary permit to continue its feasibility studies. When such an application is filed, the Commission issues public notice and provides other entities an opportunity to file competing preliminary permit or development applications, of which the Commission would select the winning applicant using procedures outlined in its regulations.³

4. The Hydropower Efficiency Act amends section 5 of the FPA to give the Commission the authority to extend a preliminary permit once for not more than

² 16 U.S.C. 798 (2012), *amended by*, Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, 5, 127 Stat. 493 (2013).

³ *See* 18 CFR 4.36-4.37 (2014).

two additional years, allowing permittees more time to complete their feasibility studies without facing possible competition for the site from others.

B. Amendments Pertaining to Projects Exempt from Licensing

5. Certain projects may qualify for an exemption from the licensing requirements of Part I of the FPA: specifically, small conduit hydroelectric facilities or small hydroelectric power projects. A small conduit hydroelectric facility (small conduit), as defined in section 30 of the FPA,⁴ is an existing or proposed hydroelectric facility that utilizes for electric power generation the hydroelectric potential of a conduit, or any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. A small hydroelectric power project, as defined in the Public Utilities Regulatory Policies Act of 1978 (PURPA),⁵ is a project that utilizes for electric generation the water potential of either an existing non-federal dam or a natural water feature (e.g., natural lake, water fall, gradient of a stream, etc.) without the need for a dam or man-made impoundment.
6. Before the new law, small conduit exemptions could be located only on non-federal lands and only municipal small conduit exemptions could have an installed

⁴ 16 U.S.C. 823a (2012), *amended by*, Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, 4, 127 Stat. 493 (2013).

⁵ 16 U.S.C. 2708 (2012).

capacity of up to 40 megawatts (MW) (the maximum installed capacity of non-municipal projects was limited to 15 MW). To increase the number of projects eligible for small conduit exemptions, the Act amends section 30 of the FPA⁶ to allow small conduit exemptions to be located on federal lands, and to increase the maximum installed capacity for all small conduit exemptions to 40 MW. Similarly, the Hydropower Efficiency Act increases the number of projects eligible for small hydroelectric power project exemptions. Previously, small hydroelectric power projects could not have an installed capacity that exceeded 5 MW. Now, pursuant to the Act's amendment to section 405 of PURPA,⁷ small hydroelectric power projects may have a maximum installed capacity of up to 10 MW.

7. In addition to its amendments of existing exemptions, the Hydropower Efficiency Act creates a subset of small conduit exemptions, called "qualifying conduit hydropower facilities," which are not required to be licensed under Part I of the FPA. A qualifying conduit hydropower facility is a facility that meets the following qualifying criteria: (1) the facility would be constructed, operated, or maintained for the generation of electric power using only the hydroelectric potential of a non-federally owned conduit, without the need for a dam or impoundment; (2) the facility would have a total installed

⁶ 16 U.S.C. 823(a) (2012), *amended by*, Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, 4, 127 Stat. 493 (2013).

⁷ 16 U.S.C. 2705, *amended by*, Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, 3, 127 Stat. 493 (2013).

capacity that does not exceed 5 MW; and (3) the facility is not licensed under, or exempted from, the license requirements in Part I of the FPA on or before the date of enactment of the Hydropower Efficiency Act (i.e., August 9, 2013). To obtain a determination that a project is a qualifying conduit hydropower facility, an entity must file with the Commission a notice of its intent to construct the facility that demonstrates the facility meets the qualifying criteria discussed above.

C. Revised Regulations

8. By this Final Rule, the Commission is conforming its regulations to the Hydropower Efficiency Act. Nevertheless, the Commission has complied with the requirements of the Act since its enactment. The Commission has issued two-year extensions to preliminary permit holders, granted a small conduit exemption on federal lands, and issued conduit facility determinations on whether proposed projects are qualifying conduit hydropower facilities. The Commission's compliance procedures are available on its website at <http://www.ferc.gov/industries/hydropower.asp>.⁸

9. In this Final Rule, the Commission modifies and deletes language on preliminary permits and exemptions in Parts 4 and 380 of its regulations. Further, the Commission adds language to Part 4. For example, now that small conduit exemptions are permitted to be located on federal lands, the Commission adds a provision requiring an exemptee with a small conduit exemption on federal lands to notify the respective federal land

⁸ See Federal Energy Regulatory Commission, Hydropower Regulatory Efficiency Act of 2013, <http://www.ferc.gov/industries/hydropower/indus-act/efficiency-act.asp>.

agency when it requests to surrender its exemption. The Commission also adds a new subpart to Part 4 (i.e., Subpart N) on qualifying conduit hydropower facilities to set forth the required contents of a notice of intent to construct, which will provide the Commission with information necessary to determine whether the proposed facility meets the requirements of the Hydropower Efficiency Act.

10. Along with conforming the Commission's regulations, this Final Rule corrects miscellaneous grammatical and typographical mistakes to improve the clarity and accuracy of the regulations. All revisions provided in the Final Rule are intended to be ministerial.

II. Information Collection Statement

11. The Paperwork Reduction Act⁹ requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements imposed by agency rules.¹⁰ Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to the

⁹ 44 U.S.C. 3501-3520 (2012).

¹⁰ *See* 5 CFR 1320.10 (2014).

collection of information unless the collection of information displays a valid OMB control number.

12. The Commission will submit the revised information collection requirements to OMB for its review and approval. The entities affected by this rule would be those with: (1) preliminary permits who request extensions, (2) proposed non-municipal small conduit hydroelectric facilities (with a total installed capacity of greater than 15 MW and up to 40 MW) requesting exemptions, (3) proposed small conduit hydroelectric facilities (located on federal lands) requesting exemptions, (4) proposed small hydroelectric power projects (with total installed capacity of greater than 5 MW and up to 10 MW) requesting exemptions, and (5) proposals to construct projects eligible to be qualifying conduit hydropower facilities. The Commission will submit the information collection requirements in this Final Rule to OMB for its review. The information collection requirements are included in the following FERC collection numbers: (a) FERC-505, “Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination,”¹¹ and (b) FERC-512, “Preliminary Permit.”

13. **Information Collection Costs:** The Commission’s estimated average annual reporting burden and cost associated with implementation of this rule follows. Overall, the rule reduces the current burden for affected entities. As noted earlier, permittees may

¹¹ The former title of FERC collection number FERC-505 was “Application for License/Relicense for Hydropower Projects with 5 MW or Less Capacity.”

request a two-year extension of their preliminary permit term without preparing a successive preliminary permit application or competing with other entities for the site. Moreover, more entities may qualify for exemption from certain licensing requirements (i.e., small conduit hydroelectric facilities or small hydroelectric power projects), and others may qualify to operate their projects without Commission oversight (i.e., qualifying conduit hydropower facilities).

Annual Changes Implemented by the Final Rule in RM14-22¹²						
Type of Respondents	Number of Respondents (a)	Annual Number of Responses¹³ per Respondent (b)	Total Number of Responses (a)X(b)=(c)	Average Burden & Cost Per Response (d)	Total Annual Burden Hours & Total Annual Cost (c)X(d)=(e)	Cost per Respondent (e)/(a)
FERC-505, Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination						
Small conduit exemption applications (40 MW or less, which can now be on fed. lands) ¹⁴	5 ¹⁵	1	5	46 hrs. \$3,243	230 hrs. \$16,215	\$3,243

¹² The estimated average hourly cost (salary plus benefits) is \$70.50.

¹³ We consider the filing of an application to be a “response.”

¹⁴ The estimates provided for small conduit exemption applications are for all conduit exemption applications, including applications for non-municipal conduit

(continued ...)

Small conduit exemption holder—notice to fed. agencies of petition to surrender and steps to be taken to restore lands	1	0.1 ¹⁶	0.1	46 hrs.	4.6 hrs.	\$324
				\$3,243	\$324	
Small hydroelectric power project exemption applications (greater than 5 MW and up to 10 MW) ¹⁷	2	1	2	46 hrs.	92 hrs.	\$3,243
				\$3,243	\$6,486	

exemptions that have an installed capacity of greater than 15 MW and up to 40 MW, and for any conduit exemption located on federal land.

¹⁵ The Commission previously received roughly nine small conduit exemption applications annually, many of which are now likely to be eligible to be qualifying conduit hydropower facilities, and thus are not required to be licensed under Part I of the FPA. After implementation of this rule, we estimate five new small conduit exemption applications per year.

¹⁶ Since August 2013, the Commission has received three small conduit exemption applications, one of which proposes to locate the project on federal lands. We anticipate surrenders of conduit exemptions on federal lands to be rare, and therefore, we estimate one surrender of a conduit exemption on federal lands to be filed every ten years (equaling on average 0.1 applications per year). The one surrender would trigger agency notification, which is estimated to take 46 hours. The burden and cost are being averaged over that ten-year period (equaling on average 4.6 hours per year).

¹⁷ The Commission received six license applications between 2010 and 2013 that

(continued ...)

Qualifying conduit hydropower facility - notices of intent ¹⁸	8 ¹⁹	1	8	46 hrs.	368 hrs.	\$3,243
				\$3,243	\$25,944	
FERC-512, Application for Preliminary Permit						
Request for extension to 5 years	80 ²⁰	1	80	4 hrs.	320 hrs.	\$282
				\$282	\$22,560	

14. **Title:** FERC-505, “Small Hydropower Projects and Conduits including License/Relicense, Exemption, and Qualifying Conduit Facility Determination,” and FERC-512, “Preliminary Permit.”

15. **Action:** Revisions to FERC-505 and FERC-512.

16. **OMB Control Nos.:** 1902-0115 (FERC-505) and 1902-0073 (FERC-512).

proposed projects with installed capacity greater than 5 MW, which could now qualify for a small hydroelectric power project exemption. Therefore, Commission staff estimates that on average the Commission receives two applications per year.

¹⁸ A notice of intent is a request that the Commission determine a project is a qualifying conduit hydropower facility.

¹⁹ While the Commission initially received a rash of notices of intent to construct qualifying conduit hydropower facilities, we expect notices of intent to taper off. Nearly 75 percent of the 23 notices of intent we received in the past year were filed within the first 6 months of the program. In the last three months, we have received two notices of intent. Therefore, we estimate that we will receive eight notices of intent per year.

²⁰ Based on the number of preliminary permits issued in the past 3 years, Commission staff estimates that an annual average of 80 permits will be eligible to request an extension.

17. **Respondents:** Municipalities, businesses, private citizens, and for-profit and not-for-profit institutions.

18. **Necessity of Information:** The revised regulations implement the Hydropower Efficiency Act's amendments to preliminary permits, small conduit hydroelectric facilities, and small hydroelectric power projects, and the Act's addition of qualifying conduit hydropower facilities. The revised regulations for the most part affect only the number of entities that would file applications with the Commission in addition to imposing two new information collection requirements.

19. The new requirement for a respondent requesting to surrender a small conduit exemption on federal lands to notify the respective federal land agency is necessary for the Commission to carry out its responsibilities under the FPA, as amended by the Hydropower Efficiency Act. The information provided to the respective federal land agency will help inform the agency of activities occurring on federal lands or reservations under the agency's jurisdiction.

20. The new requirement to file a notice of intent to construct a qualifying conduit hydropower facility with the Commission is necessary to carry out the Commission's responsibilities under section 30(a) of the FPA, as amended by the Hydropower Efficiency Act. The information provided to the Commission enables the Commission to review the features of the proposed project and make a determination on whether a proposed project is a qualifying conduit hydropower facility. As noted earlier, the Commission already complies with the Hydropower Efficiency Act by requiring entities requesting qualifying conduit facility determinations to file with the Commission a notice

of intent to construct, which follows the procedural guidance provided on the Commission's website.

21. **Internal Review:** The Commission has reviewed the revisions and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

22. **Comments:** The revised information collection requirements will not be effective or enforceable until OMB approves the information collection changes described in this order. The Commission, however, will continue to use its existing regulations and procedures available on its website to accept requests for two-year extensions of preliminary permits, applications for non-municipal small conduit exemptions with installed capacity greater than 15 MW and up to 40 MW, applications for small conduit exemptions located on federal lands, applications for small hydroelectric power project exemptions greater than 5 MW and up to 10 MW, and notices of intent to construct qualifying conduit hydropower facilities.

23. The Commission solicits comments on the Commission's need for this information; whether the information will have practical utility; the accuracy of provided burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Comments are due within 60 days of the

date this order is published in the Federal Register. After receipt and analysis of public comments, the Commission will issue a second notice in this docket requesting public comment, and will submit the reporting requirements to OMB for approval.

24. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], by phone (202) 502-8663, or by email to DataClearance@ferc.gov.

25. Comments concerning the information collections in this Final Rule and the associated burden estimates should be sent to the Commission and reference Docket No. RM14-22-000. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. Commenters that are not able to file comments electronically should send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

III. Environmental Analysis

26. 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.²¹ Excluded from this requirement are rules that are

²¹ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.²² This Final Rule amends the Commission's regulations to conform to recent legislation and corrects grammatical and clerical errors; and does not substantially change the effect of the underlying legislation or regulations being revised.

IV. Regulatory Flexibility Act

27. The Regulatory Flexibility Act of 1980 (RFA)²³ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.

28. However, final rules promulgated without the publication of a general notice of proposed rulemaking under section 553 of the Administrative Procedure Act (APA)²⁴ are exempt from the RFA's requirements.²⁵ Section 553(b)(3)(A) of the APA states that final rules that are interpretive rules may be published without general notice of proposed rulemaking. Interpretive rules are defined as rules that "generally interpret the intent expressed by Congress" where an agency "does not insert its own judgments in

²² 18 CFR 380.4(a)(2)(ii) (2014).

²³ 5 U.S.C. 601-612 (2012).

²⁴ 5 U.S.C. 553 (2012).

²⁵ 5 U.S.C. 604(a) (2012).

implementing a rule, and simply regurgitates statutory language.”²⁶ They are an “agency’s reading of a statute” that do not “intend to create new rights or duties, but only remind[] affected parties of existing duties.”²⁷

29. This Final Rule is an interpretive rule because it modifies the Commission’s regulations to conform to the Hydropower Efficiency Act. It does not create new rights or duties. Rather, it reminds affected parties of existing duties required by the Hydropower Efficiency Act, with which the Commission and non-agency entities have complied since the Act’s enactment.

V. Document Availability

30. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission’s Home Page (<http://www.ferc.gov>) and in the Commission’s Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern Time) at 888 First Street, NE, Room 2A, Washington DC 20426.

31. From the Commission’s Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and

²⁶ Small Business Administration, Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* 9 (May 2012), available at http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf.

²⁷ *Orengo Caraballo v. Reich*, 11 F.3d 186, 195 (D.C. Cir. 1993).

Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

32. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or by email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

VI. Effective Date and Congressional Notification

33. These regulations are effective February 23, 2015. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.²⁸ This rule is being submitted to the Senate, House, and Government Accountability Office.

List of subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements

²⁸ 5 U.S.C. 804(2) (2012).

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission is amending Parts 4 and 380, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 continues to read as follows:

Authority: 16 U.S.C. 791a-825v, 2601-2645; 42 U.S.C. 7101-7352.

§ 4.30 [Amended]

2. Amend § 4.30 as follows:

- a. Revise paragraph (b)(4);
- b. Revise paragraph (b)(8);
- c. Revise paragraph (b)(20);
- d. Redesignate paragraphs (b)(25) through (b)(30) as (b)(27) through (b)(32);

and redesignate paragraphs (b)(21) through (b)(24) as (b)(22) and (b)(25);

- e. Add paragraph (b)(21);
- f. Revise redesignated paragraph (b)(24);
- g. Add paragraph (b)(26);
- h. Revise redesignated paragraph (b)(30);
- i. Revise redesignated paragraph (b)(31).

The revisions, redesignations, and additions are as follows:

§ 4.30 Applicability and definitions.

* * * * *

(b) * * *

(4) * * *

(ii) Dam, for the purposes of provisions governing an application for exemption of a small conduit hydroelectric facility or a notice of intent to construct a qualifying conduit hydropower facility, means any structure that impounds water.

(5) * * *

(8) Federal lands, for the purposes of provisions governing an application for exemption of a small conduit hydroelectric facility or a small hydroelectric power project, means any lands to which the United States holds fee title.

(9) * * *

(20) Non-Federal lands, for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility or a small hydroelectric power project, means any lands except lands to which the United States holds fee title.

(21) Non-federally owned conduit, for the purposes of provisions governing the notice of intent to construct qualifying conduit hydropower facilities, means any conduit except a conduit to which the United States holds fee title.

(22) Person * * *

(23) Project * * *

(24) Qualified exemption applicant, means any person who meets the requirements specified in § 4.31(c)(2) with respect to a small hydroelectric power project for which exemption from licensing is sought.

(25) Qualified license applicant * * *

(26) Qualifying conduit hydropower facility, means a facility, not including any dam or impoundment, that is not required to be licensed under Part I of the FPA because it is determined to meet the following criteria:

- (i) Generates electric power using only the hydroelectric potential of a non-federally owned conduit;
- (ii) Has an installed capacity that does not exceed 5 megawatts (MW); and,
- (iii) Was not licensed or exempted from the licensing requirements of Part I of the FPA on or before August 9, 2013.

(27) Ready for environmental analysis * * *

(28) Real property interests * * *

(29) Resource agency * * *

(30) Small conduit hydroelectric facility, means an existing or proposed hydroelectric facility that is constructed, operated, or maintained for the generation of electric power, and includes all structures, fixtures, equipment, and lands used and useful in the operation or maintenance of the hydroelectric facility, but excludes the conduit on which the hydroelectric facility is located and the transmission lines associated with the hydroelectric facility and which:

- (i) Utilizes for electric power generation the hydroelectric potential of a conduit;
- (ii) Has an installed generating capacity that does not exceed 40 MW;
- (iii) Is not an integral part of a dam;
- (iv) Discharges the water it uses for power generation either:
 - (A) Into a conduit;

(B) Directly to a point of agricultural, municipal, or industrial consumption; or

(C) Into a natural water body if a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located; and

(v) Does not rely upon construction of a dam, which construction will create any portion of the hydrostatic head that the facility uses for power generation unless that construction would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(31) Small hydroelectric power project, means any project in which capacity will be installed or increased after the date of application under subpart K of this chapter, which will have a total installed capacity of not more than 10 MW, and which:

(i) * * *

(32) PURPA * * *

§ 4.31 [Amended]

3. Revise paragraphs (b) and (c) of § 4.31 to read as follows:

§ 4.31 Initial or competing application: who may file.

* * * * *

(b) Application for exemption of a small conduit hydroelectric facility—

(1) Exemption from provisions other than licensing—

(i) Only federal lands involved. If only rights to use or occupy federal lands would be necessary to develop and operate the proposed small conduit hydroelectric

facility, any citizen, association of citizens, domestic corporation, municipality, or state may apply for exemption of a small conduit hydroelectric facility from provisions of Part I of the Federal Power Act, other than licensing provisions.

(ii) Some non-federal lands involved. If real property interests in any non-federal lands would be necessary to develop and operate the proposed small conduit hydroelectric facility, any citizen, association of citizens, domestic corporation, municipality, or state that has all of the real property interests in the lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of a small conduit hydroelectric facility from provisions of Part I of the Federal Power Act, other than licensing provisions.

(2) Exemption from licensing—

(i) Only federal lands involved. If only rights to use or occupy federal lands would be necessary to develop and operate the proposed small conduit hydroelectric facility, any citizen, association of citizens, domestic corporation, municipality, or state may apply for exemption of that facility from licensing under Part I of the Federal Power Act.

(ii) Some non-federal lands involved. If real property interests in any non-federal lands would be necessary to develop and operate the proposed small conduit hydroelectric facility, any citizen, association of citizens, domestic corporation, municipality, or state who has all the real property interests in the lands necessary to develop and operate the small conduit hydroelectric facility, or an option to obtain those interests, may apply for exemption of that facility from licensing under Part I of the Federal Power Act.

(c) Application for case-specific exemption of a small hydroelectric power project—

(1) * * *

(2) Exemption from licensing—

(i) Only Federal lands involved. If only rights to use or occupy Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any citizen, association of citizens, domestic corporation, municipality, or state may apply for exemption of that project from licensing.

(ii) Some non-Federal lands involved. If real property interests in any non-Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any citizen, association of citizens, domestic corporation, municipality, or state who has all of the real property interests in non-Federal lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of that project from licensing.

§ 4.34 [Amended]

4. Revise paragraph (f)(2) of § 4.34 to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(f) Licenses and exemption conditions and required findings—

(1) * * *

(2) Exemption conditions. Any exemption from licensing issued for conduit facilities, as provided in section 30(b) of the Federal Power Act, or for small hydroelectric power projects having a proposed installed capacity of 10,000 kilowatts or less, as provided in section 405(d) of the Public Utility Regulatory Policies Act of 1978, as amended, shall include such terms and conditions as the fish and wildlife agencies may timely determine are appropriate to carry out the responsibilities specified in section 30(c) of the Federal Power Act.

* * * * *

§ 4.38 [Amended]

5. In § 4.38(a)(1), remove the words “United States lands” and add, in their place, the words “federal lands.”

§ 4.39 [Amended]

6. In § 4.39(d), remove the reference “§ 4.31(c)” and add, in its place, the reference “§ 4.32(d).”

§ 4.82 [Amended]

7. In § 4.82(a):

a. Remove the word “three” and add, in its place, the word “five.”

b. Remove the reference “4.81(b), (c), (d), and (e)” and add, in its place, the reference “4.81(b), (c), and (d).”

8. In § 4.82(c), remove the word “three” and add, in its place, the word “five.”

§ 4.90 [Amended]

9. Revise § 4.90 to read as follows:

§ 4.90 Applicability and purpose.

This subpart implements section 30(b) of the Federal Power Act and provides procedures for obtaining an exemption for constructed or unconstructed small conduit hydroelectric facilities, as defined in § 4.30(b)(30), from all or part of the requirements of Part I of the Federal Power Act, including licensing, and the regulations issued under Part I.

§ 4.92 [Amended]

10. Revise paragraph (a) of § 4.92 to read as follows:

§ 4.92 Contents of exemption application.

(a) * * *

(1) An introductory statement, including a declaration that the facility for which application is made meets the requirements of § 4.30(b)(30), or if the facility qualifies but for the discharge requirement of § 4.30(b)(30)(iv), the introductory statement must identify that fact and state that the application is accompanied by a petition for waiver of § 4.30(b)(30)(iv) filed pursuant to § 385.207 of this chapter;

(2) * * *

(3) If the project structures would use or occupy any lands other than federal lands, an appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.31(b); and

* * * * *

11. In § 4.92(b):

a. Remove the two references to “§ 4.30(b)(28)” and add, in their place, the reference “§ 4.30(b)(30)”;

b. Remove the three references to “§ 4.30(b)(28)(v)” and add, in their place, the reference “§ 4.30(b)(30)(iv);”

c. In the sentence “[t]he exact name and business address of each applicant is,” correct the word “is” to read “are.”

d. In the sentence “[t]he exact name and business address of each person authorized to act as agent for the applicant in this application is,” correct the word “is” to read “are”; and,

e. Remove the duplicate clause “as appropriate.”

12. Revise paragraph (c) of § 4.92 to read as follows:

§ 4.92 Contents of exemption application.

* * * * *

(c) * * *

(9) If the hydroelectric facility discharges directly into a natural body of water and a petition for waiver of § 4.30(b)(30)(iv) has not been submitted, evidence that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located.

(10) * * *

(11) A description of the nature and extent of any construction of a dam that would occur in association with construction of the proposed small conduit hydroelectric

facility, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after that construction; and any evidence that the construction of the dam would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

* * * * *

§ 4.93 [Amended]

13. In § 4.93(a), remove the reference “§ 4.30(b)(28)(v)” and add, in its place, the reference “§ 4.30(b)(30)(iv).”

§ 4.94 [Amended]

14. Amend § 4.94 as follows:

a. Redesignate paragraphs (d) through (f) as (e) through (g);

b. In redesignated paragraphs (e) through (g), redesignate articles 4 through 6 as articles 5 through 7;

c. Add paragraph (d) to read as follows:

§ 4.94 Standard terms and conditions of exemption.

* * * * *

(d) Article 4. This exemption does not confer any right to use or occupy any federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any federal lands for those purposes must be obtained from the administering federal land agencies. The Commission may accept a license application submitted by any qualified license applicant and revoke this exemption, if any necessary

right to use or occupy federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

* * * * *

§ 4.95 [Amended]

15. In § 4.95, add paragraph (e) to read as follows:

§ 4.95 Surrender of exemption.

* * * * *

(e) Where occupancy of federal lands or reservations has been permitted by a federal agency having supervision over such lands, the exemption holder must concurrently notify that agency of the petition to surrender and of the steps that will be taken to restore the affected federal lands or reservations.

Subpart K [Amended]

16. In the title of Subpart K, remove the number “5” and add, in its place, the number “10.”

§ 4.101 [Amended]

17. In § 4.101, remove the reference “§ 4.30(b)(29)” and add, in its place, the reference “§ 4.30(b)(31).”

§ 4.102 [Amended]

18. In § 4.102(e), remove the words “United States lands” and add, in their place, the words, “federal lands.”

§ 4.106 [Amended]

19. In § 4.106(h), remove the end punctuation “:” and add, in its place, a period.

§ 4.107 [Amended]

20. In § 4.107(b)(1), remove the number “5” and add, in its place, the number “10.”

Subpart N [Added]

21. Add new Subpart N to read as follows:

Subpart N—Notice of Intent to Construct Qualifying Conduit Hydropower

Facilities

Sec.

§ 4.400 Applicability and purpose.

§ 4.401 Contents of notice of intent to construct a qualifying conduit hydropower facility.

§ 4.400 Applicability and purpose. This part implements section 30(a) of the Federal Power Act, as amended by the Hydropower Regulatory Efficiency Act of 2013, and provides procedures for obtaining a determination from the Commission that the facility to be constructed is a qualifying conduit hydropower facility, as defined in § 4.30(b)(26), and thus, is not required to be licensed under Part I of the FPA.

§ 4.401 Contents of notice of intent to construct a qualifying conduit hydropower facility.

(a) A notice of intent to construct a qualifying conduit hydropower facility submitted under this subpart must contain the following:

- (1) An introductory statement as described in paragraph (b) of this section;
- (2) A statement that the proposed project will use the hydroelectric potential of a non-federally owned conduit as set forth in paragraph (c) of this section;

(3) A statement that the proposed facility has not been licensed or exempted from the licensing requirements of Part I of the FPA, on or before August 9, 2013, the date of enactment of the Hydropower Regulatory Efficiency Act, as set forth in in paragraph (d) of this section;

(4) A description of the proposed facility as set forth in paragraph (e) of this section;

(5) Project drawings as set forth in paragraph (f) of this section;

(6) If applicable, the preliminary permit project number for the proposed facility;

and,

(7) Verification as set forth in paragraph (g) of this section.

(b) Introductory Statement. The introductory statement must be set forth in the following format:

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION
NOTICE OF INTENT TO CONSTRUCT QUALIFYING CONDUIT HYDROPOWER
FACILITY

[Name of applicant] applies to the Federal Energy Regulatory Commission for a determination that the [facility name] is a qualifying conduit hydropower facility, meeting the requirements of section 30(a) of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013.

The location of the facility is:

State or Territory: _____

County: _____

Township or nearby town: _____

Water source: _____

The exact name and business address of the applicant(s) are:

Applicant's Name: _____

Address: _____

Telephone Number: _____

Email Address: _____

The exact name and business address of each person authorized to act as an agent for the applicant(s) in this notice of intent are:

Name of Agent: _____

Address: _____

Telephone Number: _____

Email Address: _____

[Name of applicant] is [a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state of incorporation), as appropriate].

(c) Non-Federal Conduit Statement. The non-federal conduit statement must be set forth in the following format:

The [facility name] will use the hydroelectric potential of a non-federally owned conduit.

(d) Original Facility Statement. The original facility statement must be set forth in the following format:

The [facility name] has not been licensed or exempted from the licensing requirements of Part I of the FPA, on or before August 9, 2013, the date of enactment of the Hydropower Regulatory Efficiency Act.

(e) Description of Proposed Facility. Description of proposed facility must include:

(1) A detailed description of any conduits and associated consumptive water supply facilities, intake facilities, powerhouses, and any other structures associated with the facility;

(2) The purposes for which the conduit is used;

(3) The number, type, generating capacity (kW or MW), and estimated average annual generation (kWh or MWh) of the generating units and brief description of any plans for future units; and,

(4) A description of the nature and extent of the dam that would occur in association with construction of the proposed qualifying conduit hydroelectric facility, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after that construction; and any evidence that the construction of the dam would occur for agricultural, municipal, or industrial consumptive purposes even if the hydropower generating facilities were not installed.

(f) Drawings, Maps, Diagrams. Include a set of drawings/maps/diagrams showing the structures and equipment of the hydropower facility in relation to the existing conduit. Drawings of the facility must include:

(1) A Plan View (overhead view) drawing of the proposed hydropower facilities, which includes the following:

(i) The hydropower facilities, including all intake and discharge pipes, and how those pipes connect to the conduit;

(ii) The portion of the conduit in proximity to the facilities on which the hydropower facilities will be located;

(iii) The dimensions (e.g., length, width, diameter) of all facilities, intakes, discharges, and conduits;

(iv) Identification of facilities as either existing or proposed;

(v) The flow direction labelled on all intakes, discharges, and conduits; and,

(2) A Location Map showing the facilities and their relationship to the nearest town, which includes the following:

(i) The powerhouse location labeled, and its latitude and longitude identified; and,

(ii) The nearest town, if possible, or other permanent monuments or objects, such as roads or other structures that can be easily noted on the map and identified in the field.

(3) If a dam would be constructed in association with the facility, a profile drawing showing the conduit, and not the dam, creates the hydroelectric potential.

(g) Verification. Provide verification using either a sworn, notarized statement

set forth in paragraph (g)(1) of this section or an unsworn statement set forth in paragraph (g)(2) of this section.

(1) As to any facts alleged in the notice of intent to construct or other materials filed, be subscribed and verified under oath in the form set forth below by the person filing, an officer thereof, or other person having knowledge of the matters set forth. If the subscription and verification is by anyone other than the person filing or an officer thereof, it shall include a statement of the reasons therefor.

This (notice of intent to construct, etc.) is executed in the:

State of: _____

County of: _____

by: (Name) _____

(Address) _____

being duly sworn, depose(s) and say(s) that the contents of this (notice of intent to construct, etc.) are true to the best of (his or her) knowledge or belief. The undersigned applicant(s) has (have) signed the (notice of intent to construct, etc.) this _____ day of _____, 20____.

By: _____

Subscribed and sworn to before me, a _____ [Notary Public, or title of other official authorized by the state to notarize documents, as appropriate] of the State of _____ this day of _____, 20____.

/SEAL/ [if any]

(Notary Public, or other authorized official)

(2) I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____ [date].

(Signature)

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

22. The authority citation for Part 380 continues to read:

Authority: 42 U.S.C. 4321-4370h, 7101-7352; E.O. 12009, 3 CFR 1978

Comp., p. 142.

§ 380.4 [Amended]

23. In § 380.4(a)(14), remove the reference “§ 4.30(b)(26)” and add, in its place, the reference “§ 4.30(b)(30).”

§ 380.5 [Amended]

24. In § 380.5(b)(7):

a. Remove the reference “§ 4.30(b)(29)” and add, in its place, the reference “§ 4.30(b)(31).”

b. Remove the number “5” and add, in its place, the number “10.”