

Supporting Statement

FERC-505 (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination) and FERC-512 (Preliminary Permit), as modified by the Final Rule in Docket RM14-22-000

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) review and approve the FERC-505 (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination; OMB Control No. 1902-0115) and FERC-512 (Preliminary Permit; OMB Control No. 1902-0073) information collections, as modified by the Final Rule in Docket No. RM14-22.¹

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission regulates nonfederal hydropower projects on navigable waters and federal lands pursuant to the Federal Power Act (FPA).²

RM14-22, Final Rule. On August 9, 2013, Congress enacted the Hydropower Regulatory Efficiency Act of 2013 (Hydropower Efficiency Act)³ 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 study and licensing stages. To that end, Congress amended statutory provisions pertaining to preliminary permits and projects that are exempt from licensing.

In response, the Commission issued the Final Rule in Docket No. RM14-22-000, amending Parts 4 and 380 of its regulations to conform to the Hydropower Efficiency Act. Although the Commission has been complying with the Hydropower Efficiency Act since its enactment, and made its compliance procedures available on its website, the Final Rule now formalizes the Commission's compliance procedures in its revised regulations on preliminary permits and exemptions, and in a new subpart on qualifying conduit hydropower facilities.

1 The Final Rule (Order 800) was issued 9/18/2014 and is available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13638388> (79 FR 59105, 10/1/2014).

2 16 USC §§791a-825r (2012).

3 Pub. L. 113-23 (2013).

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(updated 2/18/2015)

FERC-505.⁴ The FERC-505 is an application for a small hydropower project license or relicense, exemption, or determination of a qualifying conduit hydropower facility.

Small Hydropower Project License

Small hydropower projects are minor water power projects and major water power projects that have an installed capacity of 5 megawatts (MW) or less.⁵ Small hydropower projects have distinct filing requirements as outlined in 18 CFR 4.61.

The Commission issues licenses for hydropower projects for up to 50 years. Pursuant to section 4(e) of the FPA, when making licensing decisions the Commission must give equal consideration to preserving energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality when approving licenses. In addition, under the comprehensive development standard of section 10(a) of the FPA, the Commission must consider all aspects of the public interest in using a waterway and consider a project's consistency with federal and state comprehensive plans for improving or developing waterways.

Exemptions from Licensing

A small hydroelectric project may be eligible for an exemption. An exemption is not a form of deregulation; it is a statutory provision that allows an applicant to be exempt from some or all of Part I of the FPA, including the comprehensive development standard of FPA Section 10(a)(1). There are two types of FERC exemptions: (1) small conduit exemptions; and (2) small hydroelectric power project (i.e., 10-megawatt (MW)) exemptions.

A small conduit exemption, as defined in section 30 of the FPA,⁶ 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 not primarily used for the generation of electricity.

A 10-MW exemption, as defined in the Public Utilities Regulatory Policies Act of 1978 (PURPA),⁷ 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. For both types of exemptions, the

⁴ Information collection requirements for FERC-505 are listed in Attachment A.

⁵ Minor water power projects are those that have a total installed capacity of 1.5 megawatts (MW) or less. Major water power projects have a total installed capacity of greater than 1.5 MW.

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

⁷ 16 U.S.C. 2708 (2012).

applicant must possess all real property rights at the time of filing unless the project is located on federal land.

Qualifying Conduit Hydropower Facilities

The Hydropower Efficiency Act created 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 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.

FERC-512.⁸ The FERC-512 is an application for a preliminary permit or to extend a preliminary permit term. Preliminary permits, issued for up to three years, preserve the right of permit holders to have first priority in applying for a license for a project being studied, but do not authorize construction of any facilities. Nor does a preliminary permit allow the use of eminent domain to acquire lands for the project. The preliminary permits are issued pursuant to sections 4(f), 5, and 7 of the FPA. Preliminary permits can be extended one time for up to two additional years, pursuant to section 5 of the FPA.

The purpose of obtaining a preliminary permit is to maintain priority status for an application for a license while the applicant conducts site examinations and surveys to prepare maps, plans, specifications, and estimates. This period of time also provides the applicant with the opportunity to conduct engineering, economic, and environmental feasibility studies in addition to making the financial arrangements for funding the construction of the project. No other application for a preliminary permit or application for license submitted by another party can be accepted during the permit term.

2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

⁸ Information collection requirements for FERC-512 are included in 18CFR 4.31, 4.32, 4.33, 4.35, 4.36(a) and (c), 4.81, 4.82, and 4.84.

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FERC-505. FERC-505 applications are used by Commission staff to determine the broad impact of the license/relicense or exemption proposal or determine whether a qualifying conduit hydropower facility meets the qualifying criteria. An application must include certain information so stakeholders and the Commission can understand the proposed project, identify any environmental issues, identify any information needs or studies, and provide meaningful comments and recommendations on the proposed project.

Federal agencies with responsibilities under the FPA and other statutes, states, Indian tribes, and other participants have opportunities to request additional studies and provide comments and recommendations. Federal agencies with mandatory conditioning authority also provide their conditions. The Commission staff may ask for additional information that it needs for its environmental analysis. All of this information is considered in the Commission staff's environmental review under the National Energy Policy Act (NEPA).

Submission of the data is necessary to fulfill the requirements of the FPA in order for the Commission to make the required finding that a proposal is economically, technically, and environmentally sound, and is best adapted to a comprehensive plan for improving and developing a waterway or waterways

Small Hydropower Project Licenses and Exemptions from Licensing

Applicants can apply for licenses using one of three different options: (1) the traditional license process, (2) alternative license process, (3) or integrated license process (ILP). The ILP is the default process and enables potential licenses to conduct pre-filing consultation and the Commission's scoping process concurrently rather than sequentially.

- The application for a small hydropower license, per 18 CFR 4.61(b), includes the following information:
 - An initial statement
 - Exhibit A: a description of the proposed hydroelectric facilities and the proposed mode of operation
 - Exhibit E: an environmental report
 - Exhibit F: drawings of the hydroelectric structures and equipment
 - Exhibit G: a map of the project and boundary
 - Explanation of how and why the project would, or would not, or should not comply with any relevant comprehensive plan, as defined in 18 CFR 2.19
 - A verification statement

- An application for a 10-MW exemption, per 18 CFR 4.107(b), includes the following information:
 - An introductory statement
 - Exhibit A: a description of the 10-MW hydroelectric facilities and the proposed mode of operation
 - Exhibit E: an environmental report
 - Exhibit F: drawings of the hydroelectric structures and equipment
 - Exhibit G: a map of the project and boundary
 - A verification statement

- An application for a small conduit exemption,⁹ per 18 CFR 4.92, includes the following information:
 - An introductory statement
 - Exhibit A: a description of the small conduit hydroelectric facilities and the proposed mode of operation
 - Exhibit E: an environmental report
 - Exhibit F: drawings of the hydroelectric structures and equipment
 - Exhibit G: a map of the project and boundary
 - A verification statement

Qualifying Conduit Hydropower Facilities

A notice of intent to construct a qualifying conduit hydropower facility, per 18 CFR 4.401, includes the following information:¹⁰

- An introductory statement
- A statement that the proposed facility will use the hydroelectric potential of a non-federally owned conduit
- 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
- A description of the proposed facility
- Drawings of the proposed facility
- If applicable, the preliminary permit project number
- A verification statement

Commission staff uses the collected information in the notices of intent to determine if the proposed facility meets the qualifying criteria discussed above.

⁹ Conduit exemptions are categorically exempt from NEPA.

¹⁰ The Commission does not perform environmental reviews of qualifying conduits.

FERC-512. The application for a preliminary permit is used by Commission staff to assess the scope of the proposed project, the technology to be used, and jurisdictional aspects of the project. The staff assessment includes a review of the proposed hydro development for conflicts with other permits or existing projects and public notice of the application to solicit public and agency comments. The application for a one-time extension, up to two years, of a preliminary permit is used by Commission staff to determine if a permittee has met the Hydropower Efficiency Act's good faith and reasonable diligence standards.

An application for a preliminary permit includes an initial statement and three numbered exhibits, per 18 CFR 4.81. The initial statement includes information on the applicant, the project, the requested term of the permit, affected political jurisdictions, and a verification of the facts presented. The three numbered exhibits are as follows:

- Exhibit One is a description of the proposed project and includes a characterization of the project structures, transmission facilities, and reservoir; estimates of energy and capacity; identification of affected United States lands; and any other information that demonstrates how the proposed development of the water resource would be in the public interest.
- Exhibit Two is a description of project studies, either completed or planned, for the purpose of assessing project feasibility, determining environmental impacts, and preparing an application for license including a proposed schedule for completing each study. The exhibit includes a statement of costs and financing that includes an estimate of the costs of doing the project studies described above and the source of funding for these studies.
- Exhibit Three includes a map or series of maps that clearly show the location of the project, the location and relationship of the principal project features, a proposed boundary for the project, any lands or reservations of the United States needed for project purposes, and areas which are specially protected.

A permit holder is not required to file a license application. Likewise, a developer may study a project without holding a preliminary permit. However, the holding of a permit does give a developer first priority to file a license application over any competitors who wish to file applications for projects at the same site during the permit term.

Any permittee wishing to extend the term of its permit must file an application pursuant to 18 CFR 482. In its application, the applicant should specify the requested term of the extension,

and pursuant to the Hydropower Efficiency Act, describe how it has carried out activities under its permit in good faith and with reasonable diligence.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE THE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN

FERC continually considers the use of improved information technology to reduce burden in the filing requirements for submission of information.

The Commission allows eFiling of both the FERC-505 application and the FERC-512 application.

See <http://www.ferc.gov/docs-filing/efiling.asp> for more details and information.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2

No similar information is available; these are case-specific applications for a benefit (e.g., license or permit) and are unique to the applicant and the site for which the filing is made.

5. METHODS USED TO MINIMIZE THE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

FERC-505. The FERC-505 reporting requirements are the basic filing requirements pertaining to all applications for a small hydropower project license/relicense, exemption, or determination of a qualifying conduit hydropower facility. The Commission sets forth distinct filing requirements for small hydropower projects. Small entities have streamlined filing requirements. The Commission is able to expedite the process for small, low-impact hydropower projects in the following ways:

- waive some pre-filing consultation requirements (with resource agency cooperation);
- combine environmental scoping with pre-filing consultation;
- combine public noticing requirements;
- shorten comment periods;

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- coordinate with resource agencies to obtain their final terms and conditions before we issue an environmental assessment, instead of the customary preliminary and final versions;
- use a single environmental document (opposed to using draft and final documents); and
- issue the order on the same day as the environmental assessment.

In addition, the Commission reduces the reporting requirements for the duration of small, low-impact hydropower projects. Exemptions are granted in perpetuity, and qualifying conduit hydropower facilities may operate without Commission oversight.

FERC-512. The FERC-512 reporting requirements are basic filing requirements pertaining to all applications for a preliminary permit or for a one-time two-year extension of a preliminary permit. The data required impose the least possible burden on applicants while collecting information required to process the information.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY

FERC-505. If the information were not collected, the Commission would not be able to fulfill the requirements of the FPA in ensuring that a project proposal is economically and technically sound (to include requirements to improve and develop waterways). Additionally, the Commission would be unable to ensure environmental concerns were being properly documented and mitigated during approval of any application.

FERC-512. If the information were not collected, the potential license applicant(s) would have no means to establish priority for future development of the site (i.e. hold the site while studies are conducted to determine the feasibility of hydropower development). The lack of priority would place potential license applicants at greater financial risk in pursuing hydropower, and could discourage developers from pursuing hydropower. The collection could not be made less frequently since it is made only once upon the filing of the permit application and once for a one-time extension of up to two years.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

There are no special circumstances related to this information collection.

8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE

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On September 19, 2014, the Commission issued the Final Rule, Order 800, which included the 60-day notice requesting public comment in accordance with OMB requirements.¹¹ The Commission received no comments from the public.

On December 5, 2014, the Commission issued a 30-day notice, which was published in the Federal Register (79 FR 73286, 12/10/2014).

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information collected in filings to be confidential. However, the Commission will consider specific requests for confidential treatment (e.g., Critical Energy Infrastructure Information [CEII] or non-public) to the extent permitted by law.¹² The Commission will review each request for confidential treatment on a case-by-case basis.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE.

There are no questions of a sensitive nature.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

Existing OMB-Approved Inventory. The existing annual burden approved by OMB for the collections follows.

¹¹ 79 FR 59105, 10/1/2014. The Final Rule is posted in FERC's eLibrary at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13638388>.

¹² 18 CFR 388.112

Number of Respondents (a)	Annual Number of Responses¹³ per Respondent (b)	Total Number of Responses (a)X(b)=(c)	Average Annual Time Burden (Hrs.) (d)	Total Annual Time Burden (Hrs.) (c)X(d)=(e)
FERC-505 (OMB Control No. 1902-0115)				
16	1	16	3673.87 hrs.	58,782 hrs.
FERC-512 (OMB Control No. 1902-0073)				
125	1	125	37 hrs.	4,625 hrs.

Changes Made by the Final Rule in Docket RM14-22. Overall, the rule reduces the current burden for affected entities. More entities may qualify for exemption from certain licensing requirements (i.e., small conduit exemptions or 10-MW exemptions), and others may qualify to operate their projects without Commission oversight (i.e., qualifying conduit hydropower facilities). Moreover, permittees may 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.

The Commission’s estimated average annual reporting burden and cost associated with implementation of this final rule in Docket RM14-22 follows.

Annual Changes Implemented by the Final Rule in RM14-22¹⁴						
Type of Respondents	Number of Respondents (a)	Annual Number of Responses 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)
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¹³ We consider the filing of an application to be a “response.” The annual no. of respondents and responses is based on historical and expected workload figures. (These filings are case-specific applications and are not recurring annual filing requirements.)

¹⁴ The estimated average hourly cost (salary plus benefits) is \$70.50.

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Small conduit exemption applications (40 MW or less, which can now be on fed. lands)	2 ¹⁵	1	2	46 hrs.	92 hrs.	\$3,243
				\$3,243	\$6,486	
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	

15 In the Commission’s first solicitation of comments on the information collections in Order No. 800, Commission staff estimated that the Commission would receive five conduit exemption applications per year. Since the Hydropower Efficiency Act’s enactment in August 2013, the Commission has received only three conduit exemption applications. Therefore, Commission staff reduces its estimate of anticipated conduit exemption applications to two applications per year.

16 Given that Commission staff estimates two conduit exemption applications per year, Commission staff anticipates surrenders of conduit exemptions on federal lands to be rare. Hence, Commission staff estimates 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 proposed projects with installed capacity greater than 5 MW, which could now qualify for a 10-MW exemption. Therefore, Commission staff estimates that on average the Commission receives two applications per year.

Qualifying conduit hydropower facility - notices of intent	8 ¹⁸	1	8	46 hrs.	368 hrs.	\$3,243
				\$3,243	\$25,944	
Sub-Totals for FERC-505			12.1		556.6 hrs., and \$39,240	
FERC-512, Application for Preliminary Permit						
Request for extension to 5 years	80 ¹⁹	1	80	4 hrs.	320 hrs.	\$282
				\$282	\$22,560	
Sub-Totals for FERC-512			80		320 hrs. and \$22,560	
Totals for FERC-505 plus FERC-512			92.1		876.6 hrs. and \$61,800	

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital or start-up costs associated with these information collections. All of the costs are associated with the burden hours and accounted for in Questions #12 and #15.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimated costs of the program related to these filing requirements (and not only related to the Final Rule in RM14-22) follows.

	Number of Employees (FTEs)	Estimated Annual Federal Cost (rounded)
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¹⁸ In Order 800 and in the 30-day public notice, Commission staff estimated that it will receive eight notices of intent per year. Since Commission staff's last estimate, Commission staff has received 15 notices of intent, 14 of which are from one applicant. Based on historical filings, Commission staff considers this to be an anomaly. Therefore, Commission staff continues to anticipate eight notices of intent per year.

¹⁹ 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.

FERC-505		
Analysis and Processing of filings ²⁰	8.75	\$1,282,671
PRA ²¹ Administrative Cost ²²		\$5,092
FERC FERC-505 Total		\$1,283,180
FERC-512		
Analysis and Processing of filings	5.25	\$769,603
PRA Administrative Cost		\$5,092
FERC FERC-512 Total		\$774,695

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

The Commission's Order 800 is designed to encourage hydropower development by reducing costs and regulatory burden during the project study and licensing stages. For example, more entities may qualify for exemption from certain licensing requirements (i.e., small conduit exemptions or 10-MW exemptions), and others may qualify to operate their projects without Commission oversight (i.e., qualifying conduit hydropower facilities). In addition, permittees may 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. Because of these burden reducing and burden avoiding measures designed to encourage more entities to enter the field, FERC is expecting to see an increase in requests over the next 3 years.

Implementation of the Final Rule in RM14-22 will change the total burdens as follows. Note that the figures are rounded.

	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
FERC-505				
Annual Number of Responses	28	16	0	+12
Annual Time Burden (Hr.)	59,339	58,782	0	+557

20 Based upon FERC's 2014 FTE average salary plus benefits (\$146,591/year or \$70.50/hour)

21 Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 (2012).

22 The Commission bases the cost of Paperwork Reduction Act administration on staff time and other costs related to compliance with the Paperwork Reduction Act of 1995.

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Annual Cost Burden (\$)	\$ 0	\$ 0	\$ 0	\$ 0
FERC-512				
Annual Number of Responses	205	125	0	+80
Annual Time Burden (Hr.)	4,945	4,625	0	+320
Annual Cost Burden (\$)	\$ 0	\$ 0	\$ 0	\$ 0

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There are no tabulations, statistical analyses, or publications of information planned for the information collections. The Commission intends to use the data for regulatory purposes only.

17. DISPLAY OF EXPIRATION DATE

The expiration date is displayed in a table posted on ferc.gov at <http://www.ferc.gov/docs-filing/info-collections.asp>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

The Commission does not use the data collected for this reporting requirement for statistical purposes. Therefore, the Commission does not use as stated in item (i) of the certification to OMB "effective and efficient statistical survey methodology." The information collected is case specific to each information collection.

Attachment A

FERC-505 has information collection requirements described in the following sections in 18 CFR:

- 2.19
- 4.32
- 4.35
- 4.36 (b) and (c)
- 4.61
- 4.71
- 4.92
- 4.93
- 4.95
- 4.96
- 4.102
- 4.104
- 4.107
- 4.108
- 4.201
- 4.202
- 4.301
- 4.303
- 4.400
- 4.401
- Part 5
- 8.1
- 8.2
- 16.1
- 16.4
- 16.6
- 16.7
- 16.8
- 16.9
- 16.10
- 16.11
- 16.12
- 16.14
- 16.19
- 16.20
- 16.22
- 16.26
- 141.15

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- 292.203
- 292.208