

DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Todd Thompson, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3228; email todd.thompson@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53-249, dated August 25, 2023.

(ii) [Reserved]

(3) For BAE Systems service information, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email RApublications@baesystems.com; website baesystems.com/en/our-company/our-businesses/regional-aircraft/about-us.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

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Issued on May 28, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 5, 6, 7

[Docket No. RM24-5-000]

Establishment of Categorical Reasonable Period of Time for Action on Requests for Water Quality Certification Under Section 401(a)(1) of the Clean Water Act and Clarifying Types of Hydroelectric Project Proceedings That May Require Water Quality Certification

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proposed rule, the Federal Energy Regulatory Commission (Commission) amends its regulations to clarify that for all proceedings before the Commission that require a water quality certification pursuant to section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), the reasonable period of time during which the certifying authority may act on the water quality certification request is one year from the certifying authority's receipt of the request. The proposed rule also clarifies that all Commission authorizations that have the potential to discharge into waters of the United States require a section 401 water quality certification or waiver, including hydropower exemptions, amendments, and surrenders. Finally, the proposed rule provides updated terminology in the Commission's hydropower regulations and updates the timing of the filing requirements for the Commission's expedited hydropower licensing process.

DATES: Comments are due July 8, 2024.

ADDRESSES: You may send comments, identified by RM24-5-000, by either of the following methods:

- *Agency website:* Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- *Mail:* Those unable to file electronically may mail comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document.

FOR FURTHER INFORMATION CONTACT:

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I. Background

A. Clean Water Act Section 401

1. Section 401 of the Clean Water Act (CWA) is a direct grant of authority to states and authorized Tribes¹ (*i.e.*, certifying authorities) to review for compliance with appropriate federal, state, and Tribal water quality requirements any discharge into waters of the United States that may result from a proposed activity that requires a federal license or permit.² Section 401(a)(1) of the CWA prohibits a federal agency from issuing a federal license, permit, or other authorization for a project or activity that may result in a discharge into waters of the United States, such as a Federal Energy Regulatory Commission (Commission) order issuing a license for a hydroelectric project or order authorizing an amendment or surrender of a license, unless the appropriate certifying authority either grants certification or waives its certification authority.³ Under the Clean Water Act, if the certifying authority “fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request,” then certification is waived.⁴

2. The January 2021 Executive Order 13990 entitled *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*,

¹ “Authorized Tribes” refers to Indian Tribes that have been approved for “treatment as a state” status under the CWA. Authorized Tribes may also have the authority under section 401 to issue water quality certifications.

² 33 U.S.C. 1341(a)(1).

³ *Id.*

⁴ *Id.*

among other things directed the Environmental Protection Agency (EPA) to review the water quality certification rule EPA promulgated in 2020 under section 401 of the CWA.⁵ In compliance with the Executive Order, on September 14, 2023, the EPA issued a final 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule (Certification Improvement Rule),⁶ which revised its regulations under 40 CFR part 121.⁷ The Certification Improvement Rule applies prospectively to all actions after the effective date of the rule.

B. Reasonable Period of Time

3. Regarding the statutory reasonable period of time in which a certifying authority must act on a request for certification, section 121.6(b) of the Certification Improvement Rule contemplates that the federal agency and certifying authority will establish a reasonable period of time on a case-by-case basis. If the federal agency and certifying authority do not agree, the rule sets a six-month default reasonable period of time.⁸ The rule, however, also provides that if a federal agency establishes a one-year reasonable period of time by regulation, the maximum time allowed under the CWA, the federal agency may use that one year as the reasonable period of time without negotiating with certifying authorities.⁹

4. With respect to licensing proceedings, the Commission promulgated regulations providing for a categorical one-year reasonable period of time for action by a certifying authority, as reflected in subsection 4.34(b)(5)(iii) of its regulations in 1987,¹⁰ subsection 5.23(b)(2) of its regulations in 2003,¹¹ and subsection 7.2(b)(3)(ii) of its regulations in 2019.¹²

⁵ Exec. Order No. 13990, 86 FR 7037 (Jan. 25, 2021). EPA issued the Clean Water Act Section 401 Certification Rule on June 1, 2020. 85 FR 42210 (July 13, 2020).

⁶ 88 FR 66558 (Sept. 27, 2023).

⁷ The rule was published in the **Federal Register** on September 27, 2023, and became effective 60 days after publication on November 27, 2023.

⁸ 88 FR 66663.

⁹ *Id.* at 66588.

¹⁰ *Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act*, Order No. 464, FERC Stats. & Regs. ¶ 30,730 (1987) (cross-referenced at 38 FERC ¶ 61,146); 18 CFR 4.34(b)(5)(iii). Part 4 of the Commission's regulations governs applicants using the traditional licensing process and the alternative licensing process.

¹¹ *Hydroelectric Licensing Under the Fed. Power Act*, Order No. 2002, 68 FR 51070 (Aug. 25, 2003), Order No. 2002–A, 69 FR 5268 (Feb. 4, 2004), 104 FERC ¶ 61,109 (2003), *order on reh'g*, 106 FERC ¶ 61,037 (2004); 18 CFR 5.23(b)(2). Part 5 governs applicants using the integrated licensing process.

¹² *Hydroelectric Licensing Reguls. Under the Am.'s Water Infrastructure Act of 2018*, Order No.

Although it is the Commission's practice to apply a one-year reasonable period of time for water quality certification applications in all hydropower proceedings where they are required,¹³ the current regulations are silent as to certain FPA proceedings, including those regarding hydropower exemptions (a subcategory of licensing proceedings), amendments to hydropower licenses, or surrenders of hydropower licenses, some of which may trigger CWA section 401.

C. Hydropower Exemptions

5. Currently, the Commission's regulations do not specify that hydropower exemption applicants must obtain a water quality certification or waiver if the proposed project may result in a discharge into waters of the United States. The Commission stated in its preamble to the 1980 rule establishing the 5–MW exemption that there is no applicable section 401 requirement where there is no license.¹⁴ This unsupported statement implied, incorrectly, that an exemption is not a federal license or permit subject to CWA section 401.¹⁵ Subsequently, in 1987, the Commission explained in its response to comments for its final rule promulgating the Commission's part 4 regulations for waiver of water quality certification requirements that, although the Commission had not required applicants for exemptions to obtain water quality certification, it would consider changing its practice in a later

858, 84 FR 17064 (Apr. 24, 2019), 167 FERC ¶ 61,050 (2019); 18 CFR 7.2(b)(3)(ii). Part 7 governs applicants using the expedited licensing process for qualifying non-federal hydropower projects at existing nonpowered dams and for closed-loop pumped storage projects.

¹³ In 2021, the Commission also promulgated subsections 153.4 and 157.22(b) of its regulations governing Liquefied Natural Gas (LNG) facilities and natural gas pipelines, respectively, to establish a categorical "reasonable period of time" of one year for a certifying authority to act on a certification request. 18 CFR 153.4, 157.22(b); *Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act*, 174 FERC ¶ 61,196 (2021).

¹⁴ *Exemption from All of Part of Part 1 of the Fed. Power Act of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts of Less*, Order No. 106, FERC Stats. & Regs. ¶ 30,204, at 31,368 (1980) (cross-referenced at 13 FERC ¶ 61,116). The Commission's hydropower exemption regulations were revised in 2014 to increase the maximum installed capacity for eligible small hydroelectric power projects from 5 MW to 10 MW. *Revisions & Tech. Corrections To Conform the Commission's Reguls. to the Hydropower Regul. Efficiency Act of 2013*, Order No. 800, 148 FERC ¶ 61,197 (2014); *see also* 18 CFR 4.101–4.108. The Commission also issues exemptions for qualifying conduit hydroelectric projects, pursuant to section 30 of the FPA, as amended. *See* 18 CFR 4.90–4.96.

¹⁵ The Commission's prior statement in a preamble does not supersede the statutory mandate under Section 401(a) of the CWA.

rulemaking.¹⁶ As matter of practice, the Commission incorporates water quality certification conditions into final exemption orders when a certification is issued by the relevant certifying authority.¹⁷

6. The proposed rule clarifies that because an exemption is a federal permit, section 401 of the CWA applies where the project has the potential to discharge into waters of the United States.

II. Proposed Revisions

A. Reasonable Period of Time

7. This proposed rule clarifies that, for all proceedings before the Commission that require water quality certification, the reasonable period of time for a certifying authority to act on the certification request is one year from the certifying authority's receipt of the request. This proposed rule is consistent with EPA's proviso that federal agencies may establish a categorical one-year reasonable period of time in their regulations. The Commission's proposed rule promotes administrative efficiency because there would be no need to negotiate with the certifying authority in every case where a section 401 water quality certification is required. As the Commission has previously stated, we continue to believe that the benefits of setting a categorical one-year reasonable period of time for a certifying authority to act on a request for certification best serves the public interest by providing certainty and consistency for all Commission hydropower proceedings in which a section 401 certification is required.¹⁸

8. Thus, by revising the Commission's regulations in parts 4 and 6 to cover all proceedings before the Commission that require a section 401 water quality certification, all proceedings will now be governed by the same reasonable period of time and be consistent with

¹⁶ Order No. 464, FERC Stats. & Regs. ¶ 30,730 at 30,546.

¹⁷ *See, e.g., City of Nashua, New Hampshire*, 182 FERC ¶ 62,009, at PP 12–14 (2023) (stating that "[u]nder Section 401(a) of the Clean Water Act (CWA), the Commission may not authorize construction or operation of a hydroelectric project that may result in a discharge into the navigable waters of the United States unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification"); *New England Hydropower Co., LLC*, 155 FERC ¶ 62,132, at P 13 (2016) (making the water quality certification conditions mandatory conditions of the exemption); *Charlie Hotchkin & Claire Fay*, 132 FERC ¶ 62,037, at P 7 (2010) (same).

¹⁸ *See Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act*, 174 FERC ¶ 61,196; Order No. 464, FERC Stats. & Regs. ¶ 30,730.

the regulations currently governing applicants for hydropower licenses.¹⁹

B. Hydropower Exemptions

9. The proposed rule explicitly incorporates applications for an exemption from licensing under the water quality certification requirements in part 4 of the Commission's regulations to remove any uncertainty as to whether an applicant for an exemption should apply to a certifying authority for a water quality certification if the proposed project may result in a discharge into waters of the United States. This proposed change clarifies that because exemptions are federal permits, CWA section 401 applies to such projects.

C. Terminology and Part 7 Filing Requirements

10. The Commission's proposed rule updates the term "certifying agency" previously used in the Commission's regulations in parts 4, 5, and 7 to "certifying authority," which is the defined term EPA uses in its regulations to describe the entity responsible for certifying compliance with applicable water quality requirements under CWA section 401.²⁰ The proposed rule also incorporates the term "express" waiver into the Commission's regulations in parts 4, 5, and 7, to reflect the four ways that a certifying authority may act on a request for certification, pursuant to 40 CFR 121.7.²¹ These proposed changes will align the Commission's regulatory terminology with the EPA's regulatory terminology for clarity and consistency.

11. Finally, the proposed rule changes the timing of the filing requirements under part 7 of the Commission's regulations for the expedited licensing process. Current section 7.2(3) of the Commission's regulations requires that an application to the Commission under part 7 must include either a copy of the request for a water quality certification, the issued certification, or evidence of waiver of the certification.²² That requirement conflicts with the EPA's Certification Improvement Rule, which requires any request for a water quality

certification to include a copy of the final application for the federal license or permit.²³ To avoid this conflict, the Commission is proposing that an applicant under part 7 must file within 60 days of its application with the Commission a copy of the certification request, certification, or the certifying authority's express waiver.

III. Regulatory Requirements

A. Information Collection Statement

12. The Paperwork Reduction Act²⁴ requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (*i.e.*, reporting, recordkeeping, or public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in proposed rules published in the **Federal Register**.²⁵ This proposed rule does not impose new information collection requirements on ten or more persons.²⁶ If a proposed exemption project has the potential to discharge into waters of the United States, the proposed regulations will make it clear that an exemption applicant would be required to file either a copy of the water quality certification or the certifying authority's express waiver, a copy of the request for certification, or notification that the certifying authority failed to act. The exemption applicants would not need to create a new document or fill out a form, rather they are just submitting to the Commission a copy of the certifying authority's response or informing the Commission that the certifying authority has failed to act within one year. Over the last ten years, the Commission received an average of less than two exemption applications per year. The directives to submit exemptions for certification or evidence of waiver of water quality certification are covered by and already included in, the existing OMB-approved information collection FERC-505 (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination; OMB Control No. 1902-0115).

¹⁹ See also *supra* note 13.

²⁰ 88 FR 66662; 40 CFR 121.1(b). We note that there are other parts of the Commission's regulations that use the term "certifying agency" in the context of section 401 that this NOPR is not proposing to update. Therefore, we clarify in this proposed rule that these two terms will be used interchangeably throughout the Commission's regulations.

²¹ Section 121.7 of the EPA's regulations stipulates that a certifying authority may act on a request for certification in one of four ways: grant certification, grant certification with conditions, deny certification, or expressly waive certification.

²² 18 CFR 7.2(3).

²³ 40 CFR 121.5(a)(1)(i).

²⁴ 44 U.S.C. 3501-3521.

²⁵ See 5 CFR 1320.11.

²⁶ The proposed rule does not impose any new information collection requirements on license, amendment, and surrender applicants, nor certifying authorities. The rule clarifies the filing requirements for exemption applicants who need a water quality certification.

B. Environmental Analysis

13. 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.²⁷ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment, including the promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation, or the regulations being amended.²⁸ This proposed rule proposes to categorically establish a reasonable period of time for a certifying authority to act on a water quality certification request for a license, exemption, amendment, or surrender application of a hydroelectric project pending with the Commission. The proposed rule also updates the term "certifying agency" to "certifying authority," incorporates the term "express" waiver to reflect the four ways a certifying authority may act on a request for certification and revises the requirements under part 7 to permit compliance with both EPA's and the Commission's regulations. Because this proposed rule is procedural in nature, preparation of an Environmental Assessment or an Environmental Impact Statement is not required.

C. Regulatory Flexibility Act

14. The Regulatory Flexibility Act of 1980 (RFA)²⁹ generally requires a description and analysis of proposed 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 proposed rule and minimize any significant economic impact on a substantial number of small entities.³⁰ In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.³¹ The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.³² The SBA size standard for hydroelectric power generation is based on the number of employees, including

²⁷ *Reguls. Implementing the Nat'l Env't Pol'y Act of 1969*, Order No. 486, 41 FERC ¶ 61,284 (1987).

²⁸ 18 CFR 380.4(a)(2)(ii).

²⁹ 5 U.S.C. 601-612.

³⁰ *Id.* 603(c).

³¹ *Id.* 605(b).

³² 13 CFR 121.101.

affiliates.³³ Under SBA’s size standards, a hydroelectric power generator is small if, including its affiliates, it employs 750 or fewer people.³⁴

15. If enacted, this proposed rule would apply to entities, a small number of which may be small businesses, with an application for a license, exemption, amendment, or surrender of a hydroelectric project pending with the Commission that requires a water quality certification under section 401(a)(1) of the CWA. However, the proposed rule would not have a significant economic impact on these entities, regardless of their status as a small entity or not, as the proposed rule (1) updates terminology and the timing of filing requirements to be consistent with EPA regulations; (2) clarifies what and when an exemption applicant must file if the proposed project triggers CWA section 401; and (3) establishes a categorical one year period of time for a certifying authority to act on a request for a water quality certification for hydroelectric proceedings in which the proposed activity may result in a discharge into waters of the United States triggering section 401(a)(1) of the CWA.

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

D. Comment Procedures

17. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due July 8, 2024. Comments must refer to Docket No. RM24–5–000, and must include the commenter’s name, the organization they represent, if applicable, and their address.

18. The Commission encourages comments to be filed electronically via the eFiling link on the Commission’s website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

19. Commenters that are not able to file comments electronically must send an original of their comments to: Secretary, Federal Energy Regulatory

Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

20. All comments will be placed in the Commission’s public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

E. Document Availability

21. 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>).

22. 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.

23. 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, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects

18 CFR Part 4

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

18 CFR Part 5

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

18 CFR Part 6

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 7

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

By direction of the Commission.
Issued: May 23, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

In consideration of the foregoing, the Commission is proposing to amend Parts 4, 5, 6, and 7 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. Amend § 4.34 by revising paragraph (b)(5) to read as follows:

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

* * * * *

(b) * * *

(5)(i) With regard to certification requirements under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act) for an application for a license or exemption from licensing, an applicant shall file within 60 days from the date of issuance of the notice of ready for environmental analysis:

(A) A copy of the water quality certification or the certifying authority’s express waiver;

(B) A copy of the request for certification, including proof of the date on which the certifying authority received the request; or

(C) Evidence of waiver of water quality certification as described in paragraph (b)(5)(iii) of this section.

(ii) In the case of an application process using the alternative procedures of paragraph 4.34(i), the filing requirement of paragraph (b)(5)(i) shall apply upon issuance of notice the Commission has accepted the application as provided for in paragraph 4.32(d) of this part.

(iii) A certifying authority is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying authority has not denied, expressly waived, or granted certification by one year after the date the certifying authority received a written request for certification. If a certifying authority denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

* * * * *

■ 3. Amend § 4.201 by adding paragraph (e) to read as follows:

§ 4.201 Contents of application.

* * * * *

(e) For any amendment that requires certification under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), a certifying authority is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying authority has not denied,

³³ *Id.* 121.201, subsection 221.

³⁴ *Id.*

expressly waived, or granted certification by one year after the date the certifying authority received a written request for certification.

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

■ 4. 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.

■ 5. Amend § 5.23 by revising paragraph (b) to read as follows:

§ 5.23 Response to notice.

* * * * *

(b) *Water quality certification.*

(1) With regard to certification requirements under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), the license applicant shall file within 60 days from the date of issuance of the notice of ready for environmental analysis:

(i) A copy of the water quality certification or the certifying authority's express waiver;

(ii) A copy of the request for certification, including proof of the date on which the certifying authority received the request; or

(iii) Evidence of waiver of water quality certification as described in paragraph (b)(2) of this section.

(2) A certifying authority is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying authority has not denied, expressly waived, or granted certification by one year after the date the certifying authority received a written request for certification. If a certifying authority denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(3) Notwithstanding any other provision in 18 CFR part 4, subpart B, any application to amend an existing license, and any application to amend a pending application for a license, requires a new request for water quality certification pursuant to § 4.34(b)(5) of this chapter if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

PART 6—SURRENDER OR TERMINATION OF LICENSE

■ 6. The authority citation for part 6 continues to read as follows:

Authority: Secs. 6, 10(i), 13, 41 Stat. 1067, 1068, 1071, as amended, sec. 309, 49 Stat. 858; 16 U.S.C. 799, 803(i), 806, 825h; Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.), unless otherwise noted.

■ 7. Revise § 6.1 to read as follows:

§ 6.1 Application for surrender.

(a) Every application for surrender of a license shall state the reason therefor; and, except in the case of an application for surrender of a license for a minor project, or for a transmission line only, shall be executed by the licensee and filed in the same form and manner as the application for license, and shall be accompanied by the license and all amendments thereof. Public notice of such application shall be given at least 30 days prior to action upon the application.

(b) For any surrender that requires certification under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), a certifying authority is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying authority has not denied, expressly waived, or granted certification by one year after the date the certifying authority received a written request for certification.

PART 7—EXPEDITED LICENSING PROCESS FOR QUALIFYING NON-FEDERAL HYDROPOWER PROJECTS AT EXISTING NONPOWERED DAMS AND FOR CLOSED-LOOP PUMPED STORAGE PROJECTS

■ 8. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; Pub. L. 115–270, 132 Stat. 3765.

■ 9. Revise § 7.2 to read as follows:

§ 7.2 Use of expedited licensing process.

(a) In order to pursue the expedited licensing process, an applicant must request authorization for the expedited process, as provided for in paragraph (b) of this section. The licensing procedures in this part do not apply to an application for a new or subsequent license.

(b) Requirement to consult.

(1) Before it files any application for an original license for a qualifying non-federal hydropower project at an existing nonpowered dam or for a closed-loop pumped storage project pursuant to sections 34 and 35 of the Federal Power Act, a potential applicant must consult with the relevant Federal, State, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any federal lands or facilities utilized or occupied by the project, the appropriate State fish and wildlife agencies, the

management agencies, the certifying authority under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1), the agency that administers the Coastal Zone Management Act, 16 U.S.C. 1451–1465, any Indian Tribe that may be affected by the proposed project, and members of the public.

(2) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, and Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

(c) An application that accompanies a request for authorization to use the expedited licensing process must include the information specified below.

(1) Section 34 of the Federal Power Act qualification—projects at nonpowered dams. The application must demonstrate that the proposed facility meets the following qualifications pursuant to section 34(e) of the Federal Power Act:

(i) As of October 23, 2018, the proposed hydropower facility was not licensed under or exempted from the license requirements contained in Part I of the Federal Power Act;

(ii) The facility will be associated with a qualifying nonpowered dam;

(iii) The facility will be constructed, operated, and maintained for the generation of electric power;

(iv) The facility will use for such generation any withdrawals, diversions, releases, or flows from the associated qualifying nonpowered dam, including its associated impoundment or other infrastructure; and

(v) The operation of the facility will not result in any material change to the storage, release, or flow operations of the associated qualifying nonpowered dam.

(2) Section 35 of the Federal Power Act qualification—closed-loop pumped storage projects. The application must demonstrate that the proposed closed-loop pumped storage project meets the following qualifications pursuant to section 35(g)(2) of the Federal Power Act:

(i) The project will cause little to no change to existing surface and groundwater flows and uses; and

(ii) The project is unlikely to adversely affect species listed as a threatened species or endangered species, or designated critical habitat of such species, under the Endangered Species Act of 1973.

(3) Section 401 of the Clean Water Act. The license applicant shall file

within 60 days from the filing date of application:

(i) A copy of a request for certification under section 401(a)(1) of the Clean Water Act, including proof of the date on which the certifying authority received the request; or

(ii) A copy of water quality certification or the certifying authority's express waiver.

(4) Evidence of waiver of water quality certification. A certifying authority is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying authority has not denied, expressly waived, or granted certification by one year after the date the certifying authority received a written request for certification. If a certifying authority denies certification, the applicant must file a copy of the denial within 30 days after the applicant receives it.

(5) Endangered Species Act (ESA). The application must include:

(i) A no-effect determination that includes documentation that no listed species or critical habitat are present in the action area;

(ii) Documentation of concurrence from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Service(s)), as necessary, that the action is not likely to adversely affect ESA-listed species or critical habitat; or

(iii) A draft Biological Assessment that includes documentation of consultation with the Service(s).

(6) Section 106 of the National Historic Preservation Act. Documentation that section 106 consultation has been initiated with the state historic preservation officer(s) and any Indian Tribes identified as having an interest in the project.

(7) Dam owner documentation. For projects to be located at existing nonpowered dams:

(i) Documentation of consultation with any nonfederal owner of the nonpowered dam if the applicant is not the owner and confirmation that the owner is not opposed to a hydropower development at the location; or

(ii) Documentation from the federal entity that non-federal hydropower development is not precluded at the proposed location and confirmation that the federal entity is not opposed to a hydropower development at the location.

(8) Public parks, recreation areas, and wildlife refuges. If the project would use any public park, recreation area, or wildlife refuge established under state or local law, documentation from the managing entity indicating it is not

opposed to the site's use for hydropower development.

■ 10. Amend § 7.7 by revising paragraph (a) to read as follows:

§ 7.7 Amendment of application.

(a) Any proposed amendments to the pending license application after issuance of the notice of acceptance and ready for environmental analysis under this section must include:

(1) An amended or new section 401 of the Clean Water Act water quality certification or a new certifying authority's express waiver, if the amendment would have a material adverse impact on the water quality in the discharge from the proposed project; and

(2) Updates to all other material submitted under § 7.2(c).

* * * * * [FR Doc. 2024-11896 Filed 6-5-24; 8:45 am] BILLING CODE 6717-01-P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[ED-2024-OPE-0073]

Transitioning Gang-Involved Youth to Higher Education Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed priority and definition.

SUMMARY: The Department of Education (Department) proposes a priority and definition for use in the Transitioning Gang-Involved Youth to Higher Education Program, Assistance Listing Number 84.116Y. The Department may use the priority and definition for competitions in fiscal year (FY) 2024 and later years. We intend for this priority and definition to support projects for organizations that work directly with gang-involved youth to help such youth pursue higher education opportunities that will lead to postsecondary certification or credentials.

DATES: We must receive your comments on or before July 8, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at www.regulations.gov. However, if you require an accommodation or cannot otherwise submit your comments via www.regulations.gov, please contact the program contact person listed under FOR FURTHER INFORMATION CONTACT. The Department will not accept comments submitted by fax or by email, or comments submitted

after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jymece Seward, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C113, Washington, DC 20202-4260. Telephone: 202-453-6138. Email: Jymece.Seward@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and definition. To ensure that your comments have maximum effect in developing the final priority and definition, we urge you to identify clearly the specific section of the proposed priority and definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from this proposed priority and definition. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priority and definition by accessing Regulations.gov. To inspect comments in person, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a