

Document	Adams Accession No./ Federal Register Citation
Letter, "Regulatory Issue Resolution Protocol Screening Form and Resolution Plan for Improving the Part 72 Regulatory Framework (RIRP-I-16-01)," May 12, 2017.	ML17138A119
Letter, "Response to Nuclear Energy Institute's Letter Regarding Regulatory Issue Resolution Protocol Screening Form and Resolution Plan for Improving the Part 72 Regulatory Framework (RIRP-I-16-01)," June 5, 2017.	ML17150A458
Letter, "Application for Amendment 16 to Standardized NUHOMS® Certificate of Compliance No. 1004 for Spent Fuel Storage Casks, Revision 0 (Docket No. 72-1004)," June 29, 2017.	ML17191A235
Letter, "Application for Amendment No. 16 to Standardized NUHOMS® Certificate of Compliance No. 1004—Accepted for Review," July 21, 2017.	ML17206A045
Preliminary Safety Evaluation Report, "TN Americas LLC Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel Docket No. 72-1004 NUHOMS® System Amendment No. 16," September 18, 2019.	ML19262E161
Letter, "Industry White Paper—Defining Spent Fuel Performance Margins," November 8, 2019 .....	ML19318D970
Public Meeting Documentation, November 18, 2019 .....	ML19324C657 (package)
Summary, November 18, 2019 Public Meeting, December 18, 2019 .....	ML19340A414
Transcript, "Public Meeting to Discuss the Issues Contained in PRM-72-7 and Additional Staff-Identified .....	ML20079H441
Changes to 10 CFR Part 72," November 18, 2019 .....	
Letter, Endorsement of Graded Approach, January 8, 2020 .....	ML19353D337 (package)
Letter, Request to Withdraw PRM-72-7, February 25, 2020 .....	ML20058B100
FEDERAL REGISTER notice for direct final rule, "TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 16," June 30, 2020.	85 FR 39049
FEDERAL REGISTER notice correction, "TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 16," July 17, 2020.	85 FR 43419

#### IV. Conclusion

The NRC is withdrawing PRM-72-7 and is no longer pursuing the Spent Fuel Cask Certificate of Compliance Format and Content rulemaking for the reasons discussed in this document. If the NRC decides to pursue a similar or related rulemaking in the future, it will inform the public through a new rulemaking entry in the Unified Agenda of Regulatory and Deregulatory Activities.

Dated: October 2, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2020-22268 Filed 10-16-20; 8:45 am]

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#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

##### 18 CFR Parts 153 and 157

[Docket No. RM20-18-000]

##### Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to the Environmental Protection Agency's Clean Water Act Section 401 Certification Rule and Executive Order 13868, the Federal Energy Regulatory Commission (Commission) is proposing

rules to categorically establish a reasonable period of time for a certifying authority to act on a water quality certification request related to natural gas and liquified natural gas projects for which either an application filed pursuant to section 3 or section 7(c) of the Natural Gas Act (NGA) is pending with the Commission. The Commission is amending its regulations to define when the certification requirements of section 401(a)(1) of the Clean Water Act (CWA) have been waived as a result of the failure of the state or other authorized certifying agency to act on a request for CWA certification filed by an applicant for a Commission-issued section 7 certificate of public convenience and necessity or section 3 authorization under the NGA. The Commission is allowing CWA certifying authorities up to one year after the certifying authority's receipt of a request for section 401 water quality certification to grant or deny the applicant's request for certification.

**DATES:** Comments are due November 18, 2020.

**ADDRESSES:** You may send comments, identified by RM20-18-000, 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:

David Swearingen (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6173, [david.swearingen@ferc.gov](mailto:david.swearingen@ferc.gov).

Karin Larson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8236, [karin.larson@ferc.gov](mailto:karin.larson@ferc.gov).

Rachael Warden (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8717, [rachael.warden@ferc.gov](mailto:rachael.warden@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

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## I. Background

1. On April 10, 2019, Executive Order 13868 entitled *Promoting Energy Infrastructure and Economic Growth* was issued with the stated goal of enabling timely construction of energy infrastructure and reducing regulatory uncertainties from the permitting process for infrastructure projects. The Executive Order directed the Environmental Protection Agency (EPA) to update its regulations governing water quality certification under section 401 of the Clean Water Act (CWA).<sup>1</sup> CWA section 401 is a direct grant of authority to states<sup>2</sup> to review for compliance with appropriate federal, state, and tribal water quality requirements any discharge into a water of the United States that may result from a proposed activity that requires a federal license or permit. Section 401(a)(1) of the CWA requires that an applicant for a federal license or permit to conduct activities that may result in a discharge into the navigable waters of the United States, such as a Federal Energy Regulatory Commission (Commission) hydroelectric project license or a Natural Gas Act (NGA) certificate of public convenience and necessity for a natural gas pipeline that crosses a navigable water, must provide the federal permitting agency a water quality certification from the state in which the discharge originates or evidence of waiver thereof.<sup>3</sup> If the state “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.<sup>4</sup>

2. In compliance with the Executive Order, on June 1, 2020, the EPA issued the Clean Water Act Section 401 Certification Rule (Certification Rule), which revises its regulations under 40 CFR part 121. The rule was published in the **Federal Register** on July 13, 2020, and becomes effective 60 days after publication on September 11, 2020. The Certification Rule applies prospectively to certification requests submitted after the effective date of the rule. The Executive Order mandates that “[w]ithin 90 days of [EPA’s issuance of revised regulations], if necessary, the heads of each 401 Implementing Agency<sup>5</sup> shall initiate a rulemaking to

ensure their respective agencies’ regulations are consistent with” the EPA’s Certification Rule and “with the policies set forth in section 2 of this order.”<sup>6</sup>

3. Section 121.6(a) of the Certification Rule requires federal permitting agencies<sup>7</sup> to establish the reasonable period of time for the certifying authority<sup>8</sup> to act on a water quality certification request, which period may not exceed one year from receipt. If the certifying authority fails or refuses to act on a certification request within the reasonable period of time, then the certification requirement for a license or permit is waived.<sup>9</sup> The reasonable period of time may be set either categorically or on a case-by-case basis.<sup>10</sup>

4. The Commission’s practice has been to deem the one-year waiver period to commence when the certifying agency receives the request. In 1987, the Commission promulgated subsections 4.34(b)(5)(iii) and 5.23(b)(2)<sup>11</sup> of its regulations governing hydropower licensing proceedings to provide that a certifying agency is deemed to have waived certification if it has not denied or granted certification by one year after the date it received a written certification request.<sup>12</sup> Accordingly, subsections 4.34(b)(5)(iii) and 5.23(b)(2)<sup>13</sup> of the Commission’s regulations establish for hydroelectric projects a categorical “reasonable period of time” of one year.

certification requirements of section 401 of the CWA.

<sup>6</sup> E.O. 13868 of Apr 10, 2019, 84 FR 15495, 15496 (Apr. 15, 2019).

<sup>7</sup> The Certification Rule defines “Federal Agency” as any federal government agency to which application is made for a license or permit that is subject to the requirements of CWA section 401. Clean Water Act Section 401 Certification Rule, 85 FR 42210, 42285 (July 13, 2020) (to be codified at 40 CFR pt. 121).

<sup>8</sup> The Certification Rule defines “Certifying Authority” as the agency with the responsibility to certify compliance with applicable requirements for water quality under CWA section 401. *Id.* The Commission’s regulations refer to a “Certifying Authority” as a “Certifying Agency.”

<sup>9</sup> *Id.* at 42286.

<sup>10</sup> See *id.* at 42285. In setting the reasonable period of time the Certification Rule calls for the federal agency to consider the complexity of the proposed project, the nature of any potential discharge and the potential need for studies of the effects from the proposed discharge. See *id.* at 42286.

<sup>11</sup> 18 CFR 4.34(b)(5)(iii) and 5.23(b)(2). Part 4 of the Commission’s regulations governs applicants using the traditional licensing process and part 5 governs applicants using the integrated license application process.

<sup>12</sup> *Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act*, Order No. 464, 52 FR 5446 (Feb. 23, 1987), FERC Stats. & Regs. ¶ 30,730 (1987).

<sup>13</sup> 18 CFR 4.34(b)(5)(iii) and 5.23(b)(2).

5. While no comparable regulation exists for NGA infrastructure proceedings, the Commission’s practice is to also categorically apply a one-year waiver period for water quality certification applications filed in connection to a proposed natural gas or liquefied natural gas infrastructure project application.<sup>14</sup>

## II. Proposed Revisions

6. We continue to believe that the benefits of setting a categorical waiver period of one year, as permitted by the CWA, best serves the public interest by avoiding uncertainty associated with open-ended and varying certification deadlines.<sup>15</sup> Considering the historical complexity of proposed projects and the nature and potential need for studies of the discharge, the Commission proposes to continue to use the categorical one-year waiver period as the “reasonable period of time” within which the certifying authority must act and to codify this waiver period for natural gas and liquefied natural gas projects by adding the categorical one-year waiver period to its regulations governing applications for authorizations under sections 3 and 7 of the NGA for liquefied natural gas and natural gas facilities in parts 153 and 157. Given that it would be administratively inefficient and a potential source of controversy to establish reasonable time periods on a case-by-case basis; that state certifying agencies may vary in terms of their procedures for reviewing requests for water quality certification; and that natural gas projects before the Commission include highly complex proposals that may well take a state a significant time to review, we find that providing the maximum time permitted under the CWA, *i.e.*, a categorical one-year waiver period, is reasonable.

<sup>14</sup> *Constitution Pipeline Co., LLC*, 162 FERC ¶ 61,014, at P 16 (explaining that since 1987 the Commission has consistently determined, both by regulation and in our orders on proposed projects, that the reasonable period of time for action under section 401 is one year after the date the certifying agency receives a request for certification), *reh’g denied*, 164 FERC ¶ 61,029 (2018).

<sup>15</sup> *Constitution Pipeline Co., LLC*, 162 FERC ¶ 61,014 at PP 16–17, 20 (determining that setting a one-year waiver period yields substantial benefits to the applicant, the certifying agency, and the Commission); *Constitution Pipeline Co., LLC*, 164 FERC ¶ 61,029 at P 10 (same). See Order No. 464, FERC Stats. & Regs. ¶ 30,730 (concluding that giving the certifying agencies the maximum period allowed by the CWA will not unduly delay Commission processing of license applications and would achieve a major objective of the rule—obtaining early certainty as to when certification would be deemed waived and avoiding open-ended certification deadlines).

<sup>1</sup> 33 U.S.C. 1341(a)(1).

<sup>2</sup> Indian tribes that have been approved for “treatment as a state” status may also have the authority under section 401 to issue water quality certifications.

<sup>3</sup> 33 U.S.C. 1341(a)(1).

<sup>4</sup> *Id.*

<sup>5</sup> “Implementing agency” is defined as a federal agency that issues permits or licenses subject to the

### III. Regulatory Requirements

#### A. Information Collection Statement

7. The Paperwork Reduction Act<sup>16</sup> 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**.<sup>17</sup> This proposed rule does not contain any information collection requirements. The Commission is therefore not required to submit this rule to OMB for review.

#### B. Environmental Analysis

8. 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.<sup>18</sup> 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.<sup>19</sup> This proposed rule proposes to categorically establish a reasonable period of time for a certifying agency to act on a water quality certification request for natural gas and liquified natural gas projects with an application pending with the Commission. 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

9. The Regulatory Flexibility Act of 1980 (RFA)<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>23</sup> The SBA has established a size standard for pipelines transporting natural gas, stating that a firm is small if its annual receipts (including its affiliates) are less than \$30 million.<sup>24</sup>

10. If enacted, this proposed rule would apply to entities, a small number of which may be small businesses, with an application for a project pending with the Commission under section 3 or 7 of the NGA that require a water quality certification under section 401(a)(1) of the CWA. However, the proposed rule would have no effect on these entities, regardless of their status as a small entity or not, as the rule imposes no action or requirement on those entities. 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

11. 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 November 18, 2020. Comments must refer to Docket No. RM20-18-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

12. 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.

13. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

14. 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

15. 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>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

16. 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.

17. 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](mailto: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](mailto:public.referenceroom@ferc.gov).

#### List of Subjects

##### 18 CFR Part 153

Exports, Natural gas, Reporting and recordkeeping requirements.

##### 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: September 9, 2020.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

In consideration of the foregoing, the Commission is proposing to amend parts 153 and 157, chapter I, title 18, *Code of Federal Regulations*, as follows:

<sup>16</sup> 44 U.S.C. 3501-3521.

<sup>17</sup> See 5 CFR 1320.11.

<sup>18</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 41 FERC ¶ 61,284 (1987).

<sup>19</sup> 18 CFR 380.4(a)(2)(ii).

<sup>20</sup> 5 U.S.C. 601-612.

<sup>21</sup> *Id.* 603(c).

<sup>22</sup> *Id.* 605(b).

<sup>23</sup> 13 CFR 121.101.

<sup>24</sup> 13 CFR 121.201, subsection 486.

## PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

■ 1. The authority citation for part 153 continues to read as follows:

**Authority:** 15 U.S.C. 717b, 717o; E.O. 10485; 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

■ 2. Revise § 153.4 to read as follows:

### § 153.4 General requirements.

The procedures in §§ 157.5, 157.6, 157.8, 157.9, 157.10, 157.11, 157.12, 157.22, and 157.23 of this chapter are applicable to the applications described in this subpart.

## PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 is revised to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 33 U.S.C. 1341(a)(1); 42 U.S.C. 7101–7352.

■ 2. Revise § 157.22 to read as follows:

### § 157.22 Schedule for final decisions on a request for a Federal authorization.

(a) For an application under section 3 or 7 of the Natural Gas Act that requires a Federal authorization—*i.e.*, a permit, special use authorization, certification, opinion, or other approval—from a Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, a final decision on a request for a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law.

(b) For requests for a water quality certification submitted pursuant to section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act) in connection with a project for which authorization is sought from the Commission under section 3 or 7 of the Natural Gas Act, the reasonable period of time during which the certifying agency may act on the water quality certification request is one year from the certifying agency's receipt of the request. 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.

[FR Doc. 2020–20327 Filed 10–16–20; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG–2020–0424]

RIN 1625–AA00

### Safety Zones; Vieques Unexploded Ordnance Operations, East Vieques; Vieques, Puerto Rico

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish permanent safety zones for certain waters of Vieques, Puerto Rico. This action is necessary to provide for the safety of life on the navigable waters near the island of Vieques, Puerto Rico due to unexploded ordnances. This proposed rulemaking would prohibit mariners from anchoring, dredging, or trawling in the designated areas. It would also prohibit persons and vessels from being in the safety zones during clearance operations, unless authorized by the Captain of the Port San Juan or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before November 18, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG–2020–0424 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Natallia Lopez, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2380, email [Natallia.M.Lopez@uscg.mil](mailto:Natallia.M.Lopez@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
PR Puerto Rico  
§ Section  
U.S.C. United States Code  
UXO Unexploded Ordnance

## II. Background, Purpose, and Legal Basis

On April 30, 2020, contractors on behalf of the U.S. Navy contacted the Coast Guard requesting the establishment of permanent safety zones surrounding unexploded ordnances (UXO) in Vieques, PR. The Navy has implemented long-term plans for the deactivation and removal of the UXOs, but safety zones are needed until those operations are completed. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the UXOs would be a safety concern for anyone within the designated areas.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the designated areas until the complete deactivation and removal of all UXOs. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

## III. Discussion of Proposed Rule

The COTP is proposing to establish permanent safety zones in the navigable waters east of Vieques, Puerto Rico. UXOs from past military training operations remain present in the waters of east Vieques, Puerto Rico. The U.S. Navy is currently in the process of planning, retrieving, and properly disposing of the UXOs in this area. These operations will be ongoing for the next 20 years. Accordingly, ordnance clearing operations will be held at various times on the waters of East Vieques, Puerto Rico. UXOs will be retrieved by several divers working for the U.S. Navy.

This proposed safety zones area encompasses waters in East Vieques, Puerto Rico. In areas where UXOs are known to be in shallow waters, where mariners have been known to anchor which creates risk for the unintended detonation of UXOs. The safety zones would prohibit vessels from anchoring, dredging, or trawling in the designated areas at all times. Further, no vessel or person would be permitted to enter, transit through, or remain in the safety zones during clearance operations due to increased risk of explosion and fragmentation hazards.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the proposed permanent safety zones by contacting the Captain of the Port San