



DEPARTMENT OF HOMELAND SECURITY

Notice of Adoption of the Department of Energy Electric Vehicle Charging Stations

Categorical Exclusion pursuant to Section 109 of the National Environmental Policy Act

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of adoption of the Department of Energy's electric vehicle charging stations categorical exclusion pursuant to section 109 of the National Environmental Policy Act.

SUMMARY: The Department of Homeland Security (DHS) is adopting the Department of Energy's (DOE) electric vehicle charging stations categorical exclusion (CE) pursuant to section 109 of the National Environmental Policy Act to use for proposed DHS actions. This notice describes the categories of proposed actions for which DHS intends to use DOE's electric vehicle charging stations CE and details the consultation between the agencies.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Jennifer DeHart Hass, Director, Environmental Planning and Historic Preservation, by phone at 202-834-4346, or by e-mail at jennifer.hass@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

National Environmental Policy Act and Categorical Exclusions

The National Environmental Policy Act, 42 U.S.C. 4321–4347 (NEPA), requires all Federal agencies to assess the environmental impacts of their actions. Congress enacted NEPA to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA's twin aims are to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42

U.S.C. 4331. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an environmental impact statement (EIS), environmental assessment (EA), or categorical exclusion. 42 U.S.C. 4336. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. *Id.* If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. *Id.* 42 U.S.C. 4336. Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency may establish in its NEPA implementing procedures categorical exclusions, which are categories of actions the agency has determined normally do not significantly affect the quality of the human environment. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a categorical exclusion covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the categorical exclusion to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2). If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established. 42

U.S.C. 4336c. To adopt another agency’s categorical exclusion under Section 109, an agency must identify the relevant categorical exclusion listed in that agency’s (“establishing agency”) NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate; identify to the public the categorical exclusion that the agency plans to use for its proposed actions; and document adoption of the categorical exclusion. *Id.*

This notice documents DHS’s adoption of DOE’s electric vehicle charging stations CE under section 109 of NEPA.

II. Identification of the Categorical Exclusion

DOE’s Electric Vehicle Charging Stations Categorical Exclusion

DOE’s electric vehicle charging stations categorical exclusion (CE) is codified in DOE’s NEPA procedures as CE B5.23 in 10 CFR part 1021, subpart D, appendix B, as follows:

B5.23 Electric vehicle charging stations

The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

“Previously disturbed or developed” refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed State, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. 10 CFR 1021.410(g)(1).

The DOE electric vehicle charging stations CE also includes additional conditions referred to as integral elements. (10 CFR part 1021 subpart D, app. B). In order to apply the CE, the proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DHS¹ or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a federally recognized Indian Tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, State, or local government, federally recognized Indian Tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

¹ Modified from CFR part 1021 subpart D, app. B to reflect DHS as the adopting agency.

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or federally-proposed or candidate species or their habitat (Endangered Species Act); State-listed or State-proposed endangered or threatened species or their habitat; Federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands

(iv) Areas having a special designation such as federally- and State-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions," or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

Proposed DHS Category of Actions

The electric vehicle charging stations CE allows for the installation, modification, operation, and removal of electric vehicle charging stations. The CE could be applied to DHS and its Components' electric vehicle charging station projects, including installation, operation, modification, and removal of electric vehicle charging stations at existing DHS owned or occupied facilities. Reducing the Department's reliance on fossil fuels and reducing emissions across the Department will improve sustainability in accordance with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*. DHS is actively working to transition its fleet to electric vehicles to meet these requirements across all Components. In support of fleet electrification, infrastructure is necessary to support charging of the vehicles and DHS is in the process of establishing electric vehicle charging stations at existing DHS owned and occupied facilities across the United States.

DHS will consider each proposal for electric vehicle charging stations to ensure that the proposal is within the scope of the CE. DHS intends to apply this categorical exclusion to the same types of proposals to which DOE has applied the CE, which have included a wide variety of locations on and off federal property, differences in local conditions, various numbers of electric vehicle charging stations per proposal, and different types of equipment and technologies including Level 1, Level 2, and DC Fast Charging stations.

III. Consideration of Extraordinary Circumstances

When applying this CE, DHS will evaluate the proposed action to ensure evaluation of integral elements listed above. In addition, in considering extraordinary circumstances, DHS will consider whether the proposed action has the potential to result in significant effects as described in DOE's extraordinary circumstances listed at 10 CFR 1021.410(b)(2). DOE defines extraordinary circumstances as unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved

conflicts concerning alternative uses of available resources. Consistent with DHS Instruction Manual 023-01-001-01, *Implementing the National Environmental Policy Act* (DHS Instruction Manual), DHS will document utilization of this CE and consideration of extraordinary circumstances within the DHS Environmental Planning and Historic Preservation Decision Support System.

IV. Consultation with DOE and Determination of Appropriateness

DHS and DOE consulted on the appropriateness of DHS's adoption of the electric vehicle charging stations CE from June 2023 through September 2023. This consultation included a review of DOE's experience developing and applying the CE and the types of actions for which DHS plans to utilize the CE. Based on this consultation and review, DHS has determined that the types of projects it intends to undertake to install, operate, modify, and remove electric vehicle charging stations at its facilities are substantially similar to such projects for which DOE has applied the CE. Accordingly, the impacts of DHS projects will be substantially similar to the impacts of DOE projects, which are not significant, absent the existence of extraordinary circumstances. Therefore, DHS has determined that its proposed use of the electric vehicle charging stations CE, as described within this notice, would be appropriate.

Notice to the Public and Documentation of Adoption

This notice serves to identify to the public and document DHS's adoption of DOE's categorical exclusion for electric vehicle charging stations and identifies the types of actions to which DHS will apply the CE, and the considerations DHS will use in determining whether an action is within the scope of the CE. Upon issuance of this notice, the adopted electric vehicle charging stations CE will be available to DHS and accessible at www.dhs.gov/national-environmental-policy-act.

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