

accommodated where the resource agencies are working cooperatively with the Commission on preparation of the NEPA document.

192. The application would be required to include the applicant's response to comments on the draft application and, with respect to any requests for additional information gathering or studies in the comments to which it agrees, either provide the requested information or include a plan and schedule for doing so. If the applicant does not agree to any additional information-gathering or study requests made in comments on the draft license application, it must explain the basis for declining to do so.<sup>242</sup> The application would also be required to include a copy of the water quality certification, a copy of the request for certification, or evidence of waiver of water quality certification.<sup>243</sup>

193. Within 14 days of the application filing, the Commission would issue public notice of the tendering of the application, including a preliminary schedule of major processing milestones.<sup>244</sup> Within 30 days, the Commission would make a determination with respect to any requests for additional information or studies made in comments on the draft license application.<sup>245</sup>

194. When all filing requirements are met and the approved study plan is completed, the Commission would issue a notice of acceptance and ready for environmental analysis, requesting comments, protests, interventions; recommendations, preliminary mandatory terms and conditions, and fishway prescriptions, and an updated schedule for the remainder of the proceeding.<sup>246</sup> Responses would be due within 60 days.<sup>247</sup>

195. Each draft EA or EIS, and EA not preceded by a draft, will include for comment draft license articles based on recommendations made pursuant to FPA Sections 10(a) (including 10(j) recommendations),<sup>248</sup> and preliminary mandatory terms and conditions and fishway prescriptions. If the application does not require a draft EA, the EA would be issued within 120 days of date for responses to the application acceptance and REA notice, with comments thereon due in 30–45 days,

and modified terms and conditions due 60 days thereafter. The Commission would act on the application within 60 days following the date for filing modified terms and conditions.<sup>249</sup>

196. For applications requiring a draft NEPA document, the draft NEPA document would be issued within 180 days from the date responses are due to the acceptance and REA notice, with comments due in from 30 to 60 days. Modified recommendations, terms and conditions, and fishway prescriptions would be due within 60 days of the date for filing of comments on the draft NEPA document. The Commission would issue a final NEPA document within 90 days following the date for filing modified terms and conditions or fishway prescriptions. The Commission would act on the application within 90 days following issuance of the final NEPA document.<sup>250</sup>

197. An amendment to an application filed under part 5 would be governed by the same provisions that govern amendments to applications under the existing regulations.<sup>251</sup>

198. The Commission requests comments on which process steps in the proposed integrated process may require adjustment. The Commission also requests comments on which time frames, if any, should be specified in the regulations for purposes of guiding the development of a process plan and schedule (including studies), and which may not be appropriate for specification in the regulations, but rather should be developed entirely in the context of case-specific facts.

#### *F. Improvements to Traditional Process and ALP*

199. Various commenters propose that the traditional licensing process be modified to include various elements of an integrated licensing process or other features.<sup>252</sup> These include: Early public and agency input on issues and study design;<sup>253</sup> establishment of specific criteria for study requests;<sup>254</sup> the outcome of the existing pre-filing study dispute resolution to be binding on all stakeholders;<sup>255</sup> waiver of pre-filing consultation requirements; greater use of applicant-prepared NEPA documents;

including process steps in the ALP; and moving NEPA scoping into the pre-filing consultation period.<sup>256</sup> In addition to draft license articles discussed above, we are adopting two of these recommendations; increased public participation and mandatory, binding dispute resolution.

#### *1. Increased Public Participation*

200. NGOs identify limited opportunity for public participation as a major problem in the traditional process,<sup>257</sup> and many licensees and other commenters agree.<sup>258</sup> American Rivers and Alabama Rivers also state that consultation meetings are often held at times and places that are inconvenient for unpaid volunteers. They recommend that applicants hold more consultation meetings on evenings and weekends when NGO volunteers are more likely to be available.

201. We agree that the traditional process needs to provide greater opportunity for public participation. Since the current regulations were established in 1989, the role of the public, in particular NGOs, has increased dramatically and their participation is often crucial to the negotiation of settlement agreements. Environmental groups, organizations representing recreation users, as well as local residents, consumer advocacy groups, and organizations representing ratepayers all have important interests to represent. We see no reason potential applicants should not make reasonable efforts to bring these entities into pre-filing consultation as early as possible, and for these entities to be involved in the development of study plans. We are therefore proposing to modify the existing pre-filing consultation regulations to that end.<sup>259</sup>

202. There is no need to modify the ALP with regard to public participation, since it already requires the applicant to include the public in pre-filing

<sup>256</sup> SCL, Southern. Southern would also require the applicant to file a study plan for Commission approval following the issuance of a staff scoping document.

<sup>257</sup> HRC, ADK, AmRivers, C-WRC, KCCNY, CRWC, RAW, NE FLOW.

<sup>258</sup> NHA, SCE, PG&E, Southern. All of the industry-sponsored process proposals contemplate greater pre-filing participation by the public, although the degree of participation is not always clear. A few industry commenters suggest that the general public already plays too great a role in licensing and makes unreasonable study requests. They recommend that public participation be limited to local residents who own lands adjacent to project reservoirs or other persons similarly situated. Wausau, DM&GLH, Domtar.

<sup>259</sup> Briefly stated, in most places that 18 CFR 4.38 and 16.8 refer to consultation with resource agencies and Indian tribes, the reference has been changed to resource agencies, Indian tribes and members of the public.

<sup>242</sup> Proposed 18 CFR 5.16(e).

<sup>243</sup> Proposed 18 CFR 5.17(f).

<sup>244</sup> Proposed 18 CFR 5.18 (Tendering notice and schedule).

<sup>245</sup> Proposed 18 CFR 5.18(b).

<sup>246</sup> Proposed 18 CFR 5.21 (Notice of acceptance and ready for environmental analysis).

<sup>247</sup> Proposed 18 CFR 5.22 (Response to notice).

<sup>248</sup> These would not include standard form license articles. See Section III.D.4.d., *supra*.

<sup>249</sup> Proposed 18 CFR 5.23 (Applications not requiring a draft NEPA document).

<sup>250</sup> Proposed 18 CFR 5.24 (Applications requiring a draft NEPA document).

<sup>251</sup> Proposed 18 CFR 5.26 (Amendment of application).

<sup>252</sup> AMC, SCE, NHA, SCL, EEI, PREPA, California, Wisconsin DNR, CTUIR.

<sup>253</sup> HRC, AMC, California, SCE, NHA, Wisconsin DNR, SCDWQ, SCL.

<sup>254</sup> Study criteria are identified by SCE and NHA.

<sup>255</sup> SCE.