§ 292.208 the requirements of paragraph (a) of this section, or an application for Commission recertification pursuant to the requirements of paragraph (b) of this section, as appropriate.

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§ 292.208 Special requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion (as that term is defined in §292.202(p)) is a qualifying facility only if it meets the requirements of:

(1) Paragraph (b) of this section;

(2) Section 292.203(c); and

(3) Part 4 of this chapter.

(b) A hydroelectric small power production described in paragraph (a) is a qualifying facility only if:

(1) The Commission finds, at the time it issues the license or exemption, that the project will not have a substantial adverse effect on the environment (as that term is defined in §292.202(q)), including recreation and water quality;

(2) The Commission finds, at the time the application for the license or exemption is accepted for filing under §4.32 of this chapter, that the project is not located on any segment of a natural watercourse which:

(i) Is included, or designated for potential inclusion in:


(B) A State wild and scenic river system;

(ii) Crosses an area designated or recommended for designation under the Wilderness Act (16 U.S.C. 1132) as:

(A) A wilderness area; or

(B) Wilderness study area; or

(iii) The State, either by or pursuant to an act of the State legislature, has determined to possess unique, natural, recreational, cultural, or scenic attributes that would be adversely affected by hydroelectric development.

(d) If the project is located on any segment of a natural watercourse that meets any of the conditions in paragraph (c)(2) of this section, the applicant must provide the following information in its application:

(1) The date on which the natural watercourse was protected;

(2) The statutory authority under which the natural watercourse was protected; and

(3) The Federal or state agency, or political subdivision of the state, that is in charge of administering the natural watercourse.

[Order 499, 53 FR 27003, July 18, 1988]

§ 292.209 Exceptions from requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) The requirements in §§292.208(b)(1) through (3) do not apply if:

(1) An application for license or exemption is filed for a project located at a Government dam, as defined in section 3(10) of the Federal Power Act, at which non-Federal hydroelectric development is permissible; or

(2) An application for license or exemption was filed and accepted before October 16, 1986.