



ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-100]

Notice of Adoption of Electric Vehicle Charging Stations Categorical Exclusion Under the National Environmental Policy Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of adoption of categorical exclusion.

SUMMARY: The Environmental Protection Agency (EPA) is adopting the Department of Energy's (DOE) Electric Vehicle Charging Stations Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA) to use in EPA's program and funding opportunities administered by EPA. This notice describes the categories of proposed actions for which EPA intends to use DOE's CE and describes the consultation between the agencies.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Michele Richoux, EPA Clean School Bus Program, by phone at 202-250-8852 or by email at cleanschoolbus@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NEPA and CEs

The National Environmental Policy Act, as amended at, 42 U.S.C. 4321–4347 (NEPA), requires all Federal agencies to assess the environmental impact of their actions. Congress enacted NEPA in order 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 CE. 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. 42 U.S.C. 4336. 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. 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 also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336(e)(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE 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 CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. 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” or use another agency’s CEs for a category of proposed agency actions. 42 U.S.C. 4336(c). 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. *Id.* This notice documents EPA's adoption of DOE's Electric Vehicle Charging Stations CE under section 109 of NEPA to use in EPA's program and funding opportunities, including those administered by the EPA Clean School Bus Program.

EPA's Program

The Clean School Bus Program provides funding to eligible entities to incentivize and accelerate the replacement of existing school buses with clean and zero emissions school buses. Eligible activities include the replacement of existing internal-combustion engine school buses with electric, propane, or compressed natural gas school buses, as well as the purchase of electric vehicle supply equipment (EVSE) (also referred to as Electric Vehicle Charging Stations) and EVSE installations. Eligible entities include state and local governmental entities that provide bus service, including public school districts; eligible contractors; nonprofit school transportation associations; Indian Tribes, Tribal organizations, or Tribally-controlled schools responsible for the purchase, lease, license, or contract for service of school buses or for providing school bus service for a Bureau of Indian Affairs funded school.

II. Identification of the Categorical Exclusion

DOE's Electric Vehicle Charging Stations CE

DOE's electric vehicle charging stations CE is codified in DOE's NEPA procedures as CE B5.23 of 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 nonnative 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 CE also includes additional conditions referred to as integral elements (10 CFR part 1021 subpt. D, app. B). In order to apply this 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 EPA¹ 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

¹ Modified from 10 CFR part 1021 subpart D, app. B to reflect EPA as the adopting agency.

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, EPA, and the National Institutes of Health.

Proposed EPA Category of Actions

EPA intends to apply this categorical exclusion to electric vehicle charging station projects undertaken directly by EPA or that are financed in whole or in part through Federal funding opportunities, including those administered by the EPA Clean School Bus Program. The CE allows for the installation, modification, operation, and removal of electric vehicle charging stations. EPA will consider each proposal for the installation, modification, operation, or removal of electric vehicle charging stations to ensure that the proposal is within the scope of the CE. EPA intends to apply this CE in a manner consistent with DOE's application—to the same types of proposals (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, EPA will evaluate the proposed action to ensure evaluation of the integral elements listed above. In addition, in considering extraordinary circumstances, EPA 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.

IV. Consultation with DOE and Determination of Appropriateness

EPA and DOE consulted on the appropriateness of EPA's adoption of the CE in October 2023. EPA and DOE's consultation included a review of DOE's experience developing and

applying the CE, as well as the types of actions for which EPA plans to utilize the CE. These EPA actions are very similar to the type of projects for which DOE has applied the CE and therefore the impacts of EPA projects will be very similar to the impacts of DOE projects, which are not significant, absent the existence of extraordinary circumstances. Therefore, EPA has determined that its proposed use of the CE as described in this notice is appropriate.

V. Notice to the Public and Documentation of Adoption

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

Dated: January 11, 2024.

Christine Koester,

Director, Legacy Fleets Incentives and Assessment Branch,

Office of Transportation and Air Quality.

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