By order of the Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM87-36-001, et al.; Order No. 481-A]

Interpretation of Comprehensive Plans Under Section 3 of the Electric Consumers Protection Act; Order on Rehearing

Issued: April 27, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of its final rule setting forth the Commission's interpretation of a Federal or state comprehensive plan under section 10(a)(2)(A) of the Federal Power Act, as amended by the Electric Consumers Protection Act of 1986. The Commission will treat as a comprehensive plan one that: Is prepared by an agency established pursuant to Federal law that has the authority to prepare such a plan, or by a state agency, of the state in which the proposed hydroelectric project is or will be located, authorized to conduct such planning pursuant to state law; is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and is filed with the Secretary of the Commission.

EFFECTIVE DATE: This order will become effective June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Kristina Nygaard, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of its final rule [1] setting forth the Commission's interpretation of a Federal or state comprehensive plan under section 10(a)(2)(A) of the Federal Power Act (FPA),[2] as amended by the Electric Consumers Protection Act of 1986 (ECPA).[3] The Commission will treat as a comprehensive plan one that: Is prepared by an agency established pursuant to Federal law that has the authority to prepare such a plan, or by a state agency, of the state in which the proposed hydroelectric project is or will be located, authorized to conduct such planning pursuant to state law; is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and is filed with the Secretary of the Commission.

II. Background and Discussion

Section 10(a)(2)(A) of the FPA requires the Commission, in its hydropower licensing decisions, to consider, among other things:

> (A) The extent to which the [proposed] project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by—
>
> (i) An agency established pursuant to Federal law that has the authority to prepare such a plan; or
>
> (ii) The State in which the facility is or will be located.

The Commission issued a final rule stating its interpretation of such a comprehensive plan on October 26, 1987. The Commission received ten requests for rehearing of the rule.[4]

1. The interpretative rule exception to the APA

The final rule was issued without prior notice and comment under the interpretative rule exception to the Administrative Procedure Act (APA).[5] The APA generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register** and give interested persons an opportunity to comment on the proposed action before issuing a final rule.[6] These requirements, however, do not apply to "interpretative rules, general statements of policy, or rules of agency organization, procedure or practice * * *." [7] Most of the petitioners for rehearing argue that the final rule does not fall within the interpretative rule exception to the APA. They argue that the rule imposed requirements for these plans that were not contained in ECPA and that the rule was therefore not interpretative in nature.

The Commission disagrees. Since the final rule merely stated the Commission's interpretation of a comprehensive plan under ECPA, the Commission believes the rule was properly issued under the interpretative rule exception to the APA.

2. Comprehensive plan criteria

In the final rule, the Commission stated that Congress intended that a state plan would fall within the scope of section 10(a)(2)(A) of the FPA only if the plan were prepared and adopted pursuant to a specific act of the state legislature and were developed, implemented, and managed by the appropriate state agency. The final rule also codified the Commission's conclusion in *Fieldcrest Mills, Inc.*[8] that plans within the scope of section 10(a)(2)(A) should "reflect the preparers' own balancing of the competing uses of a waterway." The rule pointed out that the weight to be accorded any plan, whether or not it qualifies as a state comprehensive plan, depends on its supporting documentation, since Commission findings must be based on substantial evidence.[9] The rule then set forth general guidelines with respect to what type of plan would carry the most weight in the Commission's licensing decisions.

The petitioners assert that the final rule interprets section 10(a)(2)(A) incorrectly by drawing overly restrictive requirements for qualifying comprehensive plans. Their arguments are based on the statutory language of section 10(a)(2) and on its legislative history.

Five petitioners [10] point out that section 10(a)(2)(A) refers to

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[1] Order No. 481, 52 FR 39905 (Oct. 26, 1987), III FERC Stats. & Regs. ¶ 30,773 (1987).

[2] 16 U.S.C. 803(a)(2)(A).

[3] Pub. L. No. 99-495, 100 Stat. 1234 (1986).

[4] The State of California *ex rel.* Resources Agency and the State Water Resources Control Board, the Commonwealth of Kentucky Department for Environmental Protection, the Vermont Agency of Natural Resources, the New York State Department of Environmental Conservation, the State of Minnesota Department of Natural Resources, and American Rivers *et al.* filed timely rehearing requests. The State of Montana, the State of Washington Department of Ecology, the Northwest Power Planning Council, and the State of Oregon filed requests for rehearing out of time. The Commission is considering these as requests for reconsideration.

[5] 5 U.S.C. 551 *et seq.* (1982).

[6] 5 U.S.C. 553(b)(A) (1982).

[7] *Id.*

[8] 37 FERC ¶ 62,264 (1986).

[9] *See* section 313(b) of the FPA, 16 U.S.C. 825*l*(b).

[10] State of California, Kentucky Department for Environmental Protection, Vermont Agency of

Continued

comprehensive plans "for improving, developing, *or* conserving" waterways (emphasis added), and that therefore these plans should not be required to balance all relevant public uses of the waterways. Rather, they reason that a plan, for example, that is concerned only with identifying reaches of rivers that should be protected from all forms of development should also qualify under section 10(a)(2)(A). These petitioners refer by way of contrast to the language of section 10(a)(1), which requires that projects to be licensed shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for a variety of beneficial public uses that are linked with the conjunctive "and," not the disjunctive "or." [11]

Two petitioners [12] also argue that requiring section 10(a)(2)(A) comprehensive plans to consider and balance all beneficial uses of a waterway renders "conflicting or redundant" the requirement of section 10(a)(2)(B) of the FPA that the Commission consider the "recommendations of * * * State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located * * *." California asserts that state comprehensive plans would always be subsumed within the state recommendations obtained pursuant to section 10(a)(2)(B).

Finally, American Rivers, *et al.* takes issue with the Commission's conclusion, as expressed in its order in *Fieldcrest Mills, Inc.* and in Order No. 481, that a comprehensive plan must be prepared and adopted pursuant to a specific act of the state legislature. American Rivers, *et al.* reasons that a comprehensive plan should qualify so long as a state agency is legally competent as a matter of state law to prepare such a plan.

The issue before the Commission is whether Congress, in enacting section 10(a)(2)(A) of ECPA, intended state and Federal comprehensive plans to consider and balance all relevant beneficial uses of a waterway, or whether Congress intended that such plans could deal with some, or only one, beneficial use.

The Commission recognizes that there is an ambiguity of intent reflected in the statutory language and the legislative history. However, it is not necessary to resolve this ambiguity, because, as a matter of policy, the Commission will accord section 10(a)(2)(A) treatment to state and Federal plans that consider one, or more, or all beneficial public uses of a waterway. In so doing, it will ensure that all state and Federal river programs and policies will be fully considered in the Commission's licensing decision.

With respect to the argument of American Rivers, *et al.* opposing the requirement of a specific act of the state legislature, the Commission's position was guided by the pre-passage remarks of Committee Chairman McClure, who stated that the provision would require the Commission to consider the extent to which a proposed plan was consistent with a state comprehensive plan "as established by an act of the State legislature and developed, implemented and managed by an appropriate State agency." [13] No state petitioner objected to the Commission's interpretation on this point. However, we are satisfied that, as the Senate Report states, the plan must merely be "prepared by appropriate agencies as authorized to conduct such planning pursuant to * * * State law." [14]

In sum, the Commission will treat as a comprehensive plan under section 10(a)(2)(A) of the FPA a plan that (1) is prepared by an agency established by Federal law that has the authority to prepare such a plan, or by a state agency authorized to conduct such planning pursuant to state law; (2) is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; (3) articulates the standards applied, the data relied upon, and the methodology used; and (4) is filed with the Secretary of the Commission.

It also bears repeating that, as we stated in Order No. 481, even if a state or Federal plan does not qualify as a comprehensive plan under section 10(a)(2)(A), the Commission will consider the plan, as it considers all relevant studies and recommendations, in its public interest analysis pursuant to section 10(a)(1).

The Commission notes the Conference Report, which states: [15]

> [The bill] incorporates a new section 10(a)(2), expressly requiring FERC to consider comprehensive plans developed by other entities pursuant to State or Federal law, as well as recommendations of Federal and State agencies and Indian tribes with expertise on aspects of the public interest. It is not an exclusive list of values FERC must evaluate and address in order to satisfy its comprehensive planning responsibilities. However, it highlights the steps the Commission must take to inform itself regarding the needs and uses of the river in question. Other steps the Commission would have to take, depending on particular circumstances, include addressing fish and wildlife management and restoration plans for the river drainage and accom[m]odating the views of other interested parties.

Congress, in enacting ECPA, thus affirmed the Commission's "responsibility to resolve competing demands in the public interest." [16] This means that, whereas the Commission has the clear duty to give full consideration to the recommendations submitted in a licensing proceeding, no one recommendation—or comprehensive plan under section 10(a)(2)(A)—can veto a proposed project.[17] Moreover, the fewer the beneficial uses of a waterway that a state or Federal plan has considered and balanced, the less weight will be attached to a proposed project's inconsistency with the plan, since the Commission is required to consider and balance all beneficial uses of a waterway. The Commission therefore encourages states and Federal agencies to develop plans that study and balance as many uses as possible and provide as much data as possible. However, all plans, based on articulated standards and data, will assuredly enhance the Commission's decisionmaking process by giving it the benefit of the planners' analyses and policy judgments.

Because this order constitutes a new policy with respect to comprehensive plans under section 10(a)(2)(A) of the FPA, we will instruct the Director, Office of Hydropower Licensing, to mail a copy of this order to all state governors and appropriate Federal agencies. The Director will request the states and Federal agencies to file with the Commission the plans they believe meet the policy criteria set forth in this

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Natural Resources, Minnesota Department of Natural Resources, and American Rivers, *et al.*

[11] Section 10(a)(1) provides that projects to be licensed shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving *or* developing a waterway or waterways for the use *or* benefit of interstate or foreign commerce, for the improvement *and* utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e) * * *. [Emphasis added.]

[12] State of Oregon and State of California.

[13] 99 CONG. REC. S4140 (April 11, 1986).

[14] S. REP. NO. 99-161, 99th Cong., 1st Sess. 8-9 (1985). The Conference Report refers to comprehensive plans "developed by other entities pursuant to State or Federal law * * *." H.R. REP. NO. 99-934 at 22.

[15] H.R. REP. NO. 99-934 at 22.

[16] *Id.* at 25.

[17] *Cf. id.* at 23 ("Section 10(j) does not give [fish and wildlife] agencies a veto * * *"); Escondido Mutual Water Co. v. La Jolla Band, 466 U.S. 765, 777 (1984) (under Section 4(e), a Secretary administering a federal reservation "has no power to veto the Commission's decision to issue a license * * *").

order. The Director will, within a reasonable period of time, advise the filer whether a plan meets the policy criteria, and if not, why not. If necessary in order to make a determination, the Director may ask the filer to submit additional information with respect to a plan. The Commission staff will also be available, on request, to discuss comprehensive planning with state and Federal personnel.

As a final matter, the Commission notes the request of the Northwest Power Planning Council that the Commission clarify whether the Council's Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan are comprehensive plans within the final rule. The Commission found that these two plans were comprehensive plans within the meaning of ECPA in *Utah Power & Light Company.*[18] The Commission is clarifying that, as a policy matter, it will treat the Council's Program and Plan as comprehensive plans under section 10(a)(2)(A).

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR Part 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; and National Environmental Policy Act, 42 U.S.C. 4321–4361 (1978), unless otherwise indicated.

2. Section 2.19 is revised to read as follows:

§ 2.19 State and Federal comprehensive plans.

(a) In determining whether the proposed hydroelectric project is best adapted to a comprehensive plan under section (10)(a)(1) of the Federal Power Act for improving or developing a waterway, the Commission will consider the extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by:

(1) An agency established pursuant to Federal law that has the authority to prepare such a plan, or

(2) A state agency, of the state in which the facility is or will be located, authorized to conduct such planning pursuant to state law.

(b) The Commission will treat as a state or Federal comprehensive plan a plan that:

(1) Is a comprehensive study of one or more of the beneficial uses of a waterway or waterways;

(2) Includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and

(3) Is filed with the Secretary of the Commission.

[18] 40 FERC ¶ 61,139 (1987).

[FR Doc. 88–9848 Filed 5–3–88; 8:45 am]

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18 CFR Part 16

[Docket No. RM87-7-000; Order No. 496]

Information To Be Made Available by Hydroelectric Licensees Under Section 4(a) of the Electric Consumers Protection Act of 1986

Issued April 28, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing final regulations governing the notice and information requirements that apply to an existing licensee of a hydroelectric power project subject to sections 14 and 15 of the Federal Power Act. The rule makes final the requirements in the Commission's interim rule in this docket relating to the manner and timing of licensee notification of intent to apply for a new license and to the information that a licensee must make reasonably available to the public upon notifying the Commission of its intention. The rule implements, in part, provisions added to the Federal Power Act by the Electric Consumers Protection Act of 1986.

EFFECTIVE DATE: This order will become effective June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426 (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

Final Order

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing final regulations governing the notice and information requirements that apply to an existing licensee of a hydroelectric power project subject to sections 14 and 15 of the Federal Power Act (FPA).[1] The rule makes final the requirements in the Commission's interim rule in this docket relating to the manner and timing of licensee notification of intent to apply for a new license and to the information a licensee must make reasonably available to the public upon notifying the Commission of its intention.[2] The rule implements, in part, provisions added to the Federal Power Act by the Electric Consumers Protection Act of 1986 (ECPA).[3]

II. Background

In ECPA, Congress amended the FPA to establish new procedures, timetables, and standards for the relicensing of projects subject to sections 14 and 15 of the FPA in order to promote greater competition in the relicensing process. Section 15(b)(1) of the FPA[4] requires an existing licensee to notify the Commission at least five years before the expiration of its license whether or not it intends to file an application for a new license. Section 15(c)(2) authorizes the Commission to adjust, by rule or order, the time period specified for the filing of a notice of intent when the expiration date of an existing license does not allow sufficient time for filing that notice five years before the expiration of the license. Section 15(b)(3) requires the Commission to provide public notice of an existing licensee's intention to file or not to file an application for a new license and to notify Federal and state fish and wildlife agencies of that intention.

Section 15(b)(2) of the FPA provides that at the time an existing licensee

[1] 16 U.S.C. 807–808 (1982 and Supp. 1987).

[2] Information to be Made Available by Hydroelectric Licensees Under section 4(a) of the Electric Consumers Protection Act of 1986, Docket No. RM87-7-000, Order No. 467, 52 FR 11,035 (Apr. 7, 1987), III FERC Stats. & Regs. ¶ 30,736 (Mar. 30, 1987), *as amended by* 52 FR 18,227 (May 14, 1987), III FERC Stats. & Regs. ¶ 30,742 (May 7, 1987).

[3] Pub. L. 99-495, 100 Stat. 1243 (Oct. 16, 1986).

[4] 16 U.S.C. 808(b)(1).

notifies the Commission of its intention under section 15(b)(1), it must make reasonably available to the public for inspection at its offices current maps, drawings, data, and any other information as the Commission will, by rule, require regarding the construction and operation of the licensed project. That section further provides that the information must include, to the greatest extent practicable, pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Section 15(b)(2) also provides that copies of the required information must be made available by the existing licensee at reasonable reproduction costs.[5]

Section 15(c)(1) of the FPA requires an existing licensee or a competitor to file an application for a new license with the Commission at least 24 months before the expiration of the existing license.

The Commission issued an interim rule on March 30, 1987, implementing some of the relicensing provisions enacted in ECPA.[6] The interim rule specifies the date by which a licensee must notify the Commission that it does or does not intend to file an application for a new license and the information a licensee must make reasonably available to the public for inspection and reproduction upon filing its notice of intent.

The interim rule became effective on May 7, 1987, without prior notice and comment, because a statutory deadline made prior notice and comment impracticable.[7] The Commission invited interested persons to submit their views on the interim rule for consideration before the Commission issued a final rule in this proceeding. The Commission modified the interim rule on its effective date to comply with recommendations of the Office of Management and Budget (OMB).[8]

[5] The legislative history of ECPA indicates that the requirement for reimbursement of reproduction costs was not intended to apply to Federal and state fish and wildlife agencies. H.R. Rep. No. 507, 99th Cong., 2nd Sess. at 35 (March 25, 1986).

[6] 52 FR 11035 (Apr. 7, 1987).

[7] ECPA required the Commission to promulgate regulations regarding the information to be provided under the newly enacted section 15(b)(2) within 180 days of the date on which ECPA became law.

[8] OMB did not approve the requirements of the interim rule that a licensee compile information prior to the receipt of a request and that a licensee file with the Commission a statement of unavailability listing those items of required information that it could not make available, together with a statement of the reasons for their unavailability. The Commission revised the interim rule to require that a licensee make information available in a form that is readily accessible, reviewable, and reproducible, rather than that the licensee "compile" it in such a form (§ 16.16(c)(1)). The Commission also suspended the provision of the interim rule which required an existing licensee to file a statement of unavailability regarding required information (§ 16.16(d)(1)). *See* Interim Rule; Stay of Effective Date, 52 FR 18227 (May 14, 1987), III FERC Stats. & Regs. ¶ 30,742.

III. Discussion

The Commission is issuing this rule to modify and make final the provisions of the interim rule concerning notice and information requirements. Changes to the requirements of the interim rule include specifying a commencement date for the period within which an existing licensee must file a notice of intent,[9] restricting the cultural resources information a licensee must make available to the public at the time it provides that notice of intent,[10] and expanding the types of conservation information that a licensee must make available.[11] The final rule retains the deadline for a licensee to file a notice of intent of five years before the expiration of an existing license.

The interim rule also included an introductory provision that defined terms and described the general applicability and purposes of the Commission regulations on the takeover and relicensing of licensed projects [12] and a provision specifying the deadline for an applicant to file an application for a new license.[13] The Commission is not making those provisions final in this rule because it will address these provisions in a separate rulemaking proceeding in Docket No. RM87–33–000.[14]

The Commission received 14 comments on the interim rule. Commenters included individual licensees, associations representing licensees, organizations representing Native Americans, and an association concerned with historic preservation.[15]

A. Time Period for Filing Notice of Intent

In general, the interim rule requires a licensee to file, at least five years before the expiration of the existing license, a notice stating whether or not it intends to file an application for a new license.[16] ECPA amended the FPA to establish this five-year deadline.[17] The final rule specifies a commencement date for the period within which a licensee must file a notice of intent, thereby limiting the filing to the six-month period before the statutory deadline. Specifically, the final rule provides that a licensee must file a notice of intent at least five, but not more than five and one-half, years before the expiration of its license.[18] The interim rule included certain transitional provisions for projects with existing licenses that expire before October 17, 1992.[19] These provisions are not retained in the final rule because the periods within which affected licensees were required to file notices of intent have passed.

Several licensees suggest that the Commission require a person other than an existing licensee to notify the Commission of its intention to file an application for a new license. Some of these commenters suggest that a nonlicensee applicant give this notification within six months after the Commission's public notice of the existing licensee's notification of intent to file or not to file an application for a new license.[20]

Section 15(b)(1) of the FPA, as amended by ECPA, contains explicit provisions regarding advance notification by a licensee of intent to file or not to file an application for a new license. There are no comparable provisions requiring notification by a nonlicensee applicant. The first requirement that the FPA imposes on a nonlicensee is that it file an application for a new license at least 24 months before the expiration of the term of the existing license, as required of all applicants by section 15(c)(1). The Commission believes that a notification requirement for a nonlicensee applicant, as suggested by the commenters, could be anticompetitive, as it would require the nonlicensee applicant to be

[9] Final rule, § 16.15(c).

[10] Final rule, § 16.16(d)(5).

[11] Final rule § 16.16(d)(6).

[12] Interim rule, § 16.1.

[13] Interim rule, § 16.14.

[14] Comments addressing these provisions in the interim rule will be incorporated into Docket No. RM87–33–000.

[15] Licensee commenters were Alabama Power Company, Eugene Water & Electric Board, Georgia Power Company, Pacific Gas and Electric Company, Nebraska Public Power District, Public Service Company of Colorado, and Southern California Edison Company. Associations representing licensees were Edison Electric Institute, California Public Agencies, and Wisconsin Utilities Association, Inc. Long Lake Energy Corporation commented as a competitor. Other commenters were the Native American Rights Fund, the National Congress of American Indians, and the Advisory Council on Historic Preservation.

[16] Interim rule, § 16.15.

[17] FPA, § 15(b)(1), 16 U.S.C. 808(b)(1) (Supp. 1987).

[18] Final rule, § 16.15(c)(1).

[19] The interim rule required an existing licensee with a license that expires on or after October 16, 1991, but before October 17, 1992, to file a notice of intent with the Commission by October 16, 1987, and required an existing licensee with a license that expires on or before October 15, 1991, to file a notice of intent with the Commission by August 5, 1987, if the licensee had not filed an application or a statement under § 16.3 before October 16, 1986. Interim rule, § 16.15(b) (2) and (3).

[20] Comments of Alabama Power Company (Alabama Power) at 2, Edison Electric Institute (EEI) at 10, Southern California Edison Company at 3, and Wisconsin Utilities Association at 1.

sufficiently prepared to proceed with a license application and to make a public statement as to its intentions at least four and one-half years prior to the expiration of a license. The statutory requirements that a licensee provide notice of its intent and make certain information available to the public are intended to promote competition in relicensing by allowing potential competitors to review and evaluate information concerning a project in order to determine whether to file an application for a license and to prepare an application if it decides to file one. A notice requirement for a nonlicensee applicant, for which there is no requirement in the FPA, would undermine the statutory intent of promoting competition. The Commission declines to adopt this suggestion.

B. Information To Be Made Available at the Time of Notification

A licensee must make available the required information whether or not it intends to file an application for a new license. In the final rule, the Commission generally retains the information requirements of the interim rule. Changes from the interim rule are discussed below.

1. *General requirements for information to be made available.*—a. *Period during which required information must be made available to the public.* The interim rule requires that a licensee make certain information reasonably available to the public upon filing its notice of intent with the Commission, but does not provide a termination date for the availability of the required information.[21] Two commenters suggest that the required information remain available until the deadline for filing an application for a new license; another commenter suggests that it remain available until six months after the deadline for filing competing applications, that is, until 18 months before the expiration of the existing license.[22]

The Commission agrees that a time limit should be placed on the availability of required information. The Commission believes, however, that any period of availability should be longer than those suggested by commenters. This information may be useful to competing applicants, interveners in relicensing proceedings, and the public. In addition to facilitating competition, the availability of the required information promotes informed public scrutiny of the hydroelectric relicensing process. Therefore, the Commission is requiring that the specified information must remain available until the termination of any relicensing proceeding.[23]

b. *Time period to be covered by required information.* The interim rule required that information relating to project generation and outflows and annual operation and maintenance costs "for the previous five years" be made available,[24] as well as reports on operation or maintenance problems "occurring within the last five years." [25] The Commission recognizes that the precise period intended to be covered by this information is ambiguous and clarifies in the final rule that information should cover the period beginning five years before the filing of a notice of intent.

Some licensees suggest that the coverage period for other required information, such as historical records, cultural data, and environmental, conservation, and recreation reports, should also be limited to the same five-year time interval preceding notification of intent.[26] However, these commenters recommend that this five-year limitation not be applied when the most recent data is more than five years old at the time a notice of intent is filed.

Long Lake Energy Corporation (Long Lake) claims that the five-year coverage period for information relating to generation data and operation and maintenance costs and problems is too short because it does not adequately show the manner in which a licensee has operated a project. Long Lake suggests that information concerning project costs, generation, and maintenance over the life of the project is relevant to an examination of a licensee's "track record" and states that nothing in section 15(b)(2) of the FPA or in the legislative history of ECPA supports limiting the period covered by the information to be made available. Long Lake recommends that the Commission remove the five-year limit and require that a licensee make available such information covering the entire life of the project.[27]

Section 15(b)(2) of the Federal Power Act states that an existing licensee must make current maps, drawings, data, and other information available at the time it gives notice of its intention to apply for a new license. The Commission interprets the word "current" to mean that the data provided will accurately describe the project and allow a meaningful assessment of it. The most meaningful generation, operations, and maintenance data are the most recent. The intended requirement of the interim rule that a licensee make available specified information in these categories covering the five-year period preceding the filing of its notice of intent is reasonable and the Commission is retaining it in the final rule. However, in order to ensure that available information remains current, the Commission is requiring a licensee to supplement the information covering that five-year period with any additional data developed after the filing of a notice of intent.[28]

The Commission also adopts in part commenters' suggestion that a licensee provide earlier data when there is no existing data covering the specified five-year period preceding the notice of intent. The final rule provides that a licensee must make available any report on operations or maintenance problems, other than routine maintenance, beginning with the five-year period preceding the notice of intent or the most recent five-year period for which data exists.[29]

With regard to certain other categories of data, the Commission believes that it is appropriate to require the provision of all existing records, with some non-temporal limitations.[30] All events and studies related to a project and involving cultural resources, fish and wildlife, recreation, or conservation may be relevant in the relicensing process and a record more than five years old may constitute the only documentation on these subjects. Accordingly, the Commission has placed no limit on the time period covered by these categories of documents.[31]

c. *Reports to be made available.* Several sections of the interim rule require a licensee to make "all existing reports" available for public inspection.[32] Licensee commenters express concern that the interim rule might be interpreted to require a licensee to search for and obtain reports by third parties that are not in the

[21] Interim rule, § 16.16(e).

[22] Comments of Alabama Power at 3, EEI at 13–14, and Southern California Edison at 1.

[23] Final rule, § 16.16(b)(2).

[24] Interim rule, § 16.16(b)(1) (iii) and (v).

[25] Interim rule, § 16.16(b)(2)(iii).

[26] Comments of Alabama Power at 3, EEI at 12–14, Southern California Edison at 2, and Wisconsin Utilities Association at 1–2.

[27] Comments of Long Lake at 5–7.

[28] Final rule, § 16.16(c).

[29] Final rule, § 16.16(d)(2)(iii).

[30] Records concerning archaeological resources and records concerning use of the project area by Native Americans are discussed further below.

[31] Final rule, § 16.16(d) (3), (4), (5), and (6).

[32] The following sections of the interim rule refer to "all existing reports": § 16.16 (b)(1)(v), (b)(2)(iii), (b)(3)(i), (b)(3)(ii), (b)(5)(i), (b)(6)(i), and (b)(6)(ii).

possession of the licensee.[33] They suggest that the rule be amended to require the provision of reports of which a licensee has knowledge, reports prepared or filed with the Commission by the licensee, or reports in the licensee's possession.

The Commission believes that reports prepared by third parties may contain information that is required to be made available under section 15(b)(2) of the Federal Power Act. However, the Commission did not intend that the interim rule impose on licensees the burden of searching the records of unrelated entities. Similarly, the intent of the final rule is to require a licensee to make available all required reports in its possession or control, whether those reports were prepared by the licensee or by third parties.

The Wisconsin Utilities Association asks the Commission to clarify the rule to specify whether reports that must be made available are those that exist when a licensee notifies the Commission of its intention to file or not to file an application for a new license or those that exist when information is requested by a member of the public.[34]

A licensee satisfies the public access requirement by providing information when a request is made. At that time, a licensee determines the existence and availability of a document and provides it to the requester within a reasonable period of time. Thus, a licensee is required to make available a report that exists when a request is made, even if that report were generated after the licensee filed its notice of intent.

d. *Unavailable information.* The Commission suspended the requirement of the interim rule that a licensee file a statement of unavailability regarding items of required information that it could not, for reasons beyond its control, make available to the public.[35] OMB had not approved this section, stating that the statutory intent of providing public access is satisfied by requiring a licensee to provide information when a request is made and by allowing the licensee to determine the existence and availability of the required information at that time. OMB noted the provision in the interim rule allowing a member of the public who believes that required information is being withheld to petition the Commission for assistance.[36]

The Eugene Water and Electric Board and Long Lake state that a licensee should be required to provide a statement of unavailability of information.[37] Several licensees disagree and cite the OMB failure to approve this requirement. The intent of section 15(b)(2) of the FPA is that a licensee make required information available within a reasonable time. The Commission expects that an existing licensee will make a good faith effort to provide required information in its possession or control and that if information is unavailable, a licensee will inform a requester of that fact within a reasonable period of time. The Commission believes that the requirement to file a statement of unavailability is unnecessary and has not included that requirement in the final rule. However, it is retaining a procedure similar to that established in the interim rule, allowing anyone who believes that a licensee is not making existing required information reasonably available to petition the Commission for assistance.[38]

e. *Proprietary information.* Georgia Power argues that a licensee should not be required to make available certain proprietary information such as future plans, studies of demand and need, particularized cost information, and the relation of particularized costs to the information, and the relation of particularized costs to the licensee's electric system as a whole.[39] No provision of the interim or final rule requires production of the types of information enumerated by the commenter.[40] The Commission expressly stated in the preamble to the interim rule that it does not believe that information concerning a licensee's future plans should be disclosed to the public before an application for a new license is filed. It further stated that release of this information may unfairly disadvantage the existing licensee and limited disclosure to public information pertaining to the existing project as licensed.[41] The Commission reaffirms these statements in this final rule.

2. *Specific categories of information.*—a *Correspondence.* The interim rule requires a licensee to make available all public correspondence on the licensed project and on certain specific topics.[42] Some licensee commenters state that these requirements are overly broad and unduly burdensome and that much of the required correspondence would be irrelevant to an evaluation of the current operation of a project.[43] The Edison Electric Institute (EEI) suggests that the Commission limit the required information to correspondence to which the licensee is a party and which relates to one of the party and which relates to one of the subject areas in § 16.16(d).[44]

The Commission believes that all correspondence relating to a project should be made available. These documents demonstrate in part how a licensee has used a public resource. This information is valuable not only to competitors, but also to the public, for whom relicensing constitutes an important opportunity to evaluate use of the nation's water resources. Thus, the Commission has not adopted the suggestion that a licensee be required to make available only correspondence to which it is a party.

Some licensees also suggest that licensees be permitted to make available correspondence on all subjects in a single correspondence file.[45] Correspondence is more likely than other categories of documents to be filed chronologically or by some method other than by subject matter. The Commission believes that making correspondence related to the project available satisfies the purposes of section 15(b)(2) of the FPA. Accordingly, in this final rule, the Commission is clarifying that a licensee may provide all required public correspondence in one file.[46]

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[33] Comments of EEI at 12, Nebraska Public Power District at 1, Public Service Company of Colorado at 1-2, and Southern California Edison at 2.

[34] Comments of Wisconsin Utilities Association at 1.

[35] 52 FR 18,227 (May 14, 1987), suspending interim rule, § 16.16(d)(1).

[36] Interim rule, § 16.16(d)(2).

[37] Comments of Eugene Water & Electric Board at 1 and Long Lake at 9–11.

[38] Final rule, § 16.16(f).

[39] Comments of Georgia Power at 3.

[40] The interim rule sets out specific items of required information in § 16.16(b), 52 FR at 11039–11040. The cost information required consists of annual operation and maintenance costs and original project costs (§ 16.16(b)(1)(v). The comparable provision in the final rule is § 16.16(d)(1)(v).

[41] 52 FR at 11036.

[42] Under the interim rule, a licensee is required to provide all public correspondence relating to the existing project (§ 16.16(b)(1)(iv)); the safety and structural adequacy of the existing project (§ 16.16(b)(2)(v)); fish and wildlife resources within the project area (§ 16.16(b)(3)(iv)); energy conservation measures relating to the existing project (§ 16.16(b)(4)(ii)); recreation and land use resources within the project area (§ 16.16(b)(5)(iv)); and cultural resources within the project area (§ 16.16(b)(6)(iii)).

[43] Comments of EEI at 21, Public Service Company of Colorado at 2, and Southern California Edison at 3.

[44] Comments of EEI at 20–21.

[45] Comments of EEI at 21 and Southern California Edison at 3.

[46] Final rule, § 16.16(g).

b. *License applications, orders, issuing licenses, and appurtenant documents.* The interim rule requires a licensee to make available the original license application; the order issuing the license for the existing project, including approved Exhibit drawings; all orders issuing amendments to the license for the existing project; and all orders issuing annual licenses for the existing project.[47]

EEI states that some licensees may be coming to the end of a second license term and suggests that the Commission require such licensees to make available only their licenses and appurtenant documents.[48] The Commission is not adopting this suggestion because it believes that pertinent information may be contained in a prior license and related documents. The Commission is requiring that a licensee make available the original and all subsequent licenses and appurtenant documents.[49]

c. *Data to verify operation of the project in accordance with license terms.* The interim rule requires licensees to make available all data necessary to enable the public to verify that the project has been and is being operated in accordance with the requirements of each license article, including minimum flow requirements, maximum ramping rates, reservoir elevation limitations, and environmental monitoring procedures.[50] The licensees state that it is the Commission, not the public, that must determine whether or not a licensee has complied with the terms and conditions of its license and that, regardless of the amount of data made available, the public may not be able to verify compliance.[51]

The Commission believes that information relevant to verifying compliance with license terms and conditions may be useful to competitors, interveners, and the general public. A competitor may seek such information to demonstrate that it should receive the new license. An intervener may use it to support one applicant over another or to seek revisions in the terms and conditions of a license. The general public may use this information to evaluate a licensee's stewardship of a waterway. Because information relevant to verifying compliance with license terms and conditions is useful to reviewers other than the Commission, the Commission retains the requirement that such information be made reasonably available to the public.[52]

Other licensees suggest that this section could be interpreted to require a licensee to conduct new studies to establish compliance with license articles. The Commission restates its position that a licensee will not be required to conduct an additional study to fulfill the information requirements of the final rule.

Long Lake requests that licensees be required to make available several additional categories of information. First, Long Lake suggests that all records pertaining to inspections, investigations, and enforcement actions undertaken by the Commission in connection with a project should be made available to the public because this information is relevant to a licensee's performance with respect to any project.

The Commission believes that the information provision requirements of the interim and final rules cover the types of records cited by Long Lake. For example, the interim and final rules require that licensees make available all public correspondence relating to the existing project and all existing reports on any operation or maintenance problems other than routine maintenance.[53] The Commission therefore declines to adopt an additional requirement.

Long Lake also suggests that a licensee be required to provide information concerning all of its hydroelectric projects when it files an application for a new license for any project. Long Lake believes that a licensee's level of performance at other hydroelectric facilities is an important indicator of its ability to operate and maintain the project for which the application is filed.[54] The Commission is not adopting this suggestion because performance at other hydroelectric projects is not a factor the Commission must consider in making its licensing decisions under either section 10 or section 15 of the FPA.[55]

d. *Conservation plans.* The interim rule requires a licensee that is an electric utility, or a state or a municipality that uses any of the power generated by the existing project to make available its plan to conserve electricity or encourage conservation by its customers.[56] EEI claims this requirement is too onerous because conservation plans are often lengthy documents which are frequently revised. EEI suggests that the Commission require that a licensee make available only current information concerning its energy conservation programs and that a licensee be allowed the discretion to provide either a current conservation plan or a detailed summary of the conservation initiatives it has undertaken. EEI also points out that a licensee may not have a single comprehensive plan covering all its activities in the energy conservation field.[57]

Section 4(e) of the FPA requires the Commission to give significant consideration to energy conservation issues in granting a hydroelectric project license.[58] The activities of a licensee with regard to conservation are of major importance in a relicensing proceeding. The Commission is thus retaining the requirement that a licensee's conservation plan be made available to the public and is broadening the requirement to include any other information pertinent to a licensee's efforts to conserve electricity or to encourage conservation by its customers. The Commission is expanding this information requirement because it recognizes that not all conservation information may be contained in a formal conservation plan.

e. *Project generation and outflow data.* The interim rule requires a licensee to make available a compilation of project generation and respective outflow data for the five years preceding a request, in time increments not to exceed one hour.[59] Several licensees state that some hydroelectric powerhouses are not metered for hourly readings and suggest that generation and outflow data be provided in the smallest increment recorded.[60] in the final rule, the Commission is requiring that project generation and outflow data be made available in increments not to exceed one hour, unless use of another time increment can be justified.[61]

f. *Recreational use reports.* The interim rule requires a licensee to make available all existing reports on past and current recreational uses of the project area.[62] Licensee commenters ask

[47] Interim rule, § 16.16(b)(1)(i).

[48] Comments of Alabama Power at 3–4 and EEI at 14–15.

[49] Final rule, § 16.16(d)(1)(i).

[50] Interim rule, § 16.16(b)(1)(ii).

[51] Comments of Alabama Power at 4, EEI at 15, and Georgia Power at 3.

[52] Final rule, § 16.16(d)(1)(ii).

[53] Interim rule, § 16.16 (b)(1)(iv) and (b)(2)(iii); Final rule, § 16.16 (d)(1)(iv) and (d)(2)(iii).

[54] Comments of Long Lake at 7–9.

[55] 16 U.S.C. 803 and 808 (1982 and Supp. 1987).

[56] Interim rule, § 16.16(b)(4)(i).

[57] Comments of EEI at 21–22.

[58] 16 U.S.C. 797(e) (Supp. 1987).

[59] Interim rule, § 16.16(b)(1)(iii).

[60] Comments of Alabama Power at 4, EEI at 15–16, and Southern California Edison at 2.

[61] Final rule, § 16.16(d)(1)(iii).

[62] Interim rule, § 16.16(b)(5)(i).

the Commission to require instead that a licensee make available its FERC Form No. 80 and any FERC-approved recreation plan.[63] The Commission believes, however, that documents other than FERC Form No. 80 and a FERC-approved recreation plan may contain useful information regarding recreational uses. The Commission also notes that not every project has an approved recreation plan and that the filing of FERC Form No. 80 is no longer required on an annual basis. The Commission therefore declines to revise the requirement that a licensee make available any report on past or current recreational uses of the project area.[64]

Several licensees claim that the appropriate term of art to describe the area within a project boundary is "project" or "project boundary" rather than "project area".[65] The Commission used the term project area in the sections of the interim rule requiring the provision of information concerning fish and wildlife resources, recreation and land use resources, and cultural resources. The Commission believes that project area is properly used to denote the area within a project boundary and it has retained that term in the final rule.[66]

g. *Reports on archaeological resources and use by Native Americans.* Several commenters object to the requirements of the interim rule that all existing reports documenting archaeological resources identified in the project area and historical and present use of the project and surrounding areas by Native Americans, as well as all public correspondence relating to cultural resources within the project area, be made available to the public.[67] The National Congress of American Indians and the Native American Rights Fund argue that compliance with the provisions of the interim rule would violate the privacy rights of Native Americans with regard to sacred sites and ceremonies and would increase the vulnerability of Indian burial sites to looting. The Edison Electric Institute suggests that disclosure of certain information would violate the spirit of the American Indian Religious Freedom Act of 1978.[68] Other commenters cite the Archaeological Resources Protection Act of 1979 [69] and the National Historic Preservation Act of 1966,[70] which protect from disclosure information concerning the nature and location of certain archaeological and historic resources.

The Commission recognizes the desirability of protecting historic and Native American sites from undue damage. The Commission is modifying the provision of the interim rule to require that a licensee make available specified cultural resources information from which the licensee has deleted specific site or property locations, the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located.[71]

3. *Manner in which information is to be made available.*—a. *Copying charges.* The interim rule provided that an existing licensee must make requested copies of the required information available at reasonable costs of reproduction, not to exceed ten cents per page of photocopy, microform, or computer printout.[72] Several licensees commented generally that a charge of ten cents per page is unreasonable. Other commenters state that certain documents require to be made available for reproduction are of large or irregular size and require special duplicating techniques that may cost more than ten cents per page. They suggest that the Commission provide that a requester be charged the actual cost of duplication or "reasonable costs" of reproduction.[73]

The Commission agrees that a uniform fee of ten cents per page may not be reasonable in all circumstances and that a more equitable approach is to require a requester to reimburse a licensee for the actual costs of duplication. In this final rule, the Commission is requiring that a licensee charge a requester reasonable costs of duplication for reproducing documents that it is required to make available.[74]

b. *Location at which information must be made available.* The interim rule provides that required information must be made available at a licensee's principal place of business during regular business hours.[75] Some licensees suggest that the Commission allow a licensee the option of providing some or all of the information at other locations. Alternate locations suggested by commenters include the project site, other offices of the licensee, a public building such as a school or library, or some other facility near the project.[76] The Commission believes that making required information available at more than one site may be advantageous to both the licensee and the public. The Commission also believes that to permit a licensee to make portions of the required information available at several potentially widely scattered locations would place an undue burden on those seeking to review that information. The Commission concludes that there must be one location at which all the required information is available, although that location need not be the licensee's principal place of business. The final rule offers the alternative of making all the required information available at any other location or locations which may be more accessible to the public.[77]

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[78] requires certain analyses of proposed agency rules that will have a "significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the FRA, the Commission hereby certifies that the final rule regarding notification and information to be provided by a licensee, if promulgated, would not have a significant economic impact on a substantial number of small entities. or that, even if the rule were to have a significant economic impact on a substantial number of small entities, it would be to their benefit. The Commission believes that the entities affected by the rule do not fall within the class of "small entity." Even if the rule were to have a significant effect on a substantial number of small entities, however, the relicensing requirements in this final rule are necessary for the Commission to grant a new or nonpower license to an applicant at the expiration

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[63] Comments of EEI at 16–17 and Southern California Edison at 2.

[64] Final rule, § 16.16(d)(4)(i).

[65] Comments of Alabama Power at 4 and EEI at 16–17.

[66] Final rule, § 16.16(d) (3), (4) and (5).

[67] Interim rule § 16.16(b)(6).

[68] 42 U.S.C. 1996 (1982). This section states that it is the policy of the United States to preserve rights of Native Americans to the exercise of their traditional religions, including the right of access to religious sites. It has been interpreted to require Federal agencies to consider Indian religious values, to obtain and consider Indian views, and to avoid unnecessary interference with Indian religious practices. *Wilson* v. *Block*, 708 F.2d 735 (D.C. Cir. 1983, *cert. denied* 464 U.S. 1056 (1984).

[69] 16 U.S.C. 470hh (1982).

[70] 16 U.S.C. 470w–3 (1982).

[71] Final rule, § 16.16(d)(5).

[72] Interim rule, § 16.16(c)(3).

[73] Comments of California Public Agencies at 3–4, EEI at 24–25, Georgia Power at 5, and Southern California Edison at 7.

[74] Final rule, § 16.16(e)(2). The Commission has exempted fish and wildlife agencies from payment of the costs of reproduction of required information. Final rule § 16.16(e) (3).

[75] Interim rule, § 16.16(c)(2).

[76] Comments of Alabama Power at 5 and EEI at 23.

[77] Final rule, § 16.16(e)(1)(i).

[78] 5 U.S.C. 601–612 (1982).

of an existing license term. An applicant may benefit substantially by obtaining a license.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[79] and the Office of Management and Budget's (OMB) regulations[80] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this final rule have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis, Office of Management Systems and Analysis (202) 357-5600). Comments on the information collection provisions of this final rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have an effect on the human environment.[81] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[82] No environmental consideration is necessary for a proposal for the promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended.[83] The final rule is procedural in nature. It defines requirements for a licensee to provide notice of its intent to file or not to file an application for a new license and to make available to the public information concerning a project. Moreover, the final rule does not substantially change the effect of legislation and regulations being amended. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this final rule.

VII. Effective Date

This rule is effective June 3, 1988.

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[79] 44 U.S.C. 3501-3520 (1982).

[80] 5 CFR 1320.13 (1986).

[81] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), to be codified at 18 CFR Part 380.

[82] *Id.*, to be codified at § 380.4.

[83] *Id.*, to be codified at § 380.4(a)(2)(ii).

List of Subjects in 18 CFR Part 16

Electric power.

In consideration of the foregoing, the Commission amends Part 16 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

1. The authority citation for Part 16 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99-495; Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 16.15 is revised to read as follows:

§ 16.15 Notification procedures under section 15 of the Federal Power Act.

(a) *Applicability.* This section applies to a licensee of an existing project subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to notify.* In order to notify the Commission under section 15 of the Federal Power Act whether a licensee intends to file or not to file an application for new license, the licensee must file with the Commission an original and fourteen copies of a letter, that contains the following information:

(1) The licensee's name and address.

(2) The project number.

(3) The license expiration date.

(4) An unequivocal statement of the licensee's intention to file or not to file an application for a new license.

(5) The type of principal project works licensed, such as dam and reservoir, powerhouse, or transmission lines.

(6) Whether the application is for a power or nonpower license.

(7) The location of the project by state, county and stream, and, when appropriate, by city or nearby city.

(8) The installed plant capacity.

(9) The location or locations of all the sites where the information required under § 16.16 is available to the public.

(10) The names and mailing addresses of:

(i) Every county in which any part of the project is located, and in which any Federal facility that is used by the project is located;

(ii) Every city, town, Indian tribe, or similar local political subdivision:

(A) In which any part of the project is located and any Federal facility that is used by the project is located, or

(B) That has a population of 5,000 or more people and is located within 15 miles of the project dam.

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project is located and any Federal facility that is used by the project is located, or

(B) That owns, operates, maintains, or uses any project facility or any Federal facility that is used by the project; and

(iv) Every other political subdivision in the general area of the project that there is reason to believe would be likely to be interested in, or affected by, the notification.

(c) *When to notify.* (1) Except as provided in paragraph (c)(2) of this section, if a license expires on or after October 17, 1992, the licensee must notify the Commission as required in paragraph (b) of this section at least five years, but no more than five and one-half years, before the existing license expires.

(2) The requirement in paragraph (c)(1) of this section does not apply if a licensee filed notice more than five and one-half years before its existing license expired and before the effective date of this rule.

(d) *Commission notice.* Upon receipt of the notification required under paragraph (b) of this section, the Commission will provide notice of the licensee's intent to file or not to file an application for a new license by:

(1) Publishing notice in the **Federal Register**;

(2) Publishing notice once every week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(3) Notifying appropriate Federal and state resource agencies and Indian tribes by mail.

3. Section 16.16 is revised to read as follows:

§ 16.16 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.

(a) *Applicability.* This section applies to a licensee of an existing project subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to make information available.* A licensee must make the information specified in paragraph (d) of this section reasonably available to the public for inspection and reproduction, from the date on which the licensee notifies the Commission pursuant to § 16.15(b) of this part until the date any relicensing proceeding for the project is terminated.

(c) *Requirement to supplement information.* A licensee must supplement the information it is required to make available under the provisions of paragraph (d) with any additional information developed after the filing of a notice of intent.

(d) *Information to be made available.* A licensee must make the following information regarding its existing project reasonably available to the public as provided in paragraph (b) of this section:

(1) The following construction and operation information:

(i) The original license application and the order issuing the license and any subsequent license application and subsequent order issuing a license for the existing project, including

(A) Approved Exhibit drawings, including as-built exhibits,

(B) Any order issuing amendments or approving exhibits, and

(C) Any order issuing annual licenses for the existing project;

(ii) All data relevant to whether the project is and has been operated in accordance with the requirements of each license article, including minimum flow requirements, ramping rates, reservoir elevation limitations, and environmental monitoring data;

(iii) A compilation of project generation and respective outflow with time increments not to exceed one hour, unless use of another time increment can be justified, for the period beginning five years before the filing of a notice of intent;

(iv) Any public correspondence relating to the existing project;

(v) Any report on the total actual annual generation and annual operation and maintenance costs for the period beginning five years before the filing of a notice of intent;

(vi) Any reports on original project costs, current net investment, and available funds in the amortization reserve account;

(vii) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system or point of use; and

(viii) Any bill issued to the existing licensee for annual charges under section 10(e) of the Federal Power Act.

(2) The following safety and structural adequacy information:

(i) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(ii) Any independent consultant's reports required by Part 12 of the Commission's regulations and filed on or after January 1, 1981;

(iii) Any report on operation or maintenance problems, other than routine maintenance, occurring within the five years preceding the filing of a notice of intent or within the most recent five-year period for which data exists, and associated costs of such problems under the Commission's Uniform System of Accounts;

(iv) Any construction report for the existing project; and

(v) Any public correspondence relating to the safety and structural adequacy of the existing project.

(3) The following fish and wildlife resources information:

(i) Any report on the impact of the project's construction and operation on fish and wildlife resources;

(ii) Any existing report on any threatened or endangered species or critical habitat located in the project area, or affected by the existing project outside the project area;

(iii) Any fish and wildlife management plan related to the project area prepared by the existing licensee or any resource agency; and

(iv) Any public correspondence relating to the fish and wildlife resources within the project area.

(4) The following recreation and land use resources information:

(i) Any report on past and current recreational uses of the project area;

(ii) Any map showing recreational facilities and areas reserved for future development in the project area, designated or proposed wilderness areas in the project area, Land and Conservation Fund lands in the project area, and designated or proposed Federal or state wild and scenic river corridors in the project area;

(iii) Any documentation listing the entity responsible for operating and maintaining any existing recreational facilities in the project area; and

(iv) Any public correspondence relating to recreation and land use resources within the project area.

(5) The following cultural resources information:

(i) Except as provided in paragraph (d)(5)(ii) of this section, a licensee must make available:

(A) Any report concerning documented archaeological resources identified in the project area;

(B) Any report on past or present use of the project area and surrounding areas by Native Americans; and

(C) Any public correspondence relating to cultural resources within the project area.

(ii) A licensee must delete from any information made available under paragraph (d)(5)(i) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(6) The following energy conservation information under section 10(a)(2)(C) of the Federal Power Act, related to the licensee's efforts to conserve electricity or to encourage conservation by its customers including:

(i) Any plan of the licensee;

(ii) Any public correspondence; and

(iii) Any other pertinent information relating to a conservation plan.

(e) *Form, place, and hours of availability, and cost of reproduction.* (1) A licensee must make the information specified in paragraph (d) of this section available to the public for inspection:

(i) At its principal place of business or at any other location or locations that are more accessible to the public, provided that all of the information is available in at least one location;

(ii) During regular business hours; and

(iii) In a form that is readily accessible, reviewable, and reproducible.

(2) Except as provided in paragraph (d)(3) of this section, a licensee must make requested copies of the information specified in paragraph (c) of this section available either:

(i) At its principal place of business or at any other location or locations that are more accessible to the public, after obtaining reimbursement for reasonable costs of reproduction; or

(ii) Through the mail, after obtaining reimbursement for postage fees and reasonable costs of reproduction.

(3) A licensee must make requested copies of the information specified in paragraph (d) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources without charge for the costs of reproduction or postage.

(f) *Unavailability of required information.* Anyone may file a petition with the Commission requesting access to the information specified in paragraph (d) of this section if it believes that a licensee is not making the information reasonably available for public inspection or reproduction. The petition must describe in detail the basis for the petitioner's belief.

(g) *Public correspondence.* A licensee may compile and make available in one file all the public correspondence required to be made available for inspection and reproduction by § 16.16(d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(iv), and (d)(6)(ii).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. 78N-0434]

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Esmopal

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is amending the animal drug regulations by removing the regulation that reflects approval of the new animal drug application (NADA) for Esmopal. Esmopal is a new animal drug approved for injection into roasting chickens to produce more uniform fat distribution and to improve finish. This action is being taken because, as explained in a notice published elsewhere in this issue of the **Federal Register**, approval of the NADA is being withdrawn.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 1988 (53 FR 4214), CVM published an amended notice of opportunity for hearing on a proposal to withdraw approval of NADA 13-187, submitted by Mattox & Moore, Inc. (Mattox & Moore), for Esmopal (21 CFR 522.844).

CVM based the proposed action on section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)(B)) on the grounds that (1) Esmopal is not shown to be safe for use because (a) new evidence provides a reasonable basis from which serious questions about the ultimate safety of Esmopal and the residues that may result from its use may be inferred, and (b) new evidence shows that Esmopal is no longer shown to be safe by adequate tests by all methods reasonably applicable, and (2) section 512(d)(1)(H) of the act applies to the drug because (a) new evidence shows that estradiol has been shown to induce cancer in animals, (b) it is impossible to determine whether the total residue of Esmopal is below the level of no carcinogenic concern, (c) there is no method approved by FDA by regulation that can measure the total residue of Esmopal at a concentration low enough to be of no carcinogenic concern, and (d) the residue concentration under conditions of use reasonably certain to be followed in practice cannot be shown to be at or below the concentration of no carcinogenic concern.

Mattox & Moore did not file a written appearance requesting a hearing and therefore waived the opportunity for a hearing.

In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Mattox & Moore's NADA 13-187. Upon withdrawal of approval of a new animal drug application, the agency is required by section 512(i) of the act to remove the regulation that reflects the approval.

This final rule removes 21 CFR 522.844, which reflects approval of NADA 13-187, effective May 16, 1988.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C.) 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.844 [Removed]

2. Section 522.844 *Estradiol monopalmitate* is removed.

Dated: April 28, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-9869 Filed 5-3-88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 6H5481/R955; FRL-3374-6]

Pesticide Tolerances for Triflumizole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit combined residues of the fungicide triflumizole and its metabolites in or on certain feed items. Uniroyal Chemical Co., Inc., requested this rule to establish temporary maximum permissible levels for combined residues of triflumizole to permit marketing of certain feed commodities in connection with an experimental use of the fungicide on apples and grapes.

EFFECTIVE DATE: April 25, 1988.

ADDRESS: Written objections, identified by the document control number, [FAP 6H5481/R955], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 6, 1988 (53 FR 11314), in which it was announced that Uniroyal Chemical Co., Inc., had submitted a feed additive petition (FAP 6H5481) proposing the establishment of a feed additive regulation for the combined residues of the fungicide triflumizole (1-(1-(4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethyl-aniline moiety (calculated as triflumizole) in or on apples, dried at 3.0 parts per million (ppm), apple pomace, wet at 1.0 ppm, apple pomace, dry at 3.0 ppm, grape juice at 1.0 ppm, grape pomace, wet at 4.0 ppm, grape pomace, dry at 1.0 ppm, raisins at 1.0 ppm, and raisin waste at 2.0 ppm. The petitioner had subsequently amended its petition to establish tolerances for the fungicide in or on the following commodities as follows: apple pomace at 2.0 ppm, grape pomace at 25.0 ppm, and raisin waste at