

Elkin, NC, KZEF, NDB-A, Orig, CANCELLED  
Kindred, ND, K74, RNAV (GPS) RWY 11,  
Amdt 1E  
Kindred, ND, K74, RNAV (GPS) RWY 29,  
Amdt 1E  
Watford City, ND, Watford City Muni,  
Takeoff Minimums and Obstacle DP, Amdt  
2  
Burwell, NE, KBUB, RNAV (GPS) RWY 33,  
Orig-B  
Lincoln, NE, KLNK, ILS Y OR LOC Y RWY  
18, Amdt 7C  
Lincoln, NE, KLNK, ILS Y OR LOC Y RWY  
36, Amdt 11K  
Lincoln, NE, KLNK, VOR Y RWY 18, Amdt  
13B  
Dayton, OH, KDAY, ILS OR LOC RWY 24R,  
Amdt 10B  
Hamilton, OH, KHAO, ILS OR LOC RWY 29,  
Amdt 2A  
Waverly, OH, KEOP, RNAV (GPS) RWY 7,  
Amdt 1B  
Waverly, OH, KEOP, RNAV (GPS) RWY 25,  
Amdt 1B  
Corvallis, OR, KCVO, RNAV (GPS) RWY 17,  
Amdt 1B  
Corvallis, OR, KCVO, RNAV (GPS) RWY 35,  
Amdt 3A  
La Grande, OR, KLG, NDB-B, Amdt 2  
La Grande, OR, La Grande/Union County,  
Takeoff Minimums and Obstacle DP, Amdt  
4  
Conway, SC, KHYW, NDB RWY 4, Orig-D  
Huron, SD, Huron Rgnl, Takeoff Minimums  
and Obstacle DP, Amdt 5A  
Clarksville, TN, KCKV, RNAV (GPS) RWY  
17, Amdt 1B  
Dyersburg, TN, Dyersburg Rgnl, Takeoff  
Minimums and Obstacle DP, Amdt 1A  
Dyersburg, TN, KDYR, VOR-A, Amdt 18B,  
CANCELLED  
Memphis, TN, KMEM, RNAV (GPS) Z RWY  
18C, Amdt 2C  
Memphis, TN, KMEM, RNAV (GPS) Z RWY  
18L, Amdt 2E  
Memphis, TN, KMEM, RNAV (GPS) Z RWY  
18R, Amdt 2G  
Comanche, TX, KMKV, RNAV (GPS) RWY  
35, Orig-B  
Houston, TX, KHOU, RNAV (GPS) RWY 17,  
Amdt 1B, CANCELLED  
Houston, TX, KHOU, RNAV (GPS) RWY 35,  
Amdt 1C, CANCELLED  
Houston, TX, William P Hobby, Takeoff  
Minimums and Obstacle DP, Amdt 7A  
Midland, TX, KMAF, RADAR 1, Amdt 7A,  
CANCELLED  
Van Horn, TX, KVHN, RNAV (GPS) RWY 21,  
Orig-B  
Martinsville, VA, KMTV, RNAV (GPS) RWY  
13, Amdt 2A  
Highgate, VT, KFSO, RNAV (GPS) RWY 19,  
Amdt 2  
Land O' Lakes, WI, Kings Land O' Lakes,  
Takeoff Minimums and Obstacle DP, Amdt  
5  
Wheeling, WV, KHLG, ILS OR LOC RWY 3,  
Amdt 23A

[FR Doc. 2021-16584 Filed 8-4-21; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 4 and 5

[Docket No. RM20-21-000; Order No. 877]

#### Removing Profile Drawing Requirement for Qualifying Conduit Notices of Intent and Revising Filing Requirements for Major Hydroelectric Projects 10 MW or Less

**AGENCY:** Federal Energy Regulatory  
Commission, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations governing the filing requirements for qualifying conduits and certain major hydroelectric power projects. Specifically, the Commission is removing the requirement that a notice of intent to construct a qualifying conduit include a profile drawing showing the source of the hydroelectric potential in instances where a dam would be constructed in association with the facility and extending the licensing requirements that currently apply to major projects up to 5 megawatts (MW) to major projects 10 MW or less, consistent with the amended definition of a small hydroelectric power project in the Hydropower Regulatory Efficiency Act of 2013.

**DATES:** This rule is effective October 4, 2021.

**FOR FURTHER INFORMATION CONTACT:**  
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#### SUPPLEMENTARY INFORMATION:

## I. Background

1. By this final rule, the Federal Energy Regulatory Commission (Commission or FERC) is amending parts 4 and 5 of its regulations governing the filing requirements for qualifying conduits and certain major hydroelectric power projects. The Commission, under Part I of the Federal Power Act (FPA), licenses hydropower projects that are developed by non-Federal entities including individuals, private entities, states, municipalities, electric cooperatives, and others.

2. The Hydropower Regulatory Efficiency Act of 2013 (2013 HREA)<sup>1</sup> was signed into law on August 9, 2013. As explained below, changes implemented in response to the 2013 HREA form the basis for these revisions to the Commission's regulations.

## II. Notice of Proposed Rulemaking

3. On February 18, 2021, the Commission issued a notice of proposed rulemaking (NOPR) proposing to: (1) Remove the requirement that a notice of intent to construct a qualifying conduit include a profile drawing showing the source of the hydroelectric potential in instances where a dam would be constructed in association with the facility; and (2) extend the licensing requirements that currently apply to major projects up to 5 megawatts (MW) to major projects 10 MW or less, consistent with the amended definition of a small hydroelectric power project in the 2013 HREA.<sup>2</sup> The Commission did not receive any comments in response to the NOPR. The proposal set forth in the NOPR and the Commission's determination are discussed below.

## III. Discussion

### A. Qualifying Conduits

4. The NOPR explained that the 2013 HREA amended section 30 of the FPA to create a subset of small conduit facilities that are categorically excluded from the licensing and exemption requirements of the FPA. In 2014, the Commission issued Order No. 800, which became effective February 23, 2015, defining a "qualifying conduit hydropower facility" at § 4.30(b)(26) of its regulations.<sup>3</sup> Subsequently, section 30 of the FPA was amended by the

<sup>1</sup> Public Law 113-23, 127 Stat. 493 (2013).

<sup>2</sup> *Removing Profile Drawing Requirement for Qualifying Conduit Notices of Intent and Revising Filing Requirements for Major Hydroelectric Projects 10 MW or Less*, 86 FR 13506 (Mar. 9, 2021), 174 FERC ¶ 61,105 (2021).

<sup>3</sup> *See Revisions and Technical Corrections to Conform the Commission's Regulations to the Hydropower Regulatory Efficiency Act of 2013*, Order No. 800, 79 FR 59105 (Oct. 1, 2014), 148 FERC ¶ 61,197 (2014).

America's Water Infrastructure Act of 2018.<sup>4</sup>

5. In accordance with section 30(a)(2)(A),<sup>5</sup> any person, State, or municipality proposing to construct a "qualifying conduit hydropower facility" must file a notice of intent demonstrating the facility meets the following "qualifying criteria":<sup>6</sup>

- Be located on and use only the hydroelectric potential of a non-federally owned conduit;
- have a proposed installed capacity that does not exceed 40 MW;<sup>7</sup> and
- be proposed for construction and, as of the date of enactment of the 2013 HREA, not be licensed under, or exempted from, the licensing requirements of Part I of the FPA.

6. Under the 2013 HREA, as amended,<sup>8</sup> the Commission is required to determine whether proposed projects meet the criteria to be considered qualifying conduit hydropower facilities. Qualifying conduit hydropower facilities are not required to be licensed or exempted by the Commission; however, the entity proposing to construct a facility that meets the criteria must file a Notice of Intent to Construct a Qualifying Conduit Hydropower Facility (NOI) with the Commission that demonstrates the facility meets the qualifying criteria discussed above.

7. The NOI must contain: An introductory statement; a statement that the proposed project will use the hydroelectric potential of a non-federally owned conduit; a statement that the proposed facility has not been licensed or exempted on or before August 9, 2013; a description of the facility proposal; project drawings; the preliminary permit project number of the proposed facility, if applicable; and verification in a sworn notarized statement or an unsworn statement.<sup>9</sup> Specifically with respect to the project drawings, the NOI must include a plan (or overhead view); a location map showing the facilities and their relationship to the nearest town; and if a dam would be constructed in association with the facility, a profile drawing showing that the conduit, and

not the dam, creates the hydroelectric potential.<sup>10</sup>

8. On June 18, 2015, in *Soldier Canyon Filter Plant*,<sup>11</sup> the Commission stated:

In determining whether a proposed qualifying conduit hydropower facility meets the requirement of FPA section 30(a) that it use "only the hydroelectric potential of a non-federally owned conduit" and (if it meets the other section 30(a) requirements) is thus excluded from the licensing requirements of the FPA, we see no reason to apply a different, more stringent standard than was established in 1980 for small conduit facility exemptions. We view small conduit facilities and qualifying conduits as simply generating hydroelectricity by using the water within a conduit operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. Whether, or in what proportion, the conduit's ability to generate hydropower is due to the conduit's gradient or the head from an upstream dam is not relevant.<sup>12</sup> This holding indicates that the profile drawings are no longer relevant and should not be required as part of the NOI submittal. Consequently, the Commission proposed to amend its regulations to remove this requirement.

*B. Major Projects Greater Than 5 MW and up to and Including 10 MW*

9. Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>13</sup> provided that certain hydropower projects that produce 5,000 kilowatts, or 5 MW, or less of power were exempted from the licensing requirements of Part 1 of the FPA.

10. In 1981, the Commission adopted the 5-MW demarcation for certain major hydroelectric projects required to be licensed under Part 1 of the FPA to parallel PURPA's 5-MW demarcation regarding exemptions.<sup>14</sup> Part 4 of the Commission's regulations includes three relevant licensing subparts: (1) Subpart E—Application for License for Major

Unconstructed Project and Major Modified Project (see 18 CFR 4.40); (2) Subpart F—Application for License for Major Project—Existing Dam (see 18 CFR 4.50); and (3) Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 5 MW or Less (see 18 CFR 4.60; 4.61).<sup>15</sup> Subparts E and F apply to projects greater than 5 MW, and include additional filing requirements beyond subpart G, which applies to projects less than or equal to 5 MW.

11. Likewise, part 4 of Commission's regulations include two subparts that rely on the same 5-MW limit to determine minimum filing requirements for an application for license solely for transmission lines that transmit power from a licensed water power projects as well amendments to licensed water power projects: (1) Subpart H—Application for License for Transmission Line Only (see 18 CFR 4.71); and (2) Subpart L—Application for Amendment of License (see 18 CFR 4.201), respectively.

12. Part 5 of the Commission's regulations rely on the 5-MW limit to determine minimum filing requirements for applications for license for water power projects filed and processed using the integrated licensing process (see 18 CFR 5.18).

13. The 2013 HREA amended section 405 to increase the limit for exemptions to 10,000 kilowatts, or 10 MW, with the goal of facilitating the speed at which such hydropower projects could be built. Order 800 amended the Commission's regulations to reflect the 10-MW limit.<sup>16</sup>

14. As a result of these changes, the Commission's limit for license application provisions no longer parallels the limit for exemptions. We stated in the NOPR that we continue to believe that a parallel demarcation is appropriate to "expedite hydropower development by easing the burden of preparing an application for license and by assisting the Commission in more rapid processing of applications."<sup>17</sup>

<sup>15</sup> The Commission has maintained a distinction between major and minor projects based on section 10(i) of the FPA. However, the license application procedures set forth in § 4.61 of the Commission's regulations apply to both minor projects and major projects less than 5 MW (with the exception of Exhibit E for unconstructed projects). These revisions do not affect minor projects.

<sup>16</sup> See *Revisions and Technical Corrections to Conform the Commission's Regulations to the Hydropower Regulatory Efficiency Act of 2013*, Order No. 800, 148 FERC ¶ 61,197 (2014).

<sup>17</sup> *Applications for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less*, 46 FR 9637 (Jan. 29, 1981), FERC Stats. & Regs. ¶ 32,106 (1981) (cross-referenced at 14 FERC ¶ 61,042).

<sup>4</sup> Public Law 115–270, 132 Stat. 3765 (2018).

<sup>5</sup> 16 U.S.C. 823a(a)(2)(A).

<sup>6</sup> *Id.* 823a(a)(3)(C). The qualifying conduit hydropower facility must also meet the requirements for a small conduit facility as defined in section 30(a)(3)(A) of the FPA. *Id.* 823a(a)(3)(A).

<sup>7</sup> The 2013 HREA required that qualifying conduit hydropower facilities not exceed 5 MW. This limit was revised to 40 MW at section 3002(2) in the America's Water Infrastructure Act of 2018 (codified at 16 U.S.C. 823a(a)(3)(C)(ii)).

<sup>8</sup> Public Law 115–270, 132 Stat. 3765.

<sup>9</sup> 18 CFR 4.401.

<sup>10</sup> *Id.* § 4.401(f).

<sup>11</sup> 151 FERC ¶ 61,228 (2015).

<sup>12</sup> *Id.* P 13.

<sup>13</sup> 16 U.S.C. 2705.

<sup>14</sup> *Regulations Governing Applications for License for Major Unconstructed Projects and Major Modified Projects; Applications for License for Transmission Line Only and Applications for Amendment to License*, Order No. 184, 46 FR 55926 (Nov. 13, 1981), FERC Stats. & Regs. ¶ 30,308 (1981) (cross-referenced at 17 FERC ¶ 61,122); *Regulations Governing Applications for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less*, Order No. 185, 46 FR 55944 (Nov. 13, 1981), FERC Stats. & Regs. ¶ 30,309 (1981) (cross-referenced at 17 FERC ¶ 61,121).

Moreover, the 5-MW limit in the Commission’s regulations could be burdensome to projects greater than 5 MW and up to and including 10 MW, in terms of the cost and time associated with the additional filing requirements of subparts E and F.

15. Therefore, the Commission proposed to amend parts 4 and 5 of its regulations to extend the licensing and amendment filing requirements that currently apply to major projects up to 5 MW to major projects 10 MW or less, consistent with the amended definition of a small hydroelectric power project in the 2013 HREA.<sup>18</sup>

C. Commission Determination

16. For the reasons discussed above, the Commission adopts the NOPR’s proposal to: (1) Remove the requirement that an NOI include a profile drawing showing the source of the hydroelectric potential in instances where a dam would be constructed in association with the facility; and (2) extend the licensing requirements that currently

apply to major projects up to 5 MW to major projects 10 MW or less.

IV. Regulatory Requirements

A. Information Collection Statement

17. The Paperwork Reduction Act<sup>19</sup> requires each Federal agency to seek and obtain the Office of Management and Budget’s (OMB) approval before undertaking a collection of information directed to 10 or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in final rules published in the **Federal Register**.<sup>20</sup> 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 a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

18. *Public Reporting Burden:* By revising regulations governing the filing

requirements for qualifying conduits and for major hydroelectric power projects greater than 5 MW and up to and including 10 MW, this final rule will modify certain reporting and recordkeeping requirements included in FERC–500 (OMB Control No 1902–0058)<sup>21</sup> and FERC–505 (OMB Control No. 1902–0115).<sup>22</sup>

19. These revisions to the Commission’s regulations will align the filing requirements for qualifying conduits with Commission precedent and align the filing requirements for major projects greater than 5 MW and up to and including 10 MW to be consistent with the amended definition of a small hydroelectric power project in the 2013 HREA. Both revisions represent a slight decrease in the reporting requirements and burden information for FERC–500 and FERC–505.

20. The estimated burden and cost for the requirements affected by this final rule follow.

CHANGES DUE TO THE FINAL RULE IN DOCKET NO. RM20–21–000

	Numbers of respondents	Numbers of responses <sup>23</sup> per respondent	Total number of responses	Avg. burden hrs. & cost per response <sup>24</sup>	Total annual burden hours & total annual cost
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = 5
FERC–500 .....	3	1	3	320 hours/\$26,560 reduction.	960 hours/\$79,680 reduction.
FERC–505 .....	8	1	8	10 hours/\$830 reduction.	80 hours/\$6,640 reduction.
Total .....	.....	.....	11	.....	1,040 hours/\$86,320 reduction.

21. *Titles:* FERC–500 (Application for License/Relicense for Water Projects with More than 5 Megawatt (MW) Capacity) and FERC–505 (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination).

22. *Action:* Revisions to information collections FERC–500 and FERC–505.

23. *OMB Control Nos.:* 1902–0058 (FERC–500) and 1902–0115 (FERC–505).

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

25. *Frequency of Information:* Ongoing.

26. *Necessity of Information:* The revised regulations remove the Commission’s requirement for notices of intent to construct a qualifying conduit to include a profile drawing, consistent with Commission precedent, and align the Commission’s filing requirements for major projects greater than 5 MW and up to and including 10 MW to be consistent with the amended definition

of a small hydroelectric power project in the 2013 HREA. The revised regulations affect only the number of entities that would file applications with the Commission for these two project types and reduce information collection requirements.

27. *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

<sup>18</sup> Section 4.32(a)(5)(ii), which contains a cross-reference to § 4.61, will also be revised.

<sup>19</sup> 44 U.S.C. 3501–3521.

<sup>20</sup> See 5 CFR 1320.12.

<sup>21</sup> FERC–500 includes the reporting and recordkeeping requirements for “Application for

License/Relicense for Water Projects with More than 5 Megawatt (MW) Capacity.”

<sup>22</sup> FERC–505 includes the reporting and recordkeeping requirements for “Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination.”

<sup>23</sup> We consider the filing of an application or notice of intent to be a “response.”

<sup>24</sup> Commission staff estimates that the industry’s skill set and cost (for wages and benefits) for FERC–500 and FERC–505 are approximately the same as the Commission’s average cost. The FERC 2020 average salary plus benefits for one FERC full-time equivalent (FTE) is \$172,329/year (or \$83.00/hour).

itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

28. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission at one of the following methods:

- *USPS at:* Federal Energy Regulatory Commission, Ellen Brown, Office of the Executive Director, 888 First Street NE, Washington, DC 20426.
- *Hard copy communication other than USPS:* Federal Energy Regulatory Commission, Ellen Brown, Office of the Executive Director, 12225 Wilkins Avenue, Rockville, Maryland 20852.
- *email to:* [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov).
- *phone:* (202) 502-8663, or by fax: (202) 273-0873.

29. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Comments submitted to OMB should be sent within 30 days of publication of this notification in the **Federal Register** and should refer to FERC-500 (OMB Control No 1902-0058) and FERC-505 (OMB Control No. 1902-0115).

### B. Environmental Analysis

30. The Commission is required to prepare an Environmental Assessment or an Environmental Impact statement for any action that may have a significant effect on the human environment.<sup>25</sup> Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.<sup>26</sup> This final rule revises the filing requirements for qualifying conduit projects and the filing requirements for license applications for major hydroelectric projects with an installed capacity of 10 MW or less. Because this final rule is procedural and does not substantially change the effect of the regulations being amended, preparation of an Environmental Assessment or Environmental Impact Statement is not required.

<sup>25</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

<sup>26</sup> 18 CFR 380.4(a)(2)(ii).

### C. Regulatory Flexibility Act

31. The Regulatory Flexibility Act of 1980 (RFA)<sup>27</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rulemaking and minimize any significant economic impact on a substantial number of small entities.<sup>28</sup> In lieu of preparing a regulatory flexibility analysis, an agency may certify that a final rule will not have a significant economic impact on a substantial number of small entities.<sup>29</sup>

32. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>30</sup> The SBA size standard for electric utilities is based on the number of employees, including affiliates.<sup>31</sup> Under SBA's current size standards, a hydroelectric power generator (NAICS code 221111)<sup>32</sup> is small if, including its affiliates, it employs 500 or fewer people.<sup>33</sup> The Commission, however, currently does not require information regarding the number of individuals employed by hydroelectric generators to administer Part 1 of the Federal Power Act and therefore is unable to estimate the number of small entities under the SBA definition. Regardless, the Commission anticipates that this final rule will affect few entities.

33. As noted earlier, the final rule will only affect entities filing notices of intent to construct a qualifying conduit in instances where a dam would be constructed in association with the facility and entities filing licensing or amendment applications for major hydroelectric projects with an installed capacity of greater than 5 MW and up to and including 10 MW. From 2013 to 2020, the Commission received approximately 140 total notices to construct qualifying conduits and 18 applicable licensing applications. The revisions will eliminate the filing requirement for profile drawings and reduce the filing requirements for major

<sup>27</sup> 5 U.S.C. 601-612.

<sup>28</sup> *Id.* 603(c).

<sup>29</sup> *Id.* 605(b).

<sup>30</sup> 13 CFR 121.101.

<sup>31</sup> *Id.* § 121.201.

<sup>32</sup> The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, *North American Industry Classification System*, <https://www.census.gov/eos/www/naics/>.

<sup>33</sup> 13 CFR 121.201 (Sector 22—Utilities).

hydroelectric projects with an installed capacity greater than 5 MW and up to and including 10 MW, thus reducing the burden on small hydro developers going forward.

34. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

### D. Document Availability

35. 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>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

36. 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 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.

37. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto: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](mailto:public.referenceroom@ferc.gov).

### E. Effective Date and Congressional Notification

38. These regulations are effective October 4, 2021. 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. This rule is being submitted to the Senate, House, Government Accountability Office, and Small Business Administration.

### List of Subjects in 18 CFR Parts 4 and 5

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

By direction of the Commission.

Issued: July 15, 2021.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 4 and 5, 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–825r; 42 U.S.C. 7101–7352.

- 2. In § 4.32, revise paragraph (a)(5)(ii) to read as follows:

#### **§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.**

(a) \* \* \*

(5) \* \* \*

(ii) License for a minor water power project and a major water power project 10 MW or less: § 4.61;

\* \* \* \* \*

- 3. In § 4.40, revise paragraph (a) to read as follows:

#### **§ 4.40 Applicability.**

(a) *Applicability.* The provisions of this subpart apply to any application for an initial license for a major unconstructed project that would have a total installed capacity of more than 10 megawatts, and any application for an initial or new license for a major modified project with a total installed capacity more than 10 megawatts. An applicant for license for any major unconstructed or major modified water power project that would have a total installed generating capacity of 10 megawatts or less must submit application under subpart G of this part (§§ 4.60 and 4.61).

\* \* \* \* \*

- 4. In § 4.50, revise paragraphs (a)(1) and (3) to read as follows:

#### **§ 4.50 Applicability.**

(a) \* \* \*

(1) Except as provided in paragraph (a)(2) of this section, the provisions of this subpart apply to any application for either an initial license or new license for a major project—existing dam that is proposed to have a total installed capacity of more than 10 megawatts.

\* \* \* \* \*

(3) An applicant for license for any major project—existing dam that would have a total installed capacity of 10 megawatts or less must submit

application under subpart G of this part (§§ 4.60 and 4.61).

\* \* \* \* \*

- 5. Revise the heading to subpart G to read as follows:

#### **Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 10 Megawatts or Less**

- 6. In § 4.60, revise paragraphs (a)(2) and (3) and (b) to read as follows:

#### **§ 4.60 Applicability and notice to agencies.**

(a) \* \* \*

(2) Any major project—existing dam, as defined in § 4.30(b)(16), that has a total installed capacity of 10 MW or less; or

(3) Any major unconstructed project or major modified project, as defined in § 4.30(b)(15) and (14) respectively, that has a total installed capacity of 10 MW or less.

(b) *Notice to agencies.* The Commission will supply interested Federal, state, and local agencies with notice of any application for license for a water power project 10 MW or less and request comment on the application. Copies of the application will be available for inspection at the Commission's Public Reference Room. The applicant shall also furnish copies of the filed application to any Federal, state, or local agency that so requests.

\* \* \* \* \*

- 7. In § 4.61, revise paragraphs (a)(3), (b) introductory text, (d)(1) introductory text, and (d)(2) introductory text to read as follows:

#### **§ 4.61 Contents of application.**

(a) \* \* \*

(3) Each application for a license for a water power project 10 megawatts or less must include the information requested in the initial statement and lettered exhibits described by paragraphs (b) through (f) of this section, and must be provided in the form specified. The Commission reserves the right to require additional information, or another filing procedure, if data provided indicate such action to be appropriate.

(b) \* \* \*

#### **Before the Federal Energy Regulatory Commission**

*Application for License for a [Minor Water Power Project, or Major Water Power Project, 10 Megawatts or Less, as Appropriate]*

\* \* \* \* \*

(d) \* \* \*

(1) *For major unconstructed and major modified projects 10 MW or less.*

Any application must contain an Exhibit E conforming with the data and consultation requirements of § 4.41(f), if the application is for license for a water power project which has or is proposed to have a total installed generating capacity greater than 1.5 MW but not greater than 10 MW, and which:

\* \* \* \* \*

(2) *For minor projects and major projects at existing dams 10 MW or less.* An application for license for either a minor water power project with a total proposed installed generating capacity of 1.5 MW or less or a major project—existing dam with a proposed total installed capacity of 10 MW or less must contain an Exhibit E under this paragraph (d)(2). See § 4.38 for consultation requirements. The Environmental Report must contain the following information:

\* \* \* \* \*

- 8. In § 4.71, revise paragraphs (b)(1) and (2) to read as follows:

#### **§ 4.71 Contents of application.**

\* \* \* \* \*

(b) \* \* \*

(1) For any transmission line that, at the time the application is filed, is not constructed and is proposed to be connected to a licensed water power project with an installed generating capacity of more than 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.41;

(2) For any transmission line that, at the time the application is filed, is not constructed and is proposed to be connected to a licensed water power project with an installed generating capacity of 10 MW or less—Exhibits E, F, and G under § 4.61; and

\* \* \* \* \*

- 9. In § 4.201, revise paragraphs (b)(1) and (3) through (5) to read as follows:

#### **§ 4.201 Contents of application.**

\* \* \* \* \*

(b) \* \* \*

(1) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of more than 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.41;

\* \* \* \* \*

(3) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of 10 MW or less, but more than 1.5 MW—Exhibits F and G under § 4.61, and Exhibit E under § 4.41;

(4) For amendment of a license for a water power project that, at the time the

application for amendment is filed, has been constructed, and is proposed to have a total installed generating capacity of 10 MW or less—Exhibit E, F, and G under § 4.61; and

(5) For amendment of a license for a water power project that, at the time the application is filed, has been constructed and is proposed to have a total installed generating capacity of more than 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.51.

\* \* \* \* \*

#### § 4.401 [Amended]

■ 10. In § 4.401, remove paragraph (f)(3).

### PART 5—INTEGRATED LICENSE APPLICATION PROCESS

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

**Authority:** 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 7101–7352.

■ 12. In § 5.18, revise paragraph (a)(5)(i) to read as follows:

#### § 5.18 Application content.

(a) \* \* \*

(5) \* \* \*

(i) License for a minor water power project and a major water power project 10 MW or less: § 4.61 of this chapter (General instructions, initial statement, and Exhibits A, F, and G);

\* \* \* \* \*

[FR Doc. 2021–15511 Filed 8–4–21; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9889]

RIN 1545–BO4

### Investing in Qualified Opportunity Funds; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; correction.

**SUMMARY:** This document contains corrections to Treasury Decision 9889, which was published in the **Federal Register** on Monday, January 13, 2020. Treasury Decision 9889 contained final regulations under the Internal Revenue Code (Code) that govern the extent to which taxpayers may elect the Federal income tax benefits with respect to certain equity interests in a qualified opportunity fund (QOF).

**DATES:** These corrections are effective on August 5, 2021 and applicable on or after January 13, 2020.

**FOR FURTHER INFORMATION CONTACT:** Concerning section 1400Z–2 and these regulations generally, Harith J. Razaa, (202) 317–7006, or Kyle C. Griffin, (202) 317–4718, of the Office of Associate Chief Counsel (Income Tax and Accounting). These numbers are not toll-free numbers.

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations (TD 9889) that are the subject of this correction are under section 1400Z–2 of the Code.

##### Need for Correction

As published on January 13, 2020 (85 FR 1866) the final regulations (TD 9889) contain errors that need to be corrected.

##### Correction of Publication

Accordingly, the final regulations (TD 9889) that are the subject of FR Doc. 2019–27846, appearing on page 1866 in the **Federal Register** of January 13, 2020, are corrected as follows:

1. On page 1897, second and third columns, removing the fourth through the sixth sentences of the last paragraph.

2. On page 1923, first column, the first full paragraph is corrected to read: “As set forth in the final regulations, the 62-month working capital safe harbor provides that, during the maximum 62-month covered period, (1) NQFP in excess of the five-percent NQFP limitation will not cause a trade or business to fail to qualify as a qualified opportunity zone business, and (2) gross income earned from the trade or business will be counted towards satisfying the 50-percent gross income requirement (each of clauses (1) and (2) function in a manner similar to the 31-month working capital safe harbor). In addition, the regulations provide additional flexibility for entities utilizing the working capital safe harbor. First, for start-up entities, the 62-month working capital safe harbor provides that, during the maximum 62-month covered period, if property of an entity that would otherwise be NQFP is treated as being a reasonable amount of working capital under the safe harbor, the entity satisfies the requirements of section 1400Z–2(d)(3)(A)(i) only during the working capital safe harbor period(s) with regard to such property. However, the final regulations make clear that such property is not and will never be qualified opportunity zone business property for any purpose. Second, for any eligible entity utilizing the working capital safe harbor, if tangible property is expected to be qualified opportunity

zone business property pursuant to the written plan, such tangible property is treated as qualified opportunity zone business during the working capital safe harbor test for purposes of section 1400Z–2(d)(3). Under the 62-month working capital safe harbor, intangible property purchased or licensed with working capital covered by the safe harbor, and pursuant to the plan submitted with respect to that safe harbor, will count towards the satisfaction of the 40-percent intangible property use test.”

3. On page 1926, third column, the second sentence of the first full paragraph, the language “In general, the final regulations permit a qualified opportunity zone business to treat tangible property for which working capital covered by the 31-month working capital safe harbor is expended as (i) used in the trade or business of the qualified opportunity zone business, and (ii) qualified opportunity zone business property throughout the period during which such working capital is covered by the safe harbor.” is corrected to read “In general, the 62-month working capital safe harbor under the final regulations provides that, during the maximum 62-month covered period, if property of a start-up entity that would otherwise be NQFP is treated as being a reasonable amount of working capital under the safe harbor, the start-up entity satisfies the requirements of section 1400Z–2(d)(3)(A)(i) only during the working capital safe harbor period(s) with regard to such property. However, the final regulations make clear that such property is not qualified opportunity zone business property for any other purpose. See part V.N.3.c of this Summary of Comments and Explanation of Revisions describing the 62-month working capital safe harbor set forth in § 1.1400Z2(d)–1(d)(3)(vi).”

4. On page 1926, third column, the first through the sixth line from the bottom of the first full paragraph, the language “capital covered by the 31-month working capital safe harbor are not, following the conclusion of the final safe harbor period, treated as tangible property for purposes of applying the 70-percent tangible property standard.” is corrected to read “capital covered by the 62-month working capital safe harbor are not, following the conclusion of the final safe harbor period, treated as qualified opportunity zone business property for purposes of applying the 70-percent tangible property standard. Because working capital is not tangible property, working capital covered by the 62-month safe harbor cannot be treated as qualified opportunity zone business