

**SUPPORTING STATEMENT
ALTERNATIVES PROCESS IN HYDROPOWER LICENSING
OMB CONTROL NUMBER 0648-XXXX**

This is a resubmission, with the final rule, of a request is for a new information collection due to modifications in this rule (RIN: 0648-AU01). There were no public comments on the information collection requirements, and no changes made to the ICR.

A. Justification

1. Explain the circumstances that make the collection of information necessary.

Under the Federal Power Act, as amended, hydropower licenses must be adapted to a comprehensive plan for improving or developing affected waterways, including protection of fish and wildlife. (See, for example, 16 U.S.C. Sections 4(e) and 811.) When Federal lands are involved, the relevant agency will also be able to participate in the review and development of conditions. The agencies potentially having such review collaboration are the Departments of Interior, Commerce, and Agriculture. Under the Energy Policy Act of 2005, a license applicant for a new hydropower project may submit an alternative means of protecting a fishway from what was originally recommended by the Federal Energy Regulatory Commission during the licensing process. It is the development and provision of this particular information to pursue an alternative process that is the subject of this information collection. The Department of Commerce is submitting this information collection renewal request to OMB as a companion to the Department of the Interior's submission in 2012 on behalf of the three agencies. The agencies have also published regulations implementing these statutory processes, including the alternatives process in hydropower licensing.

In summary, the specific statutory and regulatory authority for this information collection is the [Federal Power Act](#) (FPA), 16 U.S.C. 797(e) - 811, the [Energy Policy Act of 2005](#) (EPAct), Pub. L. 109-58, particularly Section 241 which amended the FPA to add the alternatives process, and the implementing regulations by the three agencies, [7 CFR Part 1](#), [43 CFR Part 45](#), and [50 CFR Part 221](#), to implement section 24.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The Secretary of the agency involved must accept the proposed alternative if the Secretary determines, based on substantial evidence provided by a party to the license proceeding or otherwise available to the Secretary, (a) that the alternative condition provides for the adequate protection and utilization of the reservation, or that the alternative prescription will be no less protective than the fishway initially proposed by the Secretary, and (b) that the alternative will

either cost significantly less to implement or result in improved operation of the project works for electricity production. In order to make this determination, the regulations require that all of the following information be submitted, and hence that all of the following information be collected in this information collection:

- (1) A description of the alternative, in an equivalent level of detail to the agency's preliminary condition or prescription;
- (2) An explanation of how the alternative:
 - (i) If a condition, will provide for the adequate protection and utilization of the reservation; or
 - (ii) If a prescription, will be no less protective than the fishway prescribed by the agency;
- (3) An explanation of how the alternative, as compared to the preliminary condition or prescription, will:
 - (i) Cost significantly less to implement; or
 - (ii) Result in improved operation of the project works for electricity production.
- (4) An explanation of how the alternative or revised alternative will affect:
 - (i) Energy supply, distribution, cost, and use;
 - (ii) Flood control;
 - (iii) Navigation;
 - (iv) Water supply;
 - (v) Air quality; and
 - (vi) Other aspects of environmental quality; and
- (5) Specific citations to any scientific studies, literature, and other documented information relied on to support the proposal.

Each submission of information collected under the current collection has triggered that process authorized by the EPA Act and the Interim Final Rule published on November 17, 2005. The Department receiving the information submission acknowledges it, in writing, advising the submitter that it has been received, and providing a schedule of planned actions based on the receipt of the proposed alternative conditions and prescriptions. In its initial acknowledgement letter, the Department also notifies the submitter that because the Department must consider any findings of the Administrative Law Judge on disputed issues of material fact pertaining to the conditions or prescriptions for which the alternatives were submitted, that it – in effect – cannot file its response to the proposed alternatives and any potential modified conditions or prescriptions until after receiving notice of the Administrative Law Judge's final rulings. (Note: The schedule of planned actions typically states that the Department will file its response to the proposed alternatives and any potential modified conditions or prescriptions within 60 days after receiving notice of the Administrative Law Judge's final rulings.)

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The regulations provide for filing of alternatives on diskette or compact disc. It is expected that all alternatives will be filed in such manner. However, for legal reasons, the original document must also be filed and served in non-electronic format.

4. Describe efforts to identify duplication.

This information is not collected by any other Federal agency than the three identified.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The Departments certify that these rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

According to the Small Business Administration, for NAICS code 221111, hydroelectric power generation, a firm is small if, including its affiliates, its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. Although the regulated community of FERC licensees does include a substantial number of small entities, the number of affected entities in a given year is likely to very small, at most 1 per year.

More importantly, the effect of the rules on small entities will not be significant. Any entity affected by these rules will have already been heavily involved in a FERC hydropower licensing proceeding, submitting and commenting on information in the record of that proceeding. These rules merely provide an additional administrative procedure, should the entity choose to use it, to obtain a definitive ruling on disputed issues of material fact with respect to conditions and prescriptions to be included in the license. Any cost to the entity will be incurred only when it decides that the cost will be justified by the benefits of the process. For these reasons, the rules will not have a significant economic effect.

The Departments have also determined that the information to be collected is the minimum necessary to specify, and properly consider, an alternative.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the information was not collected in accordance with these regulations, the requirements of the EAct could not be met.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner consistent with OMB guidelines.

- ◆ requiring respondents to report information to the agency more often than quarterly;
- ◆ requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- ◆ requiring respondents to submit more than an original and two copies of any document;
- ◆ requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- ◆ in connection with a statistical survey that is not designed to produce valid and reliable

- ◆ results that can be generalized to the universe of study;
- ◆ requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- ◆ that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- ◆ requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances that would require exceptions to 5 CFR 1320.5(d)(2).

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The final rule 0648-AU01 was submitted to OMB on 12/8/2014. There were no comments on the information collection requirements.

The Department of the Interior's notice seeking public comments was published May 22, 2012, 77 FR 30308. No public comments were received in response to that notice. Additionally, comments have not been received regarding the information collection over the past five years.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The following three people were originally contacted in June of 2008. Between June 7, 2012, and June 26, 2012, the same three people were again contacted by the Department of the Interior and asked to update or confirm their previous estimates:

John Whitaker, Attorney with Winston and Strawn, 2700 K Street, N.W., Washington, D.C. 20006, (202) 282-5766. Mr. Whitaker represented a number of firms pursuing alternatives process submissions with the Federal Government. In response to an email and a follow-up telephone call, Mr. Whitaker confirmed his previous estimate of 150-175 total hours, including the civil engineering, research, development of documentation, etc. to present a submission of this type to the Government.

Michael Swiger, Attorney with Van Ness Feldman, 1050 Thomas Jefferson Street, NW,

Washington, D.C. 20007, (202) 298-1891 also represented firms pursuing alternatives process submissions. In response to an email and a follow-up telephone call, Mr. Swiger confirmed his previous estimate of 1,000 total hours, including the civil engineering, research, development of documentation, etc. to present a submission of this type to the Government.

Rosana Sokolowski, Licensing Compliance Coordinator, Chelan P. U. District, 327 Wenatchee Avenue, Wenatchee, Washington 98801, (509) 661-4175 works in the licensing Department of this company. In response to an email and a follow-up telephone call, Ms. Sokolowski confirmed her previous estimate of 500 total hours, including the civil engineering, research, development of documentation, etc. to present a submission of this type to the Government.

Taking these three estimates together, and recognizing that there is a team effort on behalf of a company to prepare such a submission, we have determined that 500 hours is a good estimate to capture the range between the simpler versus the more complex projects.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality provided to respondents.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

None of the information requested is considered sensitive.

12. Provide an estimate in hours of the burden of the collection of information.

The Department of the Interior polled the three Departments that participate in the review and development of hydropower licensing conditions (Interior, Commerce, and Agriculture). The expected annual total for all three agencies combined, based on actual experience and on best predictions going forward, is five per year. The expected annual total for the Department of Commerce is one to two per year.

The estimated 500 hours of burden on the public for each such submission was derived by polling three persons who had worked on such submissions and approximating an average of their experienced number of hours. The amounts varied from a low of 150-175 hours to a high of 1,000 hours, with an intermediate 500 hours. The respondents explained that the complexity of the proposed alternative project varied, which is why the times to prepare their submissions

varied. Based on all three of the explanations, it was determined that 500 hours was a reasonable summation of the different levels of experience.

Since there are an estimated two collections per year for the Department of Commerce, that yields an hour burden to the public of an estimated 1,000 hours.

Taking the mean hourly wage of civil engineers who are deemed most likely to develop the submissions, as \$39.76 (based on Bureau of Labor Statistics data at the following link: <http://www.bls.gov/news.release/pdf/ocwage.pdf>), and multiplying by 1.4 to include a benefits factor, the hourly rate is \$55.66. (The benefits multiplier derived from BLS news release USDL: 12-0450, March 27, 2012, at <http://www.bls.gov/news.release/pdf/ecec.pdf>). This hourly rate, multiplied by the total number of 1,000 hours (500 hours times estimated two annual submissions) yields a total burden of \$55,660.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

There are no capital expenses. The businesses that complete such information collections would already have all the equipment including computers, etc. necessary for the ongoing operations of the business.

We have identified no reporting or recordkeeping “non-hour” cost burdens for this collection of information.

14. Provide estimates of annualized cost to the Federal government.

The annual cost of the data collection is estimated based on the agencies’ experience with analyzing and considering each alternative. Each information collection reviewed is considered to relate to a single alternative review. Such time includes initial review and analysis, efforts to generate a response, and a reasonable amount of time to deal with issues that flow from the submission. Although there is variation in the review time for different projects, some reportedly taking as little as 60 hours, and some taking more than 300 hours, in assessing the reports of the different reviewers, it was determined that 150 hours is a good measure of the typical range of time expended per project review. Any variation is due to the differences in levels of complexity between projects, and the varying amounts of necessary follow up and discussion.

The average civil service grade level of reviewers is estimated to be GS-14, Step 5. There is expected to be a preponderance of such review effort in the Washington, D.C. Metropolitan area. Using the 2012 OPM pay rates for that pay grade in that area, the average hourly wage is \$57.13. (This figure is derived from the OPM web site at http://www.opm.gov/oca/12tables/pdf/dcb_h.pdf.) This sum, multiplied by a factor of 1.5 to

include benefits, yields \$85.69 per hour (the benefits multiplier is derived from BLS news release USDL: 12-0450, March 14, 2012, at <http://www.bls.gov/news.release/pdf/ecec.pdf>.)

Taking this hourly rate of \$85.69, multiplying by 150 hours per review, yields \$12,853.50 per case; this sum multiplied by the expected two occurrences per year yields a total cost to the Government of \$25,707 annually.

15. Explain the reasons for any program changes or adjustments.

Not Applicable.

16. For collections whose results will be published, outline the plans for tabulation and publication.

There are no plans for tabulation and publication of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

There is no practical place to display it because parties proposing an alternative to a condition or prescription that one or more of the Departments develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under the FPA are not required to do so using any specific agency-developed form or information collection instrument.

18. Explain each exception to the certification statement.

We are not requesting exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods such as sampling.