

§ 5.24

(2) 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.

(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.

§ 5.24 Applications not requiring a draft NEPA document.

(a) If the Commission determines that a license application will be processed with an environmental assessment rather than an environmental impact statement and that a draft environmental assessment will not be required, the Commission will issue the environmental assessment for comment no later than 120 days from the date responses are due to the notice of acceptance and ready for environmental analysis.

(b) Each environmental assessment issued pursuant to this paragraph must include draft license articles, a preliminary determination of consistency of each fish and wildlife agency recommendation made pursuant to Federal Power Act section 10(j) with the purposes and requirements of the Federal Power Act and other applicable law, as provided for in § 5.26, and any preliminary mandatory terms and conditions and fishway prescriptions.

(c) Comments on an environmental assessment issued pursuant to paragraph (a) of this section, including comments in response to the Commission's preliminary determination with respect to fish and wildlife agency recommendations and on preliminary mandatory terms and conditions or fishway prescriptions, must be filed no later than 30 or 45 days after issuance

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of the environmental assessment, as specified in the notice accompanying issuance of the environmental assessment, as should any revisions to supporting documentation.

(d) Modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date for filing of comments provided for in paragraph (c) of this section, as specified in the notice accompanying issuance of the environmental analysis.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61743, Oct. 30, 2003]

§ 5.25 Applications requiring a draft NEPA document.

(a) If the Commission determines that a license application will be processed with an environmental impact statement, or a draft and final environmental assessment, the Commission will issue the draft environmental impact statement or environmental assessment for comment no later than 180 days from the date responses are due to the notice of acceptance and ready for environmental analysis provided for in § 5.22.

(b) Each draft environmental document will include for comment draft license articles, a preliminary determination of the consistency of each fish and wildlife agency recommendation made pursuant to section 10(j) of the Federal Power Act with the purposes and requirements of the Federal Power Act and other applicable law, as provided for in § 5.26, and any preliminary mandatory terms and conditions and fishways prescriptions.

(c) Comments on a draft environmental document issued pursuant to paragraph (b) of this section, including comments in response to the Commission's preliminary determination with respect to fish and wildlife agency recommendations and on preliminary mandatory terms and conditions or prescriptions must be filed no later than 30 or 60 days after issuance of the draft environmental document, as specified in the notice accompanying issuance of the draft environmental document.

(d) Modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date