

(3) The failure of a resource agency, Indian tribe, or consulted member of the public to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(4) Following [insert issuance date of final rule] a potential license applicant engaged in pre-filing consultation under this part may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

(f) *Application requirements documenting consultation and any disagreements with resource agencies, Indian tribes, or members of the public.* An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) and § 16.8(i), and must include:

(1) Any resource agency's, Indian tribe's, or member of the public's letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreements with a resource agency, Indian tribe, or consulted member of the public on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement;

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency, Indian tribe, or consulted member of the public.

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency, Indian tribe, or consulted member of the public, copies of related documents showing the attempts, and documents showing the

conclusion of the second stage of consultation.

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan;

(7) A description of how the applicant's proposal addresses the significant resource issues raised by members of the public during the joint meeting held pursuant to paragraph (b)(2) of this section.

* * * * *

(j) *Transition provisions.* (1) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license is [insert date three months following issuance date of final rule] or later.

(2) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule] are subject to the provisions of § 16.8 as promulgated prior to [insert date three months following issuance date of final rule].

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§ 16.9 [Amended]

7. Amend § 16.9 as follows:

In paragraph (d)(1)(iii), remove the phrase "agencies and Indian tribes" and add in its place the phrase "agencies, Indian tribes, and non-governmental organizations".

8. Amend § 16.10 as follows:

a. Paragraph (d) is removed.

b. Paragraph (e) is redesignated as paragraph (d) and is revised.

c. Paragraph (f) is removed.

The revised text reads as follows:

§ 16.10 Information to be provided by an applicant for new license: Filing requirements.

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(d) *Inclusion in application.* The information required to be provided by this section must be included in the application as a separate exhibit labeled "Exhibit H."

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§ 16.11 [Amended]

9. Amend § 16.11 by removing paragraph (a)(2).

§ 16.19 [Amended]

10. Amend § 16.19 by removing paragraphs (b)(3) and (b)(4).

§ 16.20 [Amended]

11. Amend § 16.20 by revising paragraph (c) to read as follows:

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(c) *Requirement to file.* An applicant must file an application for subsequent license at least 24 months before the expiration of the existing license.

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PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2. Amend § 385.214 by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 385.214 Intervention (Rule 214).

(a) * * *

(2) Any State Commission, the Advisory Council on Historic Preservation, and the U.S. Departments of Agriculture, Commerce, and the Interior, and any state fish and wildlife or water quality certification agency is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b). If the period for filing notice has expired, a State Commission, the Advisory Council on Historic Preservation, and the U.S. Departments of Agriculture, Commerce, and the Interior, state fish and wildlife or water quality certification agency must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person, other than the Secretary of Energy or a State Commission, the Advisory Council on Historic Preservation, and the U.S. Departments of Agriculture, Commerce, and the Interior, and any state fish and wildlife or water quality certification agency seeking to intervene to become a party must file a motion to intervene.

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3. Amend § 385.2201 by adding paragraph (g)(2) to read as follows:

§ 385.2201 Rules governing off the record communications (Rule 2201).

* * * * *

(g) * * *

(2) The disclosure requirement of paragraph (g)(1) of this section shall apply, with respect to communications with a cooperating agency, only to study