



DEPARTMENT OF THE INTERIOR

Office of the Secretary

[MO 4500183156]

Notice of Adoption of Categorical Exclusions under Section 109 of the National Environmental Policy Act

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) is notifying the public and documenting the adoption of 11 Department of Energy (DOE) and 6 National Telecommunications Information Administration (NTIA) categorical exclusions (CXs) for use by the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA), under section 109 of the National Environmental Policy Act (NEPA). In accordance with section 109, this notice identifies the types of actions for which the BLM and BIA will rely on the CXs, the considerations that the BLM and BIA will use in determining the applicability of the CXs, and the consultation between the agencies on the use of the CXs, including application of extraordinary circumstances.

DATES: The adoption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: BLM: Amelia Savage, Senior Planning and Environmental Analyst, Division of Support, Planning and NEPA, alsavage@blm.gov, telephone (480) 307-8665. BIA: Chester McGhee, Branch Chief, Environmental Services, chester.mcghee@bia.gov, telephone (615) 289-3390.

SUPPLEMENTARY INFORMATION:

Background

Program Background

1. Realty

The BLM and BIA realty programs process applications for rights-of-way or other land use authorizations that facilitate commercial, non-commercial, recreational, and conservation activities including communication sites, transmission lines, fiber optic infrastructure, and renewable energy.

2. Recreation

The BLM's recreation program supports and delivers a wide variety of recreational experiences including, but not limited to, camping, hunting, fishing, hiking, horseback riding, off-highway vehicle driving, mountain biking, bird watching, and various winter sports. The program manages over 4,000 recreation sites and associated facilities, in addition to over 400 fee sites. An estimated 82 million visitors enjoy outdoor recreation on BLM-managed public lands every year. The recreation program also supports the bureau's travel and transportation management program, which includes trails, roads, primitive roads, and associated parking lots and trail heads.

3. Resource Protection

The BLM's and BIA's Wildlife and Cultural Heritage Programs manage wildlife habitat to help ensure self-sustaining, abundant, and diverse populations of wildlife on public and Tribal lands and preserve public and Tribal lands and their resources that are important to the public and to American Indian and Alaska Native communities to ensure that current and future generations retain the ability to connect to their natural and cultural heritage.

4. Minerals

The BLM manages Federal mineral resources pursuant to the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. 181 *et seq.*, and other legal authorities.

BIA is authorized to approve leases for exploration, extraction of, or removal of certain minerals on Indian Lands under the Indian Mineral Leasing Act of 1938 (IMLA);

the Act of March 3, 1909; the Indian Mineral Development Act of 1982 (IMDA); and other Tribe-specific statutes. BIA regulations implementing the IMLA, the 1909 Act, and the IMDA are found at 25 CFR Parts 211, 212, and 225, respectively.

National Environmental Policy Act and Categorical Exclusions

NEPA as amended at, 42 U.S.C. 4321–4347, requires all Federal agencies to consider the environmental impact of their proposed actions before deciding whether and how to proceed. 42 U.S.C. 4321, 4332. NEPA aims to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in those processes. 42 U.S.C. 4331. The NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ NEPA regulations).

Under NEPA and the CEQ’s NEPA implementing regulations, a Federal agency can establish CXs—categories of actions that normally do not have a significant effect on the human environment, individually or in the aggregate, and therefore do not require preparation of an environmental assessment (EA) or an environmental impact statement (EIS)—in their agency NEPA procedures. 42 U.S.C. 4336(e)(1); 40 CFR 1501.4, 1507.3, 1508.1(e). If an agency determines that a CX 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, the agency may apply the CX to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to “adopt” or another agency’s CX for a category of proposed agency actions. 42 U.S.C. 4336(c). To rely on another agency’s CXs under Section 109, the adopting agency must identify the relevant CX listed in another agency’s (“establishing agency”) NEPA procedures that cover the adopting agency’s category of

proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CX for a category of actions is appropriate; identify to the public the CX that the adopting agency plans to use for its proposed actions; and document adoption of the CX. 42 U.S.C. 4336c. The BLM and BIA have prepared this notice to describe how they have met applicable statutory requirements for the adoption of 17 CXs and to notify the public of these adoptions. Eleven of these CXs were established by DOE: 10 CFR part 1021, subpart D, appendix B, paragraphs B1.11, B1.13, B1.19, B1.20, B4.6, B4.7, B4.13, B4.14, B5.12, B5.16, and B5.23. Six of these CXs were established by NTIA: 89 FR 22688, April 2, 2024, Categorical Exclusions, Operational, C-2, C-4, C-5, C-6, C-7, and C-8.

The Department's NEPA procedures, codified at 43 CFR part 46, address compliance with NEPA. The Department's protocol for application of CXs is at 43 CFR 46.205. The Department's CXs available to all bureaus within the Department are listed in 43 CFR 46.210. Additional Department-wide NEPA policy is found in the Department's Departmental Manual (DM), in chapters 1 through 4 of part 516. Supplementary NEPA procedures for the Department's bureaus are published in additional chapters in part 516 of the DM. Chapter 10 and 11 of the 516 DM covers the BIA's and the BLM's NEPA procedures, respectively. The BLM CXs are listed in 516 DM 11.9 and BIA's CXs are listed in 516 DM 10.5.

Categorical Exclusions that are Adopted

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B1.11, regarding installation of fencing, for adoption. Examples of actions for which BLM and BIA programs would rely on the CX include, but are not limited to, installation of fences to mark the boundary of facilities such as visitor centers, recreation sites, or communication sites; along highways to guide wildlife to safe passages to facilitate migration; and to protect resources.

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B1.13, regarding pathways, short access roads, and rail lines, for adoption. Examples of actions for which the BLM's and BIA's recreation and realty programs would rely on the CX include, but are not limited to, construction of walkways and trails, bicycle paths, small outdoor fitness areas, and short access roads and rail lines.

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B1.19, regarding microwave, meteorological, and radio towers, for adoption. Examples of actions for which the BLM's and BIA's realty programs would rely on the CX include, but are not limited to, modification, operation, and removal of existing communications facilities and associated infrastructure. BIA would rely on this CX for associated approvals for siting or construction of a new communication facility, but the BLM would not rely on this CX to site or construct a new communication facility. BIA would rely on this CX to approve Wind Energy Evaluation Leases. Additionally, the BLM and BIA may rely on this CX to authorize new land uses that support adjacent communications facilities. The reference to B(4)(iv) in this CX is for DOE's "Integral Elements".

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B1.20, regarding protection of cultural resources, fish and wildlife habitat, for adoption. Examples of actions for which the BLM's and BIA's cultural heritage, wildlife, fisheries, and other programs would rely on the CX include, but are not limited to, small habitat restoration projects, fencing for resource protection, and installation of fish passage structures.

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B4.6, regarding additions and modifications to transmission facilities, for adoption. Examples of actions for which the BLM and BIA

would rely on this CX include, but are not limited to, transmission line reconditioning to upgrade facilities, replacing damaged insulators, installing fire monitoring equipment, and paving of roads to access transmission lines in previously disturbed or developed facility areas.

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B4.7, regarding adding fiber optic cables, for adoption. Examples of actions for which the BLM and BIA would rely on this CX include, but are not limited to, installing fiber optic lines within existing rights-of-ways, or previously disturbed utility corridors, and associated vaults and pulling and tensioning sites outside of rights-of-way in nearby previously disturbed or developed areas.

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B4.13, regarding upgrading and rebuilding existing powerlines, for adoption. Examples of actions for which the BLM and BIA would rely on this CX include, but are not limited to, upgrading or rebuilding existing powerlines, replacing poles to different material, and placing emergency control and fault notification equipment on poles within existing powerline right-of-way or within otherwise previously disturbed or developed lands. Additionally, powerlines would be upgraded or rebuilt within the existing right-of-way boundary and could extend into a small (as discussed at 10 CFR 1021.410(g)(2)) area beyond such lands as needed to comply with applicable electrical standards. The BLM and BIA would incorporate appropriate design and construction standards, control technologies, and best management practices into the authorizations.

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B4.14, regarding construction and operation of electrochemical-battery or flywheel energy storage systems, for adoption. Examples of actions for which BLM and BIA would rely on this CX include, but are not limited to,

construction, operation, upgrading, retrofitting, and decommissioning of electrochemical-battery or flywheel energy storage systems within a previously disturbed or developed area or within a small area contiguous to a previously disturbed or developed area consistent with the text of the CX, such as for installation of back up battery systems for wind and solar energy generation and at communication facilities.

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B5.12, regarding workover of existing wells, for adoption. Examples of actions for which the BLM and BIA would rely on the CX include, but are not limited to, projects involving the reuse of existing well facilities for in situ recovery of locatable and non-energy leasable minerals such as lithium or similar mineral bearing brines, sedimentary aquifer hosted uranium deposits, or subsurface non-energy leasable resources, and conversion of existing wells to aid in carbon sequestration consistent with the CX text.

The CX refers to DOE best practices and protocols, which refer to conditions that DOE places on the conduct of work. These conditions are specific to the type and location of the project. “Best management practices” are not specified in the CXs because they change over time and vary by location and technology. The BLM and BIA would use their respective best management practices and industry standards when using CXs that mention “best practices and protocols.”

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B5.16, regarding solar photovoltaic systems, for adoption. Examples of actions for which the BLM and BIA would rely on the CX include, but are not limited to, installation of solar photovoltaic systems on or adjacent to existing facilities (i.e., recreation sites, fire annex buildings, and other BLM and BIA owned facilities). Additionally, BIA would rely on this CX for construction of solar photovoltaic systems on previously disturbed or developed lands.

The BLM and BIA have identified the DOE CX, found at 10 CFR part 1021, subpart D, appendix B, paragraph B5.23, regarding electric vehicle charging stations, for adoption. Examples of actions for which the BLM and BIA would rely on the CX include, but are not limited to, installation of electric vehicle charging stations at BLM and BIA facilities, rest stops, or on Indian lands.

The BLM and BIA have identified the NTIA CX, found at 89 FR 22688, Categorical Exclusions, Operational, C-2, regarding outdoor research activities, for adoption. Examples of actions for which the BLM and BIA would rely on this CX include, but are not limited to, the examples listed in the CX text, as well as geotechnical surveys to properly site facilities and structures.

The BLM and BIA have identified the NTIA CX, found at 89 FR 22688, Categorical Exclusions, Operational, C-4, regarding new construction or improvement of non-tower structures, for adoption. Examples of actions for which the BLM and BIA would rely on this CX include, but are not limited to, addition of equipment and structures (such as emergency power facilities) to support existing communication facilities and new construction of facilities that support communication systems, within a previously disturbed area that cause no more than 1 acre of disturbance.

The BLM and BIA have identified the NTIA CX, found at 89 FR 22688, Categorical Exclusions, Operational, C-5, regarding existing microwave or radio communication facilities, for adoption. Examples of actions for which the BLM and BIA would rely on this CX include, but are not limited to, installing, operating, maintaining, retrofitting, upgrading, repairing, removing, and/or replacing infrastructure (examples listed in CX text) within an existing communication facility.

The BLM and BIA have identified the NTIA CX, found at 89 FR 22688, Categorical Exclusions, Operational, C-6, regarding new construction or improvement of temporary buildings or experimental equipment, for adoption. Examples of actions for

which the BLM and BIA would rely on this CX include, but are not limited to, new construction or improvement of temporary buildings or experimental equipment such as installation of small instrument panels and other small facilities outside the existing communication facility, installation of buildings that will aid in carbon sequestration, and seismic testing stations on previously disturbed ground consistent with the CX text.

The BLM and BIA have identified the NTIA CX, found at 89 FR 22688, Categorical Exclusions, Operational, C-7, regarding new construction of self-supporting wireless communication towers, for adoption. Examples of actions for which the BLM and BIA would rely on this CX include, but are not limited to, support for approval of the installation of communication towers to aid in placement of wind turbines and installation of self-supporting towers within an existing communication site, consistent with the CX text.

The BLM and BIA have identified the NTIA CX, found at 89 FR 22688, Categorical Exclusions, Operational, C-8, regarding aerial or buried utility communication and security systems, for adoption. Examples of actions for which the BLM and BIA would rely on this CX include, but are not limited to, support for approval of installation, reconstruction, replacement and operation of water, sewer, electrical, other utilities, and fiber optic cables that are within existing rights-of-ways, easements, grants of license, distribution systems, facilities, or similar arrangements, such as previously disturbed areas.

Consultation with DOE and NTIA and Determination of Appropriateness

The BLM and BIA consulted with DOE and NTIA on the appropriateness of the adoption of these CXs for the BLM's and BIA's use in September and October 2024. The consultations included a review of DOE's and NTIA's experience developing and applying these CXs, as well as the types of actions for which the BLM and BIA plan to utilize the CXs. The BLM and BIA actions are similar in type and scope to the actions

that DOE and NTIA conduct and therefore the effects of the BLM's and BIA's actions are expected to be similar to the effects of DOE and NTIA actions, which are not significant, assuming compliance with all applicable conditions and absent the existence of extraordinary circumstances. DOE regulations at 10 CFR 1021 subpart D, appendix B also identify "conditions that are integral elements of the classes of actions in appendix B" that apply to the CXs that BLM and BIA are adopting. As described below, the BLM and BIA will ensure that proposed actions comply with these "DOE Integral Elements" when relying on CXs adopted from DOE. The Department has determined that adoption of the CXs for the BLM's and BIA's use as described in this notice is appropriate.

DOE Integral Elements

When the BLM and BIA intend to rely on a CX adopted from DOE as described in this notice, the Responsible Official will evaluate the proposed action against the DOE's Integral Elements, which are additional conditions for reliance on each CX. The Responsible Official will only rely on a CX adopted from DOE as identified in this notice if the proposed action complies with the DOE Integral Elements. The DOE Integral Elements are described in 10 CFR 1021 subpart D, appendix B. The BLM and BIA will use their respective environment, safety, and health protocols when using these CXs.

Consideration of Extraordinary Circumstances

In consultation with DOE and NTIA, the BLM and BIA evaluated the extraordinary circumstances to be considered when applying these CXs. When applying these CXs, Responsible Officials (43 CFR 46.30) within the BLM and BIA will evaluate proposed actions covered by the CXs to determine whether any extraordinary circumstances, listed at 43 CFR 46.215, are present that would preclude reliance on the CX. The Department's extraordinary circumstances include, in part, consideration of impacts on public health and safety; natural resources and unique geographic characteristics such as historic or cultural resources; park, recreation, or refuge lands;

wilderness areas; wild or scenic rivers; national natural landmarks, sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas; unresolved conflicts concerning alternative uses of available resources; unique or unknown environmental risks; precedent for future decision-making; historic properties; listed species or critical habitat; low income or minority populations; access by Indian religious practitioners to, and for ceremonial use of, Indian sacred sites and the physical integrity of those sites; and contribution to the introduction, continued existence, or spread of invasive weeds or non-native invasive species.

The Department's list of extraordinary circumstances addresses those of the DOE found at 10 CFR 1021.410(b)(2) and those of the NTIA found at 89 FR 22688; therefore, BLM and BIA Responsible Officials intending to rely on these CXs will review whether the proposed action has the potential to result in significant effects as described in the Department's extraordinary circumstances. If the Responsible Official cannot rely on a CX to support a decision on a particular proposed action due to extraordinary circumstances, the Responsible Official will prepare an EA or EIS, consistent with 40 CFR 1501.4(b)(2) and 43 CFR 46.205(c).

Notice to the Public and Documentation of Adoption

This notice identifies to the public that the BLM and BIA are adopting 11 DOE CXs and 6 NTIA CXs for the BLM's and BIA's use. The notice identifies the types of actions to which the BLM and BIA would apply these CXs. The documentation of the adoptions is available at <https://www.blm.gov/programs/planning-and-nepa/what-informs-our-plans/nepa> for the BLM, <https://www.bia.gov/service/nepa-compliance> for BIA and at <https://www.doi.gov/oepe/nepa/categorical-exclusions>. The BIA and the BLM will add the adopted CXs to their respective NEPA DM Chapters, 516 DM 10 and 11.

Authorities

National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Stephen G. Tryon,

Director, Office of Environmental Policy and Compliance.

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