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

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

**ACTION:** Notice of Adoption of Categorical Exclusions pursuant to Section 109 of the National Environmental Policy Act, 42 U.S.C. 4336c.

**SUMMARY:** The Department of Homeland Security (DHS) is notifying the public and documenting the adoption of 27 categorical exclusions (CEs) under the National Environmental Policy Act (NEPA). This notice identifies the types of actions to which DHS will apply the CEs, the considerations that DHS will use in determining the applicability of the CEs, and the consultation between the agencies on the use of the CEs, including application of extraordinary circumstances.

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

**FOR FURTHER INFORMATION CONTACT:** Jennifer DeHart Hass, Director, Environmental Planning Branch, by email at [jennifer.hass@hq.dhs.gov](mailto:jennifer.hass@hq.dhs.gov) or by telephone at (202) 834-4346.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

##### *National Environmental Policy Act and Categorical Exclusions*

The National Environmental Policy Act, 42 U.S.C. 4321–4347, as amended (NEPA), requires, with respect to major federal actions significantly affecting the quality of the human environment, all Federal agencies to assess the environmental impacts of their proposed actions before deciding whether and how to proceed. 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 aims are to ensure that agencies consider the potential environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4332.

To comply with NEPA, agencies determine the appropriate level of review for a proposed action. 42 U.S.C. 4336. Where required, these levels of review may be documented in an environmental impact statement (EIS), an 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. 42 U.S.C. 4336(b)(1). If the proposed action is not likely to have significant environmental effects or where the level of significance is unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. 42 U.S.C. 4336(b)(2). Following preparation of an EA, the agency may reach a finding of no significant impact if the analysis shows that the action will have no significant effects. If, following preparation of an EA, the agency finds that the proposed action may have significant effects, then an EIS is required.

Under NEPA, a Federal agency may establish categorical exclusions – categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in its agency NEPA procedures. 42 U.S.C. 4336e (1). If an agency determines that a categorical exclusion covers a proposed action, the agency will then evaluate the proposed action for any extraordinary circumstances in which a normally excluded action may have a significant effect. 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 rely on the categorical exclusion to approve 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, 42 U.S.C. 4336c, 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, the adopting agency must: (1) identify the relevant categorical exclusion listed in another agency’s (“establishing agency”) NEPA procedures “that covers a category of proposed actions or related actions”; (2) consult with the establishing agency “to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate”; (3) “identify to the public the categorical exclusion that the [adopting] agency plans to use for its proposed actions”; and (4) document adoption of the categorical exclusion. 42 U.S.C. 4336c.

This notice documents the Department’s adoption of 27 CEs for DHS use and notifies the public of these adoptions. One CE for adoption was established by HUD at 24 CFR 50.20 paragraph (a)(2). Four CEs were established by TVA at Appendix A to Subpart C of Part 1318, Title 18 in paragraphs 16, 30, 31, 38. Five CEs for adoption were established by the Department of Interior, BLM at 516 Departmental Manual 11 paragraphs 11.9.C(2), 11.9.C(3), 11.9.C (8), 11.9.C (9), and 11.9.I(I)(1). Fifteen CEs were established by the U.S. Department of Agriculture: nine CEs from NRCS at 7 CFR 650.6 paragraphs (d)(2), (d)(9), (d)(11), (d)(12), (d)(13), (d)(14), (d)(15), (d)(16), and (d)(17); three CEs from USFS at 36 CFR 220.6 paragraphs E.6, E.11, and E.18; and, three CEs from RD at 7 CFR 1970.54 paragraphs (a)(7), (a)(8), (a)(9). One CE was established by Navy at 32 CFR 775.6 paragraph f (46). One CE was established by

Army at 32 CFR 651.30 Appendix B, Section II paragraph (g)(2).

The DHS NEPA procedures are contained within Department of Homeland Security Directive 023-01 Rev 01 and the Instruction Manual 023-01-001-01 Rev 01, *Implementing the National Environmental Policy Act* (DHS NEPA Instruction Manual). The Department maintains a list of categorical exclusions available to all DHS Components in the DHS NEPA Instruction Manual.

## **II. Identification of the Categorical Exclusions**

DHS has identified the following 27 CEs for adoption.

### *HUD Categorical Exclusion for Adoption*

24 CFR 50.20(a)(2). *Rehabilitation of buildings and improvements when the following conditions are met: (i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, (ii) In the case of multifamily residential buildings: (A) Unit density is not changed more than 20 percent; (B) The project does not involve changes in land use from residential to non-residential; and (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. (iii) In the case of non-residential structures, including commercial, industrial, and public buildings: (A) The facilities and improvements are in place and will not be changed in size nor capacity by more than 20 percent; and (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.*

An example of DHS's intended use of the CE includes for DHS Component, Federal Emergency Management Agency (FEMA), funding assistance for the rehabilitation or replacement of buildings that do not have a change in size or capacity greater than 20 percent following a disaster. The CE would allow building rehabilitation efforts without needing to adhere to the existing acreage requirements for repairs or staging in existing DHS CEs.

TVA Categorical Exclusions for Adoption

18 CFR 1318 Appendix A to Subpart C paragraph 16. *Construction of new transmission line infrastructure, including electric transmission lines generally no more than 10 miles in length and that require no more than 125 acres of new developed rights-of-way and no more than 1 mile of new access road construction outside the right-of-way; and/or construction of electric power substations or interconnection facilities, including switching stations, phase or voltage conversions, and support facilities that generally require the physical disturbance of no more than 10 acres.* An example of DHS's intended use includes construction of new transmission line infrastructure and associated support facilities. This CE expands the range of the activities currently covered under existing DHS CEs.

18 CFR 1318 Appendix A to Subpart C paragraph 30. *Actions to maintain, restore, or enhance terrestrial ecosystems that generally involve physical disturbance of no more than 125 acres, including, but not limited to, establishment and maintenance of non-invasive vegetation; bush hogging; prescribed fires; installation of nesting and roosting structures, fencing, and cave gates; and reintroduction or supplementation of native, formerly native, or established species into suitable habitat within their historic or established range.*

DHS intends to use the CE to perform the actions described in the CE, and include, but are not limited to, establishment and maintenance of non-invasive vegetation, and reintroduction or supplementation of native species. As an example, DHS intends to utilize this CE to cover actions related to post-wildfire stabilization activities.

18 CFR 1318 Appendix A to Subpart C paragraph 31. *The following forest management activities: a. Actions to manipulate species composition and age class, including, but not limited to, harvesting or thinning of live trees and other timber stand improvement actions (e.g., prescribed burns, non-commercial removal, chemical*

control), generally covering up to 125 acres and requiring no more than 1 mile of temporary or seasonal permanent road construction; b. Actions to salvage dead and/or dying trees including, but not limited to, harvesting of trees to control insects or disease or address storm damage (including removal of affected trees and adjacent live, unaffected trees as determined necessary to control the spread of insects or disease), generally covering up to 250 acres and requiring no more than 1 mile of temporary or seasonal permanent road construction; and, actions to regenerate forest stands, including, but not limited to, planting of native tree species upon site preparation, generally covering up to 125 acres and requiring no more than 1 mile of temporary or seasonal permanent road construction. Examples of DHS use of the CE are the actions described in the CE, and include, but are not limited to, harvesting or thinning of live trees and other timber stand improvement actions, such as prescribed burning. The CE would allow DHS to expand current allowable acreage limitations for activities covered under a CE. DHS and its Components, including FEMA, would use this CE to reduce wildfire risk, such as through hazardous fuel reduction and defensible space activities. DHS's intended use of the CE aligns with TVA's use.

18 CFR 1318 Appendix A to Subpart C paragraph 38. *Siting, construction, and use of buildings and associated infrastructure (e.g., utility lines serving the building), physically disturbing generally no more than 10 acres of land not previously disturbed by human activity or 25 acres of land so disturbed.* DHS and its Components, including FEMA, would use this CE to support disaster recovery and resiliency projects. These activities are commonly funded by FEMA but currently have a 1-acre constraint under existing CEs. The CE would allow DHS to expand current allowable acreage limitations.

#### BLM Categorical Exclusions for Adoption

DHS has identified 516 DM 11 paragraph 11.9.C(2). for the sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or which

constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads.

DHS intends to use this CE to cover tree removal when those trees pose a public safety hazard and can be accessed by existing roads. No DHS CEs currently cover hazardous tree removal.

DHS has identified 516 DM 11 paragraph 11.9.C(3) for seeding or reforestation of timber sales or burn areas where no chaining is done, no pesticides are used, and there is no conversion of timber type or conversion of non-forest to forest land. Specific reforestation activities covered include: seeding and seedling plantings, shading, tubing (browse protection), paper mulching, bud caps, ravel protection, application of non-toxic big game repellent, spot scalping, rodent trapping, fertilization of seed trees, fence construction around out-planting sites, and collection of pollen, scions and cones.

DHS intends to use this CE to cover seeding and a variety of reforestation activities. FEMA could use this CE for post disaster recovery projects, such as wildfire stabilization activities. This CE would cover an activity commonly funded by FEMA but which is not fully covered in existing DHS CEs.

DHS has identified 516 DM 11 paragraph 11.9.C(8) "Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction. Such activities: (a) May include incidental removal of live or dead trees for landings, skid trails, and road clearing. (b) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and (c) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of

vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract. (d) For this CX, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, and that in the judgment of an experienced forest professional or someone technically trained for the work, is likely to die within a few years. Examples include, but are not limited to: (i) Harvesting a portion of a stand damaged by a wind or ice event. (ii) Harvesting fire damaged trees. "

DHS intends to use this CE to cover the removal of dead or dying trees under 250 acres. FEMA would use this CE for disaster recovery efforts from wildfire and severe storms. This is an activity commonly funded by FEMA but not fully covered in existing DHS/FEMA CEs.

DHS has identified 516 DM 11 paragraph 11.9.(I)(1) "Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. Such activities: (a) May include removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease; and (b) May include incidental removal of live or dead trees for landings, skid trails, and road clearing. (c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and (d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the

roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract. Examples include, but are not limited to: (i) Felling and harvesting trees infested with mountain pine beetles and immediately adjacent uninfested trees to control expanding spot infestations; and (ii) Removing or destroying trees infested or infected with a new exotic insect or disease, such as emerald ash borer, Asian longhorned beetle, or sudden oak death pathogen. "

DHS intends to use this CE to covers sanitation harvest of trees for insect and disease control less than 250 acres. FEMA would use this CE for forest management efforts to reduce wildfire risk. This is an activity commonly funded by FEMA but not fully covered in existing DHS/FEMA CEs.

DHS has identified 516 DM 11 paragraph 11.9.C(I1) " Emergency Stabilization. Planned actions in response to wildfires, floods, weather events, earthquakes, or landslips that threaten public health or safety, property, and/or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management-approved condition as a result of the event. Such activities shall be limited to: repair and installation of essential erosion control structures; replacement or repair of existing culverts, roads, trails, fences, and minor facilities; construction of protection fences; planting, seeding, and mulching; and removal of hazard trees, rocks, soil, and other mobile debris from, on, or along roads, trails, campgrounds, and watercourses. These activities: (1) Shall be completed within one year following the event;

- (2) Shall not include the use of herbicides or pesticides;
- (3) Shall not include the construction of new roads or other new permanent infrastructure;

(4) Shall not exceed 4,200 acres; and

(5) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(6) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract. "

DHS intends to use this CE to covers emergency response activities to natural disasters, such as repair/installation of structures, removal of debris, planting, etc. FEMA could use this CE for post-wildlife stabilization activities under HMGP and HMGP-Post Fire programs. This CE provides more specificity regarding types of post-wildfire stabilization activities than existing DHS/FEMA CEs.

*NRCS Categorical Exclusion for Adoption*

DHS has identified 7 CFR 650.6 paragraph (d)(2) "Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances"

DHS intends to use this CE to cover the removal of dams and associated appurtenances funded under the High Hazard Potential Dam Program. No CEs currently

exist for DHS/FEMA that are applicable to dam removal. This CE would support FEMA's efforts in adhering to IJA initiatives to fund dam removal projects.

DHS has identified 7 CFR 650.6 paragraph (d)(9) "Repairing or maintenance of existing small structures or improvements (including structures and improvements utilized to restore disturbed or altered wetland, riparian, in stream, or native habitat conditions). Examples of such activities include the repair or stabilization of existing stream crossings for livestock or human passage, levees, culverts, berms, dikes, and associated appurtenances"

DHS intends to use this CE to cover maintenance and improvement of small structures. CBP may use this CE for repairs or maintenance of structures impacted by storm damage, such as culvert repair. Currently, emergency repairs may not adhere to NEPA guidelines and subsequently require costly repairs of repairs. Establishing the use of this CE could allow pre-arranged design guidance and facilitate responsible repairs that fit the time constraints of mission but minimize the costs and delays of EA preparation.

DHS has identified 7 CFR 650.6 paragraph (d)(11) "Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition. "

DHS intends to use this CE to cover actions that help restore ecosystems and wildlife, including dam removal. No CEs currently exist for DHS/FEMA that are applicable to dam removal. This CE would support FEMA's efforts in adhering to IJA initiatives to fund dam removal projects.

DHS has identified 7 CFR 650.6 paragraph (d)(12) "Repairing or maintenance of existing constructed fish passageways, such as fish ladders or spawning areas impacted by natural disasters or human alteration. "

DHS intends to use this CE to cover dam rehabilitation activities funded by the

High Hazard Potential Dam Program in order to repair or maintain fish passageways.

FEMA does not have any similar CEs existing.

DHS has identified 7 CFR 650.6 paragraph (d)(13) "Repairing, maintaining, or installing fish screens to existing structures. "

DHS intends to use this CE to cover dam rehabilitation activities funded by the High Hazard Potential Dam Program in order to repair or maintain fish screens on existing structures. FEMA does not have any similar CEs existing.

DHS has identified 7 CFR 650.6 paragraph (d)(14) "Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the existing footprint of the dam, and no major change in reservoir or downstream operations will result. "

DHS intends to use this CE to cover repairs and maintenance of existing spillways to meet current safety and performance standards. The CE would apply to rehabilitation projects of High Hazard Potential Dams. FEMA does not have any similar CEs currently.

DHS has identified 7 CFR 650.6 paragraph (d)(15) "Repairing or improving (deepening/widening/armoring) existing auxiliary/emergency spillways associated with dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the dam or abutment areas, and no major change in reservoir or downstream operation will result. "

DHS intends to use this CE to cover repairs and improvement of existing auxiliary and emergency spillways to meet current safety and performance standards. The CE would apply to rehabilitation projects of High Hazard Potential Dams. FEMA does not have any similar CEs currently.

DHS has identified 7 CFR 650.6 paragraph (d)(16) "Repairing embankment slope failures on structures, originally built to NRCS standards, where the work is confined to

the embankment or abutment areas. "

DHS intends to use this CE to cover dam rehabilitation activities funded by the High Hazard Potential Dam Program.

DHS has identified 7 CFR 650.6 paragraph (d)(17) "Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards. The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped which may result in a catastrophic failure. Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the existing dam and abutment areas, and no major change in reservoir operations will result. Examples of work may include the addition of fill material such as earth or gravel or placement of parapet walls.

DHS intends to use this CE to cover the increase of an existing dam/dike freeboard to meet current safety and performance standards. The CE would apply to rehabilitation projects of High Hazard Potential Dams. FEMA does not have any similar CEs currently.

*USFS Categorical Exclusions for Adoption*

DHS has identified 36 CFR 220.6 paragraph E.6 "Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include, but are not limited to:

- (i) Girdling trees to create snags;
- (ii) Thinning or brush control to improve growth or to reduce fire hazard

including the opening of an existing road to a dense timber stand;

(iii) Prescribed burning to control understory hardwoods in stands of southern pine; and

(iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor. "

DHS intends to use this CE to cover timber stand and wildlife habitat improvement activities, including prescribed burning. No DHS CEs currently exist that cover prescribed burning as a method for performing hazardous fuel reduction.

DHS has identified 36 CFR 220.6 paragraph E.11 "Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

(i) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;

(ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(iii) Shall be completed within 3 years following a wildland fire. "

DHS intends to use this CE to cover post-fire rehabilitation activities occurring within 3 years of a wildland fire. FEMA could use this CE for post-wildfire stabilization activities, such as hazardous fuels reduction and defensible space activities. This CE provides more specificity regarding types of post-wildfire stabilization activities than existing DHS/FEMA CEs.

DHS has identified 36 CFR 220.6 paragraph E.18 "Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled.

Examples include but are not limited to:

(i) Repairing an existing water control structure that is no longer functioning properly with minimal dredging, excavation, or placement of fill, and does not involve releasing hazardous substances;

(ii) Installing a newly-designed structure that replaces an existing culvert to improve aquatic organism passage and prevent resource and property damage where the road or trail maintenance level does not change;

(iii) Removing a culvert and installing a bridge to improve aquatic and/or terrestrial organism passage or prevent resource or property damage where the road or trail maintenance level does not change; and

(iv) Removing a small earthen and rock fill dam with a low hazard potential classification that is no longer needed. "

DHS intends to use this CE to cover the removal, replacement, or modification of dams funded under the High Hazard Potential Dam Program. No CEs currently exist for DHS/FEMA that are applicable to dam removal. This CE would support FEMA's efforts in adhering to IJIA initiatives to fund dam removal projects.

#### *RD Categorical Exclusions for Adoption*

DHS has identified 7 CFR 1970.54 paragraph (a)(7) "Small-scale site-specific development. The following CEs apply to proposals where site development activities (including construction, expansion, repair, rehabilitation, or other improvements) for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic. These CEs are identified in paragraphs (a)(1) through (a)(9) of this section.

This paragraph does not apply to new industrial proposals (such as ethanol and biodiesel production facilities) or those classes of action listed in §§1970.53, 1970.101, or 1970.151...

(7) Repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal

change in use, size, capacity, purpose, operation, location, or design from the original facility. "

DHS intends to use this CE to cover dam rehabilitation activities less than 10 acres of disturbance funded by the High Hazard Potential Dam Program.

DHS has identified 7 CFR 1970.54 paragraph (a)(8) "Small-scale site-specific development... (8) Installation or enlargement of irrigation facilities on an applicant's land, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres. "

DHS intends to use this CE to cover less than 10 acres of disturbance for the installation or expansion of diversion dams specifically for rural development.

DHS has identified 7 CFR 1970.54 paragraph (a)(9) "Small-scale site-specific development...Replacement or restoration of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers, with no or minimal change in use, size, capacity, or location from the original facility(s). "

DHS intends to use this CE to cover the replacement or restoration of existing diversion dams less than 10 acres of disturbance specifically for rural development.

#### *Navy Categorical Exclusions for Adoption*

DHS has identified 32 CFR 775.6 paragraph f (46) (46) "Minor repairs in response to wildfires, floods, earthquakes, landslides, or severe weather events that threaten public health or safety, security, property, or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management-approved condition (i.e., the previous state) without intervention. Covered activities must be completed within one year following the event and cannot include the construction of new permanent roads or other new permanent infrastructure. Such activities include, but are not limited to: Repair of existing essential erosion control structures or installation of temporary erosion controls; repair of electric power transmission infrastructure; replacement or repair of storm water conveyance structures, roads, trails, fences, and

minor facilities; revegetation; construction of protection fences; and removal of hazard trees, rocks, soil, and other mobile debris from, on, or along roads, trails, or streams; "

DHS intends to use the CE to cover repair to minor infrastructure following a disaster or severe weather event in order to restore these features to their prior state. This CE provides more specificity regarding types of post-wildfire stabilization activities than existing DHS/FEMA CEs.

#### *Army Categorical Exclusions for Adoption*

DHS has identified 32 CFR 651.30 Appendix B, Section II paragraph (g)(2) "Routine repairs and maintenance of roads, trails, and firebreaks. Examples include, but are not limited to: grading and clearing the roadside of brush with or without the use of herbicides; resurfacing a road to its original conditions; pruning vegetation, removal of dead, diseased, or damaged trees and cleaning culverts; and minor soil stabilization activities. "

DHS intends to use the CE to fund post-wildfire stabilization activities under its HMGP and HMGP-Post Fire programs.

### **III. Consideration of Extraordinary Circumstances**

When applying these categorical exclusions, DHS will evaluate the proposed actions for whether there are any extraordinary circumstances. The Department's extraordinary circumstances are listed within the DHS Instruction Manual and include, in part, consideration of impacts on public health and safety; listed species and migratory birds; historic or cultural resources; Indian sacred sites; environmentally sensitive areas, such as historic properties prime or unique agricultural lands, coastal zones, designated wilderness or wilderness study areas, wild and scenic rivers, 100-year floodplains, wetlands, sole source aquifers, Marine Sanctuaries, National Wildlife Refuges, National Parks, National Monuments, essential fish habitat; violations of a

Federal, State, or local law or requirement imposed to protect the environment; certain levels of controversy in terms of scientific validity; precedent for future decision-making; context of scope and size of the particular action; and degradation of already existing poor environmental conditions.

DHS's list of extraordinary circumstances is comparable to those of HUD, found at 24 CFR 58.2 (a)(3); the TVA, found at 18 CFR 1318.201; of the BLM, found at 43 CFR 46.215; of the NRCS, found at 7 CFR 650.6(c); of the USFS, found at 36 CFR 220.6(b); of RD, found at 7 CFR 1970.52; of Navy, found at 32 CFR 775.6 (e)(1); and of Army, found at 32 CFR 651.29 (b). Therefore, only the DHS NEPA Instruction Manual, and the extraordinary circumstances contained therein would be reviewed as to whether the proposed action has the potential to result in significant effects for actions DHS is intending to apply a HUD, TVA, BLM, NRCS, USFS, RD, Navy, and Army categorical exclusion. If DHS determines that a CE is not appropriate to support a decision on a particular proposed action due to extraordinary circumstances, DHS would prepare an EA or EIS. Consistent with the DHS NEPA Instruction Manual, DHS will document each application of these CEs in the DHS Environmental Planning and Historic Preservation Decision Support System.

#### **IV. Consultation with Agencies and Determination of Appropriateness**

In April and May of 2025, DHS consulted with HUD, TVA, BLM, NRCS, USFS, RD, Navy, and Army about the appropriateness of the Department's adoption of their respective categorical exclusions. Those consultations each included a review of each agency's or bureau's experience in establishing and applying the categorical exclusions, as well as DHS's intended uses for the categorical exclusions. Based on those consultations and reviews, DHS has determined that the types of activities DHS proposes to authorize are substantially similar to the activities for which HUD, TVA, BLM, NRCS, USFS, RD, Navy, and Army have applied their respective categorical

exclusions. Accordingly, the impacts of the DHS actions would be substantially similar to the impacts of each establishing agency's actions, which are not significant, absent the existence of extraordinary circumstances. Therefore, DHS has determined that DHS's proposed use of the CEs, as described within this notice is appropriate.

#### **V. Notice to the Public and Documentation of Adoption**

This notice serves to identify to the public and document DHS's adoption of HUD, TVA, BLM, NRCS, USFS, RD, Navy, and Army categorical exclusions and identifies the types of actions to which DHS contemplates applying the actions at this time. DHS may expand use of one or more of the CEs identified above to other activities where appropriate, and in accordance with applicable conditions for use of the CE. Upon issuance of this notice, the adopted HUD, TVA, BLM, NRCS, USFS, RD, Navy, and Army categorical exclusions will be available to DHS and accessible on DHS.gov at <https://www.dhs.gov/ocrso/eed/epb/nepa>.

**Jennifer Hass,**

*Acting Executive Director,  
Energy and Environment Division  
Department of Homeland Security*

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