



Federal Energy Regulatory Commission

Office of Energy Projects

STAFF GUIDANCE MANUAL ON IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

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Staff Guidance Manual on Implementation of the National Environmental Policy Act

A. INTRODUCTION

1. Purpose of the Guidance Manual.

To facilitate the preparation of environmental documents, staff of the Federal Energy Regulatory Commission (Commission) is issuing this guidance manual to ensure the overall quality and consistency of the Commission's review of proposed actions under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4347 (NEPA). The guidance manual describes the process by which Commission staff will: (1) determine what actions are subject to NEPA's procedural requirements and the requisite level of NEPA review; (2) ensure that relevant environmental information is identified and considered early in the process in order to support informed decision making; (3) conduct coordinated, consistent, predictable and timely environmental reviews, and reduce unnecessary burdens and delays; and (4) implement NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and applicant preparation of environmental documents. Commission staff will consult with the Council on Environmental Quality on methods and procedures, in accordance with NEPA § 102(2)(B) (42 U.S.C. § 4332(2)(B)).

This guidance manual sets forth the procedures and practices Commission staff will follow to fulfill its requirements under NEPA. It further explains Commission staff's interpretation of key concepts in NEPA that are used in preparing environmental documents. It does not govern the individual rights and obligations of either regulated entities or stakeholders in general. As guidance this document does not substitute for, amend, or supersede the Commission's regulations for implementing the Natural Gas Act of 1938 (NGA), Federal Power Act (FPA), or NEPA. The guidance uses non-mandatory language such as "recommend" and "may" to describe Commission staff's practices intended to help the Commission meet its obligations under NEPA, while "will" describes routine practice that may be adapted for case-specific circumstances. The use of mandatory language such as "required" and "must" describes controlling requirements under statutes or regulations. Nothing in this manual should be interpreted as supplanting or curtailing any obligation the Commission has under federal laws.

B. IMPLEMENTING PROCEDURES

1. Determining when NEPA applies.

In accordance with the provisions of NEPA and the Commission's regulations, staff will determine that NEPA does not apply to a proposed action when:

- (a) The activities or decisions do not result in final agency action under the Administrative Procedure Act, *see* 5 U.S.C. § 704, or other relevant statute that also includes a finality requirement;
- (b) The proposed activity or decision is exempted from NEPA by law;
- (c) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;
- (d) Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that the Commission retains no residual discretion to alter its action based on the consideration of environmental factors, and therefore, that function of the Commission is nondiscretionary within the meaning of NEPA §§ 106(a)(4) or 111(10)(B)(vii) (42 U.S.C. §§ 4336(a)(4), 4336e(10)(B)(vii));
- (e) The proposed action is an action for which another statute's requirements serve the function of agency compliance with NEPA;
- (f) The proposed action is not a "major Federal action" as defined by NEPA § 111(10) (42 U.S.C. § 4336e(10)). A determination as to whether a proposed action is a "major Federal action" is inherently bound up in the facts and circumstances of each individual situation. The Commission's regulations generally identify major federal actions subject to Commission jurisdiction, *see* 18 C.F.R. §§ 380.4–380.6; or
- (g) The issuance or update of Commission staff's NEPA procedures is not subject to NEPA review.

2. Determining the appropriate level of NEPA review.

If NEPA applies to a proposed activity or decision, the appropriate level of NEPA review should be determined in the following sequence and manner. At all steps in the following process, Commission staff will consider the proposed action or project and its effects.

- (a) If the Commission has established at 18 C.F.R. § 380.4 or adopted pursuant to NEPA § 109 (42 U.S.C. § 4336c) a categorical exclusion that covers the proposed action, Commission staff will analyze whether to apply the categorical exclusion to the proposed action and, if appropriate, apply the categorical exclusion as described in section B.5(d) of this guidance manual.
- (b) If another agency has already established a categorical exclusion that covers the proposed action, Commission staff may recommend that the Commission adopt the categorical exclusion as described in section B.5(c) of this guidance manual and apply the categorical exclusion to the proposed action at issue, and to future activities or decisions of that type.

(c) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, Commission staff may recommend that the Commission establish or revise the categorical exclusion, and then apply the categorical exclusion to the proposed action, as described in section B.5(b) of this guidance manual.

(d) If staff cannot apply a categorical exclusion to the proposed action consistent with paragraphs section B.2(a)-(c) of this guidance manual, staff will assess whether the proposed action is identified in the Commission's regulations at 18 C.F.R. §§ 380.5, 380.6 as normally requiring preparation of either an environmental assessment or an environmental impact statement, and:

(1) if the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, staff will develop an environmental assessment, as described in in section B.7 of this guidance manual; or

(2) if the proposed action is likely to have reasonably foreseeable significant effects, staff will develop an environmental impact statement, as described in section C of this guidance manual.

(e) Other considerations:

(1) When considering whether the reasonably foreseeable effects of the proposed action are significant, Commission staff will analyze the potentially affected environment and degree of the effects of the action. Staff may use any data source that it deems reliable and, except as provided in the Commission's study plan regulations under the FPA, 18 C.F.R §§ 4.38, 5.11–5.14, 16.8, will not require new scientific and technical research or the development of new methodologies unless it is essential to evaluating alternatives and the cost and time of obtaining such research or methodologies are not unreasonable.

(2) In considering the potentially affected environment, staff may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.

Resource areas examined may include: geology; soils; water resources (e.g., water quality and quantity); wetlands; fisheries and aquatic resources; vegetation; terrestrial resources; special status and protected species; cultural and Tribal resources; recreation resources; land use and visual resources; air quality; noise; socioeconomics; and reliability and safety.

(3) In considering the degree of the effects, Commission staff may consider the following, as appropriate to the specific action: both short- and long-term effects; both beneficial and adverse effects; effects on public health and safety; economic effects; and effects on the quality of life of the American people.

3. Lead and cooperating agencies.

The Commission acts as the lead agency for processing applications subject to the Commission's NGA and FPA jurisdiction. When serving as the lead agency, the Commission will be responsible for completing the NEPA process and will determine and document the scope of the proposed jurisdictional action. When a joint lead relationship is established pursuant to NEPA § 107(a)(1)(B) (42 U.S.C. § 4336a(a)(1)(B)), the Commission and the other joint lead agency or agencies will be collectively responsible for completing the NEPA process. If the Commission and another Federal agency are unable to agree on which agency

will be the lead agency pursuant to NEPA § 107(a)(5) (42 U.S.C. § 4336(a)(5)), the affected agency may request that the Council on Environmental Quality designate a lead agency.

4. Early coordination.

For proposed actions that are initially developed by applicants, Commission staff will:

- (a) coordinate with the non-Federal entity at the earliest reasonable time in the planning process, using, where appropriate, the Commission's pre-filing process in 18 C.F.R. § 157.21 and pre-application procedures in 18 C.F.R. parts 4, 5, or 16 to inform the entity what information staff might need to comply with NEPA; and
- (b) begin the NEPA process by determining whether NEPA applies, as described in section B.1 of this guidance manual, and if it does, determine the appropriate level of NEPA review, as described in section B.2 of this guidance manual, as soon as practicable after receiving the complete application.

5. Categorical exclusions.

(a) *Generally.* This section describes the process for establishing and revising categorical exclusions, for adopting other agencies' categorical exclusions, and for applying categorical exclusions to a proposed action. The Commission's categorical exclusions are listed in 18 C.F.R. § 380.4.

(b) *Establishing and revising categorical exclusions.* Commission staff may recommend that the Commission establish or revise a categorical exclusion for a category of actions that normally does not significantly affect the quality of the human environment. When proposing to establish or revise a categorical exclusion, Commission staff will:

- (1) Develop a written record containing information to substantiate its determination;
- (2) Consult with CEQ on its proposed categorical exclusion, including the written record, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (4);
- (3) Recommend to the Commission to establish or revise a categorical exclusion for a category of actions; and
- (4) If established or revised, provide public notice in the *Federal Register* and publish to *eLibrary*, the Commission's records information system containing issuances from the Commission and filings from applicants and the public, the Commission's establishment or revision of the categorical exclusion and the location of availability of the written record.

(c) *Adopting categorical exclusions from other Federal agencies.* Consistent with NEPA § 109, 42 U.S.C. § 4336c, Commission staff may recommend that the Commission adopt a categorical exclusion listed in another agency's NEPA procedures. When proposing to adopt a categorical exclusion, Commission staff will:

- (1) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its category of proposed or related actions;
- (2) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate;

(3) Recommend to the Commission adoption of the categorical exclusion for use by the Commission. The Commission may adopt the categorical exclusion in an order and include a brief description of the proposed action or category of proposed actions to which Commission staff intends to apply the adopted categorical exclusion and identify any extraordinary circumstances established by the other agency that Commission staff will examine when relying on the categorical exclusion; and

(4) If adopted, provide public notice in the *Federal Register* and publish the order adopting the categorical exclusion on *eLibrary*.

(d) *Applying categorical exclusions.* If Commission staff determine that a categorical exclusion covers a proposed action, staff will evaluate the action for extraordinary circumstances pursuant to 18 C.F.R. § 380.4(b), and if staff is relying on an adopted categorical exclusion, any extraordinary circumstances from the other agency that indicate a normally excluded agency action is likely to have a reasonably foreseeable significant adverse effect.

(1) If an extraordinary circumstance is not present, Commission staff will rely on the categorical exclusion and conclude environmental review under NEPA.

(2) If an extraordinary circumstance is present, Commission staff will:

(i) rely on the categorical exclusion if, notwithstanding the extraordinary circumstance, the proposed action is not likely to result in reasonably foreseeable adverse significant effects; or

(ii) determine that it cannot apply the categorical exclusion to the proposed action due to the extraordinary circumstance, in which case Commission staff will prepare an environmental assessment or environmental impact statement, as appropriate.

(e) *Applying legislative categorical exclusions.* If Commission staff determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress, through legislation, has directed the Commission to establish, covers a proposed agency action, Commission staff will conclude review consistent with applicable law. If appropriate, Commission staff may examine extraordinary circumstances or document the determination that the legislative categorical exclusion applies, consistent with paragraphs (d) and (f) of this section and the legal authority for the establishment of the legislative categorical exclusion.

(f) *Documentation of categorical exclusion determinations.* Commission staff will document its use of a categorical exclusion for a proposed action in the corresponding docket on *eLibrary*.

6. Notices and scoping.

(a) *Notices.*

(1) *Generally.* Commission staff will issue notices to inform the applicant, agencies, stakeholders, and the public during the environmental review process, and the notices may include:

(i) The purpose and need for the proposed action;

- (ii) A preliminary description of the proposed action and alternatives the environmental document will consider;
- (iii) A brief summary of expected effects;
- (iv) Anticipated permits and other authorizations;
- (v) A schedule for the NEPA process;
- (vi) A description of the public scoping process, including any scoping meeting(s);
- (vii) Contact information for Commission staff who can answer procedural questions about the proposed action and the environmental document; and
- (viii) Identification of any cooperating and participating agencies, and any information that such agencies require in the notice to facilitate their decisions or authorizations.

(2) *Environmental assessments.* If Commission staff determines that an environmental assessment is required for a proposed hydroelectric action, Commission staff will publish a notice of intent to prepare an environmental assessment or for a proposed natural gas action, Commission staff will publish a notice of schedule, which announces staff's plans to prepare an environmental assessment. The notice will be issued as soon as practicable after determining that a proposal is sufficiently developed and will serve as the start of the statutory time limit under NEPA § 107(g)(1)(B)(iii) (42 U.S.C. § 4336a(g)(1)(B)(iii)).

(3) *Environmental impact statements.* If Commission staff determines that an environmental impact statement is required for either a proposed hydroelectric or natural gas action, Commission staff will publish a notice of intent to prepare an environmental impact statement. The notice of intent for an environmental impact statement will include a request for public comment on alternatives to the proposed action, effects of the proposed action, and the relevant information, studies, or analyses with respect to the proposed action consistent with NEPA § 107(c) (42 U.S.C. § 4336a(c)). The notice of intent will be issued as soon as practicable after determining that a proposal is sufficiently developed and will serve as the start of the statutory time limit under NEPA § 107(g)(1)(A)(iii) (42 U.S.C. § 4336a(g)(1)(A)(iii)).

(b) *Scoping.* Commission staff will use an early and open process to determine the scope of issues for analysis in an environmental document, including identifying significant issues and eliminating from further study non-significant issues. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent. The Commission's scoping process is further detailed, as applicable, at 18 C.F.R. § 5.8 for hydroelectric projects using the Integrated Licensing Process, and 18 C.F.R. § 157.21 for liquefied natural gas (LNG) terminal facilities and other natural gas facilities subject to pre-filing.

7. Environmental assessments.

(a) *Generally.* If an action is subject to NEPA, consistent with the procedures in section B.2 of this guidance manual, and unless staff finds that the proposed action is subject to a categorical exclusion, or exempted from the need for an environmental assessment or environmental impact statement pursuant to another provision of law, staff will prepare an environmental assessment

if the proposed action is not likely to have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such an effect is unknown (section B.2(d)(1) of this guidance manual). Based on the completed analysis, staff will either decide to proceed with preparing an environmental impact statement or recommend a finding of no significant impact (section B.7(h) of this guidance manual). Examples of the types of actions that normally require environmental assessments, but likely do not require an environmental impact statement are listed at 18 C.F.R. § 380.5.

(b) *Elements.* For the purpose of providing evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, and because environmental assessments are to be concise, environmental assessments will briefly discuss the:

- (1) Purpose and need for the proposed action, as informed by the goals of the applicant, and based on the Commission's statutory authority under the NGA, FPA, or other appropriate statute;
- (2) Proposed actions and alternatives to the extent required by NEPA § 102(2)(H) (42 U.S.C. § 4332(2)(H)), and whether staff's recommended alternative will or will not have a significant effect on the quality of the human environment; and
- (3) Reasonably foreseeable effects of the proposed action and the alternatives considered.

(c) *Scope of Analysis.*

- (1) The environmental assessment will focus on whether the environmental effects of the proposed action are significant.
- (2) The environmental assessment will identify the scope of consideration of any environmental effects from the proposed action that extend outside the geographical territory of the project or might materialize later in time.

(d) *Page limits and format.*

- (1) *Page count.* Environmental assessments shall comply with the page limits set forth in NEPA § 107(e)(2) (42 U.S.C. 4336a(e)(2)). The text of an environmental assessment is strictly prohibited from exceeding 75 pages, not including citations or appendices.
- (2) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment.
- (3) *Page format.* Environmental assessments will use the Commission-standard font, Times New Roman, and 12-point size. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.
- (4) *Certification related to page limits.* The breadth and depth of analysis in an environmental assessment will be tailored to ensure that the environmental analysis does not exceed 75 pages, not including citations or appendices. The relevant Office of Energy Projects Division Director will certify that Commission staff has considered the factors

mandated by NEPA; that the environmental assessment represents a good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects staff's expert judgment; and that any considerations addressed briefly or left unaddressed, in Commission staff's judgment would not meaningfully inform the assessment of environmental effects. The certification will be incorporated into the environmental assessment.

(e) *Deadlines.* Commission staff will complete the environmental assessment within one year. The start date for compliance with the deadline for hydroelectric projects will be the issuance of a Notice of Intent to Prepare an Environmental Assessment, and for natural gas projects will be the issuance of a Notice of Schedule. The end date for compliance will be the issuance of the environmental assessment.

(1) The environmental assessment will issue, at the latest, on the day the deadline elapses, in as substantially complete form as is possible, unless the deadline is extended, as described below.

(2) *Deadline extensions.* If staff determines that an environmental assessment cannot be completed by the statutory deadline, staff will:

- (i) consult with the applicant under NEPA § 107(g)(2) (42 U.S.C. § 4336a(g)(2)) regarding the need to extend the deadline;
- (ii) determine the amount of time needed to complete the environmental assessment and consult with the Director of the Office of Energy Projects and the appropriate Office of Energy Projects Division Director regarding the proposed new deadline, providing only as much additional time as is necessary to complete the environmental assessment; and
- (iii) publish notice of the new deadline to eLibrary, including the reason for the deadline extension.

(3) *Certification related to deadline.* The environmental assessment will include a certification signed by the relevant Office of Energy Projects Division Director that the environmental assessment represents Commission staff's good-faith effort to fulfill NEPA's requirements within the congressional timeline, that such effort is substantially complete; that in the Commission staff's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in Commission staff's judgment, the analysis contained therein is adequate to inform the Commission of potential environmental effects of the proposed action.

(f) *Solicitation of comments.* Where staff solicits comments on an environmental assessment, the comment period will be 30 days, and comments will be requested from appropriate Federal, State, Tribal, and local agencies, the applicant, and the public.

(g) *Publication.* The entire environmental assessment will be published. During the process of preparing the environmental assessment, Commission staff may publish such draft, pre-decisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA, the Commission's regulations, and this guidance. The Commission will publish to eLibrary the environmental assessment in the corresponding docket for the proposed action as well as on the Commission's website on the respective industry environmental documents webpage.

(h) *Recommendation.* An environmental assessment will either:

- (1) include a recommendation that the applicant's proposed action, including any recommended mitigation, would not have a significant effect or the staff-identified preferred project alternative would not have a significant effect on the quality of the human environment; or
- (2) include a recommendation that the proposed action requires the preparation of an environmental impact statement if significant effects were identified and could not be mitigated.

C. ENVIRONMENTAL IMPACT STATEMENTS

1. Preparation of environmental impact statements.

(a) *Generally.* Commission staff will prepare an environmental impact statement only with respect to proposed actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant effect on the quality of the human environment. NEPA § 106(b)(1) (42 U.S.C. § 4336(b)(1)). The actions identified in the Commission's regulations, 18 C.F.R. § 380.6, generally "significantly affect[] the quality of the human environment," consistent with NEPA § 102(2)(C) (42 U.S.C. § 4332(2)(C)), and normally require the preparation of an environmental impact statement.

(b) *Solicitation of comments.* During the process of preparing an environmental impact statement, Commission staff will seek the comments of:

- (1) Any Federal agency that has jurisdiction by law (i.e., the agency has authority to approve, veto, or finance all or part of the proposal) or special expertise with respect to any environmental impact of the action or project at hand or is authorized to develop and enforce environmental standards that govern the action or project at hand;
- (2) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards;
- (3) State, Tribal, or local governments that may be affected by the proposed action;
- (4) Any agency that has requested it receive statements on actions of the kind proposed;
- (5) The applicant; and
- (6) The public, including soliciting comments from persons or organizations who may be interested in or affected by the proposed action and are on the mailing list for the project.

(c) *Timing of solicitation of comments.* This process of obtaining and requesting comments may be undertaken at any time that is reasonable in the process of preparing the environmental impact statement. Commission staff will solicit comments within a timeframe that ensures compliance with the two-year deadline for completion of an environmental impact statement.

(d) *Draft environmental impact statement.* Commission staff will issue a draft environmental impact statement and solicit comments. The comment period will generally be 45 days.

(e) *Response to comments contained in environmental impact statements.* Commission staff will address in the environmental impact statement all environmental comments within the scope of the proposed action, as appropriate.

(f) *Submission of comments.* Comments may be submitted electronically via the Commission's online *eLibrary* and associated *eComment* and *eFiling* systems or a paper copy may be mailed to the Secretary of the Commission.

2. Purpose and need.

The environmental impact statement will include the purpose and need for the proposed action, as informed by the goals of the applicant, and based on the Commission's statutory authority under the NGA, FPA, or other appropriate statute.

3. Analysis within the environmental impact statement.

(a) Consistent with the requirements of NEPA § 102(2)(C) (42 U.S.C. § 4332(2)(C)), the environmental impact statement will include a detailed statement of:

- (1) Reasonably foreseeable environmental effects of the proposed action;
- (2) Reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
- (3) A reasonable range of alternatives to the proposed action, including an analysis of any negative environmental impacts of not implementing the proposed action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;
- (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed action should it be implemented; and
- (6) Any means identified to mitigate adverse environmental effects of the proposed action.

(b) *Scope of analysis.*

- (1) The environmental impact statement will focus on whether the environmental effects of the proposed action are significant.
- (2) The environmental impact statement will identify the scope of consideration of any environmental effects from the proposed action that extend outside the geographical territory of the project or might materialize later in time.

(c) Environmental impact statements will discuss effects in proportion to their significance. With respect to issues that are not significant, Commission staff may include a brief discussion explaining why those issues are not significant.

4. Page limits and format.

(a) *Page limits.* Environmental impact statements shall comply with the page limits set forth in NEPA § 107(e)(1) (42 U.S.C. § 4336a(e)(1)). An environmental impact statement is limited to 150 pages not including citations or appendices, except for a proposed action of extraordinary complexity, in which case it is strictly prohibited from exceeding 300 pages, not including citations or appendices.

(b) *Page format.* Environmental impact statements will use the Commission-standard font, Times New Roman, and 12-point size. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such

material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item shall count as one page.

(c) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment.

(d) *Certification related to page limits.* The breadth and depth of analysis in an environmental impact statement will be tailored to ensure that the environmental impact statement does not exceed statutory page limits. The environmental impact statement will include a certification by the relevant Office of Energy Projects Division Director that Commission staff has considered the factors mandated by NEPA; that the environmental impact statement represents a good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects Commission staff's expert judgment; and that any considerations addressed briefly or left unaddressed, in Commission staff's judgment, would not meaningfully inform the assessment of environmental effects.

5. Deadlines.

Under NEPA § 107(g)(1)(A) (42 U.S.C. 4336a(g)(1)(A)), Commission staff will complete an environmental impact statement within two years. Two years will be measured from the date of issuance of the notice of intent to the publication of the final environmental impact statement.

(a) The environmental impact statement will issue (unless the deadline is extended pursuant to the provision below) by the day the deadline elapses, in as substantially complete form as is possible.

(b) *Deadline extensions.* If Commission staff determines that an environmental impact statement cannot be completed by the statutory deadline, staff will:

- (1) consult with the applicant under NEPA § 107(g)(2) (42 U.S.C. § 4336a(g)(2)) regarding the need to extend the deadline;
- (2) determine the amount of time needed to complete the environmental impact statement and consult with the Director of the Office of Energy Projects and the appropriate Office of Energy Projects Division Director regarding the proposed new deadline, providing only as much additional time as is necessary to complete the environmental impact statement; and
- (3) publish notice of the new deadline to *eLibrary*, including the reason for the deadline extension.

(c) *Certification Related to Deadlines.* The environmental impact statement will include a certification signed by the relevant Office of Energy Projects Division Director that the environmental impact statement represents Commission staff's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in the Commission staff's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Commission staff's judgment, the analysis contained therein is adequate to inform the Commission of potential environmental effects of the proposed action.

6. Publication of environmental impact statements.

(a) The entire environmental impact statement will be published. During the process of preparing the environmental impact statement, staff may publish such draft, pre-decisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA, the Commission's regulations, and this guidance. The Commission will publish to *eLibrary* draft and final environmental impact statements in the corresponding docket for the proposed action as well as on the Commission's website on the respective industry environmental documents webpage.

(b) Commission staff will file environmental impact statements together with comments and responses with the Environmental Protection Agency (EPA), Office of Federal Activities for publication in the *Federal Register*.

D. EFFICIENT ENVIRONMENTAL REVIEWS

1. Relying on other environmental documents.

Commission staff may rely on another agency's or Commission staff's prior environmental impact statement or environmental assessment, provided that the statement, assessment, or portion thereof, meets the standards under NEPA for an adequate statement or assessment and can be used in its entirety to support the proposed action without need for supplementing. If the actions covered by the original environmental document and the proposed action are substantially the same, Commission staff will republish the document being relied upon.

2. Incorporation by reference.

Commission staff may incorporate material, such as portions of prior environmental impact statements or environmental assessments, planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding staff's review and public review of the action. When incorporating material by reference, staff will cite and briefly describe the content and relevance to the environmental document and make the materials reasonably available for review by potentially interested parties within the time allowed for comment. Incorporation by reference should not be used to evade the statutory page limits, but instead should be used to avoid unnecessary replication of data underlying the analysis in the environmental document, while including all analysis necessary to comply with NEPA's analytical requirements in the environmental impact statement itself.

3. Supplemental environmental documents.

Commission staff will prepare supplements to environmental documents only if a major Federal action remains to occur, and:

- (a) substantial changes to the proposed action are made that are relevant to environmental concerns; or
- (b) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects.

4. Integrity and completeness of information.

- (a) Commission staff will not require new scientific and technical research or the development of new methodologies to inform its analyses unless that is essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable. Rather, staff will make use of what it deems to be reliable existing data and resources.
- (b) When Commission staff is evaluating the reasonably foreseeable significant effects of a proposed action on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or within a reasonable timeframe, or the means to obtain it are unknown, staff will make clear in the relevant environmental document that such information is lacking.

5. Integrating other environmental requirements with NEPA.

- (a) To the fullest extent possible, Commission staff will prepare draft NEPA documents concurrently with and integrated with analyses and related surveys and studies prepared pursuant to other Federal statutes (e.g., use of an environmental document to serve as the basis of a Biological Assessment under the Endangered Species Act).
- (b) Commission staff may combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, Commission staff may combine a NEPA document with related plans, rules, or amendments as a single consolidated document. The consolidated document will contain and clearly identify the required sections of the NEPA document.
- (c) If comments on a notice of intent or other aspects of a scoping process identify consultations, permits, or licenses necessary under other environmental laws, the draft environmental document may contain a section briefly listing the applicable requirements and how Commission staff or the applicant has or will meet them (e.g., permits applied for or received, consultations initiated or concluded).

6. Elimination of duplication with State, Tribal, and local procedures.

Commission staff may, where appropriate, cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analyses, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:

- (1) Joint planning processes;
- (2) Joint environmental research and studies;
- (3) Joint public hearings (except where otherwise provided by statute); or
- (4) Joint environmental documents.

7. Staff's environmental review of Commission's proposals for regulations.

Where the proposed action is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or Executive order requirements may satisfy one or more requirements of this guidance. When a procedure (e.g., use of a categorical exclusion, 18 C.F.R. § 380.4(a)(2)(ii)) or document satisfies one or more requirements of this guidance, Commission staff may substitute it for the corresponding requirements in this guidance and need not carry out duplicative procedures or documentation. Commission staff will identify which corresponding requirements in this guidance are satisfied and consult with CEQ, as appropriate, to confirm such determinations.

8. Unique identification numbers.

Once Commission staff determine the level of NEPA review required for a proposed action, Commission staff will provide a unique identification number for tracking purposes on all associated environmental review documents prepared for the proposed action. Commission

staff will coordinate with CEQ and other federal agencies to ensure uniformity of such identification numbers across federal agencies.

9. Emergencies.

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures, Commission staff from the Office of Energy Projects will consult with the CEQ about alternative arrangements for compliance with NEPA § 102(2)(C) (42 U.S.C. § 4332(2)(C)). Alternative arrangements do not waive the requirement to comply with NEPA but establish an alternative means for NEPA compliance.

E. AGENCY DECISION MAKING

Commission staff will publish the environmental assessment or environmental impact statement for use by the Commission to comply with its obligations under NEPA and its decision-making process under the NGA or FPA. The Commission, or the Director of the Office of Energy Projects under delegated authority, 18 C.F.R. § 375.308, will prepare and publish an order with its decision on the proposed action and notification to the public that the Commission has considered all relevant information raised in the NEPA process and that the NEPA process has been completed. For cases where an environmental impact statement is prepared, the Commission's order will serve as the record of decision, and for an environmental assessment, the Commission's order will include a finding of no significant impact.

F. PROCEDURES FOR APPLICANT-PREPARED NEPA DOCUMENTS

In accordance with NEPA § 107(f) (42 U.S.C. § 4336a(f)), the Commission has established procedures allowing applicants, or contractors hired by applicants, to prepare NEPA documents under the Commission's supervision.

(a) *Applicant-prepared environmental assessment.* An applicant seeking a natural gas certification or authorization under the NGA or hydropower license or authorization under the FPA may prepare an environmental assessment for use by Commission staff. An applicant that would like to prepare an environmental assessment should request to prepare such document and coordinate with Commission staff to ensure the document assists the Commission and Commission staff in complying with NEPA. A guidance document for preparation of an environmental assessment for an applicant-prepared environmental assessment is available on the Commission's website.

(b) *Third-party contracting program.* An applicant seeking a natural gas certification or authorization under the NGA or hydropower license or authorization under the FPA may elect to use the Commission's voluntary third-party contracting program. Under these procedures, the applicant funds a third-party contractor to assist the Commission staff in reviewing the environmental aspects of applications and preparing the environmental documents required by NEPA. This could be used for an environmental assessment or environmental impact statement. An applicant that would like to use the third-party contracting program should request use of the program. **Error! Hyperlink reference not valid.** A guidance document for the third-party contracting program is available on the Commission's website.

(c) When using a document prepared under the above procedures, Commission staff will independently evaluate the environmental document and will take responsibility for its contents.

(d) Commission staff may assist, to the extent that staff resources allow, applicants and applicant-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document, consistent with the Commission's ex parte regulations at 18 C.F.R. § 385.2201.

(e) Commission staff will work with the applicant to develop a schedule for preparation of the draft environmental document. Major changes to the schedule or related matters will be documented through written correspondence.

(f) Commission staff, when reviewing an applicant-prepared environmental document, may request environmental information. This may include any factual, scientific, or technical information used, developed, or considered by the applicant or applicant-hired contractor in the course of preparing the draft environmental document, including any correspondence with the Commission, other agencies, or with third parties.