Supplementary Information:  
1. In this Policy Statement, the Commission sets forth a new policy on establishing license terms for original and new licenses for hydropower projects located at non-federal dams. The goal of this action is to provide more certainty for stakeholders regarding the Commission’s regulatory process, reduce regulatory burden, increase administrative efficiency for all stakeholders, and further encourage licensees to negotiate settlement agreements and promptly seek authorization to implement voluntary environmental, recreational, and developmental enhancements.

I. Background

A. Current License Term Policy

2. Section 6 of the Federal Power Act (FPA) 1 provides that hydropower licenses shall be issued for a term not to exceed 50 years. There is no minimum license term for original licenses. FPA section 15(e)2 provides that any “new license”3 shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years.

3. It is current Commission policy to set a 50-year term for licenses issued for projects located at federal dams.4 For projects located at non-federal dams, the Commission sets a 30-year term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement; a 40-year term for a license involving a moderate amount of these activities; and a 50-year term where there is an extensive amount of such activity.5 The Commission previously established this policy to ease the economic impact of new costs, promote balanced and comprehensive development of renewable power generating resources, and encourage licensees to be good environmental stewards.6

4. Determining whether the measures required under a license are minimal, moderate, or extensive is highly case-

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3 “New license” is the term used in the FPA to refer to a license issued to replace a project’s expiring license.

4 City of Danville, Virginia, 58 FERC ¶ 61,318, at 62,100 (1992) (citing Little Falls Hydroelectric Associates, 27 FERC ¶ 61,376 (1984)).

5 Id. (addressing original licenses); Consumers Power Co., 68 FERC ¶ 61,077, at 61,384 (1994) (addressing new licenses). Projects that entail construction of a new dam have generally received 50-year licenses. City of Danville, Virginia, 58 FERC ¶ 61,318 at 62,020 (citing Little Falls Hydroelectric Associates, 27 FERC ¶ 61,376).

6 Consumers Power Co., 68 FERC ¶ 61,077 at 61,384.
specific and largely based on a qualitative analysis of the record before the Commission. In establishing the appropriate license term, staff initially examines the nature and extent of the required measures in the context of the project at issue, and then uses the cost of measures as a check on a qualitative conclusion that the measures required under the license are minimal, moderate, or extensive. The Commission’s current policy takes a forward-looking approach, such that any measures adopted under a prior license term are not considered. It has also been the Commission’s policy to coordinate, to the extent feasible, license terms for projects in the same river basin to maximize consideration of cumulative impacts when the projects are due to be relicensed.

5. The length of an original license has not been contested on rehearing for some time; however, licensees and other parties have recently contested the length of a new license in several relicensing proceedings. The arguments raised in these cases include that the Commission, when establishing the license term, should have considered, or given more weight to: Previously-authorized capacity-related investments or environmental enhancements made by the licensee before issuance of the new license; total cost of the relicensing process; losses in generation value related to environmental measures; the license term of projects that the license applicant states are similarly situated to its project; and the license term provided for in settlement agreements.

In each circumstance, the Commission declined to extend the length of the license.

B. Notice of Inquiry on Establishing License Terms for Hydroelectric Projects

6. On November 17, 2016, the Commission issued a notice of inquiry (NOI) to seek comments on whether, and if so how, the Commission should revise its current license term policy. The NOI invited comments on five potential license term policy options: (1) Retain the current policy; (2) modify the current policy to consider voluntary authorized actions implemented under the prior license (“previously-authorized voluntary actions”); (3) replace the current license term policy with a policy for a 50-year default license term unless a lesser license term would be in the public interest (for example, to better coordinate the license terms of projects in the same river basin); (4) add a more quantitative cost-based analysis to the current policy; and (5) alter the current policy to accept license terms agreed upon in settlement agreements, when appropriate. Comments on alternative policy options were also encouraged. The NOI established January 24, 2017, as the deadline for comments, which staff extended to March 24, 2017.

7. Industry members, federal and state resource agencies, environmental and recreational groups, and individuals filed comments. Most commenters support revising the policy. Several commenters state that under the current policy stakeholders lack certainty, and, consequently, license applicants lack guidance on what measures will yield longer license terms and are deterred from proposing additional protection, mitigation, and enhancement measures. Further, many commenters state that because the policy is forward-looking, licensees delay seeking authorizations for capacity upgrades and environmental and recreational enhancements until they apply for a new license. Some industry commenters state that under the current policy, license applicants and settlement parties cannot use the license term as a bargaining chip because the Commission might reject that term in the license order. To address these concerns, many commenters recommend that the Commission consider previously-authorized voluntary actions and defer to the license term that was negotiated as part of a settlement agreement.

8. Commenters disagree on the 50-year default license term policy option. Industry commenters generally support the 50-year default license term because they state it would provide a clear, predictable standard. Industry commenters add that such policy would eliminate the current “penalty” for efficient, well-maintained, and relatively low-impact projects that do not require substantial environmental or developmental measures and therefore only receive a 30-year license.

9. In contrast, environmental groups, individuals, and most resource agencies oppose the 50-year default license term option. Several resource agencies argue that this option would provide little incentive for a license applicant to voluntarily propose or agree to mitigation measures because such measures would no longer factor into the Commission’s license term decision. The resource agencies also contend that such policy would make it more difficult for applicants focusing their license application study efforts on disproving project effects rather than on identifying potential mitigation measures.

10. Most commenters recommend against the policy option to adopt a more quantitative cost-based analysis. Many commenters state that it would be difficult to develop a quantitative cost-based analysis that takes into account the diverse hydropower fleet and environmental and recreational values.

11. As an alternative to the five policy options, several industry commenters recommend that the Commission adopt a 40-year default license term with credit (up to an additional 10 years) for previously-authorized actions and deference to settlement agreements. They state that under this alternative, licenses should be issued for less than 40 years only when a license applicant has agreed to a settlement agreement with a negotiated license term of less than 40 years, or voluntarily coordinates its license term with other projects in a river basin.

II. Discussion

12. The extensive comments received have given the Commission a deeper understanding of the effects that the current license term policy has on stakeholders in hydropower licensing proceedings. The Commission recognizes the importance of providing license applicants and other stakeholders as much certainty as possible. License applicants expend significant financial resources on preparing their license applications and complying with their licenses thereafter.
Further, stakeholders need certainty to determine the protection, mitigation, and enhancement measures that they will negotiate and license applicants will propose.

13. The current policy also affects the Commission’s staff and resources needed to review and process license applications. Staff anticipate that over 300 projects will enter the relicensing process through 2025. Under the current policy, staff would establish the license term for each of those projects case by case.

14. After considering this matter and the comments on the NOI, the Commission has decided it is in the public interest to change its license term policy. With this Policy Statement, the Commission establishes a 40-year default license term policy for original and new licenses for hydropower projects located at non-federal dams.15

15. There are three circumstances where the Commission will consider issues arising less or more than 40 years. First, the Commission will establish a shorter or longer term if necessary to coordinate license terms for projects located in the same river basin. Second, the Commission will defer to a shorter or longer term explicitly agreed upon in a generally-supported comprehensive settlement agreement, provided that such term does not conflict with coordination. Settlement agreements that state the settlement signatories would not oppose a certain term or would support a term within a range of years will not be considered to include an explicitly agreed upon license term.16

16. Third, the Commission will consider a longer license term—provided that doing so is consistent with coordinating license terms within a basin—when a license applicant specifically requests a longer license term based on significant measures expected to be required under the new license or significant measures implemented during the prior license term that were not required by that license or other legal authority 17 and for which the Commission has not already given credit through an extension of the prior license term. The Commission will consider, on a case-by-case basis, measures and actions that enhance non-developmental project purposes (i.e., environmental, project recreation, water supply), and those that enhance power and developmental purposes, together with the cost of those measures and actions to determine whether they are significant and warrant the granting of a longer license term. Maintenance measures and measures taken to support the relicensing process will not be considered. As guidance, we note that the Commission has found that measures including the construction of pumped storage facilities, fish passage facilities, fish hatcheries, substantial recreation facilities, dams, and powerhouses warranted longer license terms.

17. There are a number of reasons for establishing a 40-year default license term with exceptions for coordination, deference to generally-supported comprehensive settlement agreements, and considerably-authorized voluntary actions. This policy will provide significant certainty to licensees, resource agencies, and other stakeholders. A 40-year default license term will provide a simpler method for Commission staff to establish license terms, and, thus, increase administrative efficiencies. A case-specific assessment will only be required for those license applications that request a longer license term, and are not explicitly supported by a generally-supported comprehensive settlement agreement. Because many projects would be relicensed less frequently, the policy would also lower administrative costs for all stakeholders, provide licensees longer license terms to recoup costs, and reduce regulatory burden. Further, the policy will place efficient, low-impact projects that require minimal measures—and thus, would receive a 30-year term under the current policy—on more equal footing with projects that require more measures.

18. The policy may also encourage licensees to voluntarily make capacity upgrades and enhance recreational and environmental resources during the prior license term. Affected resources will benefit from licensees undertaking preventative or remedial measures sooner rather than later. In addition, the policy may further encourage license applicants to engage with stakeholders to negotiate a license settlement agreement. Because a generally-supported comprehensive settlement agreements represent stakeholder values, terms negotiated as part of those agreements are in the public interest, provided they do not conflict with coordination.

19. A 40-year default license term will not adversely affect environmental and recreation resources. All of our licenses contain extensive environmental and recreation measures. While under our new policy some projects may be relicensed less frequently and unanticipated project effects on environmental resources may go unmitigated for longer durations of time than before, there are many tools available to address these unanticipated effects in a timely manner. The Commission may address serious, unanticipated environmental effects using its standard reopener article,18 and licensees often file applications for license amendments to address significant, unanticipated environmental issues. Further, resource agencies frequently reserve authority to address those effects under FPA section 4(e) (federal reservation)19 and section 18 (fishway prescription).20 And in water quality certifications issued under section 401 of the Clean Water Act. Stakeholders have also negotiated with or encouraged licensees to propose measures that include adaptive management approaches to allow for appropriate modifications as additional information is gathered, new technologies develop, and societal and environmental needs change.

20. This Policy Statement will apply to all licenses issued following its publication in the Federal Register with no retroactive application. License applicants with pending license applications may finalize comprehensive settlement agreement, or addendum to an existing agreement, that includes an explicitly agreed upon license term or may make a filing demonstrating why the Commission should award them a longer license term than 40 years. The Commission, however, will not entertain applications to amend existing licenses to extend their license terms simply on the basis of this new license term policy. Pursuant to current policy, licensees that seek to extend existing licenses with terms of less than 50 years will negotiate and license applicants will propose.

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15 This policy does not apply to pilot hydrokinetic projects, which have terms of up to five years. See FERC, Licensing Hydrokinetic Pilot Projects, www.ferc.gov/industries/hydropower/geninfo/licensing/hydrokinetics/pdf/white_paper.pdf.
16 See, e.g., Chelan PUD, 127 FERC ¶ 61.152 at n.27 (settlement states that the signatories do not oppose the licensee’s efforts to seek a 50-year term); Duke Energy, 156 FERC ¶ 61.010 at P 24 (settlement states the signatories agree to support a license term that is not less than 40 years nor more than 50 years).
17 See, e.g., Chelan PUD, 127 FERC ¶ 61.152, at P 14 (stating that the licensee acted in order to comply with the Endangered Species Act, not to simply voluntarily resolve relicensing issues early).
18 Each license incorporates a Commission L-Form that includes standard reopener clauses to enhance fish and wildlife resources. See Standardized Conditions for Inclusion in Preliminary Permits and Licenses Issued Under Part I of the Federal Power Act, 54 F.P.C. 1792 (1975).
19 16 U.S.C. 797(e) (2012) (licenses for projects located on federal reservations are subject to and contain conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary).
years, must justify such requests, for example by proposing development, environmental, and recreation enhancements in a license amendment application accompanied by a request that the Commission extend their license term.21

III. 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 FERC’s Home Page (http://www.ferc.gov) and in FERC’s Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

22. From FERC’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. User assistance is available for eLibrary and the Commission’s Web site during normal business hours from FERC Online Business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–473]

Schedules of Controlled Substances: Temporary Placement of ortho-Fluorofentanyl, Tetrahydrofuranyl Fentanyl, and Methoxyacetyl Fentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary amendment; temporary scheduling order.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to schedule the synthetic opioids, N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide (ortho-fluorofentanyl or 2-fluorofentanyl), N-(1-phenethylpiperidin-4-yl)-N-(phenyltetrahydrofuran-2-carboxamide (tetrahydrofuran fentanyl), and 2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (methoxyacetyl fentanyl), into Schedule I. This action is based on a finding by the Administrator that the placement of ortho-fluorofentanyl, tetrahydrofuran fentanyl, and methoxyacetyl fentanyl into Schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to Schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle, ortho-fluorofentanyl, tetrahydrofuran fentanyl, and methoxyacetyl fentanyl.

DATES: This temporary scheduling order is effective October 26, 2017, until October 28, 2019. If this order is extended or made permanent, the DEA will publish a document in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into Schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling 1 for up to one year, 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into Schedule I of the CSA. 2 The Administrator transmitted notice of his intent to place ortho-fluorofentanyl, tetrahydrofuran fentanyl, and methoxyacetyl fentanyl in Schedule I on a temporary basis to the Assistant Secretary for Health of HHS by letter. Notice for these actions was transmitted on the following dates: May 19, 2017 (ortho-fluorofentanyl) and July 5, 2017 (tetrahydrofuran fentanyl and methoxyacetyl fentanyl). The Assistant Secretary responded by letters dated June 9, 2017 (ortho-fluorofentanyl) and July 14, 2017 (tetrahydrofuran fentanyl and methoxyacetyl fentanyl), and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for ortho-

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21 Though DEA has used the term “final order” with respect to temporary scheduling orders in the past, this document adheres to the statutory language of 21 U.S.C. 811(b), which refers to a “temporary scheduling order.” No substantive change is intended.

2 As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary’s scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.