



## EXPORT-IMPORT BANK OF THE UNITED STATES

### Adoption of Department of Energy Categorical Exclusion under the National Environmental Policy Act

**AGENCY:** Export Import Bank of the United States

**ACTION:** Notice.

**SUMMARY:** The Export-Import Bank of the United States (EXIM) has identified a categorical exclusion (CE) established by the Department of Energy (DOE) that covers categories of actions that EXIM proposes to take. This notice identifies the DOE CE and EXIM's categories of proposed actions for which it intends to use DOE's CE and describes the consultation between the agencies.

**DATES:** The CE identified below is available for EXIM to use for its proposed actions effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### *NEPA and CEs*

The National Environmental Policy Act, 42 U.S.C. 4321–4347, (NEPA) requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA's policies and to consider environmental values in their decision making.

Federal agencies are required to provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment.<sup>1</sup> NEPA also created the Council of Environmental Quality (CEQ) as the body responsible for implementing NEPA.

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<sup>1</sup> 40 CFR 1500.1

Categorical exclusions (CEs) can be used when there is a determination the proposed type of action would not have a significant effect on the human environment; this option eliminates the need for an environmental assessment (EA) or more detailed environmental impact statement (EIS).<sup>2</sup>

CEQ considers CEs “an important mechanism to promote efficiency in the NEPA process” and recognizes an agency’s ability to “identify and substantiate categories of actions that normally do not have a significant effect on the human environment.”<sup>3</sup>

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to “adopt” or use another agency’s CEs for a category of proposed agency actions.<sup>4</sup> To use another agency’s CEs under section 109, an agency must identify the relevant CEs listed in another 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 CE to a category of actions is appropriate; identify to the public the CE that the agency plans to use for its proposed actions; and document adoption of the CE. EXIM has prepared this notice to meet these statutory requirements.

#### *Program background*

As the official export credit agency of the United States, “the mission of the Export-Import Bank of the United States is to support the creation of American jobs by facilitating the export of U.S. goods and services.” The Export - Import Bank of the United States (EXIM) steps in when the private sector does not provide financing for American businesses. The Bank’s actions have historically helped support these firms in competing with foreign businesses overseas. The Make More in America (MMIA) initiative applies EXIM’s authorities for medium and long-term (MLT) loans, loan guarantees, and insurance to export-oriented domestic projects. In doing so, MMIA allows EXIM to support American business during the whole export lifecycle. The purpose of such loans remains unchanged: to support U.S. employment. As EXIM usually lends to projects outside the United States, NEPA has not often been applicable because environmental effects are located entirely outside the jurisdiction of the United States. In the new

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<sup>2</sup> 40 CFR 1501.4

<sup>3</sup> 88 FR 49924

<sup>4</sup> 42 U.S.C. 4336c

MMIA initiative which focuses on domestic lending, borrowing and adopting CEs from another agency will speed up the processing time of deals and conserve staff resources. Faster processing times in this initiative will greatly facilitate EXIM's support of American businesses and workers.

## II. DOE Categorical Exclusion

EXIM proposes to adopt Department of Energy CE B1.31, Installation or relocation of machinery and equipment (10 CFR part 1021, subpart D, appendix B):

Installation or relocation and operation of machinery and equipment (including, but not limited to, laboratory equipment, electronic hardware, manufacturing machinery, maintenance equipment, and health and safety equipment), provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure. Covered actions include modifications to an existing building, within or contiguous to a previously disturbed or developed area<sup>5</sup> that are necessary for equipment installation and relocation. Such modifications would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts.

DOE CE B1.31 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 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;

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<sup>5</sup> DOE NEPA regulations say "'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).

(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;

(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.

### **III. Proposed EXIM Category of Actions**

EXIM intends to apply this categorical exclusion to loans, loan guarantees, and insurance transactions. The scope of projects would be akin to projects from the Department of Energy's Loans Program Office to which DOE has applied the categorical exclusion. These include purchase and installation of equipment in buildings, modifications to buildings in or contiguous to previously disturbed areas, such as a renovation of existing office, manufacturing, or lab space. In principle such transactions would be similar to EXIM's export finance transactions deemed a category C under its Environmental and Social Due Diligence Procedures and Guidelines.<sup>6</sup>

### **IV. Consideration of Extraordinary Circumstances and DOE's "Integral Elements"**

In assessing whether a categorical exclusion applies, EXIM would review whether there were extraordinary circumstances that would indicate a categorical exclusion is not appropriate due to the potential for a significant environmental effect. When applying this CE, EXIM will consider whether the proposed action has the potential to result in significant effects as described in DOE's definition of extraordinary circumstances. DOE defines extraordinary circumstances as unique situations presented

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<sup>6</sup> EXIM's Environmental and Social Due Diligence Procedures and Guidelines state that "applications greater than \$10 Million will be classified as Category C if they are not related to a physical project or if they relate to projects which do not require further environmental review because they are likely to have minimal or no adverse environmental or social risks or impacts. This category includes transactions related to new, expansion or existing projects of the type that have little or no potential to cause environmental effects and do not impact sensitive locations." Procedures and Guidelines, EXIM.GOV

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. 10 CFR 1021.410(b)(2). In addition, EXIM would review the proposed actions to ensure they do not breach the integral elements of classes of action in DOE's regulations as discussed above.

EXIM's engineering and environment division will have responsibility for determining if a categorical exclusion applies. These determinations will be posted at <https://www.exim.gov/policies/exim-bank-and-environment/make-more-america-initiative-approved-transactions>.

### Consultation and determination of appropriateness

#### Consultations

EXIM identified the DOE CE that could apply to EXIM's proposed actions and consulted with DOE in September 2023. During this consultation, the agencies discussed whether the categories of EXIM proposed actions would be appropriately covered by the DOE CE; the extraordinary circumstances that EXIM should consider before applying the CE to EXIM's proposed actions; and the requirement to evaluate the conditions listed as integral elements in DOE's regulations (10 CFR 1021, subpart D, appendix B (1)-(5)). The agencies also discussed DOE's past use of the CE.

At the conclusion of that process, the agencies determined that EXIM's proposed use of the CE as described in this notice would be appropriate because the categories of actions for which EXIM plans to use the CE are consistent with the DOE CE.

#### Notice to the Public and Documentation of the Adoption

This notice serves to identify to the public and document EXIM's adoption of DOE's CE. The notice identifies the types of actions to which EXIM will apply the CE, as well as the considerations that EXIM will use in determining whether an action is within the scope of the CE.

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