



## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **18 CFR Part 380**

**[Docket No. RM26-7-000]**

### **Categorical Exclusion under the National Environmental Policy Act for Certain Terminations or Revocations of Water Power Licenses and Exemptions**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend section 380.4 of its regulations implementing the National Environmental Policy Act (NEPA) to expand an existing Categorical Exclusion (CE). A CE describes a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment, absent extraordinary circumstances, and so does not trigger NEPA's requirement to prepare an environmental document. The proposed revision would add a category of actions to an existing CE to include terminations or revocations of water power licenses and exemptions that will result in minor or no ground disturbing activity and minor or no changes in reservoir conditions and downstream flows.

**DATES:** Comments are due **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways. Electronic filing through <http://www.ferc.gov>, is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and

print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426.
  - Hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures section of this document contains more detailed filing procedures.

The public may access the related Draft Substantiation Record in the Commission's eLibrary system under Docket No. RM26-7-000, <https://elibrary.ferc.gov/eLibrary>.

**FOR FURTHER INFORMATION CONTACT:**

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## **SUPPLEMENTARY INFORMATION:**

1. The Federal Energy Regulatory Commission (Commission) proposes to amend section 380.4 of its regulations identifying categorically excluded projects or actions under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* in an ongoing effort to streamline the Commission's regulations. Section 380.4 of the Commission's regulations implementing NEPA identifies categories of actions or projects for which generally neither an Environmental Assessment nor an Environmental Impact Statement will be prepared.<sup>1</sup> The Commission proposes to expand an existing Categorical Exclusion (CE) to add a category of actions for terminations or revocations of water power licenses and exemptions that will result in minor or no ground disturbing activity and minor or no changes in reservoir conditions and downstream flows.

### **I. Background**

2. NEPA requires Federal agencies to consider the environmental effects of their proposed actions in their decision-making process and to inform and engage the public in that process. For every proposed major federal action with a reasonably foreseeable significant effect on the quality of the human environment, the responsible federal agency shall issue an environmental impact statement (EIS).<sup>2</sup> For a proposed action with an

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<sup>1</sup> 18 CFR 380.4.

<sup>2</sup> 42 U.S.C. 4336(b)(1).

unknown or lesser effect, the agency shall issue a more concise environmental assessment (EA) unless the agency finds that the proposed action is covered by a CE or is exempt from NEPA review under another law.<sup>3</sup> A CE describes “a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment.”<sup>4</sup> Applying a CE allows an agency to satisfy NEPA’s requirements more efficiently by reducing the resources spent analyzing proposals that normally do not have significant environmental effects.

3. In deciding whether a specific proposed action is excluded from case-specific NEPA review under a CE, the Commission and its staff independently evaluate environmental information supplied by an applicant or project sponsor, by Commission staff inspections or research, by other federal agencies, and by commenting stakeholders to determine whether circumstances indicate that a proposed action may be a major Federal action significantly affecting the quality of the human environment.<sup>5</sup> A list of such circumstances, often referred to as “extraordinary circumstances,” is set out in the Commission’s regulations at 18 CFR 380.4(b)(2).

4. Agencies may establish a new CE if they have reliable data and resources, such as previous NEPA evaluations, to determine that the category of actions does not normally result in significant effects.<sup>6</sup>

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<sup>3</sup> *Id.* 4336(a)(2), (b)(2).

<sup>4</sup> *Id.* 4336e(1).

<sup>5</sup> 18 CFR 380.4(b)(1).

<sup>6</sup> Congress amended NEPA through the Fiscal Responsibility Act of 2023 to authorize agencies to “adopt” categorical exclusions listed in another agency’s NEPA procedures to be applied to the adopting agency’s actions. Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023); NEPA Section 109, 42 U.S.C. 4336c.

5. Part I of the Federal Power Act (FPA)<sup>7</sup> establishes Commission jurisdiction over non-federal hydropower projects throughout the United States. The FPA makes it unlawful for any person, State, or municipality to build and operate a hydropower project subject to the Commission’s jurisdiction unless they obtain a license<sup>8</sup> from the Commission.

6. A license may end by: voluntary surrender,<sup>9</sup> termination for failure to commence construction,<sup>10</sup> termination by implied surrender,<sup>11</sup> or revocation.<sup>12</sup> The Commission’s existing regulations only specifically address the level of NEPA review for voluntary surrenders initiated by the licensee.<sup>13</sup> Section 380.5 of the Commission’s regulations implementing NEPA states that an EA will normally be prepared first for “[s]urrender of water power licenses and exemptions where project works exist or ground disturbing activity has occurred . . . .”<sup>14</sup> The existing CE at section 380.4(a)(13) applies to the

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<sup>7</sup> 16 U.S.C. 791a–823g. Parts II and III of the FPA address electric transmission and wholesale sales rates and services.

<sup>8</sup> Given that there are no distinctions between licenses and exemptions relevant to this proceeding, we will refer herein to “licenses” as including exemptions and “licensees” as including exemptees.

<sup>9</sup> 18 CFR 6.1, 6.2 (licenses), 4.95, 4.102 (exemptions).

<sup>10</sup> *Id.* 6.3 (licenses), 4.94(c), 4.106(c) (exemptions).

<sup>11</sup> *Id.* 6.4 (licenses), 4.94(a), 4.106(a) (exemptions).

<sup>12</sup> 16 U.S.C. 823b(b) (licenses and exemptions).

<sup>13</sup> A licensee may request surrender for a variety of reasons, for example if the licensee determines that the project is no longer economical or if natural disasters have damaged or destroyed project facilities. *See* 16 U.S.C. 799 (section 6 of the FPA provides the Commission authority to issue licenses and that licenses may be surrendered only upon mutual agreement between the licensee and the Commission).

<sup>14</sup> 18 CFR 380.5(b)(13).

“surrender of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred.”<sup>15</sup> The Commission’s order either approving or denying the surrender indicates how the Commission complied with NEPA. The surrender becomes effective after the licensee fulfills any conditions for disposing of project works and restoring project lands that may be required by the Commission.

7. The Commission’s existing regulations do not specifically address the levels of NEPA review for the following types of terminations or revocations:

- Termination: Commission-initiated termination after notice if there is failure to commence actual construction of the project works within the time prescribed by the Commission.<sup>16</sup>
- Implied Surrender Termination: Commission-initiated termination after notice when a licensee or exemptee, by action or inaction, has indicated its intent to abandon the project but has not filed a surrender application (e.g., the licensee has physically abandoned the project property, sold the project property without Commission authorization, dissolved its corporate or other legal identity, or has failed for several years to operate or maintain the project with no indication of doing so in the reasonably foreseeable future).<sup>17</sup>

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<sup>15</sup> *Id.* 380.4(a)(13).

<sup>16</sup> 16 U.S.C. 806; 18 CFR 4.94(c), 4.106(c), 6.3; *see also id.* 375.308(e), (f) (delegating limited authority to the Director of the Office of Energy Projects to terminate licenses or revoke exemptions for failure to construct).

<sup>17</sup> 18 CFR 6.4, *see, e.g.*, Standard License Article 30, Form L-1 (1975) (describing the triggers, process, and liabilities for implied surrender), <https://www.ferc.gov/industries-data/hydropower/administration-and-compliance/standard-l-e-p-form-articles>; 18 CFR 6.4 (same).

- Revocation: Commission-initiated revocation under FPA § 31 when the licensee has knowingly violated a compliance order from the Commission despite a reasonable time to comply.<sup>18</sup>

8. Termination for failure to commence construction results in no environmental effects. Typically, implied surrender termination or revocation leaves project facilities in place without further action that would alter the conditions of the project or affect the surrounding environment. When evaluating a project for implied surrender termination or revocation, Commission staff reviews the project compliance history, including previous dam safety inspection reports and compliance with the recommendations in them, to determine the current conditions at the site and coordinates with the appropriate state or local authority responsible for dam safety. Following termination or revocation, the project is removed from the Commission's FPA jurisdiction but remains subject to applicable federal, state, and local laws, including state regulatory programs for dam safety.<sup>19</sup> The Commission cannot conduct post-termination monitoring because it lacks jurisdiction following termination or revocation.<sup>20</sup>

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<sup>18</sup> 16 U.S.C. 823b(b).

<sup>19</sup> *E.g., Leonard Lundgren*, 10 FERC ¶ 61,270, at 61,524 (1980) (explaining that after termination of the license for a project on National Forest land, the project owner's continued use of the project dam and facilities for irrigation, without generating electricity, would be subject to the supervision of the U.S. Forest Service under a permit for continued occupancy of national forest lands by part of the project); *Pub. Util. Dist. No. 1 of Okanogan Cnty.*, 169 FERC ¶ 61,215, at P 19 (2019) (explaining that Commission staff had coordinated with the Washington State Department of Ecology, Dam Safety Division, before terminating a license for failing to construct new facilities at the existing Enloe Dam).

<sup>20</sup> The Commission may, however, provide that a voluntary surrender will not be effective until specified conditions are met. *See PacifiCorp*, 181 FERC ¶ 61,122, at P 64 (2022).

9. With this rulemaking, the Commission seeks to clarify its compliance with NEPA for terminations or revocations that would result in, at the most, limited changes to the environment. The changes to section 380.4(a)(13) will make, for certain proposed terminations and revocations, a categorical exclusion available as a form of review that may be used to comply with NEPA, providing more efficient oversight of hydropower projects and more efficient use of Commission resources.

## **II. Substantiation**

10. The Commission may use various methods to gather and evaluate information to substantiate a proposed CE.<sup>21</sup> The amount of required information will vary based on a variety of factors (e.g., the type and number of actions previously authorized, the scale of possible effects, or the frequency of such actions). As detailed below, Commission experience has shown that few or no environmental effects result from implied surrender terminations or revocations of water power licenses and exemptions with minor or no ground disturbing activity and minor or no changes in reservoir conditions and downstream flows. Accordingly, Commission staff prepared a separate draft substantiation record based on environmental assessments of previously implemented actions. The draft substantiation record is summarized below and is available with this NOPR for public review and comment.

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<sup>21</sup> See Council on Environmental Quality, *Memorandum Establishing, Applying, and Revising Categorical Exclusions under NEPA* 6-10 (2010), [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA\\_CE\\_Guidance\\_Nov232010.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf); Office of Energy Projects, FERC, *Staff Guidance Manual on Implementation of The National Environmental Policy Act* 4-5 (June 2025), <https://www.ferc.gov/media/staff-guidance-manual-implementation-national-environmental-policy-act-june-2025s>.

11. Commission staff considered all previous implied surrender terminations and revocations since 1978, the year that the Commission first promulgated regulations implementing NEPA. The Commission has never found a potentially significant effect from a termination or revocation such that an Environmental Impact Statement was required.

12. Commission staff prepared an EA in thirteen previous implied surrender termination or revocation proceedings. For implied surrender terminations, the licensee is almost always unresponsive, so Commission staff typically based the analysis in the EAs on site inspections completed by Commission staff and on any prior NEPA document or prior submitted documents, such as the environmental report that must accompany an application for a license, exemption, or amendment. For revocations, the licensee may either be unresponsive or be responsive but persistently in violation of the requirements of its license. Commission staff typically based the analysis in those EAs on the same sources used for implied surrender terminations. The EAs evaluated effects on geology and soils, water quality and quantity, aquatic resources, terrestrial resources, recreation, cultural resources, air quality, and threatened and endangered species, as relevant.

13. Six of the EAs recommended termination or revocation without further requirements on the licensee.<sup>22</sup> The EAs determined that the proposed actions would result in no changes to existing project facilities, no ground-disturbing activity, and no

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<sup>22</sup> See the discussion in the Substantiation Record of the Whittelsey Dam Hydroelectric Project No. 10522-024; Gilman Stream Hydroelectric Project No. 7473-013; Hammeken's Powerhouse Canal Project No. 9647-003; Blackstone

Mill Hydroelectric Project No. 11426-003; Appleton Trust Project No. 9300-018; and Lowell Atlantic Hydroelectric Project No. 5946-007.

addition or change to the existing passive effect of the project works on the reservoir, flows, and environmental resources at the projects. These EAs found no potential effects on any environmental resource area.

14. The other seven EAs evaluated terminations and revocations with requirements for further actions to be conducted by the licensee required by the Commission's dam safety oversight program or by another federal agency to stabilize, repair, or remove project works.<sup>23</sup> Although the EAs identified more potential effects than in the cases requiring no further action by the licensee, the EAs uniformly concluded that the terminations and revocations would not significantly affect the quality of the human environment.<sup>24</sup>

15. These examples have informed the proposed CE. Consistent with the previous EAs, discussed in detail in the Substantiation Record, the Commission finds that "terminations or revocations of water power licenses that will result in minor or no ground disturbing activity and minor or no changes in reservoir conditions and downstream flows" normally do not significantly affect the quality of the human environment, absent extraordinary circumstances.

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<sup>23</sup> See the discussion in the Substantiation Record of the Upper Watertown Dam Project No. 9974-040, -048; Star Milling and Electric Minor Water Power Project No. 11291-023; Bannister Mill Project No. 8656-007; 29-Mile Creek Project No. 7931-021; Slaughterhouse Gulch Project No. 6375-006; Tyrone Project No. 6624-009; and Mechanicville Hydroelectric Project No. 6032-041.

<sup>24</sup> Commission staff identified the implied surrender termination for the Mechanicville Hydroelectric Project No. 6032-041 as an outlier. *Niagara Mohawk Power Corp.*, 98 FERC ¶ 61,227 (2002) (including Environmental Assessment). The EA evaluated termination with a requirement for the licensee to repair and stabilize the dam and powerhouse. The EA concluded that the activities could reintroduce polychlorinated biphenyl (PCB) pollution from the riverbed into the water column. *Id.* EA at G.2. This potential for more than a minor change to reservoir conditions and downstream flows would have placed the termination outside the scope of the proposed CE.

#### IV. Proposed Revisions to NEPA Procedures

16. The Commission proposes to expand the existing CE at 18 CFR 380.4(a)(13) to separate its clauses into subparts that will include the proposed CE for terminations and revocations of water power licenses and exemptions. The existing regulation states:

(a) *General rule.* Except as stated in paragraph (b) of this section, neither an environmental assessment nor an environmental impact statement will be prepared for the following projects or actions:

\* \* \*

(13) Surrender and amendment of preliminary permits, and surrender of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that do not require ground disturbing activity or changes to project works or operation;

\* \* \*

The proposed revised 18 CFR 380.4(a)(13) would state:

(13) Certain amendments, surrenders, terminations, and revocations of preliminary permits and water power licenses and exemptions:

- (i) Amendments or surrenders of preliminary permits;
- (ii) Amendments to water power licenses and exemptions that do not require ground disturbing

activity or changes to project works or operation;

(iii) Surrenders of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred; or

(iv) Terminations or revocations of water power licenses and exemptions that will result in minor or no ground disturbing activity and minor or no changes in reservoir conditions and downstream flows;

17. The changes to section 380.4(a)(13) will make, for certain proposed terminations and revocations, a categorical exclusion available as a form of review that may be used to comply with NEPA, providing more efficient oversight of hydropower projects.

#### **V. Request for Comments**

18. The Commission requests and encourages public comments on this notice of proposed rulemaking and the accompanying draft substantiation record. Comments may include any related matters or alternative proposals that commenters may wish to discuss. The Commission will consider comments it receives and provide responses in a final rule, with changes, if warranted.

19. Comments are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments must refer to Docket No. RM26-7-000 and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

20. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

21. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

## **VI. Regulatory Requirements**

### **A. Information Collection Statement**

22. The Paperwork Reduction Act<sup>25</sup> requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (i.e., reporting, recordkeeping, or public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in final rules published in the Federal Register. This proposed rule does not impose new information collection requirements on any person or entity. The Commission is therefore not required to submit this rule to OMB for review.

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<sup>25</sup> 44 U.S.C. 3501-3521.

## **B. Environmental Analysis**

23. This proposed rule is procedural in its entirety and therefore does not require preparation of a NEPA analysis. NEPA does not require environmental analysis or documentation when establishing procedural guidance. The determination that establishing a CE does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 230 F.3d 947, 954-55 (7th Cir. 2000).

24. Moreover, this rulemaking falls within the Commission's category of actions for the promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.<sup>26</sup> This notice proposes to add a CE for certain terminations of hydropower authorizations. Because the proposed rule is procedural in nature and falls within this categorical exclusion, preparation of an Environmental Assessment or an Environmental Impact Statement is not required. Further, we note that this proposed rule only changes the default treatment under NEPA of certain terminations of hydropower authorizations, and such a change would not alter the environmental effects of the Commission's termination orders.

## **C. Regulatory Flexibility Act**

25. The Regulatory Flexibility Act of 1980 (RFA)<sup>27</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant

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<sup>26</sup> 18 CFR 380.4(a)(2)(ii).

<sup>27</sup> 5 U.S.C. 601-612.

economic impact on a substantial number of small entities.<sup>28</sup> In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.<sup>29</sup> The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>30</sup> The SBA size standard for hydroelectric power generation is based on the number of employees, including affiliates.<sup>31</sup> Under SBA's size standards, a hydroelectric power generator is small if, including its affiliates, it employs 750 or fewer people.<sup>32</sup>

26. If enacted, this proposed rule would apply to a number of entities, some of which may be small businesses, who hold a license or exemption from the Commission for a hydropower project. However, this proposed rule would have no effect on these entities, regardless of their status as a small entity or not, as the proposed rule imposes no action or requirement on those entities. Instead, this proposed rule would establish a new CE, altering the responsibilities and obligations only of the Commission and its staff under NEPA.

27. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

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<sup>28</sup> *Id.* 603(c).

<sup>29</sup> *Id.* 605(b).

<sup>30</sup> 13 CFR 121.101.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* 121.201, subsector 221.

#### **D. Document Availability**

28. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>).

29. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1 -866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### **List of subjects in 18 CFR Part 380**

Environmental impact statements, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: February 19, 2026.

**Debbie-Anne A. Reese,**

*Secretary.*

In consideration of the foregoing, the Commission proposes to amend part 380, chapter I, title 18, *Code of Federal Regulations*, as follows:

**PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT**

1. Revise § 380.4(a)(13) to read as follows:

**§ 380.4 Projects or actions categorically excluded.**

(a) \* \* \*

\* \* \*

(13) Certain amendments, surrenders, terminations, and revocations of preliminary permits and water power licenses and exemptions:

(i) Amendments or surrenders of preliminary permits;

(ii) Amendments to water power licenses and exemptions that do not require ground disturbing activity or changes to project works or operation;

(iii) Surrenders of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred; or

(iv) Terminations or revocations of water power licenses and exemptions that will result in minor or no ground disturbing activity and minor or no changes in reservoir conditions and downstream flows;