

# Clean Water Act Section 401 Certification Final Rule

## Frequently Asked Questions

On April 10, 2019, President Trump issued [Executive Order 13868](#), “Promoting Energy Infrastructure and Economic Growth,” which directed the EPA to review Clean Water Act (CWA) Section 401 and EPA’s related regulations and guidance to determine whether the Agency’s policies should be updated or clarified. On June 1, 2020, the EPA finalized the “Clean Water Act Section 401 Certification Rule” to implement the water quality certification process consistent with the text and structure of the CWA. The final rule establishes procedures that promote consistent implementation of CWA Section 401 and regulatory certainty in the federal licensing and permitting process. For the first time in Agency history, the certification process outlined in the final rule was informed by a holistic analysis of the statutory text, legislative history, and relevant case law.

## Frequently Asked Questions

### **1. When is a Section 401 certification required?**

Consistent with the Agency’s longstanding interpretation, a CWA Section 401 certification is required for any federal license or permit that authorizes an activity that may result in a discharge. The final rule defines “discharge” for the purposes of Section 401 to mean, a discharge from a point source into a water of the United States.

### **2. How long does the certifying authority have to make a certification decision?**

CWA Section 401 requires that certifying authorities act on a certification request within a reasonable period of time, which shall not exceed one year. Consistent with longstanding practice and regulations, the federal licensing or permitting agency establishes the reasonable period of time. When establishing the reasonable period of time, the final rule requires federal agencies to consider the complexity of the proposed project, the nature of any potential discharge, and the potential need for additional study or evaluation of water quality effects from the discharge.

### **3. When does the Section 401 “reasonable period of time” begin?**

Consistent with the CWA, the reasonable period of time begins after receipt by a certifying authority of a certification request. The final rule defines “certification request” as a written, signed, and dated communication that includes project documents and information as specified in the final rule.

**4. Can the “reasonable period of time” stop or be tolled?**

No. The reasonable period of time begins when a certifying authority receives a certification request, as defined in the final rule, and it ends either when the certifying authority takes action to grant certification, grant certification with conditions, deny, or expressly waives certification. If the certifying authority does not take one of those actions during the reasonable period of time established by the federal licensing or permitting agency, certification is waived.

**5. What is the scope of a certifying authority’s review of a request for certification?**

The scope of review and action on a certification request is limited to assuring that a “discharge” from a federally licensed or permitted activity will comply with “water quality requirements.” The final rule defines “water quality requirements” as “applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act, and state or tribal regulatory requirements for point source discharges into waters of the United States.” The final rule does not require “water quality requirements” to be EPA-approved.

**6. How should existing certification requests be processed?**

The final rule becomes effective 60 days after it is published in the federal register. Certification requests that have been submitted or that are currently being processed by states, authorized tribes, or EPA, should continue to be processed in accordance with existing law. Certification requests submitted after the effective date of the final rule should be processed consistent with the final rule.

**For More Information**

To learn more about the CWA Section 401 water quality certification process and the EPA’s rulemaking effort, please visit <https://www.epa.gov/CWA-401>. The docket for the final rule (Docket ID No. EPA-HQ-OW-2019-0405) can be found at <https://www.regulations.gov>.