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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 five 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 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 preparing a concise public document that may reach a finding of no significant impact. 42 U.S.C. 4336(b)(2). 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 five CEs for DHS use and notifies the public of these adoptions. One CE for adoption was established by the Department of the Interior (DOI), Bureau of Reclamations (BOR) at DOI NEPA Handbook Appendix 2 paragraph 14.5.D(17). One CE for adoption was established by DOI, Fish and Wildlife Services (USFWS) at DOI NEPA Handbook Appendix 2 B(4). One CE for adoption was established by the Department of Agriculture (USDA), Farm Service Agency (FSA) at 7 CFR Subtitle A 1b.4(d)(1). Two CEs for adoption were established by the National Aeronautics and Space Administration (NASA) at 14 CFR Part 1216.304(d)(2)(ix) and 14 CFR Part 1216.304(d)(5)(i).

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 five CEs for adoption.

BOR Categorical Exclusion for Adoption

DHS has identified 516 DOI NEPA Handbook Appendix 2 paragraph 14.5.D(17) “*Minor safety of dam construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of construction activities.*”

DHS intends to use this CE to cover rehabilitation activities for dams, abutment areas, and appurtenances funded by the Federal Emergency Management Agency (FEMA) High Hazard Potential Dam Program.

USFWS Categorical Exclusions for Adoption

DHS has identified DOI NEPA Handbook Appendix 2 paragraph B(4). “*The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.*”

DHS intends to use this CE to cover actions described in the CE. Per consultation with USFWS, this CE should be applied for actions with the purpose of habitat restoration or enhancement. FEMA would use this CE to support limited fire prevention activities under the Hazard Mitigation Assistance program, where the purpose of the project is also habitat restoration or enhancement.

FSA Categorical Exclusions for Adoption

DHS has identified 7 CFR Subtitle A 1b.4(d)(1) “*Construction or ground disturbance actions.*

(i) Bridges;

(ii) Chiseling and subsoiling in areas not previously tilled;

(iii) Construction of a new farm storage facility;

- (iv) Dams;*
- (v) Dikes and levees;*
- (vi) Diversions;*
- (vii) Drop spillways;*
- (viii) Dugouts;*
- (ix) Excavation;*
- (x) Grade stabilization structures;*
- (xi) Grading, leveling, shaping and filling in areas or to depths not previously disturbed;*
- (xii) Installation of structures designed to regulate water flow such as pipes, flashboard risers, gates, chutes, and outlets;*
- (xiii) Irrigation systems;*
- (xiv) Land smoothing;*
- (xv) Line waterways or outlets;*
- (xvi) Lining;*
- (xvii) Livestock crossing facilities;*
- (xviii) Pesticide containment facility;*
- (xix) Pipe drop;*
- (xx) Pipeline for watering facility;*
- (xxi) Ponds, including sealing and lining;*
- (xxii) Precision land farming with ground disturbance;*
- (xxiii) Riparian buffer establishment;*
- (xxiv) Roads, including access roads;*
- (xxv) Rock barriers;*
- (xxvi) Rock filled infiltration trenches;*
- (xxvii) Sediment basin;*

(xxviii) Sediment structures;

(xxix) Site preparation for planting or seeding in areas not previously tilled;

(xxx) Soil and water conservation structures;

(xxxi) Stream bank and shoreline protection;

(xxxii) Structures for water control;

(xxxiii) Subsurface drains;

(xxxiv) Surface roughening;

(xxxv) Terracing;

(xxxvi) Underground outlets;

(xxxvii) Watering tank or trough installation, if in areas not previously disturbed;

(xxxviii) Wells; and

(xxxix) Wetland restoration.”

DHS intends to use this CE to cover a broad range of ground disturbance activities with potential for extraordinary circumstances requiring review, including bridges, dams, excavation, and more. DHS and Components would use this CE to cover routine and maintenance projects with small footprints or limited areas of disturbance (e.g., small bridges authorized by United States Coast Guard) that would not require an EA or EIS. Areas with larger footprints or areas of disturbance that may result in potentially adverse effects may require additional environmental review and consultation.

NASA Categorical Exclusions for Adoption

DHS has identified 14 CFR Part 1216.304(d)(2)(ix) for adoption “*Routine maintenance, repair, and operation of vessels (including unmanned autonomous surface vessels), aircraft (including unmanned aircraft systems), overland/surface transportation vehicles, and other transportation systems as applicable. Examples include but are not limited to transportation or relocation of NASA equipment and hardware by barge, aircraft, or surface transportation system (e.g., tractor trailer or railroad); retrieval of*

spent solid rocket boosters by vessel; repair or overhaul of vessel, aircraft, or surface transportation systems that do not result in a change in the environmental impacts of their normal operation.”

DHS intends to use this CE to cover routine maintenance, repair, and operation of transportation platforms (such as unmanned aircraft systems) completed by DHS Components. Per consultation with NASA, NASA administrative records limit this CE to small unmanned aircraft systems within Category 1 or Category 2. DHS will document each application of NASA CEs and their consistency with NASA limitations in the DHS Environmental Planning and Historic Preservation Decision Support System. DHS will only apply this CE for routine maintenance, repair, and operation of Category 1 or Category 2 aircraft systems.

DHS has identified 14 CFR Part 1216.304(d)(5)(i) for adoption “*Periodic aircraft (including unmanned aircraft systems) flight activities, including training and research and development, which are routine and comply with applicable Federal, state, Tribal, or local laws or requirements, and Executive Orders.*”

DHS intends to use this CE to cover flight activities (such as those completed by unmanned aircraft systems) completed by DHS Components.

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 DOI, found at 43 CFR 46.215; However, one DOI extraordinary circumstance 43 CFR 46.215(i), which considers the introduction of noxious weeds or non-native invasive species, is not explicitly covered under in DHS extraordinary circumstances.

To ensure DHS application of DOI CEs is consistent with DOI extraordinary circumstances, DHS will evaluate whether the action will result in the introduction of noxious weeds or non-native invasive species as described in 43 CFR 46.215(i).

Consistent with the DHS NEPA Instruction Manual, DHS will document each application of DOI CEs and their consistency with DOI extraordinary circumstances in the DHS Environmental Planning and Historic Preservation Decision Support System. 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.

DHS's list of extraordinary circumstances is comparable to those of USDA, found at 7 CFR Subtitle A Part 1b.3(f), and NASA, found at 14 CFR Part 1216.304(c).

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 USDA or a NASA CE. 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 July, August, and December of 2025 and January of 2026, DHS consulted with BOR, FSA, USFWS, and NASA 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 BOR, USFWS, FSA, and NASA 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 BOR, USFWS, FSA, and NASA categorical exclusions and identifies the types of actions to which DHS contemplates applying the actions at this time. Upon issuance of this notice, the adopted of BOR, USFWS, FSA, and NASA categorical exclusions will be available to DHS and accessible on DHS.gov at <https://www.dhs.gov/ocrso/eed/epb/nepa>.

Tracey L. Watkins,

*Chief Readiness Support Officer,
Department of Homeland Security*

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