

already been filed, because those potential applicants relied on the existing rules. As we have decided to retain the existing cooperating agencies policy, EET's request is moot.

439. California asserts that any change in the deadline for applying for water quality certification from the date of the application to a later time should apply immediately. California states that this would give all licensees that have filed an NOI, but not yet filed the license application, the benefit of additional time to resolve data requirements before filing their certification request.⁴²⁹ We agree in general that licensee applicants should have the benefit of our decision to move back the deadline date to 60 days following issuance of the REA notice. To minimize confusion, however, we will make that change effective October 23, 2003. Thus, a license application filed after that date under any process will benefit from the changed deadline date for filing the water quality certification application.

440. SCE and the Process Group request that we "grandfather" any potential applicant that has already been authorized to use the ALP, even if the NOI date has not arrived. This request is reasonable and we will grant it.

441. Duke requests that we grandfather "existing licensing proceedings," by which it apparently means that the potential applicant has commenced pre-filing consultation. This request is moot with respect to the process selection rules because a potential new license applicant by definition begins pre-filing consultation when the NOI and PAD are filed, and only those for whom the deadline date is two years away will be affected. With respect to the miscellaneous filing requirements, we think the three month transition period is sufficient.

442. Duke also states that potential applicants already engaged in the traditional pre-filing process should be permitted to employ features of the integrated process in the traditional process. We proposed changes to the regulatory text which enable a potential applicant to file a request to do so during first stage consultation after consulting with potentially affected entities.⁴³⁰ No commenter opposed the proposed provisions, which we are including in the final rule.

⁴²⁹ California cites changes to 18 CFR 4.34(j) and 4.38(h).

⁴³⁰ Proposed 18 CFR 4.38(e)(4).

IV. Environmental Analysis

443. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have significant adverse effect on the human environment.⁴³¹ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended.⁴³² This proposed rule is procedural in nature and therefore falls under this exception. Consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act

444. The Regulatory Flexibility Act of 1980 (RFA)⁴³³ generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities, or a certification that the rule will not have a significant economic impact on a substantial number of small entities.⁴³⁴ Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed licensing regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. We justify our certification on the fact that the efficiency and timeliness of the proposed integrated licensing process (early Commission assistance, early issue identification, integrated NEPA scoping with application development, and better coordination among federal and state agencies) will benefit small entities by minimizing redundancy and waste in the processes of the Commission and the various federal and state agencies associated with the hydroelectric licensing process.

VI. Information Collection Statement

445. The Office of Management and Budget's ("OMB's") regulations require that OMB approve certain information

⁴³¹ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶30,783 (Dec. 10, 1987).

⁴³² 18 CFR 380.4(a)(2)(ii).

⁴³³ 5 U.S.C. 601-612 (2000).

⁴³⁴ Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to Section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation" 15 U.S.C. 632(a).

collection requirements imposed by agency rule.⁴³⁵ This Final Rule does not make any substantive or material changes to the information collection requirements specified in the NOPR, which was previously submitted to OMB for approval. OMB has elected to take no action on the NOPR. Thus, the information collection requirements in this rule are pending OMB approval.

446. The following collections of information contained in this proposed rule will be submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission identifies the information provided for under parts 4, 5, and 16 and FERC-500 "Application for License/Relicense for Water Projects greater than 5 MW Capacity," and FERC-505, "Application for License for Water Projects less than 5 MW Capacity."

447. This Final Rule responds to comments concerning the information collections requirements specified in the NOPR, and has changed the PAD that was previously submitted to OMB. The changes make the document less burdensome on potential applicants and easier for all recipients to use. OMB did not make substantive comments on the NOPR, but directed the Commission to calculate the burden for each of the three available licensing processes and to estimate the proportion of licensees that would select each process. The burden calculation is based on the collection, dissemination of, and recordkeeping for information in the licensing process, and does not include any costs of license terms and conditions.

448. *Public Reporting Burden:* The Commission provided burden estimates for the proposed requirements. Several commenters stated that the PAD as proposed was unduly burdensome. These comments are addressed elsewhere in the Final Rule. In summary, we have clarified that the PAD requirements are limited to existing information and do not include any requirement to conduct studies, are substantially similar to existing requirements, and that the format and content requirements have been modified to reduce the burden on potential applicants.⁴³⁶

449. Estimated Annual Burden

⁴³⁵ 5 CFR part 1320.

⁴³⁶ See Section III.E.