

integrated process should apply to original license applications.

#### b. Competition for New Licenses

173. One matter that has received very little attention is whether a non-licensee competitor for a new license for an existing project should be subject to the same regulatory requirements under the integrated process as existing licensees. The proposed integrated process regulations would also apply to such competitors, except that they would not be required to file a notification of intent. We have twice previously considered and rejected recommendations to require potential competitors to file notices of intent,<sup>224</sup> and we see no reason to revisit the matter again.

#### 2. Process Steps

174. HRC states that the existing licensing process regulations are confusing because they require the reader to cross-reference sections in parts 4 and 16, and proposes that any integrated licensing process regulations be sequential in form; that is, consist of a series of steps from beginning to end. The proposed regulation text does just that and should make the process easily understood,<sup>225</sup> but necessarily includes some cross-referencing to sections of parts 4 and 16.<sup>226</sup>

#### a. NOI, Process Schedule, and Study Plan Development

175. The NOI would continue to be due between five and five and one-half years prior to expiration of the license. It would be accompanied by the Pre-Application Document,<sup>227</sup> which the potential applicant would serve on resource agencies, tribes, and the public. The Applicant could at that time also request to be designated as the Commission's non-Federal representative for purposes of

consultation under the ESA and Magnuson-Stevens Act,<sup>228</sup> or to initiate consultation under NHPA Section 106.

176. The integrated licensing process is proposed to be the default process. A potential applicant for an original or new license requesting to use the traditional process or ALP would have to file a request to do so when it files its NOI and Pre-Application Document. It would, at the same time, have to issue public notice of any request to use the traditional process or ALP in order to ensure that the general public has an opportunity to respond.<sup>229</sup>

177. Filing of the NOI and Pre-Application Document would mark the commencement of the integrated process proceeding. Commission staff would be assigned to the proceeding at that time.<sup>230</sup> The Commission would issue public notice of the filing and of a public meeting and site visit. The purposes of the public meeting would be to review existing environmental conditions and resource management goals, review existing information, initiate NEPA scoping, consider the advisability of cooperating agency relationships, and develop a schedule that, to the extent possible, coordinates all applicable regulatory processes and results in an approved study plan (including any dispute resolution) no later than a year after the NOI is filed. The participants' comments and information requests would be due following the public meeting and site visit. That same notice would also include a decision on any request to use the traditional process or the ALP.

178. For applications developed using the integrated process,<sup>231</sup> the potential applicant would file, following comments in response to the notice, a revised Pre-Application Document and a proposed information-gathering and study plan following comments in response to the notice.<sup>232</sup> That would be

followed by the Commission's NEPA Scoping Document 1 (SD1), comments on SD1 and the applicant's proposed study plan, and a meeting to discuss the proposed study plan and seek informal resolution of study disagreements.<sup>233</sup>

179. Following the study plan meeting, the applicant would file for Commission approval a revised study plan, including a description of informal efforts made to resolve study disputes and explaining why the applicant rejected any of the stakeholder information and study requests. The Commission would issue a preliminary determination on the revised study plan, describing any modifications to the plan as proposed.<sup>234</sup>

180. The study plan would be deemed approved as provided for in the preliminary determination and the Director would issue an order directing the Applicant to implement the plan, except with respect to any parts of the proposed study plan that become the subject of the formal dispute resolution procedure.<sup>235</sup>

181. The dispute resolution procedure is designed to be concluded within 90 days. Federal or state agencies or Indian tribes with mandatory conditioning authority would be required to file any notice of dispute within 20 days. The Commission would within another 20 days convene one or more three-member dispute resolution panels to consider all disputes with respect to specified resource areas (e.g., fisheries, recreation). Two of the panelists would represent the Commission and the agency that raised the dispute, respectively, and neither would have had any prior involvement with the proceeding. The third panelist would be selected by the other two panelists from among a list of technical experts, and would be required to certify that he or she has no conflicts of interest. The Commission requests comments on whether it may be appropriate in some circumstances for one panel to make recommendations with respect to disputes involving different, but related resources, such as fisheries and aquatic resources. The applicant would have 25 days from the notice of study dispute to file and serve on the panelists any information or argument with respect to the dispute.

application document), and 18 CFR 5.8 (Applicant's proposed study plan).

<sup>233</sup> Proposed 18 CFR 5.9 (Scoping document and study plan meeting); 18 CFR 5.10 (Comments and information or study requests); and 18 CFR 5.11 (Study plan meeting).

<sup>234</sup> Proposed 18 CFR 5.12 (Revised study plan and preliminary determination).

<sup>235</sup> *Id.*

<sup>224</sup> See Order No. 513, 54 FR 23,756 (June 2, 1989), 55 FR 10,768 (March 23, 1990), p. 31,415, FERC Stats. & Regs. Regulations Preambles 1986-1990, ¶ 30,854 (May 17, 1989).

<sup>225</sup> Appendix C is a flow chart depicting the proposed integrated process. The flow chart appears in color on the Commission's website.

<sup>226</sup> Some commenters also suggested a wholesale restructuring of the regulations in which parts 4 and 16 would be combined. Part 16 is distinct from part 4 because the statutory provisions applicable to new licenses established in 1986 by ECPA are in numerous respects different from the requirements applicable to original licenses: The part 4 framework governs the many overlapping aspects (e.g., application procedures, application contents, amendments) of the numerous types of authorizations (original, new, subsequent, minor, major, non-power, and transmission line licenses; small conduit and under 5 megawatt exemptions; amendments to same) that the Commission's hydropower program entails.

<sup>227</sup> See Section III.D.1.b, *supra*.

<sup>228</sup> Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(b) requires Federal agencies to consult with NMFS on any action that may result in adverse effects to essential fish habitat.

<sup>229</sup> See proposed 18 CFR 5.1 (Applicability, definitions, requirement to consult, process selection). NGOs likely to be interested in the proceeding should not be caught unaware in any event, because existing license expiration dates will be posted on the Commission's website.

<sup>230</sup> Commission staff would be responsible for filing comments and recommendations on information-gathering and study proposals, and in other respects have the same functions as most other stakeholders throughout the licensing proceeding.

<sup>231</sup> The remainder of the discussion in this section, unless specifically stated to be otherwise, pertains only to the proposed integrated process.

<sup>232</sup> Proposed 18 CFR 5.6 (Comments and information requests), 18 CFR 5.7 (Revised pre-