

and PAD no later than five years before expiration of the existing license.³³⁹

T. Summary of Changes to Integrated Process—Regulation Text

358. In this section, we summarize the changes we are making to the integrated process. The changes are discussed in the order in which they occur in the part 5 regulations. A flowchart of the integrated process with significant modifications in boldface print is posted on the Commission's Web site.

359. The content and distribution requirements for the PAD have been substantially modified.³⁴⁰

360. At the time of the notice of commencement of proceeding, the Commission will request commencement of informal ESA consultation if the potential applicant is not designated as the Commission's non-federal representative for this purpose.³⁴¹

361. We are accepting the Tribal Group's request that early tribal consultation be specifically acknowledged in the regulations. To that end, we have added a new section providing for a meeting no later than 30 days following the filing of the NOI between each willing Indian tribe likely to be affected by the potential license application and the Commission staff and other relevant Federal agencies.³⁴²

362. The NOPR proposed to have the Commission's NEPA Scoping Document 1 issued following the potential applicant's issuance of a revised PAD with a draft study plan. The Process Group concluded that because the study plan should be issue-driven, and because the PAD and other factors should enable participants to begin issue identification from the beginning of the process, the integrated process would work better if NEPA scoping begins earlier. Accordingly, we have modified the rule to provide for the issuance of Scoping Document 1 at the same time the Commission issues the notice that the proceeding has commenced.³⁴³

363. The proposed rule provided that comments on the PAD "may" include initial information and study requests. In light of the fact that the beginning of NEPA scoping has been advanced to the same date as notification that the proceeding has commenced, the regulations have been modified to state that comments on the PAD "shall" include the commenters' information

and study requests, and should include information and studies needed for consultation under ESA Section 7 or water quality certification.³⁴⁴ Agencies or Indian tribes with authority to issue water quality certification are strongly urged to participate in this and all other aspects of the development of a Commission-approved study plan and schedule.

364. The proposed rule would have required the potential applicant to file a revised PAD and a proposed study plan. The Process Group concluded that there is no need for a revised PAD if the process is modified to provide additional time for the participants to address the potential applicant's draft study plan. As we are modifying the rule for that purpose, as discussed below, the revised PAD has been eliminated. We stress once again, however, the importance of potential applicant's exercising due diligence in obtaining information and preparing all components of the PAD. It is central to the success of the enterprise.

365. At the same time the potential applicant files its draft study plan, the Commission staff will issue, if necessary, Scoping Document 2.³⁴⁵ This previously occurred when the study plan determination is issued.

366. Comments on the draft study plan were proposed to be due 60 days after the draft study plan was filed, during which period the Commission staff would have issued Scoping Document 1, with the draft study plan appended.³⁴⁶ As recommended by the Process Group, Scoping Document 1 has been advanced, and the draft study plan will be served directly on the participants. The comment period on the draft study plan has also been extended to 90 days, and provisions made for the applicants and participants to hold meetings on the study plan during the 90-day period, in order to encourage as much discussion and negotiation as possible among the participants.³⁴⁷

367. As proposed, the potential applicant would file a revised study plan for Commission approval, followed by the Commission's study plan order.³⁴⁸ The Process Group recommended that we add an opportunity for participants to file comments on the revised study plan prior to the study plan order. We have

added a 15-day period for this purpose.³⁴⁹

368. The formal dispute resolution rules have been modified to include a technical conference open to all parties, before the Advisory Panel begins deliberations.³⁵⁰

369. We have clarified the standards for requesting changes to ongoing studies, and for requesting new information gathering or studies following the initial and updated study reports.³⁵¹ In brief, requests made following the initial study report are subject to a good cause standard, and requests made following the updated study report are subject to an extraordinary circumstances standard.

370. The requirement to file for comment a draft license application has been replaced by a requirement to file a "Preliminary Licensing Proposal," although a potential applicant may elect to file a draft application.³⁵²

371. The proposed rule provided for comments, interventions, and the filing of preliminary recommendations and terms and conditions 60 days following issuance of the REA notice,³⁵³ to be followed by the issuance of a draft EA or EIS, or an environmental assessment. We have, consistent with our current rules, added a 45-day period for reply comments, which would not affect the proposed time periods for issuance of NEPA documents.³⁵⁴

U. Changes to Traditional Process and ALP

372. The NOPR proposed four significant changes to the traditional process: (1) Full public participation; (2) mandatory, binding pre-filing dispute resolution; (3) the requirement to file an NOI and PAD; and (4) extending the deadline for filing the water quality certification application until 60 days after the REA notice. The NOI and PAD and related discussion of process selection and transition provisions were discussed above.³⁵⁵ The water quality certification deadline was also discussed previously.³⁵⁶

373. As discussed in this section, we are adopting the changes to ensure full public participation, but have decided to maintain the existing pre-filing dispute resolution process.

³³⁹ 18 CFR 5.5(d).

³⁴⁰ 18 CFR 5.6 and Section III.E.

³⁴¹ 18 CFR 5.8(b)(2) and Section III.O.3.

³⁴² 18 CFR 5.7 and Section III.N.

³⁴³ See 18 CFR 5.8(c).

³⁴⁴ See 18 CFR 5.9(a).

³⁴⁵ See 18 CFR 5.10 (Scoping Document 2).

³⁴⁶ Proposed 18 CFR 5.9 and 5.10.

³⁴⁷ 18 CFR 5.11(c).

³⁴⁸ Proposed 18 CFR 5.12.

³⁴⁹ 18 CFR 5.13(b).

³⁵⁰ 18 CFR 5.14(j) and Section III.G.3.d.

³⁵¹ 18 CFR 5.15.

³⁵² 18 CFR 5.16 and Section III.K.

³⁵³ Proposed 18 CFR 5.22.

³⁵⁴ 18 CFR 5.23(a).

³⁵⁵ See Sections III.D. and III.F.

³⁵⁶ See Section III.M.2.