

Articles + Publications | July 9, 2025

FERC Revises Regulations Implementing NEPA; Adopts Two Hydropower-Related Categorical Exclusions

WRITTEN BY

Charles Sensiba | Elizabeth J. McCormick | Andrea W. Wortzel

On July 3, 2025, the Federal Energy Regulatory Commission (FERC) issued a [final rule](#) revising its regulations implementing the National Environmental Policy Act of 1969 (NEPA) to remove references to the recently [rescinded regulations](#) implementing NEPA originally promulgated in 1978 by the White House's Council on Environmental Quality (CEQ). On the same day, FERC issued an [order](#) adopting two categorical exclusions under NEPA for certain hydropower-related activities.

NEPA is a procedural statute that requires federal agencies to conduct an environmental review of any major federal action that significantly affects the quality of the human environment. In 1987, FERC added Part 380 to its regulations to implement NEPA requirements. Up until its July 3 final rule, FERC's regulations had included a number of cross-references to the CEQ NEPA regulations.

The White House's February 2025 [interim final rule \(IFR\)](#) rescinding NEPA's implementing regulations was accompanied by a [memorandum](#) directing all federal agencies to revise or establish new NEPA implementation procedures consistent with President Trump's January 20 Executive Order 14154, [Unleashing American Energy](#), which directed federal agencies to "undertake all available efforts to eliminate" energy-infrastructure permitting delays. Pursuant to that memorandum, FERC's July 3 final rule removes all references to CEQ's rescinded regulations in 18 C.F.R. Pt. 380 and 385.2201 and, where applicable, replaces them with a citation to NEPA itself. FERC's final rule does not make any other process changes to streamline or otherwise address delays caused by NEPA reviews.

While rulemaking actions generally require notice-and-comment procedures, FERC determined that such procedures were unnecessary for this rule, which "merely clarifies and corrects the Commission's NEPA procedures by removing references to CEQ's rescinded regulations." FERC's final rule will become effective on August 18. See [here](#) for an overview of all agencies that have recently revised their NEPA implementing procedures consistent with Executive Order 14154.

FERC took another action on July 3 that provides some limited relief from NEPA. FERC issued an order adopting two hydropower-specific categorical exclusions (CE) based on similar CEs previously established by the U.S. Bureau of Reclamation (Reclamation). A CE is a category of actions that an agency has determined do not result in a significant effect on the human environment, and therefore, does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS) under NEPA. Pursuant to the Fiscal Responsibility Act of 2023, which amended NEPA to codify the practice of an agency adopting the CE of another

agency, FERC staff consulted with Reclamation and determined that the type of activities that Reclamation authorizes under two particular CEs — D.1 and D.17 — are substantially similar to the types of actions the FERC authorizes for nonfederal hydropower projects. Specifically, D.1 is a CE for “maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation,” and D.17 is a CE for “minor safety of dam construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.”

FERC’s order states that it plans to use D.1 when authorizing maintenance, rehabilitation, or replacement activities at existing, nonfederal hydropower projects where such activities involve a minor change in size, location, and/or operation. It plans to use D.17 when authorizing minor construction activities to improve dam safety conditions at existing, nonfederal hydropower projects.

In determining whether to apply D.1 and/or D.17 to proposed actions, FERC staff will determine whether there are any extraordinary circumstances in which a normally excluded action could have a significant effect, including when an action may affect Indian lands, wilderness areas, wild and scenic rivers, or units of a national park, or if the action may have a significant effect on public health or safety, or would affect a unique, vulnerable, or high-value natural resource. While FERC’s July 3 order authorizes FERC staff to use these two new CEs for minor maintenance or dam safety, it will likely limit delays due to protracted NEPA reviews. The order, however, does not eliminate requirements under the Federal Power Act, its implementing regulations, and standard license articles for hydropower licensees to apply for a license amendment, nor will it eliminate other statutory requirements that are triggered by FERC’s approval of an amendment application, such as the Endangered Species Act, Clean Water Act, and National Historic Preservation Act. FERC’s order did not solicit public comment on its adoption of the two CEs, but provided that it would become effective 31 days after the order on August 4.

RELATED INDUSTRIES + PRACTICES

- Energy
- FERC
- Hydropower