

contains public notification requirements. An applicant for a new license, at the time it notices its intention to apply for relicensing, must make available for public inspection<sup>29</sup> a number of items, including the original application, as-built drawings, diagrams, emergency action plans, and operation and maintenance reports.<sup>30</sup> In addition, the provisions regarding pre-filing consultation require that items including detailed maps and a general engineering design be made available for public inspection.<sup>31</sup> These regulations would require the disclosure of CEII.

15. Parts 4 and 16, apart from containing provisions requiring that CEII be made available to the public, also in several instances require applicants to serve CEII on Indian tribes, resource agencies and other government offices. Such provisions are found at 18 CFR 4.32(b)(1)–(2); 4.38(b)(1), (c)(4), (d); 16.8(b)(1), (c)(4), (d). In Order No. 630, the Commission noted that the Federal Records Act<sup>32</sup> effectively requires a Federal agency receiving information from another Federal agency to treat it in the same manner that the originating agency would have treated it.<sup>33</sup> This requirement would not apply to the provisions listed above, however, because the resource agency would be receiving the CEII directly from the applicant, not from the Commission. Consequently, to ensure consistent treatment of CEII, the Commission proposes to add provisions for instances where information must be provided to other agencies and to tribes that would parallel the proposed provisions applicable to information made available to the public. The Commission notes that neither the proposals contained in this NOPR nor Order No. 630 is intended to require companies to withhold CEII. Instead, they are intended to ensure that the Commission's regulations do not require companies to reveal CEII. Consequently, the Commission anticipates that, in most instances, companies will share CEII with other Federal agencies without requiring other agencies to request access to CEII.

## II. Discussion

16. The Commission in this NOPR proposes to reconcile the requirements for making information available to the public with Order No. 630 by providing that companies subject to the disclosure

requirements of Form No. 715 and parts 4, 16 and 157 omit CEII from the information made available. Instead, the company would include a statement briefly describing the omitted information, without revealing CEII, and referring the reader to the procedures for challenging CEII claims and for requesting CEII. Such challenges and requests would take place under the procedures adopted in Order No. 630 and found in 18 CFR 388.112 and 388.113, employing the definition of CEII found at 18 CFR 388.113(c). Therefore, a member of the public could still obtain the information, but would have to follow procedures different from those applicable now.

17. The treatment of CEII under the proposed procedures should largely parallel the treatment of the same information filed with the Commission. Form No. 715 and parts 4, 16 and 157 require that companies make available certain portions of information that they are submitting to the Commission. Consequently, the company should simply omit, from the information made available to the public, all materials designated as CEII in its submission to the Commission. The proposed revisions require that the company adhere to any previous determinations by the Commission or the CEII Coordinator as to the status of any information claimed to constitute CEII.<sup>34</sup> Thus, if information designated as CEII in the submission to the Commission is later determined not to constitute CEII, the company should make that information available as specified in the pertinent regulation. This approach should be relatively simple and straightforward. The Commission invites comments, however, on any other approach that might function better.

18. Besides § 157.10, other provisions in part 157 could conceivably be interpreted as requiring the disclosure by a company of CEII. Section 157.6(d) requires notification to affected landowners, including a description of “the proposed project [and] its location

(including a general location map).”<sup>35</sup> Where the Commission approves a pre-filing collaborative process, the applicant must maintain a public file of all relevant documents.<sup>36</sup> Finally, in the case of blanket certificates, an applicant must provide notice to landowners, including a brief description of facilities to be constructed or replaced.<sup>37</sup> In each of these cases, the Commission believes it should ordinarily be unnecessary for the applicant to release CEII. Where maps or other descriptions are required, it should be possible for the applicant to meet the requirement without including information so detailed or sensitive that it would require the inclusion of CEII, particularly given that Order No. 630 omitted location information from the definition of CEII. Where a NEPA Pre-Filing process or collaborative process is approved, there are no specific requirements that should lead to the disclosure of CEII. The regulation simply requires that the applicant make available all “relevant documents.” The Commission does not interpret this provision as requiring the disclosure of CEII. Nevertheless, in the interest of caution the Commission is proposing to amend all three provisions to provide for the protection of CEII.

19. The Commission invites comment on provisions in its rules and regulations other than those specifically discussed in this NOPR that may require revisions to ensure consistency with Order No. 630.

20. The Commission notes that it does not intend to revisit issues already addressed in Order No. 630. Such issues include the need for protecting CEII, the definition of CEII, and the procedures for submitting and obtaining access to CEII.<sup>38</sup> The Commission also notes that FOIA has no bearing on the matters discussed in this NOPR, as it concerns only requirements that companies make information available, not requests to obtain information from the Commission.

## III. Information Collection Statement

21. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>39</sup> The public disclosure of information originally supplied by an agency to the recipient is, however, excluded from the

<sup>34</sup> Sections 157.6(d)(3)(iv), 157.22(e)(4), and 157.203(d) require information to be made available that would not necessarily be identical to information submitted to the Commission. For example, 18 CFR 157.6(d)(3)(iv) requires that an applicant include in a notice to landowners a description of the proposed project. This description would not necessarily be contained in the application submitted to the Commission. As explained below, the Commission believes that, as a practical matter, these three provisions will seldom if ever require an applicant to make CEII available. Should such a situation arise, it would be the applicant's responsibility to determine what information constituted CEII and omit it from the information made available.

<sup>35</sup> 18 CFR 157.6(d)(3)(iv).

<sup>36</sup> 18 CFR 157.22(e)(4).

<sup>37</sup> 18 CFR 157.203(d).

<sup>38</sup> Those issues are still subject to rehearing as part of Docket No. RM02–4–000. That proceeding remains the appropriate forum for their resolution.

<sup>39</sup> 5 CFR 1320.12.

<sup>29</sup> See 18 CFR 16.7(e).

<sup>30</sup> 18 CFR 16.7(d)(1)–(2).

<sup>31</sup> 18 CFR 16.8(i); see 18 CFR 16.8(b)(1)(i)–(ii).

<sup>32</sup> 44 U.S.C. 3510(b).

<sup>33</sup> 68 FR 9857, at p. 9866.