

ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 18: Conservation of Power and Water Resources

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

§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) 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 application must include 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 agency received the request; or

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

(4) 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).

(5) 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.

(6) 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.

(7) 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.

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