

(iii) The hydraulic capacity of the plant (flow through the plant) in cubic feet per second;

(iv) The average flow of the conduit at the plant or point of diversion (using best available data and explaining the sources of the data and the method of calculation); and

(v) The average amount of the flow described in paragraph (c)(7)(iv) of this section available for power generation.

(8) The planned date for beginning construction of the facility.

(9) If the hydroelectric facility discharges directly into a natural body of water and a petition for waiver of § 4.30(b)(28)(v) 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evidence that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located.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) If the hydroelectric facility discharges directly to a point of agricultural, municipal, or industrial consumption, a description of the nature and location of that point of consumption.

(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 would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(d) *Exhibit G*. Exhibit G is a map of the project and boundary and must conform to the specifications of § 4.41(h) of this chapter.

(e) *Exhibit E*. This exhibit is an Environmental Report. It must be prepared pursuant to § 4.38 and must include the following information, commensurate with the scope and environmental impact of the facility's construction and operation:

(1) A description of the environmental setting in the vicinity of the facility, including vegetative cover, fish

and wildlife resources, water quality and quantity, land and water uses, recreational use, socio-economic conditions, historical and archeological resources, and visual resources. The report must give special attention to endangered or threatened plant and animal species, critical habitats, and sites eligible for or included on the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from State natural resources agencies, the State historic preservation officer, and from local offices of Federal natural resources agencies.

(2) A description of the expected environmental impacts resulting from the continued operation of an existing small conduit hydroelectric facility, or from the construction and operation of a proposed small conduit hydroelectric facility, including a discussion of the specific measures proposed by the applicant and others to protect and enhance environmental resources and to mitigate adverse impacts of the facility on them.

(3) A description of alternative means of obtaining an amount of power equivalent to that provided by the proposed or existing facility.

(4) Any additional information the applicant considers important.

(f) *Exhibit F*. Exhibit F is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility and must conform to the specifications of § 4.41(g) of this chapter.

[Order 76, 45 FR 28090, Apr. 28, 1980, as amended by Order 413, 50 FR 11686, Mar. 25, 1985; Order 533, 56 FR 23153, May 20, 1991; Order 2002, 68 FR 51121, Aug. 25, 2003]

§ 4.93 Action on exemption applications.

(a) An application for exemption that does not meet the eligibility requirements of § 4.30(b)(28)(v) may be accepted, provided the application has been accompanied by a request for waiver under § 4.92(a)(1) and the waiver request has not been denied. Acceptance of an application that has been accompanied by a request for waiver under § 4.92(a)(1) does not constitute a ruling on the waiver request, unless expressly stated in the acceptance.

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(b) The Commission will circulate a notice of application for exemption to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

(c) In granting an exemption the Commission may prescribe terms or conditions in addition to those set forth in § 4.94, in order to:

(1) Protect the quality or quantity of the related water supply for agricultural, municipal, or industrial consumption;

(2) Otherwise protect life, health, or property;

(3) Avoid or mitigate adverse environmental impact; or

(4) Conserve, develop, or utilize in the public interest the water power resources of the region.

(d) *Conversion to license application.* (1) If an application for exemption under this subpart is denied by the Commission, the applicant may convert the exemption application into an application for license for the hydroelectric project.

(2) The applicant must provide the Commission with written notification, within 30 days after the date of issuance of the order denying exemption, that it intends to convert the exemption application into a license application. The applicant must submit to the Commission, no later than 90 days after the date of issuance of the order denying exemption, additional information that is necessary to conform the exemption application to the relevant regulations for a license application.

(3) If all the information timely submitted is found sufficient, together with the application for exemption, to conform to the relevant regulations for a license application, the converted application will be considered *accepted for filing* as of the date that the exemption application was accepted for filing.

[Order 76, 45 FR 28090, Apr. 28, 1980, as amended by Order 413, 50 FR 11687, Mar. 25, 1985; Order 533, 56 FR 23153, May 20, 1991; Order 2002, 68 FR 51121, Aug. 25, 2003]

§ 4.94 Standard terms and conditions of exemption.

Any exemption granted under § 4.93 for a small conduit hydroelectric facil-

ity is subject to the following standard terms and conditions:

(a) *Article 1.* The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt facility. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service, the National Marine Fisheries Service, and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of exemption application.

(c) *Article 3.* The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the effective date of this exemption. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

(d) *Article 4.* In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(e) *Article 5.* The Commission may revoke this exemption if, in the application process, material discrepancies,