

**Forest Service Handbook
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Forest Service Handbook 2709.15 – Hydroelectric Handbook

Chapter 30 - Environmental Process

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Approved by: Gloria Manning, Associate Deputy Chief, NFS

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Responsible Staff:

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document.

Last Change: No info on last amendment

Superseded Document(s): 30 thru 32.82, February 1987

Digest: Following is an explanation of the changes throughout the directive by section.

30: Revises and recodes entire chapter. Issues new direction to be consistent with the direction contained in FSM 2772.1. The Forest Service no longer conducts environmental analyses pursuant to the National Environmental Policy Act (NEPA) on the decision to license, amend a license, or exempt from licensing a hydropower project.

31: Issues direction that FERC is responsible for complying with NEPA for the decision to amend a license, or exempt from licensing a hydropower project.

32.1: Clarifies that the Forest Service does not conduct an environmental analysis for a FERC issued preliminary permit and that the Forest Service is responsible for issuing a special-use permit for investigation.

32.2: Updates direction and options regarding the Forest Service participating as a cooperating agency as defined by the Council on Environmental Quality (40 CFR Part 1501.6) or as an intervenor in a FERC proceeding (18 CFR §385.214).

33: Issues direction regarding Forest Service responsibilities implementing NEPA for issuance of special-use authorizations.

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31 - Federal Energy Regulatory Commission Nepa Compliance

Federal Energy Regulatory Commission (FERC) is responsible for compliance with the National Environmental Policy Act (NEPA) on the decision whether to license, amend a license, or exempt from licensing a hydropower project.

32 - Forest Service National Environmental Policy Act Compliance for Sections 4(E) and 10(A) of the Federal Power Act

The Forest Service 4(e) terms and conditions and 4(e) report, 10(a) recommendations, or other conditions should be based on the Forest Service's independent analysis and substantial evidence filed at FERC to be included in FERC's National Environmental Policy Act (NEPA) documentation and the supporting record. The Forest Service must not conduct a separate environmental analysis under NEPA for its section 4(e) terms and conditions and 10(a) recommendations.

32.1 - Preliminary Permit

The Forest Service does not conduct environmental analysis for a FERC issued preliminary permit. Forest Service is responsible for issuance of a special-use permit for investigation, if necessary. See section 33.1 and chapter 60 of this handbook.

32.2 - Original and New Licenses

The Forest Service will participate with FERC in preparation of their environmental analysis to ensure that the document supports the 4(e) terms and conditions and 4(e) report and/or 10(a) recommendations. The Forest Service may participate either as a cooperating agency, as defined by the Council of Environmental Quality (CEQ) (40 CFR Part 1501.6), or as an intervener in the FERC proceeding (18 CFR §385.214). Cooperating agency and intervener roles are mutually exclusive. See sections 32.21 and 32.22 for descriptions of these two roles.

32.21 - Cooperating Agency

The Forest Service may act as a cooperating agency with FERC on development of FERC's NEPA document for the license application, however, FERC's policy prevents cooperating agencies from intervening in a license proceeding. There are benefits of participating as a cooperating agency. Cooperating agencies participate in the development of environmental documents prior to their public release and, in some cases; can more efficiently adopt environmental documents to support Forest Service decisions.

32.22 - Intervention

As an independent commission, FERC promulgates and administers its procedures and practice as set forth in 18 CFR §385.214. FERC's *ex parte* rule controls communications among the parties in a proceeding to ensure that all are equally informed of project issues and proceedings.

FERC has adopted a strict interpretation of this rule, which prevents the Forest Service from being both an intervenor (or party to the proceeding) and a cooperating agency in the NEPA process. FERC's rationale is that the sharing of predecisional information with an agency could later be used to challenge that FERC decision.

In cases where the Forest Service is not a cooperating agency the Forest Service may intervene in a proceeding. Intervention provides the Forest Service standing in a proceeding and allows the Forest Service to file requests for a rehearing (18 CFR §385).

33 - Forest Service National Environmental Policy Act Compliance for Special-Use Authorization

The Forest Service is responsible for implementing the National Environmental Policy Act (NEPA) when issuing a special-use authorization. See FSM 2771 for direction on when special-use authorizations are required. Criteria for evaluation of an application for a special-use authorization are found in 36 CFR 251.54 (see sec. 61 and FSH 2709.11, ch. 10). The Forest Service will issue a separate decision document for issuance of the special-use authorization. The Forest Service will participate with FERC to ensure that FERC's environmental analysis addresses the impacts of the proposed special-use authorization.

33.1 - Investigative Permit

The Forest Service should consider the effects of the proposed studies and reasonable alternative methods of obtaining the required data when environmental impacts are involved. See FSH 1909.15 to determine the scope of the environmental analysis.

33.2 - Projects Exempt from Licensing

FERC may exempt small hydroelectric projects (5 MW or less) from licensing. The exemption by FERC does not authorize the use or occupancy of National Forest System lands. The Forest Service special-use authorization is the controlling document on National Forest System lands for exempted projects. Forest Service 4(e) conditions do not apply to exempted projects. The Forest Service is responsible for implementing NEPA in the decision to issue a special-use authorization.

33.3 - Licensed projects

The decision on the conditions contained in a special-use authorization should be based upon the NEPA document prepared by FERC for the license or license amendment. See FSH 1909.15 to determine the scope of the environmental analysis.