The rule, as explained above, will give smaller non-owner airlines the ability to choose the level of service they will buy from each system by barring the use of airline parity clauses. Smaller non-owner airlines will be able to choose how they will distribute their services and thus be better able to operate more efficiently.

The rule will not directly affect travel agencies but may affect the operations of smaller travel agencies. If an airline reduces its level of participation in one or more systems without reducing its level of participation in all of the systems, agencies using a system in which the airline reduced its level of participation would not be able to operate as efficiently as before or as efficiently as some of the agencies' competitors. That loss in efficiency would be significant for an agency only if the airline provided a substantial amount of the airline service in the area where the agency conducts its business and if the reduction in the level of participation made it substantially more difficult for an agent to book the airline's services. We doubt that any significant airline currently participating in the systems will drastically reduce its level of participation in any system, so changes in participation levels are not likely to significantly interfere with the efficiency of travel agency operations. Furthermore, the parity clauses give airlines the option of either reducing their level of participation in the favored system or upgrading their level of participation in other systems. Since a participating airline may well choose to reduce its participation level in the favored system, parity clauses do not ensure that every airline will participate at a high level in all systems. For these reasons, we conclude that the rule will not significantly harm travel agencies.

In addition, the rule should encourage airlines and other firms to develop alternative means of transmitting information on airline services and enabling travel agencies to carry out booking transactions. In the long term these developments would benefit travel agencies.

The only alternative rule suggested by the commenters was Sabre's proposal that we allow each system to enforce a parity clause as long as that system's terms for the higher level of participation or enhancement were comparable to the terms offered by the competing system in which the airline was already participating at a higher level. As discussed above, we decided against adopting this proposal, since it would not promote competition in the CRS and airline industries and would force airlines without any CRS affiliation to buy more services than they considered desirable.

Our rule contains no direct reporting, recordkeeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

The rule we are adopting will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

List of Subjects for 14 CFR Part 255

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation amends 14 CFR Part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712, recodifying 49 U.S.C. 1301, 1302, 1324, 1381, 1502 (1992 ed.).

2. Section 255.6 is amended by adding paragraph (e) to read as follows:

§ 255.6 Contracts with participating carriers.

* * * * *

(e) No system may require a carrier (other than a carrier that owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system) to maintain any particular level of participation or buy any enhancements in its system on the basis of participation levels or enhancements selected by that carrier in any other foreign or domestic computerized reservations system. A system may not compel a carrier that owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system, to maintain a particular level of participation or buy an enhancements in its system on the basis of participation levels or enhancements selected by that carrier in another foreign or domestic computerized reservations system, until 14 days after it has given the Department and such carrier written notice of its intent to take such action.

Issued in Washington, D.C. on October 28, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–29295 Filed 11–4–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 375

[Docket No. RM95–16–000; Order No. 596]

Regulations for the Licensing of Hydroelectric Projects; Final Rule

Issued October 29, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its procedural regulations governing applications for licenses and exemptions for hydroelectric projects. The regulations offer an alternative administrative process whereby in appropriate circumstances the pre-filing consultation process and the environmental review process will be combined. This alternative process is designed to improve communication among affected entities and to be flexible and tailored to the facts and circumstances of the particular proceeding. The final rule does not delete or replace any existing regulations.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT:

Edward Abrams, Office of Hydropower Licensing, 888 First Street, N.E., Washington, DC 20426, (202) 219–2773

Merrill Hathaway, Office of the General Counsel, 888 First Street, N.E., Washington, DC 20426, (202) 208–0825

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

CIPS is also available on the Internet. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.ferc.fed.us and select the Bulletin Board System. Read instructions on the next page, select FedWorld Dialup/Telnet. A screen will appear presenting you with several options, select option 1. There will be a welcome message from FedWorld and a log on prompt. Enter your user ID and password (if you already have an account). To establish an account, type the word NEW and answer the questions which follow. Upon establishing an account, the FedWorld Main Menu will appear. From the Main Menu, type /go ferc.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

I. Introduction

On November 26, 1996, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) to revise its procedural regulations governing applications for licenses for hydroelectric projects.[1] In response to the comments received,[2] the Commission adopts a final rule in this proceeding which offers an alternative administrative process in which the pre-filing consultation and the environmental review processes will be combined. This alternative process is designed to improve communication between affected entities and to be flexible and tailored to the facts and circumstances of the particular proceeding. The final rule does not delete or replace any existing regulations.

II. Purpose of the Final Rule

The NOPR was issued in response to a petition by the National Hydropower Association (NHA), seeking completely new Commission regulations to improve the licensing process for hydropower applicants. The Commission agreed with commenters on NHA's petition, that adoption of its proposed rules would not be fair to other entities interested in the licensing process, such as resource agencies, Indian tribes and citizens' groups, and would not in fact expedite licensing proceedings. The Commission noted, however, that the collaborative option in NHA's proposal resembled the alternative procedures that the Commission had been developing for use on a case-by-case basis as requested by the applicant, pursuant to waivers granted by the Office of Hydropower Licensing. The Commission determined that the experience with the alternative procedures had been positive, that many applicants and interested entities appeared to be interested in pursuing the alternative procedures, and that it would be helpful to refine, clarify, and codify the procedures in the regulations.

A wide range of entities, representing the hydropower industry, state and federal resource agencies, citizens' groups, and an Indian tribe, filed comments generally supporting adoption of the rule proposed in the NOPR. The commenters made a number of recommendations for improving the proposed rule, many of which are adopted in the final rule, as discussed in detail below.

The final rule offers alternative administrative procedures for the processing of applications for licenses to construct, operate, and maintain hydropower projects, including applications for certain major amendments to such licenses, and for applications for exemption. Under the final rule, in appropriate circumstances pre-filing consultation and environmental review can be combined into a single process. This alternative process can be used only if there is a consensus among the interested entities to make use of it (consent of the applicant is required but agreement of everyone interested is not), and is designed to be flexible and tailored to the facts and circumstances of the particular proceeding. The final rule does not delete or replace any existing regulations, but would supplement the existing regulations by offering applicants an opportunity to use the alternative procedures.

The present regulations require applicants for a license to engage in consultation with federal and state resource agencies and Indian tribes during the preparation of the application for the license and prior to filing it. Thereafter the Commission performs an environmental review of the application pursuant to the National Environmental Policy Act (NEPA)[3] and related statutes. The final rule is intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, and by improving communication among the participants in the licensing process. We hope that adoption and use of the alternative procedures, on a voluntary basis by applicants, will result in expedited licensing proceedings before the Commission, including the narrowing of contested issues and the submission of offers of settlement that can be used as a basis for licensing orders.

III. Discussion

A. Application for and Scope of Alternative Procedures

In proposed § 4.34(i)(1) we set forth the scope of the alternative procedures and who could request them. The proposed regulatory text stated that the applicant could submit a request to the Commission to use the alternative procedures where it intended to file an application for a hydropower license or for the amendment of a license subject to the provisions of the pre-filing consultation regulations at § 4.38.

Some commenters pointed out that the title of the rule in the notice in the **Federal Register** indicated it only applied to applications for relicense and that it should be changed to include all applications for license. A commenter recommended that an applicant be required to join with other interested entities, such as resource agencies, in making such a request.[4] Commenters also have asked whether the alternative

[1] 77 FERC ¶ 61,209 (1996).

[2] The commenters are listed in Appendix A.

[3] 42 U.S.C. 4321 *et seq.*

[4] Comments of U.S. Department of Commerce, National Marine Fisheries Service (NMFS), at 5.

procedures apply to applications for preliminary permits or exemption.

We will not require the applicant to obtain the express consent of others in order to submit a request to use alternative procedures in preparing its application. An applicant may voluntarily request to use the alternative procedures. As provided in the final rule and discussed below, the Commission will give public notice of, and interested entities may submit comments on, the applicant's request to use alternative procedures. If an applicant for a hydropower license wishes to use the standard procedures in preparing its application, it may comply with the pre-filing consultation requirements of § 4.38 or § 16.8 of the regulations and need not prepare a preliminary draft NEPA document.

The title of the notice accompanying this final rule in the **Federal Register** accurately describes the application of the new rule, extending to all applications for the licensing of hydroelectric projects. The alternative procedures apply only to applications for license and amendments to licenses that are subject to the pre-filing consultation rules contained in § 4.38 and § 16.8 of the regulations. Since applications for preliminary permit are not subject to such requirements, we see no reason to make the alternative procedures available to such applicants. On the other hand, applications for exemption are subject to the pre-filing consultation requirements of § 4.38, and we conclude that these alternative procedures should be available to applicants for exemption, if they wish to take advantage of them and meet the applicable requirements of the final rule. Accordingly, we are making changes in the rule to clarify that it also applies to applicants for exemption.

B. Objectives of Process

In the proposed regulatory text at § 4.34(i)(2), we set forth the goals of the alternative procedures, which included integrating the pre-filing consultation process and the environmental review process, facilitating greater participation by Commission staff and the public in the pre-filing consultation process, allowing the applicant to prepare an environmental assessment (EA) or a contractor to prepare an environmental impact statement (EIS), encouraging the applicant and interested persons to narrow any areas of disagreement, and promoting settlement of the issues raised by the hydropower proposal.

Commenters have recommended that these statements of objective be broadened in the final rule. They have asked that the interests of Indian tribes be kept in mind.[5] A commenter has also asked that the stated objectives include providing for effective participation in the process by citizens' groups, including the provision of financial assistance where appropriate, and allowing such participants a role in selecting contractors to conduct scientific studies and prepare required documents.[6] Commenters have asked the Commission to keep in mind in regard to the proposed regulations the goal of promoting competition between rival applicants for proposed hydropower facilities.[7] A commenter was concerned that the proposed rule may suggest that under the alternative procedures the Commission would delegate to an outside party its responsibility for NEPA documents.[8]

We believe that the language of the objectives of the alternative procedures should be revised. We have changed proposed § 4.34(i)(2)(i) to reflect the goal of combining into one process not only the pre-filing consultation procedures and the environmental review process under NEPA, but also those administrative processes associated with section 401(a) of the Clean Water Act[9] and other statutes. We are revising proposed § 4.34(i)(2)(ii) to make clear that the goal of the alternative procedures includes greater participation in the process by and improved communication among all concerned entities, including the applicant, resource agencies, Indian tribes, the public and Commission staff. While meeting certain minimum requirements of openness and fairness, the process is designed to be as flexible as possible, tailored to the circumstances of each case.

Section 4.34(i)(2)(iv) is revised to state that the rule is designed to promote cooperative efforts by the applicant and interested entities, including the sharing of pertinent information about the resource impacts of the applicant's hydropower proposal and appropriate mitigation and enhancement measures. The goal of encouraging settlement is not confined to submitting a formal offer of settlement among parties on the application when it is filed, but includes any agreement that can be reached that narrows the range of contested issues, both on necessary studies and on mitigation and enhancement measures.

We decline to modify the goal statement in the regulations as recommended by HRC. We have no objection to an applicant voluntarily deciding to provide financial assistance to citizens' groups to facilitate their effective participation in the alternative process or to allowing such groups an appropriate role in choosing contractors to do necessary studies. We believe that if any participant believes such measures are important and would further the successful completion of the process and the achievement of its other objectives, these questions should be discussed among the participants. But we do not believe it would be appropriate or helpful for the Commission to attempt to force participants to make such arrangements, which should be strictly voluntary and arise from the particular circumstances and dynamics of each case.

The final rule establishing alternative procedures for hydropower applications is neutral in regard to its impact on potential rival applicants for hydropower facilities, such as an applicant seeking to renew its license for such facilities and a municipal competitor seeking a license for the same facilities. No applicant in a competitive proceeding has asked the Commission to use the alternative procedures. However, nothing in the final rule precludes granting such a request. If it is made, we will consider whether it should be granted, considering all the relevant factors presented.

We are changing the language of § 4.34(i)(2)(iii) to state that the applicant or its contractor or consultant will only prepare a preliminary draft EA or a preliminary draft EIS, which after filing (with the related application) will be subject to complete review, revision and issuance for comment by the Commission.

Finally, we are adding a § 4.34(i)(2)(v) to the rules, to make it clear that another objective of the alternative procedures is the orderly and expeditious review by the Commission of any agreement or offer of settlement filed to resolve issues raised by an application for hydropower license, amendment, or exemption. We hope that involvement of the Commission's staff, prior to the filing of an application and agreement or offer of settlement with the Commission, together with the preparation of preliminary draft NEPA documents during the pre-filing consultation process, will result in filings that the Commission can expeditiously review. These filings should include water quality certification under section 401 of the Clean Water Act, with any

[5] Comments of Penobscot Nation (Penobscots), U.S. Dept. of the Interior (Interior) at 4, 10.

[6] Hydropower Reform Coalition (HRC) Comments at 8–10.

[7] Comments of Holyoke Gas & Electric Dept. and the Northern California Power Agency.

[8] Comments of NMFS at 3.

[9] 33 U.S.C. 1341(a)(1).

applicable conditions, and (after filing of the application) a final decision by any land management agency under section 4(e) of the Federal Power Act (FPA),[10]/ with mandatory conditions, should be submitted to the Commission so that we can make a prompt decision on the license or exemption application.

C. Demonstration Required of Applicant

The NOPR proposed in § 4.34(i)(3)(i) to require that the applicant, in its request to the Commission for use of the alternative procedures, demonstrate that it had made a reasonable effort to contact all resource agencies, Indian tribes, citizens' groups and others affected by the hydropower proposal, and that a ''consensus'' exists that the use of alternative procedures is appropriate.

This proposed regulatory text generated the most controversy in the rulemaking. Commenters disagreed vigorously as to what ''consensus'' should mean, with some arguing that it should mean unanimous agreement by all concerned,[11]/ and others arguing that it should mean the preponderance of views, at least by the major participants in the process.[12]/ Some commenters have proposed elaborate voting schemes in this regard,[13]/ while others have claimed that certain entities, such as resource agencies, should have a veto power over use of the alternative procedures.[14]/ Some commenters have asked the Commission to specify in the rule exactly what the requester should include in its showing.[15]/

The term ''consensus'' in ordinary usage means ''general agreement'' or ''collective opinion: the judgment arrived at by most of those concerned.'' [16]/ That is how the Commission employs the term here. While unanimous views obviously reflect consensus, unanimity is not always essential to a fundamentally consensual approach in a multi-party situation. The final rule does not require the applicant, in the request for use of the alternative procedures, to show that everyone concerned supports the use of these procedures. The applicant need only show that the weight of opinions expressed make it reasonable to conclude that under the circumstances it appears that use of the alternative procedures will be productive. We do not require the applicant to make any formal showing, such as a signed agreement

We envision a series of interactions between the applicant and participants that goes beyond an exchange of letters. Such interactions could include teleconferences and meetings involving Commission staff to explore the alternative procedures. In some cases the applicant's showing may rely on a lack of objections raised in such meetings. This situation may arise at the outset of the pre-filing consultation process, when interested entities are unsure of how the alternative procedures may compare to those otherwise required under Commission regulations and are unaware of the relative benefits of the alternative. The Commission believes that in these situations it is worth allowing the applicant and participants to try the alternative process rather than closing the door on this option.

To protect the rights of all interested entities to be advised of the request for alternative procedures and to file comments on the request in order to make their views known directly to the Commission, the final rule specifies, as proposed in the NOPR, that in all cases the Commission will give public notice in the **Federal Register** of the filing by an applicant of a request to use alternative procedures. Comments may be filed in response to this notice, and the Commission will take them into account in deciding whether or not to grant the request. The decision on the request will be final and not subject to interlocutory rehearing or appeal.[17]

D. Required Steps to Follow

In § 4.34(i)(4), the NOPR set forth certain minimum steps that all alternative procedures should include as appropriate: (1) The initial information meeting; (2) the scoping of environmental issues; (3) the analysis of scientific studies and further scoping; and (4) the preparation of a preliminary draft NEPA document and related application. Participants would be free, under the communications protocol to be submitted with the request to use alternative procedures, to describe those steps in greater detail or to agree to steps in addition to those set forth in the proposed rule.

Some commenters objected to the statement that these steps would only be included ''as appropriate,'' and expressed their stongly held views that the steps were the minimum that should be required in any alternative procedure.[18] Others argued in general for more flexibility.[19] Some commenters wanted more requirements in the regulatory text, to make clear that the alternative process must include distribution by the applicant of an initial information package, that the initial information meeting should be open to the public, and that there should be cooperation between the applicant and interested persons on the determination of necessary studies and their design and scope.[20]

Commenters also requested that the Commission specify in detail in the regulations the deadlines that would apply during the alternative process.[21]

We have set forth in the final rule a list of the minimum steps we think should be a part of any alternative process, if it is to serve its objectives of expediting the completion of the administrative process, while at the same time being fair to all participants. The final rule adopted provides for the inclusion of three steps by combining the second and third steps (dealing with the scoping and study processes, as outlined above) that were proposed in the NOPR. We do not believe that the requirement that these three steps be included restricts the flexibility of the alternative process.

We do not, however, make the inclusion of these three steps mandatory in every alternative process, as there may be special circumstances where some of them are not possible or necessary.

The best example of such a case is if the alternative process begins after the applicant has already completed the first step in the standard pre-filing consultation process (the initial information meeting open to the public). The Commission will entertain requests to use the alternative process at any reasonable time, and they need not be submitted before the commencement of the standard pre-filing consultation process. In such a case, if the Commission grants the request, it would make no sense to require by rule that the applicant repeat a step that is the same as or substantially similar to a step it

[10] 16 U.S.C. 791a *et seq.*

[11] *E.g.,* Comments of HRC at 4–5, Interior at 3–4.

[12] *E.g.,* Comments of NHA at 4, 15–18, Alabama Power Co. and Georgia Power Co. at 3–5.

[13] *E.g.,* Comments of Public Generating Pool at 6–8.

[14] Comments of U.S. Dept. of Agriculture, Forest Service, at 2.

[15] Comments of NMFS at 5.

[16] Webster's Third New International Dictionary (1981), or use of a particular voting procedure, to memorialize the consensus on use of the procedures. We do not give any single interested entity a veto power over the applicant's use of alternative procedures.

[17] The Commission will place a copy of the decision (on the request to use alternative procedures) on the Commission Issuance Posting System (CIPS), so that it can readily be found by anyone interested.

[18] *E.g.,* Comments of Interior at 4, Forest Service at 3.

[19] NMFS Comments at 4–5.

[20] HRC Comments at 9–10, 13.

[21] *E.g.,* Comments of Forest Service at 4.

has already taken under the standard process. The Commission is sensitive to the concerns expressed in the comments and will not abridge procedures allowed in the alternative process in a way that would curtail notice to or participatory rights of any interested entity. We wish to be flexible and fair to all concerned.

We agree with the comments asking for changes in the regulatory text to clarify the basic requirements for the completion of these minimum steps in the alternative process. Accordingly, § 4.34(i)(4) of the final rule makes clear that the applicant must distribute an initial information package and conduct an initial information meeting open to the public, as required in the standard process, and that the approved procedures must include provisions for the cooperative scoping of environmental issues with all participants, including the selection and design of required scientific studies and any further scoping. Our goal is to promote as much candid communication as possible among the participants about the applicant's proposal, its resource impacts, and the proposals and views of the other participants.

We do not think it is necessary or appropriate to spell out, in greater detail in the regulations, deadlines for the alternative process. The establishment of these deadlines should be done cooperatively by the participants in a manner that fits the circumstances and needs of each case, with the guidance and support of Commission staff. We believe that the successful use of the alternative procedures is predicated on a climate of cooperation among the applicant and interested entities. Therefore we do not believe that the Commission should mandate by rule exactly how the alternative process may unfold in every case. To do so would unnecessarily repeat requirements in the standard pre-filing consultation process, which remains available for use in appropriate cases, and would undercut the flexibility and spirit of cooperation and open communiciation that lie at the heart of the alternative process.

E. Notice, Filings and Service Requirements

The NOPR proposed in § 4.34(i)(5) that the Commission would give public notice of the filing of the applicant's request to use the alternative procedures, inviting comment on the request. Proposed § 4.34(6)(i) would require the Commission and the applicant to give public notice of each of the four steps required in the alternative process under proposed § 4.34(i)(4). The applicant would be required to give notice of each of these stages to entities on a mailing list approved by the Commission. The proposal required the applicant to file with the Commission quarterly reports on the progress of the alternative process, pursuant to § 4.34(i)(6)(ii), and implied in § 4.34(i)(6)(iii) that the applicant would also have to file with the Commission the critical documents generated in the process, namely the initial information package, scoping documents, and the preliminary draft environmental review document.

Some commenters have urged the Commission to add language to the rule in order to make it clear how the Commission and the applicant would give notice.[22] A commenter urged that, in the case of an applicant seeking a new license, the applicant be required to give notice at the outset to (1) any entity that had contacted the Commission during the period of the previous license about the project in question and (2) published lists of citizens' groups that may have an interest.[23] The Commission was also asked to require that various filings made by the applicant in the course of the alternative process be served on all participants in the process.[24] Resource agencies requested that the Commission require the applicant, at the conclusion of the alternative process, to index its public file (which documents the pre-filing consultation and environmental review processes) and submit all of these documents, together with the index, to the Commission with its application.[25] Commenters also expressed concern that omission of Exhibit E would eliminate important information from the Commission's record.[26]

We agree that revisions should be made in the final rule about the requirements for notice, filings and service of documents. New § 4.34(i)(3)(iii) requires the applicant, when it files its request for alternative procedures with the Commission, to serve copies on all affected resource agencies and Indian tribes and all entities that have expressed an interest in the alternative process. As provided in § 4.34(i)(5), the Commission will give notice in the **Federal Register** of receipt of the request. We believe that these requirements, together with the rule's requirement that the applicant must have made reasonable efforts to contact interested entities prior to the filing of its request (see § 4.34(i)(3)(i)), will be sufficient to put the public on notice of the request. As discussed in section III.C above, the Commission will consider any comments received in determining whether to grant the request.

Section 4.34(6)(i) is also revised from the proposal to make clear that the Commission's public notice of each of the first two stages in the alternative process, described in § 4.34(i)(4), will appear in the **Federal Register**, and that the applicant's public notice of these stages is required to appear in local newspapers in the county or counties in which the project is located. Section 4.34(i)(6)(ii) is revised to make clear that reports to the Commission on the pre-filing consultation process are required only every six months, and that this requirement can be satisfied by the submission of documents already available, such as summaries or minutes of meetings held. This section also clarifies what critical documents in the process the applicant must file with the Commission and provides that copies of these documents must be served on each participant in the process that requests a copy.[27]

When the applicant files its application and preliminary draft environmental review document with the Commission, these filings, and such additional material as will be specified by the Commission in each case, will replace the Exhibit E material that is required in the standard process. We will not permit applicants to omit material necessary for the Commission's review in these filings.

We do not think it necessary to require the applicant to index all of the documents in its public file compiled during the alternative process and to submit those documents, together with the index, to the Commission with its application.[28] Any party to the proceeding before the Commission may file any material it wishes as part of its comments on the application, or the party may request that materials in the possession of the applicant be filed with the Commission. The Commission may order such filings if it believes they

[22] *E.g.*, Comments of Interior at 5.

[23] HRC Comments at 5–6.

[24] Comments of Interior at 6–7.

[25] Comments of Interior at 6–7 and Forest Service at 1.

[26] Comments of Interior at 7.

[27] Applicants should note that in order to have sufficient copies for internal distribution, the Commission requires the submission of an original and eight copies of all filings in hydropower matters. See 18 CFR 4.34(h). The final rule makes clear that this requirement applies to filings with the Commission that are made in the course of the alternative pre-filing process described in § 4.34(i). See § 4.34(i)(6)(ii).

[28] The final rule requires the applicant to maintain a public file of all relevant documents in the pre-filing consultation process. See § 4.34(i)(6)(iii).

would be in the public interest. See the final rule § 4.34(i)(6)(iv).

F. Requests for Scientific Studies

Under the proposed rule § 4.34(i)(6)(v), the procedures approved in the alternative process may require all participants in the process to submit during the pre-filing consultation period their requests for scientific studies by the applicant. The proposal also allowed requests for such studies to be filed with the Commission after the filing of the application for good cause, with an explanation of why it was not possible to request the study during the pre-filing period.

This proposal was controversial. Some commenters pointed out that it was too restrictive, and that any party should be able to file a request for scientific studies by the applicant after the filing of its application, so long as good cause is shown. The Commission was also asked to give examples of situations in which a party would be able to show good cause.[29] Other commenters wanted the rule to be tightened to eliminate in whole or in part the right of any party to request scientific studies after the filing of the application.[30]

We believe that an important result of the alternative process, and the greater participation and communication among participants it encourages, should be the amicable resolution among participants of disputes about necessary scientific studies during the pre-filing consultation period, not after the application is filed with the Commission. With improved communication among the participants and the availability of dispute resolution in the alternative process, we do not expect to receive frequent requests for additional studies after the filing of an application that is subject to the alternative process. We understand, however, that not all such disputes will be so resolved, and that some participants, even though they have participated actively and in good faith in the alternative process, may be unwilling thereby to waive their requests for certain studies, even if the other participants in the process do not think they are necessary. The alternative process does not require such a waiver. We hope that through the alternative process, with the assistance of Commission staff, participants will be able to resolve all important differences about a hydropower proposal, including disputes about necessary studies. If the participants cannot resolve such a dispute, even with the dispute resolution procedure discussed in the next section, a party may raise it to the Commission's attention after the filing of the application. In such a case, the Commission will rule on the request, either by separate order or when issuing a decision on the application.

The requirement of good cause is self-explanatory, and the Commission does not wish to bind by rule the discretion of future Commissions to do justice in a particular case. We will not, therefore, encumber the final rule or include in this preamble additional language that would attempt to explain what would suffice to make a showing of good cause in a particular case.

G. Dispute Resolution

The proposed rule was silent on whether the Commission's provisions for dispute resolution, available in the standard pre-filing consultation process, would apply to the alternative process. Commenters asked whether they could seek resolution of disputes by the Commission in the alternative process, should it be necessary.[31]

We believe that participants should be able to ask the Commission to resolve disputes arising during the alternative process, but only if they have first made reasonable efforts to resolve the disputes with other participants, using any mechanisms established by agreement among the participants and the help of Commission staff, where appropriate. Any such request should be served on all participants and must document what efforts have been made to resolve the dispute.

H. Collapse of Consensus

The NOPR asked the commenters to address what they thought should happen if the consensus that had appeared to exist when the Commission granted an applicant's request for alternative procedures subsequently collapsed.

Many commenters attempted to answer this question. Most seemed to recognize that in certain circumstances it would make no sense to continue with the alternative process,[32] and some asked the Commission to direct what should happen in such circumstances.[33]

Despite the best of intentions of the participants, it is possible in some instances for the consensus supporting the continued use of the alternative procedures to collapse. We do not mean by this loss of consensus a disagreement on what studies should be conducted or what mitigation or enhancement measures should be required in response to the applicant's proposal, or loss of confidence on the part of one participant or a few participants in the process. We believe that a consensus will collapse if the weight of opinion of the applicant and the other participants is that the process has become a waste of their valuable time and resources and that the public interest would be better served under the circumstances by the Commission's directing a completion of the pre-filing process and what further steps are required of the applicant. In such a situation an alternative pre-filing process directed by the Commission would be required in order to clarify what steps the applicant would have to take in the time remaining to file an acceptable application.

Accordingly, the final rule adds § 4.34(i)(7) to allow a participant (including the applicant), in the event that a consensus supporting the alternative process is lost, to file a request that the Commission direct what steps should be taken to complete the pre-filing consultation process.

I. Grandfather Provision

The NOPR asked what should be done about alternative processes already approved by the Commission, pursuant to case-by-case waivers of current regulatory requirements, if the Commission adopts a final rule establishing alternative procedures.

All commenters addressing this question felt that the rule should grandfather such already approved processes.

We agree and are adding § 4.34(i)(9) to the final rule to grandfather existing alternative processes. Steps already taken do not have to be repeated, and applicants are not required to act inconsistently with written agreements already reached by participants in such cases. Other provisions of the new rule, however, such as public file requirements or requirements to file materials with the Commission (consisting of an original and eight copies) and serve copies on other participants, that may be in addition to those already agreed to in cases where waivers have been granted, will apply to all such cases after the effective date of the final rule.

J. Miscellaneous

NHA asked the Commission to improve its public noticing of

[29] HRC Comments at 11–12, U.S. Environmental Protection Agency at 1, Washington Dept. of Fish and Wildlife at 3–4.

[30] Reply Comments of EEI at 4–6.

[31] Comments of Interior at 8.

[32] Comments of Duke Power Co. at 2–3, Pacific Gas & Electric Co. at 4; HRC Comments at 7, Reply Comments at 11–12. asked the Commission to direct what should happen in such circumstances.

[33] Comments of Forest Service at 4, Montana Power Co. at 6–7, EEI Reply Comments at 6.

hydropower applications, by including the licensee name and the name of the project in addition to the project number, and to use public libraries to facilitate notice to the public. NHA also asked the Commission to explain what the NOPR meant in stating that staff could participate in cases where there was no alternative process proposed and approved, pursuant to proposed § 4.34(i)(7).

Resource agencies were concerned about the impact of the alternative procedures on the Commission's obligations under NEPA, section 10(j) of the FPA and the Endangered Species Act (ESA).[34] Federal agencies were concerned about whether the alternative procedures would affect their participation as cooperating agencies for NEPA purposes.[35] A number of commenters asked the Commission to explain how the alternative pre-filing procedures would affect the Commission's conduct of the hearing process on the application when it is filed.[36]

Regarding notices concerning a hydropower project, the Commission agrees with NHA that all public notices of a hydropower application should include not only the project number but also the name of the licensee and the name of the project. Participants in the alternative process may agree to use public libraries to facilitate notice and to provide information to the public, in addition to complying with the notice and public file requirements contained in the final rule.

The final rule contains a provision at § 4.34(i)(8) making it clear that, at the Commission's discretion, its staff may participate not only in the pre-filing consultation process where alternative procedures are in use, but also in other cases where these procedures are not being used. The Commission may commit its staff, upon request and on a case-by-case basis, to limited participation in the pre-filing consultation process in connection with the preparation of any application for license, exemption, or license amendment. The goals of such participation may include exploring whether the participants in the process should consider the use of alternative procedures and, to the extent feasible and appropriate, assisting in the informal resolution of disputes and the combination of the pre-filing consultation process with the NEPA process and related processes, such as the grant of water quality certification under the Clean Water Act and the issuance of mandatory conditions pursuant to section 4(e) of the FPA.

In such cases, on request and at its discretion, the Commission may approve suitable modifications to the procedures otherwise applicable during the pre-filing and post-filing periods, similar to those made for alternative procedures set forth in the proposed rule. If the applicant subsequently requests and is granted permission to use alternative procedures, the Commission may direct how the applicant and interested entities may shift from the standard pre-filing consultation process to the alternative process.

The final rule does not affect the Commision's compliance with NEPA, section 10(j) of the FPA, or the ESA, nor does it in any way deprive a party of the right to contest issues before the Commission and obtain a decision on these issues based on the administrative record before the Commission. The Commission will review the application for adequacy, and if it is accepted for filing the Commission will invite interventions and set a deadline for the submission of final recommendations, prescriptions, mandatory conditions, and comments. Upon receipt of the application the Commission will not issue a notice inviting additional study requests, and the Commission will not issue a notice that the application is ready for environmental analysis, as would occur under the standard procedures. The Commission will review the preliminary draft NEPA document, prepared in the course of the pre-filing consultation period under the alternative procedures, and issue a draft NEPA document for comment. The Commission will take any steps required to examine contested issues and comply in its usual manner with statutory mandates applicable to the case, such as section 10(j) of the FPA and the ESA. The Commission will then issue the NEPA document in final form and an order on the application for license, exemption, or license amendment.

If an agreement or offer of settlement is filed in connection with an application that the Commission grants, the order will address the agreement or offer of settlement. If contested issues remain, as determined by the position of the parties and resource agencies before the Commission, the order will resolve the issues based on the administrative record before the Commission.

Finally, an agency, such as a federal land management agency with authority over the proposed project under FPA section 4(e) or a state agency with responsibility for issuing a certification for the project under the Clean Water Act, is free to participate fully in any alternative procedures under the final rule and subsequently to elect to be a cooperating agency with the Commission for NEPA purposes. The Commission will continue to enforce its policy, however, that such an agency cannot intervene as a party in the proceeding and at the same time be a cooperating agency for NEPA purposes. We believe that allowing an agency to pursue both of these roles simultaneously could raise concerns about compliance by the Commission with its *ex parte* rule.[37]

IV. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[38] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[39] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[40]

This final rule is procedural in nature. It proposes alternative procedures that participants to a hydroelectric licensing or exemption proceeding may wish to use. Thus, no environmental assessment or environmental impact statement is necessary for the requirements proposed in the rule.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[41] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations promulgated will not have a significant economic impact on a substantial number of small entities.

The procedures adopted herein are purely voluntary in nature, and are designed to reduce burdens on small entities (as well as large entities) rather

[34] 16 U.S.C. 1531–1544. Comments of Interior at 9 and NMFS at 4.

[35] Comments of Forest Service at 4, Interior at 10.

[36] Comments of NMFS at 3, Western Urban Water Coalition at 4, Public Generating Pool at 14–29, Sacramento Municipal Utility District at 18–36, and the City and County of Denver at 2–3.

[37] 18 CFR 385.2201.

[38] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), codified at 18 CFR Part 380.

[39] 18 CFR 380.4(a)(2)(ii).

[40] 18 CFR 380.4.

[41] 5 U.S.C. 601–612.

than to increase them. More fundamentally, the alternative process we are proposing herein is voluntary. The procedures constitute an alternative to the procedures currently prescribed in our regulations, and will not be available unless it is the consensus of the persons and entities interested in the proceeding, as discussed herein, to use the alternative procedures. Under this approach, each small entity will be able to evaluate for itself whether the alternative procedures are beneficial or burdensome, and oppose their adoption if they appeared to be more burdensome than beneficial. Under these circumstances, the economic impact of the proposed rule will be either neutral or beneficial to the small entities affected by it.

VI. Information Collection Requirements

The Office of Management and Budget (OMB) regulations require OMB to approve certain reporting and recordkeeping requirements (collections of information) imposed by agency rule.[42] OMB has reviewed the NOPR without comment. The final rule adopted herein will impose reporting burdens only on those applicants that voluntarily choose to use the alternate procedures. Respondents subject to the filing requirements of this final rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Final Rule will affect two existing data collections, FERC–500 and FERC–505. Most of the reporting burdens associated with preparing and filing an application for a hydropower license, exemption, or amendment to license are imposed by existing regulations.

Public Reporting Burden

The alternative procedures will only require minor additional filing requirements with the Commission. The other additional burdens of the alternative procedures, as compared to the standard procedures, do not involve filings with the Commission, but will consist of various outreach efforts of the applicant and related interactions with entities interested in its hydropower proposal. An applicant would presumably only incur such additional burdens if it believed that, in the long run, it would save on litigation and other costs incurred to pursue the standard procedures.

The Commission has made approximate estimates of the additional time that may be required of an applicant to comply with the alternative procedures, as compared with the standard procedures. It is difficult to be precise about such estimates, because the time required for one applicant could vary considerably from the time required for other applicants, depending upon the circumstances involved, including the complexity of the issues raised, the total number of participants in the pre-filing process, and how cooperatively those participants worked together. If the alternative procedures were successful and resulted, for example, in the filing of an agreement or offer of settlement with the Commission, the applicant may be able to save substantially more time by avoiding litigation than was invested in the alternative procedures. If an applicant requested and was allowed to use the alternative procedures, the main additional burden, with the estimated hours to comply with each, are estimated to be:

Process	Burden (hours of effort)
(1) Contact interested entities	80
(2) Prepare and submit request, including communications protocol	80
(3) Prepare and distribute scoping and hold related meetings	50
(4) Develop agenda and other documents, including minutes, for all meetings and prepare and distribute them (only additional time as compared to presently required meetings	600
(5) Prepare and publish public notices	24
(6) Prepare and submit semi-annual progress reports and make other required Commission filings	48
(7) Maintain a complete record of the pre-filing consultation proceedings that would be open to the public	250

It is estimated that to prepare and distribute the preliminary draft environmental review document would not take any more time than to prepare Exhibit E under the standard process. Therefore, the estimated additional burden of the tasks required of an applicant if it voluntarily undertakes the alternative process totals 1132 hours.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–500 ''Application for License for Water Projects with More than 5MW Capacity''; FERC–505 ''Application for Water Projects 5MW or Less Capacity''.

Action: Proposed Data Collections.

OMB Control No.: 1902–0058; 1902–0115.

Respondents: Businesses or other for profit.

Frequency of Responses: On Occasion.

Necessity of Information: There are approximately 1,021 hydropower licenses issued by the Commission that are currently outstanding. These licenses all expire at the completion of fixed terms, and at expiration the license holders may apply for a new licenses. Other applicants may apply for exemptions or original licenses to construct and operate new or existing hydropower projects.

The final rule authorizes a potential applicant for a license, exemption or certain major amendments to a license to file a request for alternative procedures if the applicant wants to use such procedures, as authorized by the rule. The rule also requires the filing of a communications protocol with the request for alternative procedures. The applicant will have to do a number of other things in the pre-filing consultation process, including distribution of an initial information package and conduct an initial public meeting, which are required under existing Commission regulations. The applicant, possibly with a contractor's assistance, would have to conduct the scoping of environmental issues; this is a new requirement, not now imposed on applicants, but which is related to currently required pre-filing consultation duties of the applicant and would substitute in part for the environmental review process traditionally done by the Commission after the filing of an application for hydropower license or for certain major license amendments.

The applicant would have to do studies of the resource impacts of its proposal, as it now must do under current Commission regulations governing the pre-filing consultation process. The applicant or the contractor would also have to prepare a preliminary draft NEPA document and submit additional information in lieu of what is now required as Exhibit E to a hydropower application. These two filing requirements—what is now required and what would be required under the regulations for the alternative procedures—are similar.

The applicant would have to file with the Commission semi-annual reports on

[42] 5 CFR 1320.11.

the progress of the pre-filing consultation process under the alternative procedures. No such reports are now required, although the filing of these reports under the alternative procedures avoids the requirement in the current regulations for the applicant to document the entire pre-filing consultation process when the application is filed. Under the alternative procedures the applicant would have to maintain a public file of the pre-filing process and to give various public notices during this process, while current regulations do not require maintenance of a public file containing all this information or the issuance of as many such notices during the pre-filing consultation period.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Hydropower Licensing will upon receipt of the application review it to determine the broad impact of the license application. Commission staff conducts a systematic review of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public. The Commission will take any steps required to examine contested issues and comply with statutory mandates applicable to the case. These reviews ensure that the Federal Power Act as amended by other statutory provisions is formally administered to ensure compliance by the licensee. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the hydroelectric industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. [Attention: Michael Miller, Division of Information Services Phone: (202) 208–1415, fax: (202) 273–0873, email: mmiller@ferc.fed.us]

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. For submitting comments concerning the collections of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–3087, fax: (202) 395–7285]

Estimated Annual Burden (includes burden hours already approved for standard procedures):

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–500	6	6	853	5,120
FERC–505	10	10	182	1,818

Total Annual Hours for collections (Reporting + Recordkeeping, (if appropriate)) = 6,938.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Data collection	Annualized capital/start-up costs	Annualized costs (operations & maintenance)	Total annualized costs
FERC–500	$269,861	$0.00	$269,861.00
FERC–505	95,822	0.00	95,822.00
Total			365,683.00

VII. Effective Date

This rule is effective December 5, 1997. If OMB has not approved the information collection provisions at that time, the Commission will issue a notice delaying the effective date until OMB approval of the final rule.

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends parts 4 and 375 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. In § 4.34, the section heading is revised and a new paragraph (i) is added to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(i) *Alternative procedures.* (1) An applicant may submit to the Commission a request to approve the use of alternative procedures for pre-filing consultation and the filing and processing of an application for an original, new or subsequent hydropower license or exemption that is subject to § 4.38 or § 16.8 of this chapter, or for the amendment of a license that is subject to the provisions of § 4.38.

(2) The goal of such alternative procedures shall be to:

(i) Combine into a single process the pre-filing consultation process, the

environmental review process under the National Environmental Policy Act and administrative processes associated with the Clean Water Act and other statutes;

(ii) Facilitate greater participation by and improve communication among the potential applicant, resource agencies, Indian tribes, the public and Commission staff in a flexible pre-filing consultation process tailored to the circumstances of each case;

(iii) Allow for the preparation of a preliminary draft environmental assessment by an applicant or its contractor or consultant, or of a preliminary draft environmental impact statement by a contractor or consultant chosen by the Commission and funded by the applicant;

(iv) Promote cooperative efforts by the potential applicant and interested entities and encourage them to share information about resource impacts and mitigation and enhancement proposals and to narrow any areas of disagreement and reach agreement or settlement of the issues raised by the hydropower proposal; and

(v) Facilitate an orderly and expeditious review of an agreement or offer of settlement of an application for a hydropower license, exemption or amendment to a license.

(3) A potential hydropower applicant requesting the use of alternative procedures must:

(i) Demonstrate that a reasonable effort has been made to contact all resource agencies, Indian tribes, citizens' groups, and others affected by the applicant's proposal, and that a consensus exists that the use of alternative procedures is appropriate under the circumstances;

(ii) Submit a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing consultation process, including the Commission staff, may communicate with each other regarding the merits of the applicant's proposal and proposals and recommendations of interested entities; and

(iii) Serve a copy of the request on all affected resource agencies and Indian tribes and on all entities contacted by the applicant that have expressed an interest in the alternative pre-filing consultation process.

(4) As appropriate under the circumstances of the case, the alternative procedures should include provisions for:

(i) Distribution of an initial information package and conduct of an initial information meeting open to the public;

(ii) The cooperative scoping of environmental issues (including necessary scientific studies), the analysis of completed studies and any further scoping; and

(iii) The preparation of a preliminary draft environmental assessment or preliminary draft environmental impact statement and related application.

(5) The Commission will give public notice in the **Federal Register** inviting comment on the applicant's request to use alternative procedures. The Commission will consider any such comments in determining whether to grant or deny the applicant's request to use alternative procdures. Such a decision will not be subject to interlocutory rehearing or appeal.

(6) If the Commission accepts the use of alternative procedures, the following provisions will apply.

(i) To the extent feasible under the circumstances of the proceeding, the Commission will give notice in the **Federal Register** and the applicant will give notice, in a local newspaper of general circulation in the county or counties in which the project is located, of the initial information meeting and the scoping of environmental issues. The applicant will also send notice of these stages to a mailing list approved by the Commission.

(ii) Every six months, the applicant shall file with the Commission a report summarizing the progress made in the pre-filing consultation process and referencing the applicant's public file, where additional information on that process can be obtained. Summaries or minutes of meetings held in the process may be used to satisfy this filing requirement. The applicant must also file with the Commission a copy of its initial information package, each scoping document, and the preliminary draft environmental review document. All filings with the Commission under this section must include the number of copies required by paragraph (h) of this section, and the applicant shall send a copy of these filings to each participant that requests a copy.

(iii) At a suitable location, the applicant will maintain a public file of all relevant documents, including scientific studies, correspondence, and minutes or summaries of meetings, compiled during the pre-filing consultation process. The Commission will maintain a public file of the applicant's initial information package, scoping documents, periodic reports on the pre-filing consultation process, and the preliminary draft environmental review document.

(iv) An applicant authorized to use alternative procedures may substitute a preliminary draft environmental review document and additional material specified by the Commission instead of Exhibit E to its application and need not supply additional documention of the pre-filing consultation process. The applicant will file with the Commission the results of any studies conducted or other documentation as directed by the Commission, either on its own motion or in response to a motion by a party to the licensing or exemption proceeding.

(v) Pursuant to the procedures approved, the participants will set reasonable deadlines requiring all resource agencies, Indian tribes, citizens' groups, and interested persons to submit to the applicant requests for scientific studies during the pre-filing consultation process, and additional requests for studies may be made to the Commission after the filing of the application only for good cause shown.

(vi) During the pre-filing process the Commission may require the filing of preliminary fish and wildlife recommendations, prescriptions, mandatory conditions, and comments, to be submitted in final form after the filing of the application; no notice that the application is ready for environmental analysis need be given by the Commission after the filing of an application pursuant to these procedures.

(vii) Any potential applicant, resource agency, Indian tribe, citizens' group, or other entity participating in the alternative pre-filing consultation process may file a request with the Commission to resolve a dispute concerning the alternative process (including a dispute over required studies), but only after reasonable efforts have been made to resolve the dispute with other participants in the process. No such request shall be accepted for filing unless the entity submitting it certifies that it has been served on all other participants. The request must document what efforts have been made to resolve the dispute.

(7) If the potential applicant or any resource agency, Indian tribe, citizens' group, or other entity participating in the alternative pre-filing consultation process can show that it has cooperated in the process but a consensus supporting the use of the process no longer exists and that continued use of the alternative process will not be productive, the participant may petition the Commission for an order directing the use by the potential applicant of appropriate procedures to complete its application. No such request shall be accepted for filing unless the entity submitting it certifies that it has been served on all other participants. The

request must recommend specific procedures that are appropriate under the circumstances.

(8) The Commission may participate in the pre-filing consultation process and assist in the integration of this process and the environmental review process in any case, including appropriate cases where the applicant, contractor, or consultant funded by the applicant is not preparing a preliminary draft environmental assessment or preliminary draft environmental impact statement, but where staff assistance is available and could expedite the proceeding.

(9) In all cases where the Commission has approved the use of alternative pre-filing consultation procedures prior to December 5, 1997, during the pre-filing process the potential applicant need not follow any additional requirements imposed by paragraph (i) of this section, if in so doing the applicant would repeat any steps already taken in the preparation of its application and supporting documentation or act inconsistently with any written agreement signed before December 5, 1997 by the applicant and the other participants in the alternative process.

PART 375—THE COMMISSION

3. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

4. In § 375.314, paragraph (u) is added to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(u) Approve, on a case-specific basis, and issue such orders as may be necessary in connection with the use of alternative procedures, under § 4.34(i) of this chapter, for the development of an application for an original, new or subsequent license, exemption, or license amendment subject to the pre-filing consultation process, and assist in the pre-filing consultation and related processes.

Note: The appendix will not appear in the Code of Federal Regulations.

Appendix A

Comments

Citizens' Groups

Adirondack Mountain Club
American Rivers
Appalachian Mountain Club
California Hydropower Reform Coalition
Conservation Law Foundation
Hydropower Reform Coalition
Idaho Rivers United
Michigan Hydro Relicensing Coalition
New England FLOW
New York Rivers United
Trout Unlimited

Federal Agencies

U.S. Department of Agriculture, U.S. Forest Service
U.S. Department of Commerce, National Marine Fisheries Service
U.S. Department of the Interior
U.S. Environmental Protection Agency

Indian Tribes

Penobscot Nation

Industry Associations

American Public Power Association
Edison Electric Institute
National Hydropower Association
Public Generating Pool
Western Urban Water Coalition

State Agencies

Georgia Department of Natural Resources
New York State Department of Environmental Conservation
Washington Department of Fish and Game

Licensees

Adirondack Hydro Development Corporation
Alabama Power Company and Georgia Power Company
Denver Water
Duke Power Company
Holyoke Gas & Electric Company and Northern California Water Power Agency
Minnesota Power & Light Company
Montana Power Company
Pacific Gas and Electric Company
Portland General Electric Company
Sacramento Municipal Utility District
Seattle City Light

Reply Comments

Alabama Power Company and Georgia Power Company
City of Holyoke, Massachusetts Gas & Electric Department
Duke Power Company
Edison Electric Institute
Hydropower Reform Coalition
National Hydropower Association
Sacramento Municipal Utility District

[FR Doc. 97–29196 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AE05

Definition of United States (U.S.) Resident; Religious Record of Birth or Baptism as Evidence of Citizenship; Plan to Help Blind and Disabled Individuals Achieve Self-Support

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations clarify SSA's policies on the definition of a U.S. resident and the acceptable types of evidence for proving status as a U.S. citizen or national. They clarify that, for purposes of the Supplemental Security Income (SSI) program, *resident of the U.S.* means the individual has established an actual dwelling place in the U.S. and plans to continue living in the U.S. These final regulations also clarify that, for purposes of the SSI program, a religious record of a birth or baptism in the U.S. must have been recorded in the U.S. within 3 months of the birth, in addition to showing that the individual was born in the U.S., in order to be acceptable evidence that the individual is a U.S. citizen or a national of the U.S. In addition, these final regulations correct a typographical error in the wording regarding income that is used or set aside to be used under a plan to become self-supporting.

EFFECTIVE DATE: These regulations are effective December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

To be eligible for SSI benefits, an individual must be a resident of the U.S. (one of the 50 States, the District of Columbia, or the Northern Mariana Islands). Generally, a person becomes a resident when he or she arrives in the U.S., establishes an actual dwelling place in the U.S., and plans to continue living in the U.S.

Our regulation at § 416.1603(b) currently defines *resident of the U.S.* as ''a person who is living within the geographical limits of the United States.'' This definition is vague because it could be read to imply that mere presence, such as that of a visitor, is sufficient to establish residency. In addition, it does not fully support the evidence of residency documents required to establish U.S. residency listed in § 416.1603(a).

Section 416.1603(b) of these final regulations specifies that an individual must establish an actual dwelling place in the U.S. and intend to continue living in the U.S. to be considered a U.S. resident. Clarification of this section of the regulations is necessary to address problems that have arisen where individuals have established U.S.