[3410-90-P]

DEPARTMENT OF AGRICULTURE

7 CFR Part 1b

[USDA-2025-0008]

RIN 0503-AA86

National Environmental Policy Act

AGENCY: Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting the interim final rule (IFR) published on July 3, 2025, with minor changes, as final. The IFR revised departmental regulations implementing the National Environmental Policy Act (NEPA) and removed various USDA agency regulations for implementing NEPA. The IFR was in response to the Council on Environmental Quality's (CEQ) rescission of its NEPA implementing regulations (which USDA's NEPA regulations were designed to supplement), statutory changes to NEPA, executive orders, and case law. In the IFR, USDA provided a 30-day comment period for the public to review and make comments. This final rule addresses public comments and adopts as final the IFR, with certain substantive changes as explained herein.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Scott Vandegrift, Chief Environmental Review and Permitting Officer, Office of the Secretary, 202-720-5166, SM.OSEC.NRE.NEPA@usda.gov. Individuals who use telecommunications devices for the hearing-impaired may call 711 to reach the Telecommunications Relay Service, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

The following acronyms are used frequently:

APA – Administrative Procedure Act

CE – Categorical Exclusion

CEQ – Council on Environmental Quality

CFR – Code of Federal Regulations

EA – Environmental Assessment

EIS – Environmental Impact Statement

EO – Executive Order

FANEC – Finding of Applicability and No Extraordinary Circumstance

FONSI – Finding of No Significant Impact

FRA – Fiscal Responsibility Act of 2023

IFR – Interim Final Rule

NEPA – National Environmental Policy Act

ROD – Record of Decision

U.S.C. – United States Code

USDA – U.S. Department of Agriculture

I. Background

On February 25, 2025, CEQ issued an interim final rule rescinding their regulations in response to Executive Order (EO) 14154, *Unleashing American Energy*.

CEQ's interim final rule (IFR) rescinded its NEPA implementing regulations, including 40 CFR parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508. The effective date of CEQ's interim rule was April 11, 2025. The background of CEQ's regulations, recent litigation, and relevant executive orders leading up to their February 25, 2025, IFR support the rationale underlying this final rule. CEQ published a final rule on January 8, 2026, affirming their IFR.

The Department of Agriculture (USDA) is issuing this final rule to affirm its IFR that revised, moved and republished, or removed portions of USDA's existing regulations for implementing the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. §§ 4321-4347, as amended by the Fiscal Responsibility Act of 2023 (FRA), as well as add new portions to the USDA NEPA implementing regulations. USDA issued the IFR for three independent reasons, and those reasons remain valid.

First, CEQ's regulations were repealed effective April 11, 2025; see *Removal of National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 10610 (Feb. 25, 2025). USDA and its agencies' regulations were promulgated as a "supplement" that "incorporates and adopts" the CEQ's NEPA regulations, see 7 CFR 1b.1(a). However, the CEQ regulations (40 CFR parts 1500 through 1508) no longer provided a valid foundation for USDA NEPA regulations.

Second, Congress recently amended NEPA in significant part, in the FRA, Public Law 118-5, signed on June 3, 2023, in which Congress added substantial detail and direction in Title I of NEPA regarding procedural issues that CEQ and individual acting agencies had previously addressed in their own procedures. USDA recognized the need to update its regulations considering these significant legislative changes. Since USDA's regulations were originally designed as a supplement to CEQ's NEPA regulations, USDA had been awaiting CEQ action before revising its regulations, consistent with CEQ direction. *See* 40 CFR 1507.3(b) (2024); see also 86 FR 34154 (June 29, 2021). However, with CEQ's regulations rescinded, and with USDA's NEPA implementing regulations then unmodified more than two years after this significant legislative overhaul, it was exigent that USDA move quickly to conform its regulations to the statute as amended.

And third, the U.S. Supreme Court recently issued a landmark decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), in which it decried the "transform[ation]" of NEPA from its roots as "a modest procedural

requirement," into a significant "substantive roadblock" that "paralyze[s]" "agency decision-making". *Id*. at 1507, 1513 (quotations omitted). The Supreme Court explained that part of that problem had been caused by decisions of lower courts, which it rejected, issuing a "course correction" mandating that courts give "substantial deference" to reasonable agency conclusions underlying its NEPA process. *Id*. at 1513-14. But the Court also acknowledged, and through its course correction sought to address, the effect on "litigation-averse agencies" which, in light of judicial "micromanage[ment]," had been "tak[ing] ever more time and [] prepar[ing] ever longer EISs [environmental impact statements] for future projects". *Id*. at 1513. USDA incorporated this case's holdings into these regulations, availing itself of the latest information and guidance from the Court for its future NEPA application.

For these reasons USDA published an IFR to revise, move and republish, or remove portions of the USDA NEPA implementing regulations, as well as add new portions, given the CEQ NEPA regulations no longer provide a foundation for USDA NEPA regulations and leave the Department without necessary interpretation of, and implementing regulations for, NEPA (90 FR 29632 (July 3, 2025)). In the IFR preamble, USDA addressed how NEPA is a vital part of Federal agency planning and decision-making, and explained that USDA agencies need clear standards and guidelines as soon as possible to conduct the work of providing critical services and funds to Americans, as directed by Congress. USDA is affirming the final rule for these same reasons.

In publishing the IFR, USDA found that notice and comment was not required because the rule was interpretive or a rule of agency procedure or practice under 5 U.S.C 553(b)(A) and that, to the extent prior notice and solicitation of public comment would otherwise be required or this action could not immediately take effect, the need to expeditiously replace its existing rules satisfied the "good cause" exceptions in 5 U.S.C. 553(b)(B) and (d). The Administrative Procedure Act (APA) authorizes agencies to issue

regulations without notice and public comment when an agency finds, for good cause, that notice and comment is "impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. 553(b)(B), and to make the rule effective immediately for good cause. 5 U.S.C. 553(d)(3). USDA's prior rules were promulgated as a "supplement[]" to the CEQ's NEPA regulations, and USDA also "adopt[ed]" the CEQ's regulations by incorporation. Following the rescission of CEQ's regulations, USDA's current rules were left to supplement a NEPA framework that no longer exists.

That being so, rescinding the old regulations immediately without replacing them would have created a vacuum that would inflict immense uncertainty on agencies and regulated parties and potentially grind all projects under USDA's purview to a halt. This could have had significant economic effects on USDA's customers due to delays in approvals or investing in projects that could be subject to legal challenges from not having clear uniform NEPA standards, which could have also been delayed. Therefore, pairing the rescission with a new structure immediately was absolutely critical. Because of this need for speed and certainty, notice-and-comment was, to the extent it was otherwise required at all, impracticable and contrary to the public interest.

For the same reasons stated in the present section, above, USDA found that "good cause" existed under 5 U.S.C. § 553(d)(3) to waive the 30-day delay of the effective date that would otherwise be required. The IFR was accordingly effective immediately. USDA voluntarily took comments on the IFR. USDA requested and encouraged public comments on the IFR with the rationale that comments may inform USDA's decision making during this time of substantial regulatory change.

Several commenters stated that the IFR is subject to the APA, which they allege requires public notice and comment when issuing, amending, or rescinding a rule through informal rulemaking processes unless one of two exceptions applies. These commenters disagreed with USDA's determination that the IFR is procedural or interpretive in nature,

and that USDA had good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. These commenters deemed the voluntary 30-day comment period insufficient and requested that the comment period for the IFR be extended given the amount of content to review for not only the USDA IFR, but for those IFRs related to NEPA implementing regulations and procedures published by other departments/agencies at the same time. Other commenters agreed with USDA's good cause rationale regarding the comment period and encouraged USDA to publish a final rule as soon as possible.

As described in the IFR preamble, USDA maintains that notice and comment was not required because the rulemaking fell within various exceptions to the notice-and-comment requirement. *See* 5 U.S.C. 553(b). The APA did not require USDA to publish a notice of proposed rulemaking and consider public comments before the effective date of the rule because three separate exceptions to the APA's general requirement apply here: (1) the USDA departmental and agency-specific NEPA regulations were procedural only and did not dictate or preclude any specific actions that could be taken; rather, the legacy USDA departmental and agency-specific NEPA regulations prescribed *processes* for USDA and agencies to follow when complying with NEPA; (2) the legacy USDA departmental and agency-specific NEPA regulations merely provided an interpretation of a statute rather than making discretionary policy choices establishing enforceable rights or obligations for regulated parties; and (3) good cause exists to forgo notice-and-comment procedures and put the rule into immediate effect because the legacy USDA departmental and agency-specific NEPA regulations were expressly promulgated to supplement CEQ's NEPA regulations.

Following the rescission of CEQ's NEPA regulations, USDA and its agencies were left with vestigial NEPA regulations that "supplemented" a CEQ regulatory regime that no longer existed, which was not tenable and could have caused significant economic

harm to USDA's customers. 5 U.S.C. § 553(b)(A)-(B). Portions of this rulemaking also include general statements of policy. 5 U.S.C. § 553(b)(A). Regardless, USDA did provide notice and an opportunity to comment on the IFR for a 30-day period. USDA determined that 30 days was adequate because the scope of the IFR was limited to revising or rescinding previously promulgated USDA departmental and agency-specific NEPA regulations. Moreover, USDA monitored and posted the comments as they were received. The public comment period concluded on August 4, 2025.

Furthermore, USDA's IFR contained all the elements of a notice of proposed rulemaking as required by the APA. 5 U.S.C. 553(b); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020). USDA explained its position with sufficient detail to put the public on notice that it was revising the departmental NEPA regulations and rescinding the seven agency-specific regulations and provided its rationale along with an opportunity to comment. The public understood the action USDA was taking and took advantage of the opportunity to comment.

USDA issued two corrections during the comment period. The first was to change the erroneous citation to 7 CFR 2407 to the correct citation of 7 CFR 3407 and correct numbering of items listed in § 1b.4 by redesignating the second paragraph (c)(30)(xiv) as (c)(30)(xix) (90 FR 33871 (July 18, 2025)). The second was to clarify the comment deadline ending date as August 4, 2025, rather than July 30, 2025 (90 FR 34165 (July 21, 2025)).

USDA received approximately 6,075 written submissions in response to the IFR published on July 3, 2025. The overwhelming majority of the comments (approximately 5,020) were identical campaign form letters sent in response to organized initiatives. USDA received approximately 1,055 unique public comments, though many of these were also very similar in form with only minor content added to make them unique. The volume and substantive content of the comments received indicates that the public had an

adequate opportunity to comment. Thus, while USDA maintains for the reasons noted above that its IFR is subject to the exceptions set forth in 5 U.S.C. 553(b), this final rule represents the culmination of a process functionally equivalent to a traditional notice-and-comment rulemaking regardless of the initial procedural basis for the IFR.

Since publishing the IFR, USDA has identified opportunities to clarify content included in this final rule to make implementation of the revised regulations more efficient, effective, and consistent with other departments or agencies where applicable.

USDA is issuing this final rule to primarily respond to public comments on the IFR, as well as explain clarifications provided in response to feedback provided by reviewers and implementers of the revised regulations. This final rule explains that USDA is reaffirming its decision to rescind seven agency-specific NEPA regulations and revise the departmental NEPA regulations, subject to the additional revisions made by this final rule. This final rule therefore supersedes the IFR.

USDA considered and is responding to substantive public comments in this final rule. Summaries of and responses to these comments are provided in the pertinent sections of this final rule preamble. Both general support and opposition to the IFR were expressed by unique comments received. None of the comments received altered USDA's conclusion that there is a need to revise, move and republish, or remove portions of the USDA NEPA implementing regulations, as well as add new portions, given the CEQ NEPA regulations no longer provide a foundation for USDA NEPA regulations and leave the Department without necessary interpretation of, and implementing regulations for, NEPA. Comments did, however, inform opportunities to change some content between the interim and final rule as described in the sections pertinent to the comment topic.

Several commenters on the IFR expressed support for the revised regulations and USDA's approach to fulfilling NEPA's statutory requirements while allowing for

efficient, timely, and effective NEPA reviews and program implementation. Many of these commenters described their experience trying to move important infrastructure, energy, timber, and other projects through the NEPA process over the last couple of decades. They expressed frustration with the overly burdensome processes and analysis requirements that were created in response to evolving case law and the frequent revisions to the now-rescinded CEQ NEPA regulations, all of which have created confusion and unnecessary delays. For these reasons, they expressed support for a course-correction on NEPA compliance by aligning the USDA regulations with the intent of the Act in a way that meaningfully evaluates environmental effects to inform the decision-making process while still expanding the various services and resources that USDA programs provide across the nation.

Other numerous commenters on the IFR expressed lack of support for the revised regulations and USDA's approach to fulfilling NEPA's statutory requirements. These commenters see the revised regulations as failing to facilitate informed agency decisions that require a full evaluation of environmental impacts and not promoting a transparent process for informing and engaging the public. Many of these commenters described their positive and results-oriented experience engaging with federal agencies to inform the decision-making process and ensure sufficient environmental effects analysis was completed. They expressed frustration with the rescission of the CEQ NEPA regulations and the confusion and inconsistency that will be created by each federal department and/or agency issuing their own version of NEPA implementing regulations and/or procedures. For these reasons, they encouraged a version of USDA regulations that more readily mirror the processes and procedures that were described in the now-rescinded CEQ NEPA regulations.

USDA acknowledges both these supportive and non-supportive comments.

II. Basis for Consolidating and Revising USDA's NEPA Regulations

A. USDA NEPA Regulations

In 1974, the Secretary of Agriculture issued Memorandum No. 1695, Supplement 4 (Revised), to establish guidelines for the preparation of environmental impact statements and compliance with other procedural requirements of § 102(2) of the NEPA. On May 1, 1979 (44 FR 25606) and July 30, 1979 (44 FR 44802), the Department of Agriculture (USDA) proposed and finalized rules setting forth policies and procedures for compliance with NEPA and CEQ's implementing regulations (40 CFR parts 1500 through 1508). On occasion, the Department has further amended its NEPA regulations to refine and adjust to better meet its organizational and program needs. See 46 FR 47747, 48 FR 11403, 60 FR 66479, 76 FR 4801.

Prior to the IFR, USDA promulgated the most recent iteration of its NEPA regulations in 1995 (60 FR 66479, Dec. 22, 1995), to "[supplement] the regulations for the implementation of the National Environmental Policy Act (NEPA), for which regulations were published by the CEQ in 40 CFR parts 1500 through 1508 [and incorporate and adopt] those regulations". Subtitle A, part 1b.1 of title 7 of the Code of Federal Regulations (1995) (hereinafter 7 CFR 1b). USDA NEPA regulations were dependent upon provisions in the 1978 CEQ regulations. Similarly, individual USDA agency NEPA regulations expressly state that their "purpose" is to supplement and implement CEQ regulations:

1) Agricultural Research Service, subtitle B, chapter V, part 520, of title 7 of the Code of Federal Regulations (hereinafter 7 CFR 520): "These procedures incorporate and supplement, and are not a substitute for, CEQ regulations under 40 CFR parts 1500–1508, and Department of Agriculture NEPA Policies and Procedures under 7 CFR part 1b." (7 CFR 520.1 (1986));

2) Animal and Plant Health Inspection Service, subtitle B, chapter III, part 372, of title 7 of the Code of Federal Regulations (hereinafter 7 CFR 372): "These

procedures implement section 102(2) of the National Environmental Policy Act (NEPA) by assuring early and adequate consideration of environmental factors in Animal and Plant Health Inspection Service planning and decision-making and by promoting the effective, efficient integration of all relevant environmental requirements under NEPA. The goal of timely, relevant environmental analysis will be secured principally by adhering to NEPA implementing regulations (40 CFR parts 1500–1508), especially provisions pertaining to timing (§ 1502.5), integration (§ 1502.25), and scope of analysis (§ 1508.25)." (7 CFR 372.1 (2018));

3) Farm Service Agency, subtitle B, chapter VII, subchapter G, part 799, of title 7 of the Code of Federal Regulations (hereinafter 7 CFR 799): "This part: ...(2) Establishes FSA procedures to implement the (i) National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 through 4370); (ii) CEQ regulations (40 CFR parts 1500 through 1518); and (iii) USDA NEPA regulations (§§ 1b.1 through 1b.4 of this title)." (7 CFR 799.1 (2016));

4) National Institute of Food and Agriculture, subtitle B, chapter XXXIV, part 3407, of title 7 of the Code of Federal Regulations (hereinafter 7 CFR 3407): "The purpose of this regulation is to supplement the regulations for implementation of NEPA established by the CEQ and codified at 40 CFR parts 1500–1508, as adopted by USDA in 7 CFR part 1b." (7 CFR 3407.1 (1991));

5) Natural Resources Conservation Service, subtitle B, chapter VI, subchapter F, part 650, of title 7 of the Code of Federal Regulations (hereinafter 7 CFR 650): "The procedures included in this rule supplement CEQ's NEPA regulations, 40 CFR parts 1500–1508. CEQ regulations that need no additional elaboration to address NRCS-assisted actions are not repeated in this rule, although the regulations are cited as references. The procedures include some

overlap with CEQ regulations. This is done to highlight items of importance for NRCS. This does not supersede the existing body of NEPA regulations." (7 CFR 650.1 (1979));

6) Rural Development, subtitle B, chapter XVIII, subchapter H, part 1970, of title 7 of the Code of Federal Regulations (hereinafter 7 CFR 1970): "This part also supplements the CEQ regulations implementing the procedural provisions of NEPA, 40 CFR parts 1500 through 1508. To the extent appropriate, the agency will take into account CEQ guidance and memoranda." (7 CFR 1970.1 (2016)); and

7) U.S. Forest Service, chapter II, part 220, of title 36 of the Code of Federal Regulations (hereinafter 36 CFR 220): "This part establishes Forest Service, U.S. Department of Agriculture (USDA) procedures for compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. §§4321-4347) and the CEQ regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500 through 1508) ... This part supplements and does not lessen the applicability of the CEQ regulations and is to be used in conjunction with the CEQ regulations and USDA regulations at 7 CFR part 1b." (36 CFR 220.1 (2008)).

Departmental and agency NEPA regulations have been largely organizational and technical, with limited substantive content. The Department's past judgment has been that effective NEPA implementation could be achieved by reliance on a policy statement in 7 CFR 1b.2 and individual USDA agency NEPA regulations for tailored technical procedures. For the reasons described above, the Department now believes that a change is necessary to advance the Department's mission in an efficient, flexible, and innovative manner while ensuring the conservation and protection of the environment.

USDA has analyzed how best to respond to CEQ's interim and final rule and fulfill NEPA's statutory requirements while allowing for efficient program implementation. In the Department's judgment, given that NEPA is a procedural statute that simply directs consideration of reasonably foreseeable environmental impacts, it is sufficient for the Department to issue a set of uniform procedures, and it is not necessary for each subcomponent with NEPA responsibilities across the Department to supplement the Department NEPA regulations. Therefore, USDA is correcting course and right-sizing its NEPA regulations consistent with applicable law.

B. USDA Agency-Specific NEPA Regulation Summaries

1. Statement of Purpose

USDA's revised NEPA implementing regulations, as adopted via this final rule, are a more faithful implementation of the statute as amended in 2023 than its previous version of regulations. These regulations implement major structural features of the 2023 amendments to NEPA, such as deadlines and page limits for environmental assessments (EAs) and environmental impact statements (EISs), as directed at NEPA § 107 (e) and (g), 42 U.S.C. § 4336a(e) and (g), and provide that USDA will complete preparation of these documents within the maximum length and on the timeline that Congress intends. They incorporate Congress's definition of "major Federal action" and the exclusions thereto, as codified at NEPA § 111(10), 42 U.S.C. § 4336e(10). They incorporate Congress's mandated procedure for determining the appropriate level of review under NEPA, as codified in NEPA § 106, 42 U.S.C. § 4336. They incorporate Congress's direction with respect to establishment, adoption, and application of categorical exclusions (CEs), as codified at NEPA § 109 (42 U.S.C. § 4336c) and § 111(1), 42 U.S.C. § 4336e(1). They provide procedures governing project-sponsor-prepared EAs and EISs, as directed at NEPA § 107(f), 42 U.S.C. § 4336a(f). They incorporate Congress's revision to the requirements for what an agency must address in its EISs, as

codified at NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C), and Congress's requirement that public notice and solicitation of comment be provided when issuing a notice of intent to prepare an EIS, as directed at NEPA § 107(c), 42 U.S.C. § 4336a(c). All of these are crucial features of Congress's policy design and its purpose in the 2023 amendments that NEPA review be more efficient and certain.

Moreover, the revised regulations respond to the President's directive in EO 14154, *Unleashing American Energy*, 90 FR 8,353, and EO 14192, *Unleashing Prosperity Through Deregulation*, 90 FR 9,065 (Feb. 6, 2025), to ensure that regulatory requirements are grounded in applicable law and to alleviate any unnecessary regulatory burdens. The revised regulations also reflect the Supreme Court's recent and unequivocal statement that NEPA is a purely procedural statute. The Department is conscious of the Supreme Court's admonition that NEPA review has grown out of all proportion to its origins of a "modest procedural requirement," creating, "'under the guise' of just a little more process," "[d]elay upon delay, so much so that the process seems to 'borde[r] on the Kafkaesque.'" *Seven County*, 145 S. Ct. at 1513-1514. These regulations, therefore, are intended to align NEPA with its Congressionally mandated dimensions, reflecting the guidance given also by the President and the Supreme Court, and making review under it faster, more flexible, and more efficient and effective.

Several commenters on the IFR disagree with USDA's approach in the revised regulations and allege it is not consistent with EO 14154, nor is it justified by the executive order which some state is contrary to the statutory direction contained in NEPA. Several other commenters support USDA's approach and expressed their appreciation for USDA's compliance with the EO 14154 and attempt to more closely align the departmental NEPA regulations with the statutory intent of NEPA as originally intended and amended.

EO 14154 directs all agencies to prioritize efficiency and certainty and avoid and minimize delays and ambiguity in the permitting process. USDA's revised departmental regulations guide compliance with NEPA that will better advance the priorities articulated in EO 14154. Consolidating NEPA procedures under one department-wide regulation provides consistency, making USDA's NEPA process more transparent, efficient, and certain for both employees and sponsors, applicants, or other third parties who may work on efforts that span more than one USDA subcomponent.

The rescission of the CEQ NEPA regulations, along with the U.S. Supreme Court decision in *Seven County Infrastructure Coalition* v. *Eagle County, Colorado,* 145 S. Ct. 1497 (2025), provided additional reason for USDA to take a hard look at the NEPA regulatory structure across the Department. With the broader NEPA regulatory environment upended with the rescission of the CEQ regulations, USDA saw this as an opportunity to make necessary course corrections to the department's NEPA regulatory structure and move away from the overcomplicated and burdensome NEPA regulatory framework that evolved over the decades due to promulgation of agency-specific NEPA regulations that continued to layer process requirements on top of those already required by CEQ's NEPA regulations. While previous USDA NEPA regulations (to include agency-specific regulations) necessarily incorporated and adopted the CEQ regulations, CEQ's rescission of their NEPA regulations means departments and agencies are no longer entirely beholden to interpreting and applying NEPA as laid out in any version of 40 CFR Parts 1500-1508.

USDA acknowledges that CEQ's regulations previously provided a framework for NEPA compliance and informed agency practices. However, as CEQ explained in its final rule affirming the removal of its regulations, CEQ lacks independent statutory authority to maintain NEPA implementing regulations that bind agencies in the absence of an executive order delegating rulemaking authority to CEQ. 91 FR at 622-23; *see also*

Executive Order 14154, *Unleashing American Energy*, 90 FR 8,353. Accordingly, departments and agencies may now exercise discretion to adopt procedures consistent with NEPA and executive policies. Indeed, as explained above, because USDA's prior NEPA implementing procedures were expressly designed as a supplement to CEQ's rescinded regulations, CEQ's recission necessitated that USDA adopt new procedures designed to independently implement NEPA.

To this end, USDA is not carrying forward process requirements, which may have been codified in now rescinded regulations, where these do not prioritize efficiency and certainty and do not avoid and minimize delays and ambiguity in the permitting process. Additionally, USDA took into consideration that USDA subcomponents and responsible officials have multiple obligations to consider, such as analyzing the most important resource impacts within statutorily mandated page limits and deadlines, being responsive to varying levels of public interest, managing fluctuations in budget and workforce capacity, and accounting for other situations that require process flexibility. Therefore, in revising the departmental NEPA regulations, USDA consulted with CEQ under NEPA section 102(2)(B), 42 U.S.C. 4332(2)(B) and placed emphasis on: 1) more closely aligning the procedures and processes outlined in the revised 7 CFR 1b regulations with statutory requirements; and 2) promoting responsible official discretion to determine whether to conduct certain processes based on circumstances unique to the USDA subcomponent and the proposal or project at hand.

Furthermore, USDA is currently coordinating with CEQ on the *Permitting Technology Action Plan* that responds to the Presidential Memorandum of April 15, 2025 on *Updating Permitting Technology for the 21st Century*. This permitting technology update is departmental in scope. Logistically and fiscally, it is more efficient and effective to have the entire Department operating under one set of NEPA regulations as part of information technology modernization, improved customer service delivery, and

establishment of more predictable and consistent permitting and environmental review processes – rather than trying to accommodate and design around seven or more ways of conducting NEPA within the same Department, as would be the case with the seven agency-specific NEPA regulations that had been promulgated within USDA.

Some commenters noted that USDA's IFR was not consistent with regulations or procedures published in other department and agency IFRs. USDA recognizes that its approach to implementing NEPA may differ from other department and agency approaches to implementing NEPA. Through this final rulemaking, USDA is revising and affirming NEPA implementing procedures that fit its programs and authorities while maintaining government-wide consistency to the extent possible. As previously discussed, following the removal of CEQ's NEPA regulations, USDA has flexibility to determine department and agency-specific NEPA procedures to modernize, simplify, and accelerate NEPA reviews and support responsible development.

Furthermore, USDA notes that NEPA requires departments/agencies to consult with CEQ when developing NEPA procedures. *See* 42 U.S.C. 4332(2)(B). NEPA does not require departments and agencies to coordinate with one another to ensure identicality between their respective NEPA procedures, let alone between the means by which each department/agency issues those procedures. Department and agency statutory authorities and subject-matter expertise and capacity differ greatly, and variance on these matters is to be expected. Indeed, department and agency NEPA regulations and procedures were not homogenous or identical during the era in which CEQ maintained overarching implementing regulations, as demonstrated by seven non-identical, agency-specific NEPA regulations that had been promulgated within USDA, and there is no requirement or reasonable expectation that they should now be consistent with other departments and agencies when the CEQ regulations have been vacated and rescinded.

Several commenters on the IFR allege that the revised regulations require NEPA compliance and an EIS, or EA at a minimum, needs to be completed.

The establishment of NEPA implementing regulations does not require a NEPA analysis. *See Heartwood* v. *U.S. Forest Serv.,* 230 F.3d 947, 954-55 (7th Cir. 2000) (finding that neither NEPA or the CEQ regulations required the Forest Service to conduct an EA or an EIS prior to the promulgation of its procedures creating a CE).

Several commenters on the IFR allege the changes made to the departmental NEPA regulations, as well as rescission of some agency NEPA regulations, requires programmatic consultation with U.S. Fish and Wildlife Service and National Marine Fisheries Service to comply with the Endangered Species Act (ESA).

Neither the revised USDA NEPA implementing regulations themselves nor the rescission of agency-specific NEPA regulations would result in adverse impacts on endangered or threatened species or designated critical habitat. NEPA and USDA's implementing regulations provide procedures to ensure that agencies account for the environmental impacts of their actions. The commenter's alleged harm to species is speculative. Procedural regulations do not create proximate cause of any potential harm or take, which would result from future agency actions rather than USDA's procedural structure. Such future actions would be subject to the ESA's consultation requirements. Therefore, Section 7 of the ESA does not apply to this rulemaking.

USDA has revised its NEPA implementing regulations to conform to the 2023 statutory amendments, to respond to President Trump's direction in EO 14154 to, "[c]onsistent with applicable law, prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the policy goals set forth in section 2 of [that] order or that could otherwise add delays and ambiguity to the permitting process," (EO 14154, Section 5(c)) and to address the pathologies of the NEPA process and NEPA litigation as identified by the Supreme Court. Where USDA

has retained an aspect of its preexisting NEPA implementing regulations, it is because that aspect is compatible with these guiding principles; where USDA has revised or removed an aspect, it is because that aspect is not so compatible.

2. General Overview of Changes

USDA is modifying the department-level NEPA regulations found at 7 CFR 1b to provide a valid foundation from which USDA mission areas, agencies, and staff offices (or subcomponents) implement NEPA. 7 CFR 1b primarily retains and moves the placement of the following information currently contained in 7 CFR 1b and the individual agency NEPA regulations below: CEs, which includes a list of USDA agencies and offices excluded from completing an EA or EIS; and emergency action provisions. Some additional sections from agency-specific regulations are also retained, as described in the agency-specific regulation discussions listed below. Except for the information to be moved to the revised 7 CFR 1b regulation, the following individual agency NEPA regulations are rescinded in full:

– Agricultural Research Service: 7 CFR 520;

– Animal and Plant Health Inspection Service: 7 CFR 372;

– Farm Service Agency: 7 CFR 799;

– National Institute of Food and Agriculture: 7 CFR 3407;

– Natural Resources Conservation Service: 7 CFR 650;

– Rural Development: 7 CFR 1970; and

– U.S. Forest Service: 36 CFR 220.

The following summaries capture additional specific changes that are occurring for each affected USDA regulation. For all regulations, references to CEQ's rescinded NEPA implementing regulations (40 CFR parts 1500 through 1508) were removed. Where USDA agency NEPA regulations cited portions of the agency regulation that are now being rescinded, those references were also removed and revised to refer to the

applicable section in the revised 7 CFR 1b regulation. Where USDA agency NEPA regulations used agency-developed terms, such as those associated with agency-developed forms and other document types, these have been generalized to allow for the application of consistent Department implementing regulations for NEPA. As discussed previously, USDA agencies will be able to issue agency-specific procedures through technical and program guidance that aligns with NEPA and the Department regulations at 7 CFR 1b.

3. USDA Departmental NEPA Regulations (7 CFR 1b)

USDA is revising the department-level NEPA regulations at 7 CFR 1b to provide necessary guidance and direction for implementing NEPA in the absence of the CEQ NEPA implementing regulations, as rescinded effective April 11, 2025.

With the CEQ NEPA implementing regulations having been rescinded, USDA identified opportunities to reduce redundant and duplicative regulation revision efforts for agency-specific NEPA regulations and instead establish necessary direction at the department-level. This allows the Department to establish consistency across the subcomponents, where desired, in how NEPA is implemented.

Some commenters on the IFR supported USDA's decision to issue revised regulations alone rather than issuing regulations and procedures/technical guidance together or procedures/technical guidance alone. Commenters view this regulations-only approach as establishing more transparency, stability, and durability of USDA's intended approach and commitment to implementing NEPA over the long-term, whereas procedures/technical guidance can be updated at any time with little to no public notice.

USDA is adopting the regulations-only approach in this final rule. It finds that a department-wide regulation offers consistency, stability, transparency, and clear expectations for USDA subcomponents and their stakeholders.

The following provides a summary of what is included or revised in each section of the department-level NEPA regulations, as well as the rationale for the changes.

7 CFR 1b.1 – Purpose: Previous paragraphs (a) and (b) in this section are removed. Paragraphs (a) through (d) are added.

In this section, USDA removes reference to CEQ NEPA regulations at 40 CFR parts 1500 through 1508 and adds clarification of the purpose of the revised departmental NEPA regulations. It codifies the Department's determination that this rule is an interpretative rule. This section specifies the mission areas, agencies, and staff offices (hereinafter USDA subcomponents or subcomponent) the part applies to.

In the final rule, 7 CFR 1b.1(c) is revised to remove "the U.S. Department of Agriculture" and replace it with the acronym USDA. This aligns with the use of USDA throughout the regulations.

No changes have been made to 7 CFR 1b.1(a), (b), and (d) relative to the version released with the IFR in July 2025.

7 CFR 1b.2 – Policy: Previous paragraphs (a), (b), (c), and (d) in this section are removed. Paragraphs (a) through (i) are added and this section is now revised to read as indicated in 7 CFR 1b.2. In this section, USDA outlines the Department's policy on complying with NEPA and specifies roles and responsibilities at the Department for managing NEPA compliance.

7 CFR 1b.2(a) outlines USDA's intent to comply with NEPA. In the final rule, the phrase "as amended by the Fiscal Responsibility Act of 2023" is revised to "as amended". NEPA was amended again by the One Big Beautiful Bill Act of 2025 one day after the IFR published. Additional legislation could be proposed and passed that would amend NEPA again; therefore, USDA finds it appropriate to keep the language regarding amendments to NEPA general instead of citing specific Acts to circumvent the need for administrative updates to the regulations in the future.

7 CFR 1b.2(b) clarifies how USDA will manage NEPA compliance. The final rule changes the USDA senior agency official from the Under Secretary of Natural Resources and Environment to the Deputy Secretary of USDA, as referenced in 7 CFR 1b.2(a) and (b) (to include applicable paragraphs). As all agency or mission area NEPA regulations have been rescinded and USDA is operating under one department-wide regulation, it was determined the senior agency official should be a level higher than a mission area Under Secretary as the senior agency official holds responsibility for ensuring overall Department compliance with NEPA. (All references to the "senior agency official" throughout the regulations were revised to reflect this change and any references to the Under Secretary of Natural Resources and Environment were removed throughout the regulations.) This section provides clarification on the issuance of agency-specific NEPA guidance for processes and practices that address agency-specific laws and program efficiency. 7 CFR 1b.2(b)(2) is revised to refer to "any mission area", rather than "another mission area". This change was necessitated because of the change in the senior agency official (now the Deputy Secretary, not a mission area Under Secretary).

Some commenters on the IFR disagreed with the language in 7 CFR 1b.2(b)(2)(vi) that allows subcomponents to establish procedures for bonding provisions, alleging the language is ambiguous and questioning USDA's statutory authority for this provision. Commenters expressed concern that this provision could be misinterpreted as allowing bonding requirements on the public to participate in the NEPA process as it is not clear what parties this provision applies to. This provision is removed and the list in 7 CFR 1b.2(b)(2) renumbered to reflect this change.

7 CFR 1b.2(c) allows USDA subcomponents to establish subcomponent-specific NEPA guidance so long as the guidance avoids creating unnecessary process. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.2(d) adds requirements to submit to Congress on an annual basis a report that identifies any EA and EIS that such lead agency did not complete by the deadline described in NEPA § 107(g), 42 U.S.C. § 4336a(g), as amended in 2023, and provide an explanation for failure to meet deadlines. This section specifies USDA roles and responsibilities for completing this report. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.2(e) adds the process for how USDA subcomponents will determine when NEPA does not apply. Consideration of whether the action is a major Federal action is added, in line with the definition of major Federal action in NEPA, as amended by the FRA. NEPA does not apply to "non-Federal actions"; therefore, under the terms of the statute, NEPA does not apply to actions with no or minimal Federal funding, or with no or minimal Federal involvement where a Federal agency cannot control the outcome of the proposal. A but-for causal relationship is insufficient to make an agency responsible for a particular action under NEPA. See *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004). By the same token, minimal Federal funding or involvement, which may in a causal sense be a but-for cause of an action, does not by itself convert that action into a Federal action within the meaning of the language of the statute.

Several commenters on the IFR disagreed with the definition of "major Federal action" and proposed changes to the definition, while several other commenters supported the definition as it is defined in NEPA and encouraged USDA to accurately apply it to agency programs and actions, especially as it pertains to loans and loan guarantees. Some commenters disagreed with inclusion of the clause that states the "terms 'major' and 'Federal action' each have independent force" and alleged this inappropriately changes the definition of major Federal action as provided in NEPA. Some commenters proposed that USDA include a list in 7 CFR 1b that identifies actions that are not considered major Federal actions.

Some commenters on the IFR also disagreed with the consideration of "whether the proposal is an action for which another statute's requirements serve the function of the Federal agency's compliance with the Act" and suggested this was not appropriate to include as considerations for when NEPA applies and therefore should be removed.

The term "major Federal action" is statutorily defined in NEPA, as amended by the Fiscal Responsibility Act of 2023. 42 U.S.C. 4336e(10). USDA does not have the authority to change the definition. The clarification that the terms "major" and "Federal action" have independent force is to prompt consideration that an action may be Federal but not major, or major but not Federal. This does not change the definition of major Federal action but rather ensures it is accurately considered and applied. The definition of, and exclusions from, the NEPA term of art "major Federal action", read holistically, support the view that the words "major" and "Federal" within that term of art do have independent force—*e.g.*, "non-Federal actions" with "no or minimal" federal funding or involvement (*i.e.*, actions that are not "Federal" in common-sense terms, and/or that are not "major" when viewed from the perspective of "how much" of the action is truly Federal), are not "major Federal actions". Therefore, the clarification that the terms "major" and "Federal action" have independent force is in keeping with the text and structure of NEPA generally and the definition of "major Federal action" specifically.

USDA considered whether the regulations should specify those actions that are not considered major Federal actions; however, it was decided these determinations are best made on a case-by-case basis – either at a program or project level – by USDA subcomponents so that the regulations do not have to be routinely revised to amend this list. As the regulations apply to multiple USDA subcomponents, it would be difficult to create a list that universally applies to all USDA subcomponents. 7 CFR 1b.2(e) clarifies that threshold determinations of whether NEPA applies may be made on a case-by-case

or programmatic basis and record keeping of the justifications for these determinations is advisable. This includes determination of whether an action is a major Federal action.

With regards to consideration of whether the proposal is an action for which another statute's requirements serve the function of the Federal agency's compliance with the Act, USDA finds this "functional equivalent" provision is appropriate. Other laws, such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), may serve as a functional equivalent for NEPA. The functional equivalent of NEPA for CERCLA (Superfund) actions is the CERCLA Remedial Investigation (RI) and Feasibility Study (FS) process, which includes the Record of Decision. While NEPA requires the formal preparation of an EIS, the RI/FS process under CERCLA assesses a site's impacts and selects a remedy, embodying the intent of NEPA.

The Department is not proposing any change in its current application of the functional equivalent doctrine by codifying it. It is codifying the status quo by incorporating the functional equivalence doctrine into its regulations (7 CFR 1b.2(e)(6)). This is a longstanding doctrine from case law. See Mandelker, Daniel NEPA Law and Litig. 5:16 (2025). "Where federal regulatory action is circumscribed by extensive procedures, including public participation, for evaluating environmental issues and is taken by an agency with recognized expertise, formal adherence to the NEPA requirements is not required unless Congress has specifically so directed." Id., quoting State of MD. v. Train, 415 F. Supp. 116, 122 (D. Md. 1976).

In the final rule, references to "USDA" in 7 CFR 1b.2(e) and applicable paragraphs are revised to "USDA subcomponent" to be consistent with terminology used throughout the revised regulations.

7 CFR 1b.2(f) adds the process for how USDA subcomponents will determine the level of NEPA that applies. Where some agency-specific NEPA regulations identified categories of actions generally requiring an EA or EIS, these sections have not been

carried forward into 7 CFR 1b. NEPA does not require the identification of categories of actions other than those actions that are categorically excluded from documentation in an EA or EIS when a Federal agency has determined the actions normally do not significantly affect the quality of the human environment within the meaning of NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C), NEPA § 111(1), 42 U.S.C. § 4336e(1)). Because the determination of no significance was made during the process of establishing the CE, it is the consideration of whether an extraordinary circumstance exists that may preclude the use of the category (see 7 CFR 1b.3(f)). In determining whether a CE applies to a proposed action, and therefore does not require preparation of an EA or EIS, an agency should evaluate the action for extraordinary circumstances that indicate a normally excluded action is likely to have reasonably foreseeable significant adverse effects. Determinations of whether to prepare an EA or EIS should be based on the anticipated degree of effect, in accordance with NEPA, not on the type of action. An EA shall be prepared when a Federal agency finds that a CE does not apply to an action and the action does not have a reasonably foreseeable significant impact on the quality of the human environment, or the significance of such effect is unknown (NEPA § 106(b)(2) (42 U.S.C. § 4336(b)(2); 7 CFR 1b.2(f)(2)(iv)(A)) and 1b.5(a)). An EIS shall be issued when a Federal agency finds that a CE does not apply and determines an action has a reasonably foreseeable significant impact on the quality of the human environment (NEPA § 106(b)(1), 42 U.S.C. § 4336(b)(1); 7 CFR 1b.2(f)(2)(iv)(B) and 1b.7(a)). This policy accurately reflects the statutory requirements of NEPA for determining the appropriate level of NEPA review (CE, EA, or EIS). In the final rule, the references to "USDA" in 1b.2(e), (e)(1), and (e)(4) were revised to read as "a USDA subcomponent".

This section also includes the new considerations for whether the effects of the proposed action (or alternatives) are significant (7 CFR 1b.2(f)(3)). When defining considerations for significance, USDA is using the concept of "affected environment"

and a list of types of effects that include both short- and long-term effects, both beneficial and adverse effects, effects on public health and safety, economic effects, and effects on the quality of life of the American people.

Some commenters on the IFR disagreed with USDA's considerations for significance. Some would like to see the considerations of significance as they existed in the CEQ NEPA regulations prior to the 2020 revision (context and intensity framing). Others did not support the inclusion of considerations for social and economic factors as part of the affected environment and degree of effects, alleging this will expand – not streamline – effects analysis beyond what NEPA intended. Still other commenters supported the addition of considerations for social and economic effects.

Congress enacted NEPA to declare a national policy "to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and [to] fulfill the social, economic, and other requirements of present and future generations of Americans". 42 U.S.C. 4331(a). Given the statutory language as it relates to fulfilling the social and economic requirements of present and future generations, USDA finds it appropriate to include considerations of social (i.e., "effects on the quality of life of the American people") and economic effects in the consideration of affected environment and degree of effects.

With regards to the rationale the responsible official provides as to whether the degree of effect is significant, USDA is aligning considerations of significance with the statutory items that must be disclosed in an EIS, per NEPA § 102(2)(C)(i-v) (42 U.S.C. § 4332), such as disclosure of reasonably foreseeable environmental impacts (as both short- and long-term effects), consequences of not implementing the action, irreversible and irretrievable commitment of Federal resources, and long-term productivity of the human environment. Instead of leaving the list of types of effects as disparate disclosures, USDA

finds it logical to bring these together when it comes to considerations for significance. The terms "compares to" and "contributes to," as included in the considerations for significance, provide the necessary precision or focus for conducting the analysis of the effects and considering how the potential impacts compare to the consequences, especially as it relates to effects on public health and safety, economics, and the quality of life of the American people, as well as identifying irreversible and irretrievable commitments and how these contribute to loss of long-term productivity for the human environment. Outlining the significance considerations in this manner allows those conducting effects analysis to better focus on the issues to be analyzed in detail for reasonably foreseeable significant impacts and allows the responsible official to better communicate their rationale for deciding how to proceed and why.

As part of the final rule, 7 CFR 1b.2(f)(3)(iii)(A) is revised to add "and beneficial" to the phrase "How the unavoidable short- and long-term adverse [and beneficial] impacts…". As pointed out by some commenters on the IFR, it is appropriate to also compare the beneficial impacts of implementing the action to the short- and long-term adverse or beneficial consequences of not implementing the action, especially as 7 CFR 1b.2(f)(3)(ii)(B) and 7 CFR 1b.11(a)(12)(i) say both beneficial and adverse effects should be considered. 7 CFR 1b.2(f)(3)(iii)(B) is revised to change "or" to "and" and add the word "Federal" in the phrase "How the irreversible [and] irretrievable commitment of a [Federal] resource", as this aligns with the statutory language found in NEPA § 102(2)(C)(v), 42 U.S.C. 4332(2)(C)(v).

7 CFR 1b.2(g) specifies that as part of USDA subcomponent decision-making, NEPA should be integrated with other environmental analyses to demonstrate compliance with other laws. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.2(h) adds limitations on actions taken during the NEPA process. In the final rule, 7 CFR 1b.2(h) is revised to correct the citation "§ 1b.2.h" to "paragraph (h)" and change the reference to "USDA" to "USDA subcomponent" or "subcomponent" to be consistent with terminology used throughout the revised regulations.

7 CFR 1b.3 – Categorical Exclusions and Findings of Applicability and No Extraordinary Circumstance: Revises the title of this section from "Categorical Exclusions" to "Categorical Exclusions and Findings of Applicability and No Extraordinary Circumstance". Department-level CEs previously included in paragraph (a) of this section are moved to § 1b.4, with revisions occurring to these as described in the discussion of changes for § 1b.4. Previous paragraphs (b) and (c) in this section are removed. Paragraphs (a) through (j) are added and this section is now revised to read as indicated in 7 CFR 1b.3.

This section adds procedures for establishing and revising (7 CFR 1b.3(b)), adopting (7 CFR 1b.3(c)), removing (7 CFR 1b.3(d)), and applying (7 CFR 1b.3(e)) CEs.

In the final rule, 7 CFR 1b.3(a) and 7 CFR 1b.3(c)(3) are revised to change the phrase "USDA's Natural Resources and Environment mission area" to "USDA". This change is necessary due to the senior agency official changing from the Under Secretary of Natural Resources and Environment to the Deputy Secretary. In the last sentence of 7 CFR 1b.3(a), the term "USDA agency" at the end of the sentence was changed to "USDA subcomponent" to be consistent with terminology used throughout the revised regulations.

In the final rule, 7 CFR 1b.3(b)(3) is revised to clarify that public notice must be provided in the *Federal Register* regarding USDA's establishment or revision of a CE and location of availability of any additional written record. As previously written, it was interpreted that the entire written record must be provided in the *Federal Register*, and that was not the intent. The intent is to make the public aware of where the written

justification can be found, which does not need to be in the *Federal Register* notice itself. The final rule also revises the term "justification" to "record" in this section, as well as in 7 CFR 1b.3(d)(1-3) and revises references to "categories" in § 1b.3(c)(3)(iii) to now read as "categorical exclusions".

7 CFR 1b.3(e) adds clarification that USDA subcomponents may use any of the CEs listed at 7 CFR 1b.4, as well as use non-USDA categories that were adopted by any other USDA subcomponent as specified at § 1b.3(c)(3)(ii).

Several commenters on the IFR disagreed with the provision in the revised regulations that allows any USDA subcomponent to use the CEs now listed in the departmental NEPA regulations at 7 CFR 1b.4, which were initially promulgated through USDA agency-specific NEPA regulations that have now been rescinded. Some commenters also disagreed with the provision that allows any USDA subcomponent to use a CE already established by another USDA subcomponent or adopted from another agency by another USDA subcomponent. Commenters allege additional analysis is required to understand the effects anticipated if the CEs are used by different USDA subcomponents. Some commenters want all agency-promulgated CEs to be formally "adopted" by the Department to allow for appropriate use by subcomponents implementing actions in different settings.

As explained in the preamble for the IFR, the USDA NEPA regulations have always included Department-wide CEs (now moved to 7 CFR 1b.4). See 48 FR 11403 (March 18, 1983) and 60 FR 66481 (Dec. 22, 1995). Given the issuance of one set of departmental NEPA regulations to provide consistency for all USDA subcomponents implementing NEPA, the rescission of agency-specific NEPA regulations, and the overlap of similar programs and activities across USDA mission areas and agencies, the Department finds it is appropriate for USDA subcomponents to apply the same CE where the actions proposed by the subcomponent apply to the actions described by a CE. The

focus of a CE is on the character of the actions being proposed and ensuring such actions do not result in an extraordinary circumstance that creates reasonable uncertainty whether the degree of the effect is significant or certainty that a reasonably foreseeable significant effect will occur. The focus is not on the identity of the agency that conducts the action. Where a CE is relevant only to a USDA subcomponent's bespoke program, the CE is already written in a way that its use will be limited to that subcomponent. For example, CE USDA-26c-USFS applies to the "Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands"; therefore, this CE clearly only applies to the U.S. Forest Service. Additionally, the revised regulations applied numbering that includes the acronym of the USDA subcomponent that initially promulgated the CE, making it clear which subcomponent the CE generally applies to or indicating which subcomponent should be consulted to ensure proper application should another USDA subcomponent want to apply the CE.

There is, therefore, no reason in principle that a USDA subcomponent cannot rely on another agency's CE or adopted CE for the same kind of proposed action. In the case of USDA subcomponents being able to use one another's CEs, USDA subcomponents also share the same extraordinary circumstances review protocol and are readily able to confer with their fellow USDA subcomponents when questions arise. Similarly, for CEs that have already been adopted by a USDA subcomponent, another USDA subcomponent using that CE for the first time can readily confer with the agency that originally promulgated the CE without going through another formal adoption process. In addition, should a USDA subcomponent's proposed action be different from the proposed action encompassed by the CE originally promulgated by another agency, there would be no reason for the USDA subcomponent to rely on that other agency's CE, and the concerns the commenter raises would not arise.

Upon reviewing CEs adopted by USDA agencies since 2024, USDA found that 5 categories had been adopted twice by USDA agencies (Rural Utility Service and Forest Service) for actions that overlap mission areas and instances where these two agencies often function as joint leads or participating agencies on an action. Furthermore, the one example raised by a commenter alleging a CE promulgated by the Farm Service Agency for construction or ground disturbance actions could not apply to the Forest Service is moot because the CE has already been adopted by the Forest Service. These examples readily illustrate why USDA included the provisions in the revised regulations that allow USDA subcomponents to use any CE originally promulgated by another USDA subcomponent (as found in 7 CFR 1b.4) or adopted by another USDA subcomponent (as listed on a USDA website). USDA subcomponents already consult with each other on the historical use and substantiation used to establish a CE when they are unsure if a CE supports an action.

7 CFR 1b.3(e) also clarifies that USDA subcomponents may apply one or more CEs to a proposed action.

Several commenters on the IFR disagreed with the clarification in the revised regulations that more than one CE can be applied to a set of actions, alleging that this practice could lead to significant adverse impacts when "stacking" the use of more than one CE in the same area.

In some circumstances, the combination of CEs can cover all aspects of a proposed action and support a subcomponent's determination that the proposed actions, when considered in their entirety, are not likely to have a reasonably foreseeable significant adverse effect. The intent is not to allow for improper segmentation, whereby a subcomponent would improperly divide a single project into arbitrary segments divorced from logical termini, *e.g.*, by dividing a 10-acre project into 1-acre segments. Rather, the intent is to clarify that a subcomponent may apply multiple CEs when

considering proposed actions in their entirety. In such cases, the subcomponent must make a single, comprehensive determination that the CEs, when applied together, are applicable to the action as a whole and do not undermine the conclusion that the proposed action as a whole does not warrant further review in an EA or EIS.

A USDA subcomponent's reliance on multiple CEs is not precluded by NEPA, as they constitute "*categories* of action," not distinct "actions," and therefore a subcomponent can reasonably determine that an action or all constituent elements of an action fit within multiple designated "categories". If applying more than one CE to a set of actions, the cause-effect relationship must account for the impact of all the actions. It may very well be that the actions as a whole, even though implemented under more than one category, do not lead to an extraordinary circumstance or significant effects. Therefore, the actions may appropriately proceed under more than one category and would continue to be excluded from further analysis in an EA or EIS.

In summary, no changes have been made to section 1b.3(e) relative to the version released with the IFR in July 2025.

7 CFR 1b.3(f) adds procedures for considering extraordinary circumstances, explanation of what constitutes an extraordinary circumstance, and clarification for how the subcomponent should proceed based on the determination of whether there are extraordinary circumstances. Consideration of extraordinary circumstances takes into account the nature of the proposed actions and the context of the potentially affected environment, with a list of resources or circumstances the responsible official may want to screen for in the potentially affected environment. This section also clarifies an extraordinary circumstance means a unique situation exists in which actions that normally do not have significant impacts and are therefore categorically excluded from documentation in an EA or EIS, create uncertainty whether the degree of the impact is significant for the relevant resources considered (7 CFR 1b.11(a)(17)). The mere

presence of one or more of the resources or circumstances listed in 7 CFR 1b.3(f)(1) does not mean an extraordinary circumstance exists. If there is a cause-effect relationship (impact) between the proposed actions and the resource considered, an extraordinary circumstance exists only when there is reasonable uncertainty whether the degree of the effect is significant or certainty that the degree of effect is significant. In such instances, the agency will conduct additional NEPA review under an EA or EIS, as appropriate.

In the final rule, 7 CFR 1b.3(f)(2) is revised to add clarification to the sentence that begins with "If there is a cause-effect relationship…". This sentence is split into two sentences and the first sentence now reads as: "If there is a cause-effect relationship (impact) between the proposed actions and the resource considered, the responsible official should consider if there is something unique to the actions proposed or to the condition of the affected environment or resource(s) considered that creates uncertainty about the degree of potential effect or would lead to a reasonably foreseeable significant effect." This clarification better conveys USDA's intent for how responsible officials should consider extraordinary circumstances. Categories are identified for those actions that routinely have been found to not result in reasonably foreseeable significant effects, and thus that the agency has determined "normally does not significantly affect the quality of the human environment. However, when applying a CE, responsible officials should consider if there is something unique to the actions proposed or to the condition of the affected environment or resource(s) considered that creates uncertainty about the degree of potential effect or would lead to a reasonably foreseeable significant effect.

Previously, some agencies had mandated lists of resources to consider for extraordinary circumstances while other agencies had no list. USDA adds a list of resources (based on the previously existing lists in some USDA agency-specific NEPA regulations) a responsible official may consider for extraordinary circumstances but does not mandate any of these must be considered. Considerations for extraordinary

circumstances will be made at the responsible official's sole discretion and determined on a case-by-case basis, considering the nature of the proposed action and the potentially affected environment. This section adds clarification on what constitutes the existence of an extraordinary circumstance and specifies that effects analysis completed to demonstrate compliance with other applicable laws also can be relied on to determine no extraordinary circumstance exists for the resource considered. The Department added this clarification because some agencies were creating duplicative and unnecessary reports in the past.

Several commenters on the IFR expressed concern with the way extraordinary circumstances are defined in the revised regulations. Commenters also generally did not support the clarification that responsible officials have sole discretion to determine resources to be considered for extraordinary circumstances, to modify the proposed action or take other steps to create certainty regarding the degree of effect, or to determine there is "reasonable certainty" a reasonably foreseeable significant impact will not occur. Some commenters also requested that consideration of "important or prime agricultural, forest, or range lands" be removed from resources that may be considered, and the consideration of "American Indians and Alaska Native religious or cultural sites" be added to resources that may be considered.

USDA finds it appropriate to provide for responsible official sole discretion when determining resources for consideration for extraordinary circumstances, as this determination shall be based on the nature of the actions proposed and in the context of the potentially affected environment. Responsible official discretion and determinations of whether an extraordinary circumstance exists is informed by interdisciplinary review (7 CFR 1b.3(g)(2)(v)). To make this clearer in response to the comments expressing concern about responsible official "sole discretion", a sentence in 7 CFR 1b.3(f) is revised to read: "Resources for consideration for extraordinary circumstances will be

determined at the responsible official's sole discretion, [added: as informed by interdisciplinary review]…".

Rather than adding undue process for each and every action undergoing a CEs review, the USDA regulations promote responsible official discretion to determine which resources need to be considered for extraordinary circumstances. Consideration of some resources may be filtered out when looking at what is present in the potentially affected environment and where or how actions will occur.

Section 1b.3(f)(1), which provides a non-exclusive list of the resources the responsible official may screen for in the potentially affected environment when considering extraordinary circumstances, is revised in the final rule to change "important or prime agricultural, forest, or range lands" to "prime, unique, or important farmland as defined by and subject to the provisions of the Farm Protection Policy Act". The extraordinary circumstance that was listed as "Property (*e.g.,* sites, buildings, structures, and objects) of historic, archeological, or architectural significance, as designated by Federal, Tribal, State, or local governments, or property eligible for listing on the National Register of Historic Places" in the IFR is revised in the final rule to have the last portion of the sentence read as "or property eligible for or listed on the National Register of Historic Places". The intent is for properties already listed on the National Register of Historic Places to be considered for extraordinary circumstances, but the previous wording implied it was only properties eligible for listing that needed to be considered. The same section is also revised in the final rule to add "American Indians and Alaska Native religious or cultural sites" as a standalone consideration.

7 CFR 1b.3(g) adds the concept of a finding of applicability and no extraordinary circumstance (FANEC), which applies to all CEs. For those categories requiring NEPA documentation, the regulations specify that these determinations must be documented to demonstrate the appropriate use of the category, adequate consideration of extraordinary

circumstances, and a determination that no extraordinary circumstance exists. The regulations give agencies flexibility on how to document these determinations so long as certain items are addressed. It also clarifies documentation considerations for other applicable environmental laws and regulations and timing of action.

In the final rule, 7 CFR 1b.3(g)(2)(iii) is revised to replace the word "certify" with the phrase "state how", to now read: "Describe the proposed action and state how the category or categories used are applicable to the actions". The word "certify" was raising questions internally as to what was required to certify the category or categories used, when the intent is merely to state how the category(ies) apply.

7 CFR 1b.3(h) clarifies that USDA subcomponents may rely on other CE determinations. In the final rule, 7 CFR 1b.3(h) is revised to clarify that reliance on CE determinations can also include those determinations made within the USDA subcomponent, not just those determinations of other agencies, as there was internal interpretation that USDA subcomponents could not rely on their own previous determinations. The title of this section was also revised to remove the phrase "of other agencies", as this phrase was contributing to much of the misinterpretation. This change also aligns with the reliance approach outlined in 7 CFR 1b.9(e)(8). This section was also revised to clarify how responsible officials may rely on CE determinations. Reliance can just be on a previous determination that a category or categories applies to the activities being proposed when the activities are substantially the same as those described by the USDA subcomponent or other agency, but the extraordinary circumstance considerations are not substantially the same. Reliance can also be on both the previous determination that a category or categories applies to the activities being proposed when the activities are substantially the same and the previous determination that no extraordinary circumstances exist when the potentially affected environment and resources considered for extraordinary circumstances are substantially the same. The phrase "substantially the

same" was already used in 7 CFR 1b.3(h) and was used in 7 CFR 1b.9(e)(8)(i) (as published in the IFR); therefore, this phrase is not solely introduced as part of this final rule but is appropriately used in place of language that was similar in meaning but not exact in wording. As previously worded, it was not clear internally that reliance could only be for the finding that the category (or categories) fits the actions being proposed, or for both that finding and the finding that no extraordinary circumstances exist, as specified at 7 CFR 1b.3(g). In the final rule, the last sentence in this section regarding documentation of reliance was deleted and is now addressed at 7 CFR 1b.9(e)(8)(ii).

7 CFR 1b.3(i) outlines other documentation USDA subcomponents may need to consider when applying CEs. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.3(j) clarifies when timing of the agency action may occur when a CE applies. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.4 – Categorical Exclusion of USDA Subcomponents and Actions: This section revises the title from "Exclusion of Agencies" to "Categorical Exclusion of USDA Subcomponents and Actions". Previous paragraphs (a) and (b) are combined into one paragraph, now paragraph (a), which is revised to read as indicated in 7 CFR 1b.4. Paragraphs (b), (c), and (d) are added to this section.

7 CFR 1b.4(a) includes the list of USDA subcomponents generally excluded from preparing an EA or EIS, with the list of those subcomponents previously listed not changing during this rulemaking process; however, other general offices of the Department were added to this list.

Some commenters on the IFR suggested that the programs and activities of the Food Safety and Inspection Service (FSIS) should not be excluded from the preparation of an EA or EIS. FSIS programs and activities are currently excluded from the

preparation of an EA or EIS in 7 CFR 1b.4(a)(5) of the IFR. This CE was carried over from the prior version of 7 CFR 1b.4.

Several commenters on the IFR assert that FSIS' actions constitute major Federal actions with significant environmental effects and that the CE is inconsistent with NEPA. One group of commenters, the Center for Biological Diversity (CBD), Humane World for Animals (formerly, Humane Society of the United States), and Humane World Action (formerly, Humane Society Legislative Fund) previously submitted a petition requesting promulgation of a rule rescinding the CE for FSIS programs and activities in 7 CFR 1b.4(a)(5). In their comments on the IFR, these organizations include some of the same arguments made in their petition for rulemaking and reference the petition for rulemaking. Another commenter independently submitted comments on this rulemaking that mirror the comments submitted by CBD, Humane World for Animals, and Humane World Action on the IFR and some of the arguments in the petition.

After carefully considering the issues raised by the comments on the IFR, USDA has decided to retain the CE in 7 CFR 1b.4(a)(5). Specific arguments raised in these comment letters on the IFR are addressed below.

The commenters argue that NEPA authorizes categorical exclusions only for individual actions or categories of actions. Commenters claim that the CE in 7 CFR 1b.4(a)(5) violates NEPA because it categorically excludes FSIS as an entity and does not categorically exclude individual actions or categories of actions of FSIS.

The commenters mischaracterize the nature of FSIS' categorical exclusion by suggesting it applies to the agency as an entity. The CEs in 7 CFR 1b.4(a) apply to "programs and activities" of the listed subcomponent agencies, not the agencies as entities. The CEs in 7 CFR 1b.4(a) thus reflect USDA's determination that the programs and activities carried out by FSIS (and other USDA subcomponents) do not normally result in reasonably foreseeable significant impacts on the natural or physical

environment, which is the statutory standard for establishment of a CE, *see* 42 U.S.C. § 4336e(1). This analysis, while clearer under the current version of 7 CFR 1b.4(a), was the fundamental analysis underlying the initial promulgation of the CE. The original language from 1983 establishing the CE for FSIS' programs and activities was as follows: "The USDA agencies listed below carry out programs and activities which have been found to have no individual or cumulative effect on the human environment. These agencies are excluded from the requirements to prepare implementing procedures. Actions of these agencies are categorically excluded from the preparation of an EA or EIS unless the agency head determines that an action may have a significant environmental effect."

Thus, the CE is not a blanket exemption from NEPA documentation. Rather, the establishment of a CE, and subsequent agency findings that an action is excluded pursuant to that categorical exclusion, are forms of NEPA compliance expressly authorized by statute, *see* 42 U.S.C. §§ 4336(a)(2), (b)(2), 4336e(1). The establishment of (or, in this case, the decision to maintain) a CE is based on a determination that FSIS' programs and activities do not normally require preparation of an EA or EIS.

The commenters also argue that FSIS authorizes actions that have significant impacts on the environment. USDA disagrees. USDA has concluded that FSIS actions involve programs and activities that normally do not significantly affect the quality of the human environment and therefore, to the extent that NEPA applies to the FSIS' actions at the threshold state (which, as explained in what follows, it does not, as clarified by recent statutory amendments), the CE is appropriate. Moreover, FSIS' actions involve programs and activities that are either mandatory, i.e., non-discretionary, or ministerial in nature and, therefore, do not constitute "major Federal actions" that trigger NEPA review in the first instance, as illuminated by the definition of and exclusions from the definition of that term as codified in the 2023 statutory amendments to NEPA, *see* 42 U.S.C.

§ 4336e(10). In the discussion below, we describe representative FSIS activities and explain how they do not constitute major Federal actions.

FSIS administers inspection programs under the Federal Meat Inspection Act (FMIA), (21 U.S.C. §§ 601-695) the Poultry Products Inspection Act (PPIA) (*Id.* §§ 451-470), and the Egg Products Inspection Act (EPIA) (*Id.* §§ 1031-1056). These statutes *require* FSIS to provide inspection services to establishments that meet statutory requirements and to apply the mark of inspection to products that are not adulterated or misbranded (*See id*. §§ 455, 457, 603-604, 1034, 1035). FSIS has no authority to deny inspection or label approval based on effects to natural resources such as emissions, wastewater discharges, odors, traffic patterns, land use, or other environmental factors regulated by agencies such as the Environmental Protection Agency (EPA) or the Occupational Safety and Health Administration (OSHA), or state and local authorities.

Likewise, FSIS' line speed rulemakings address a narrow, inspection-administration question: what maximum rate, if any, is compatible with FSIS' ability to carry out required post-mortem inspection and with establishments' ability to maintain process control so that adulterated products do not enter commerce. The statutes do not give FSIS authority or discretion to make rulemaking decisions for line speed based on potential environmental impacts.

The Secretary is authorized to withhold or suspend inspection services, or issue "regulatory control actions," where establishments fail to comply with sanitation requirements. While FSIS has discretion to choose among these enforcement mechanisms based on the facts of a particular case, this discretion is limited to ensuring compliance with food safety requirements and protecting public health. Nothing in the FMIA, PPIA, or EPIA authorizes FSIS to alter the manner in which it carries out its obligations to prevent adulterated products from entering commerce in light of environmental considerations, waste reduction, or other such policy objectives. These actions therefore

do not constitute major Federal actions and are therefore not subject to NEPA as a threshold matter. *See* 42 U.S.C. § 4336e(10)(B)(vii).

Additionally, FSIS' decisions regarding the number of government inspectors assigned to an establishment are driven by statutory inspection mandates and staffing needs and do not authorize, fund, or control establishment operations or environmental outcomes. The statutes do not authorize FSIS to assign or withhold inspectors to influence establishment production volume, waste generation, or other potential environmental effects. Therefore, FSIS' decisions regarding the number of government inspectors assigned to an establishment do not constitute major Federal actions. *See* 42 U.S.C. § 4336e(10)(B)(i), (vii).

In commenters' final argument, they contend that FSIS actions, particularly those related to slaughter line speeds, have reasonably foreseeable downstream effects on animal production, transportation, pollution, and waste management that must be analyzed under NEPA.

Under NEPA, the "mandated focus. . . is 'the proposed action'—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration". (*Seven County Infrastructure Coalition v. Eagle County* 145 S. Ct. 1497, 1515 (2025)) "[A] court may not invoke but-for causation or mere foreseeability to order agency analysis of the effects of every project that might somehow or someday follow from the current project. NEPA calls for the agency to focus on the environmental effects of the project itself, not on the potential environmental effects of future or geographically separate projects." (*Id*. at 190 (internal citations omitted)) "The agency may draw what it reasonably concludes is a 'manageable line'—one that encompasses the effects of the project at hand, but not the effects of projects separate in time or place." (*Seven County*, 145 S. Ct. 1497, 1517) Therefore, "[a]n agency may decline to evaluate environmental

effects from separate projects upstream or downstream from the project at issue". (*Id.* at 191)

These same principles apply here. FSIS' actions are limited to ensuring food safety, proper labeling, and humane handling. As such, FSIS regulates sanitation standards, wholesomeness of products, labeling claims, and humane methods of handling and slaughter. FSIS does not regulate animal production, transportation, pollution, or waste management. These activities are regulated by other Federal, state, or local authorities. As such, when determining whether an FSIS action (i.e., regulation of slaughter line speeds) may require NEPA analysis (as described above FSIS does not believe any of its actions are major Federal actions), FSIS is not required to look at effects that may be "factually foreseeable" but are irrelevant to the agency's decision-making process and over which FSIS possesses no regulatory authority. (*Id.* at 187) For these reasons, downstream effects that an FSIS action may lead to or relate to, such as animal production, transportation, pollution, and waste management activities which are conducted and/or regulated by others, are not effects of FSIS' action and do not trigger NEPA review by FSIS.

Though FSIS has no obligation to analyze these downstream effects, it has addressed factual contentions about them in response to public comments in prior line speed rulemakings. *See* Modernization of Swine Slaughter Inspection, 84 FR 52300, 52317 (Oct. 1, 2019); Modernization of Poultry Slaughter Inspection, 79 FR 49566, 49610-11 (Aug. 21, 2014). In these rulemakings, commenters asserted that faster line speeds would cause an increase in the total number of animals that a facility would process, which in turn would cause increased water usage, emissions, and consumption of electricity. As FSIS explained in those proceedings, these assertions are misplaced. Faster line speed may allow for more efficient processing but has no direct effect on consumer demand that determines the total number of animals slaughtered. Accordingly, FSIS

determined these rulemakings would not have significant effects and sustained the application of the categorical exclusion.

In summary, FSIS does not engage in major Federal actions significantly affecting the quality of the human environment. Instead, FSIS programs and activities either: (1) are ministerial or mandatory, and not discretionary, and therefore do not fall within the definition of "major Federal action" subject to NEPA, *see* 42 U.S.C. § 4336e(10); or (2), even if they did fall within this definition, normally do not significantly affect the quality of the human environment, and are therefore appropriate bases for establishment of a categorical exclusion, *see id.* § 4336e(1). Therefore, it remains appropriate for USDA to retain the CE for FSIS' programs and actions in 7 CFR 1b.4(a)(5).

7 CFR 1b.4(b) clarifies how CEs are organized and numbered in the revised regulations. No changes have been made to this section relative to the version released with the IFR in July 2025.

The department-level CEs previously listed in 7 CFR 1b.3 have been moved to 7 CFR 1b.4(c) in this section. Examples of actions that fit the category were added to some of the department-wide categories, as further described under the agency-specific regulation changes discussed below. Some agencies had CEs that were duplicative of the department-wide categories or served as examples of those categories; therefore, these were removed as separate categories and added as examples of the department-wide categories where applicable.

CEs previously codified in USDA agency-specific NEPA regulations are now consolidated under 7 CFR 1b.4(c) and (d) in this section. Any changes to the CE language, as previously documented in agency-specific NEPA regulations, are discussed under the applicable agency-specific justification sections below. Other than these few modifications to categories, the majority of categories remain unchanged as originally promulgated and are simply moved from one section of USDA's regulations to another.

Categories are organized in the revised regulations by those that do (7 CFR 1b.4(d)) or do not (7 CFR 1b.4(c)) require NEPA documentation. New numbering was assigned to each CE to make it easier to reference categories across the Department as any USDA subcomponent may utilize the CEs listed in 7 CFR 1b. Numbering includes acronyms at the end indicating the agency that initially established the category to help agency personnel more readily locate the categories they are likely to continue using frequently, as well as to allow Department personnel to identify the agency that originally promulgated the CE should another USDA subcomponent need to consult that agency on appropriate application of the category.

7 CFR 1b.5 – Environmental Assessments: This section is added to read as indicated in 7 CFR 1b.5. This section adds procedures for issuing EAs and reinforces the role of an EA.

7 CFR 1b.5(a) outlines the conditions for when an EA will be completed. In the final rule, 7 CFR 1b.5(a) is revised to remove two erroneous inclusions of the phrase "the policy in" when referencing sections 1b.2(e) and 1b.2(f) in the regulations.

7 CFR 1b.5(b) adds requirements for defining the "Scope of Analysis" in an EA. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.5(c) gives agencies flexibility on how to format the EA so long as certain items are addressed. It also provides clarification on requirements for analysis of alternatives for an EA and reiterates the importance of deadline and page limit requirements from NEPA, as amended in 2023. Consideration of taking no action shall be included as part of the environmental impacts analysis to contrast the potential impacts of the proposed action, and any alternative(s) if developed, with the current condition and expected future condition if the proposed action or alternative were not implemented (7

CFR 1b.5(c)(2)(i)). This is necessary to inform aspects of the consideration of significance, as specified in 7 CFR 1b.2(f)(3).

In the final rule, 7 CFR 1b.5(c) is revised to specify the scope of analysis must be included in the elements for an EA. This is not a new requirement; the requirement in 1b.5(b) to address scope of analysis in the EA was included in the IFR. However, Department personnel pointed out that this requirement could be easily missed in the process of developing an EA because it was not highlighted as a required element for an EA.

In the final rule, 7 CFR 1b.5(c)(3) is revised to change the word "consequences" to "impacts". As pointed out by Department personnel, this change is necessary to align with terminology used in this section (environmental impacts) when clarifying the option to combine the potentially affected environment discussion with the environmental impacts discussion.

In the final rule, 7 CFR 1b.5(c)(6) is revised to clarify that the certifying statement for page limits and deadlines does not require a signature, as this was raising questions internally as to whether an EA needs to be signed by the responsible official to make this statement "certified". The revised language also clarifies that approval to publish the EA to a USDA website indicates the responsible official has reviewed the EA and concurs with the certifying statement.

In the final rule, 7 CFR 1b.5(c)(7) is added to the list of elements required for an EA and reads as *"Unique identification number"*. The USDA subcomponent shall include a unique identification number on the environmental assessment, as required by § 1b.9(u)". This is not a new requirement, as the requirement in 1b.9(u) to provide a unique identification number on EAs and EISs for tracking purposes was included in the IFR. However, Department personnel pointed out that this requirement could be easily missed

in the process of developing an EA because the unique identification number was not highlighted as a required element for an EA.

7 CFR 1b.5(d) emphasizes the statutory requirements for EA page limits. In the final rule, this section is revised to add the citations to NEPA for page limits for EAs to clarify these page limits are statutorily required and not a requirement established in the USDA NEPA regulations.

7 CFR 1b.5(e)states that subcomponents are to adhere to the statutory deadlines and publish an EA "in as substantially complete form as is possible". This section also requires responsible officials to certify that they made a good faith effort to satisfy the page limit and deadline requirements in the statute. It clarifies when seeking an extension to the deadline is appropriate. These new additions provide the Department's policy on how it will apply the new statutory deadlines in 42 U.S.C. § 4336a(g) and page limits in 42 U.S.C. § 4336a(e). This policy is based on the rationale that NEPA is governed by a "rule of reason". *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004). In establishing deadlines for the EA process in the 2023 revision of NEPA, Congress supplied the measure of that reason in NEPA § 107(g), 42 U.S.C. § 4336a(g). "Time and resources are simply too limited for us to believe that Congress intended" consideration under NEPA to extend indefinitely. *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983) (citing *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 551 (1978)). This section also clarifies when it may be appropriate to publish a notice of intent to prepare an EA and provides direction on making the EA available to the public.

In the final rule, the second sentence in 7 CFR 1b.5(e)(1) is revised to add "of environmental impacts" at the end of the sentence. This is to clarify the stage at which the interdisciplinary review referred to is occurring. As pointed out by Department personnel, interdisciplinary review also occurs to inform development of the proposed action. This

change clarifies that at this stage of interdisciplinary review the proposed action is considered final and now interdisciplinary review is shifting to analyzing impacts of that proposed action.

In the final rule, 7 CFR 1b.5(e)(3) is revised to now include paragraphs (i), (ii) and (iii). In paragraph (ii), clarification is provided that publishing a notice of intent for an EA will be at the sole discretion of the responsible official and clarifies what the notice of intent will include if one is published, as there was internal confusion as to whether the notice of intent for an EA needed to be the same as that for an EIS (as outlined in 7 CFR 1b.7(b)). The added language in paragraph (iii) also clarifies that, notwithstanding other statutory or regulatory requirements, the decision to solicit public comment in the notice of intent for an EA shall be at the sole discretion of the responsible official, as there is no statutory requirement in NEPA to solicit public comment in a notice of intent published for an EA, though there is such a statutory requirement for a notice of intent published for an EIS. This does not change the Department's stance in the IFR because the IFR did not require EAs to provide an opportunity for public comment, as this is not statutorily required by NEPA.

7 CFR 1b.5(f) provides requirements for publishing the EA to a USDA website. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.5(g) clarifies circumstances where it may be appropriate to extend deadlines for an EA. In the final rule, this section is revised to remove the erroneous first "as" in the phrase "such as time as", now reading as "such time as".

7 CFR 1b.5(h) adds a requirement for the responsible official to certify that the EA was completed within the deadline. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.6 – Finding of No Significant Impact: This section is added to read as indicated in 7 CFR 1b.6.

This section adds procedures for issuing findings of no significant impact and reinforces the role of a finding of no significant impact (FONSI). It gives agencies flexibility on how to format the FONSI so long as certain items are addressed. It also provides direction on making the FONSI available to the public, providing notifications, and timing of the action.

7 CFR 1b.6(a) specifies the general requirements for when a FONSI will be prepared. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.6(b) outlines the elements that must be addressed in the FONSI. In the final rule, 7 CFR 1b.6(b)(3) is revised to remove an erroneous sentence at the end of the paragraph. The sentence had previously been revised to reflect the correct statement found in the sentence prior to the last sentence in this paragraph, but the incorrect sentence at the end of the paragraph was not deleted. The following correct sentence remains: "If the responsible official finds no significant impacts based on mitigation, state the authority for any mitigation that the responsible official has adopted and any applicable monitoring or enforcement provisions." The following erroneous sentence has been deleted: "If the responsible official finds no significant effects based on mitigation, the mitigated finding of no significant impact will state any mitigation requirements enforceable by the subcomponent or voluntary mitigation commitments that will be undertaken to avoid significant effects, and any applicable monitoring or enforcement provisions."

7 CFR 1b.6(c) clarifies other considerations for documentation. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.6(d) includes requirements for publishing the FONSI. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.6(e) includes requirements for the responsible official to provide notifications of the availability of the FONSI. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.6(f) provides clarification on the timing of the action. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7 – Environmental impact statements: This section is added to read as indicated in 7 CFR 1b.7.

This section adds procedures for issuing EISs and reinforces the role of an EIS.

7 CFR 1b.7(a) outlines the conditions for when an EIS will be completed. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7(b) outlines the requirements for publishing the notice of intent. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7(c) specifies the scoping process that may be applied. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7(d) adds clarity on the process for requesting comments during preparation of an EIS to align with statutory requirements in NEPA (§ 102(2)(C), 42 U.S.C. § 4332(2)(C); (§ 107(c), 42 U.S.C. § 4336a(c)).

7 CFR 1b.7(d) also specifies that a request for comment may be undertaken at any time that is reasonable in the process of preparing an EIS, as the publication of a draft EIS is no longer required. NEPA does not require publication of a draft EIS, and filing a draft EIS with the Environmental Protection Agency and publishing the notice of availability in the *Federal Register*, as previously required by the now rescinded CEQ

regulations, adds time and unnecessary process. Responsible officials still have the discretion to publish a draft EIS on a USDA website, along with any other pre-decisional materials that, in their judgment, may assist in fulfilling their responsibilities under NEPA and in facilitating the request for comments.

7 CFR 1b.7(d) also reiterates that USDA subcomponents must ensure the process of obtaining and addressing comments and the publication of draft or pre-decisional materials must not cause the subcomponent to violate the Congressionally mandated deadline for completion of an EIS.

In the final rule, 7 CFR 1b.7(d)(2)(iv) is revised to remove the phrase "including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action or action alternatives". A slightly revised version of this phrase is added at the end of 7 CFR 1b.7(d)(2) that reads as: "May request the comments of the following in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action or action alternatives:". This change was made to clarify that solicitation of comments should occur in a manner designed to inform all of the entities listed, as some Department personnel were interpreting that only to apply to the public when the phrase was included at the end of paragraph 1b.7(d)(2)(iv) of this section.

7 CFR 1b.7(e) provides requirements to provide for electronic submission of comments and publishing all substantive comments electronically, or summarizing substantive comments and including this summary as an appendix in the EIS. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7(f) specifies that subcomponents shall consider comments and should address comments raising substantive issues or recommendations. This section also focuses the subcomponent on addressing comments by capturing the action the responsible official took in response to the issue raised or recommendation made, and

recommends that documentation of how comments were addressed should be included as an appendix in the EIS.

Section 1b.7(f) also requires electronic publication of substantive comments and provides an alternative course of action (providing a summary of comments received) if USDA subcomponents do not have the capability or capacity to electronically publish comments.

Section 1b.7(f) also specifies that USDA subcomponents shall consider substantive comments but leaves discretion for addressing substantive comments in writing. There is no requirement in NEPA to address comments in writing; however, documentation of how comments were considered is highly encouraged to demonstrate the rationale for how the responsible official decides to proceed during the iterative development of the proposed action and action alternatives and the iterative analysis process. This documentation of how the responsible official proceeded and why is advantageous to demonstrating that decisions made during the iterative NEPA process are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; however, experience implementing the previous CEQ NEPA regulation requirement for responding to comments has demonstrated this process led to burdensome and time-consuming efforts that routinely prevented USDA subcomponents from meeting the 2-year deadline for completing an EIS, which is now statutorily required (NEPA § 107(g)(1)(A), 42 U.S.C. 4336a(g)(1)(A)).

Additionally, the approach to "response to comments" that has been employed by some USDA subcomponents was not always been the most effective in that it did not focus on demonstrating the action the responsible official took in response to the substantive issue raised and/or recommendation made. In some cases, the "response to comments" documentation generated levels of paperwork that exceeded the page count of

the environmental document itself, defying one of the key principles of NEPA to generate better decisions, not better documents.

For this reason, section 1b.7(f) also clarifies that if documentation is completed to demonstrate how comments were considered and addressed, the documentation should focus on capturing the actions taken, as specified at 7 CFR 1b.7(f)(2), to facilitate a more efficient and effective approach to demonstrate how the responsible official responded to the substantive issue raised and/or recommendation made to improve the decision on how to proceed (e.g., issues to be analyzed in detail, alternatives to be considered or analyzed, or the alternative selected for implementation).

Some commenters disagreed with the emphasis to focus on "substantive" comments and the definition of substantive as provided in the revised regulations. In keeping with one of the key principles of NEPA to generate better decisions, not better documents, USDA is inclined to have responsible officials focus on those issues that are substantive as these issues contain information that meaningfully informs the decision-making process, which includes consideration of reasonably foreseeable impacts on the human environment, the resulting significance determination, decisions on how to proceed (i.e., alternatives to be considered or analyzed or the alternative selected for implementation), and compliance with applicable laws and regulations. (Also see discussion on edits made to the definition of "substantive" under section 1b.11 in the preamble.)

Numerous commenters on the IFR did not support the reduction in opportunities for public comment for the various levels of NEPA review (CE, EA, and EIS), as may have been outlined in some USDA agency-specific NEPA regulations that are now rescinded. Commenters with differing opinions on USDA's overall approach to amending the regulations tended to agree that the lack of opportunity for public comment, particularly for EISs, could have unintended adverse consequences, particularly when it

comes to informing and improving agency decisions and waiving exhaustion of administrative remedies.

Several commenters on the IFR stated that the regulations should require a comment period for EAs and require scoping for CEs (which may provide an opportunity to comment), as may have been required by some USDA agency-specific NEPA regulations prior to rescission. Several other commenters supported EAs not having a comment period as they are generally completed for projects that are not likely to have reasonably foreseeable significant impacts but for which a CE does not apply to the actions proposed.

Numerous commenters on the IFR stated that the regulations should require publication of a draft EIS (DEIS) and require a comment period on the DEIS, with many alleging this is a requirement of NEPA itself. These commenters did not support what they see as the loss of transparency and democracy that the DEIS comment period brought to agency decision-making. Some commenters supported the reduction of process associated with publishing a DEIS and soliciting, considering, and responding to additional public comments, contending that the public comment process has become a mechanism for some organizations to spam agencies with form letters and create work that is not value added to the decision-making process but rather serves to further delay implementation of necessary agency actions.

Responsible officials have multiple obligations to consider, such as analyzing the most important resource impacts within statutorily mandated page limits and deadlines, being responsive to varying levels of public interest, managing fluctuations in budget and workforce capacity, and accounting for other situations that require process flexibility. Rather than adding undue process for each and every action undergoing NEPA review, the USDA regulations align with the statutory intent and purpose of NEPA and promote

responsible official discretion to determine when and how to involve the public and solicit public comment, unless otherwise statutorily required.

Comment on CEs and EAs is not statutorily required by NEPA. USDA declines to add or keep comment opportunities for CEs and EAs when not statutorily required. USDA acknowledges that this is a shift in practice for the public regarding certain public scoping or comment requirements included in the prior regulations for certain USDA subcomponents. For example, the Forest Service's now rescinded NEPA implementing regulations required scoping for all Forest Service proposed actions, including actions that qualified for CEs (formerly 36 CFR 220.4(e)(1)). As discussed in more detail below, in the section *U.S. Forest Service NEPA Compliance Regulations (previously at 36 CFR 220)*, although there was no requirement in the text of those regulations for written comments on CEs or EAs during scoping under the Forest Service's prior regulations, agency practice generally provided an opportunity for written comment.

USDA declines to continue to require scoping across-the-board within the USDA NEPA regulations because scoping is not required by statute for any level of NEPA review. Rather than adding undue process for each and every action undergoing NEPA review, the USDA regulations align with the statutory intent and purpose of NEPA and promote responsible official discretion to determine when and how to conduct scoping. With regards to the Forest Service, the agency has separate statutory requirements to provide comment opportunities for certain EAs. These comment opportunities are addressed in 36 CFR parts 218 and 219 and these regulations were not affected by the rescission of 36 CFR part 220 or other aspects of this rulemaking.

Publication of a draft EIS and solicitation of public comments on a draft EIS are not statutorily required by NEPA. CEQ's prior regulations generally required, in relevant part, that agencies provide members of the public an opportunity to comment on a draft EIS. 40 CFR 1503.1 (1978) (rescinded). However, Congress comprehensively amended

NEPA in the FRA to provide more prescriptive instructions to agencies on completing timely and unified Federal NEPA reviews. 42 U.S.C. 4336a. Specifically, Congress expressly provided for public comment for the first time, at one (and only one) step of the process for developing an environmental document: when an agency issues a notice of intent to prepare an EIS, it must invite public comment on that notice regarding "alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action". 42 U.S.C. 4336a(c). Congress retained the original obligation to make the EIS available through the Freedom of Information Act (FOIA).

Congress elected only to require public comment at the notice of intent stage in the NEPA process for an EIS. USDA's stance is that comment at the notice of intent stage is unique in that it provides an opportunity for fact-gathering from persons who may have relevant (indeed, unique) information about environmental conditions of land they live on or by with respect to projects that USDA subcomponents have determined may have a reasonably foreseeable significant impact. It makes sense that Congress required solicitation of public comment on all notices of intent to prepare an EIS, while imposing no such requirement with respect to an EA, because Congress imposed a shorter deadline for agencies to develop an EA than to develop an EIS and because an EA, by definition, is typically prepared only for proposed actions that are not anticipated to have reasonably foreseeable significant impacts. Accordingly, Congress intended that government and public resources should focus on developing and facilitating public engagement on matters considered in EISs.

As previously stated, the only statutory requirement to solicit public comment is found at 42 U.S.C. 4336a(c), which requires that each notice of intent to prepare an EIS shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analysis with respect to the proposed agency action. There is also a statutory requirement at 42 U.S.C. 4332(C) for the head of the lead agency to consult

with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Both statutory requirements for soliciting comments are accounted for in the revised regulations. USDA will abide by the statutory requirement to solicit comments on EISs, as outlined in this final rule, and declines to add comment opportunities that are not statutorily required for EISs. As noted above, the Forest Service continues to have separate statutory requirements to provide public comment opportunities for certain EISs, as provided by 36 CFR parts 218 and 219.

While USDA has considered and agrees with comments describing how the agency decision-making process can be improved by public comments and other forms of public participation, Congress has not elected to make pre-decisional public involvement a requirement. Crucially, however, the fact that USDA's NEPA procedures no longer prescribe a particular public comment process or period over and above what NEPA requires, apart from the USDA decision to require subcomponents to publish a notice of intent in the *Federal Register* that invites comment when intending to prepare an EIS, does not prevent responsible officials from exercising their discretion to solicit additional public comment when they determine that doing so would assist in reasoned decision-making, not preclude them from meeting statutory deadlines (for EAs/EISs), and not otherwise create unnecessary delays and ambiguity in the environmental review and permitting process. USDA will continue to make its environmental documents available to the public consistent with FOIA, and this requirement is not affected by this rulemaking.

Some commenters on the IFR disagreed with the clarification in the revised regulations that while comments must be considered, there is no requirement to address in writing how comments were considered, alleging failure to address comments in writing would be a violation of NEPA and/or the APA. Additionally, commenters that

supported overall streamlining of NEPA processes expressed concern that failure to address in writing how comments were considered by the responsible official could have unintended consequences under the guise of efficiency. These commenters explained that implementation of agency actions could become more difficult if and when these actions are litigated, as the decision could be found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under the APA.

As clarified in the preamble of the IFR, there is no requirement in NEPA to address comments in writing. Documentation of how comments were considered is highly encouraged to demonstrate the rationale for how the responsible official decides to proceed during the iterative development of the proposed action and action alternatives and the iterative analysis process. However, USDA prefers to maintain responsible official discretion to determine when such documentation would be useful, depending on the nature of the proposed action and the comments received.

While there is no express requirement in NEPA or APA to address comments on a NEPA analysis in writing, USDA subcomponents will determine when such procedural requirements apply on a case-by-case basis and address comments in writing as required or when determined helpful at the discretion of the responsible official, with the understanding that this discretionary additional process cannot preclude the USDA subcomponent from meeting the statutory deadline for completing an EA or EIS (NEPA Section 107(g); 42 U.S.C. 4336a(g)). NEPA analyses are subject to judicial review under the APA, and this regulation directs preparers to provide sufficient reasoning for findings and decisions. The Department finds that subcomponents can provide sufficient reasoning without prescribing a “response to comments” or requiring comments to be addressed in writing. Agencies have multiple obligations to consider, such as analyzing the most important resource impacts within page limits and deadlines, and it is up to preparers to prioritize the content and time of the analysis while providing sufficient

reasoning for decisions made. The Department doesn't find that a mandatory response to comment requirement meets that objective.

In summary, no changes have been made to section 1b.7(f) relative to the version released with the IFR in July 2025.

7 CFR 1b.7(g) adds requirements for defining the “Scope of Analysis” in an EIS. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7(h) gives subcomponents flexibility on how to format the EIS so long as certain items are addressed. This section also eliminates some aspects of EIS formatting previously required in the CEQ NEPA Implementing Regulations, such as the summary, table of contents, list of preparers, and index. These sections also add additional time and process that do not meaningfully inform decision-making and were more relevant when documents were primarily issued in hard copy instead of electronically.

In the final rule, 7 CFR 1b.7(h) is revised to specify the scope of analysis must be included in the elements for an EIS. 7 CFR 1b.7(h)(1)(v) is added to the list of items that should be included on the cover of the EIS. Item (v) reads as, “The unique identification number, as required by § 1b.9(u).” Neither of these are new requirements, as the requirement in 1b.9(g) to address scope of analysis in the EIS and 1b.9(u) to provide a unique identification number on EAs and EISs for tracking purposes were included in the IFR. However, Department personnel pointed out that these requirements could be easily missed in the process of developing an EIS because they were not highlighted as required elements for an EIS.

In the final rule, 7 CFR 1b.7(h)(3) is revised to change the phrase “negative environmental impacts” to “consequences”. As pointed out by Department personnel, this change is necessary to align the consideration (in the EIS) of the consequences of taking

no action in the case of a no action alternative with the significance considerations outlined at 7 CFR 1b.2(f)(3)(iii)(A), which includes more than just negative environmental impacts. 7 CFR 1b.7(h)(3)(i) is revised to add the phrase “and recommend alternative uses of available resources for unresolved conflicts associated with the proposed action (NEPA section 102(2)(H))” at the end. This addition is necessary to align with the statutory requirement to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources (NEPA section 102(2)(H); 42 U.S.C. 4332(H)).

In the final rule, 7 CFR 1b.7(h)(4) is revised to change the word “consequences” to “impacts”. As pointed out by Department personnel, this change is necessary to align with terminology used in 1b.7(h)(5) (environmental impacts), which is what 1b.7(h)(4) is referring to when clarifying the option to combine the potentially affected environment discussion with the environmental impacts discussion.

In the final rule, 7 CFR 1b.7(h)(8) is revised to clarify that the certifying statement for page limits and deadlines does not require a signature, as this was raising questions internally as to whether an EIS needs to be signed by the responsible official to make this statement “certified”. The revised language also clarifies that approval to publish the EIS to a USDA website indicates the responsible official has reviewed the EIS and concurs with the certifying statement.

7 CFR 1b.7(i) emphasizes the statutory requirement for EIS page limits. In the final rule, 7 CFR 1b.7(i) and (i)(1) were revised to add the citations to NEPA for page limits for EISs to clarify these page limits are statutorily required and not a requirement established in the USDA NEPA regulations.

7 CFR 1b.7(j) adds a requirement for the responsible official to certify the EIS meets the page limit. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7(k) emphasizes the statutory deadline for EISs. It states that responsible officials are to adhere to the statutory deadlines and publish an EIS "in as substantially complete form as is possible" and requires responsible officials to certify that they made a good faith effort to satisfy the requirements in the statute. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7(l) clarifies when seeking an extension to the deadline is appropriate. In the final rule, this section is revised to remove the erroneous first "as" in the phrase "such as time as", now reading as "such time as".

7 CFR 1b.7(m) adds a requirement for the responsible official to certify that the EIS was completed within the deadline. No changes have been made to this section relative to the version released with the IFR in July 2025.

The additions in sections 1b.7(i) through (m) provide the Department's policy on how it will apply the new statutory deadlines in NEPA § 107(g), 42 U.S.C. § 4336a(g) and page limits in NEPA § 107(e), 42 U.S.C. § 4336a(e). This policy is based on the rationale that NEPA is governed by a "rule of reason". *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752 (2004). In establishing deadlines for the EIS process in the 2023 revision of NEPA, Congress supplied the measure of that reason in NEPA § 107(g), 42 U.S.C. § 4336a(g). "Time and resources are simply too limited for us to believe that Congress intended" consideration under NEPA to extend indefinitely. *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983) (citing *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978)).

7 CFR 1b.7(n) gives the responsible official discretion to publish a draft EIS and provides requirements for publishing the completed EIS to a USDA website. Publishing

the EIS on a USDA website stops the NEPA deadline clock (2 years to complete an EIS). No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.7(o) specifies the requirement to file the EIS with the Environmental Protection Agency is still the primary means for making the completed EIS available to the public, in addition to publication on a USDA website. In the final rule, the phrase "Office of Federal Activities" was removed because EPA reorganized in 2025 and this office now exists under another name. Due to the potential for future reorganizations, USDA finds it prudent to keep the reference to EPA general with regards to EIS filing procedures.

7 CFR 1b.8 –Records of decision: This section is added to read as indicated in 7 CFR 1b.8.

This section adds procedures for issuing records of decision and gives subcomponents flexibility on how to format the record of decision (ROD) so long as certain items are addressed. This section specifies requirements to make the ROD available to the public and provide notification to certain parties.

7 CFR 1b.8(a) specifies the general requirements for when a ROD will be prepared. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.8(b) outlines the elements that must be addressed in the ROD. In the final rule, 7 CFR 1b.8(b)(6) is revised to include the sentence, "If the responsible official decides to adopt any mitigation, state the statutory or regulatory authority for the mitigation." This aligns with recommendations from some commenters on the IFR, as indicated by the discussion on changes made to the definition of "mitigation", found below in the preamble for 7 CFR 1b.11 – Definitions and Acronyms.

7 CFR 1b.8(c) includes requirements for publishing the ROD. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.8(d) includes requirements for the responsible official to provide notifications of the availability of the ROD. In the final rule, this section was revised to remove erroneous inclusion of the word "during" in the phrase "and any parties that submitted comments during in response to publication of the notice of intent".

7 CFR 1b.8(e) clarifies timing of action. Notwithstanding other statutory or regulatory requirements, there is no longer a requirement to delay implementation of the action once the Environmental Protection Agency has published the notice of availability for the EIS, the ROD has been made available to the public, and necessary notifications are provided. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.9 – Efficient and effective environmental reviews: This section is added to read as indicated in 7 CFR 1b.9.

This section adds best practices for efficient and effective environmental reviews.

7 CFR 1b.9(a), (b), (c), and (d) provides best practices for managing the proposal record and includes recommendations for assembling and managing documentation developed during the environmental review process, responding to Freedom of Information Act requests, managing potential withholdings and privileges, and managing classified information.

In the final rule, 7 CFR 1b.9(a) is revised to clarify that the proposal record is not determinative of the scope and content of an administrative record prepared for litigation pursuant to the APA or other law.

No changes have been made to 7 CFR 1b.9(b), (c), or (d) relative to the version released with the IFR in July 2025.

7 CFR 1b.9(e) outlines best practices for reducing paperwork. USDA has removed usage of the terms “tiering” and “adopting”, which were described in the now rescinded CEQ NEPA Implementing Regulations. The term “rely” or “relying” is used (instead of adopting or tiering) as this is the term used in NEPA when referring to programmatic documents (NEPA § 108; 42 U.S.C. 4336b) and expands the original concept of “adopting” (now relying) to include not only whole environmental documents but also portions thereof, to include supporting analysis that may not be included in an environmental, finding, or decision document in whole. To avoid confusion with NEPA § 109 (42 U.S.C. 4336c), the term “adopting” is only used in reference to adopting another Federal agency’s CEs (the subject of NEPA § 109) and is no longer used in the context of adopting analyses. Additional clarification is provided regarding reliance on programmatic documents, to align with language added to NEPA, as amended in 2023. The terms “incorporating” or “incorporating by reference” continue to apply and are included in the regulations.

Several commenters on the IFR disagreed with the page limits and deadlines for EAs and EISs, as prescribed to in 7 CFR 1b.9(e) and other sections of the revised regulations. Commenters described the page limits and deadlines as being “arbitrary and capricious” and alleged they are being used by the Department to circumvent adequate effects analysis. Other commenters supported the establishment of page limits and deadlines and encouraged strict adherence to these. Additionally, some commenters proposed establishment of page limits and deadlines for CEs that require NEPA documentation, 10 pages and 3 months respectively, with recommendations for when the timeline would start.

The page limits and deadlines for EAs and EISs, as referred to in the revised regulations, are statutory requirements now included in NEPA, as amended by the FRA. The page limit and deadline discussion in the revised regulations merely emphasizes and

reflects congressional intent for succinct and timely completion of EAs and EISs. Given the variability in complexity of actions covered by CEs, whether the categories are promulgated by agencies or statutorily authorized, USDA declines to establish page limits or timelines for those categories requiring NEPA documentation as laws considered during the environmental review process, such as Endangered Species Act or National Historic Preservation Act, could necessarily require page limits or timelines longer than those proposed.

In the final rule, 7 CFR 1b.9(e)(7) is revised as the previous wording in the phrase "developed specifically to support that environmental document or associated decision document" was interpreted to mean that information that may be developed for a previous project and relied on for a project at hand (as described in 7 CFR 1b.9(e)(8)) could not also be incorporated by reference. Information that is initially developed for another project could be relied on for a project at hand and also incorporated by reference. USDA's intent was not to preclude incorporation by reference of information that may have initially been developed for another project and is being relied on for the project at hand; therefore, the phrase "developed specifically to support that environmental document or associated decision document" is revised to now read as: "that specifically supports the environmental document or associated finding or decision document". The term "finding" is added to this phrase as well, as CEs and EAs have finding documents (finding of applicability and no extraordinary circumstance and finding of no significant impact, respectively), not decision documents like an EIS (record of decision).

Additionally, 7 CFR 1b.9(e)(7)(i) is revised to add the phrase "and make the materials reasonably available for review by potentially interested parties" at the end of the sentence. 7 CFR 1b.9(e)(7)(ii) is revised as the previous wording was being interpreted by Department staff to imply that information could not be incorporated by

reference after an opportunity for comment was provided. The wording, as included in the IFR, was: "Subcomponents may not incorporate material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment, when an opportunity for comment is provided." It is revised to read as: "When an opportunity for comment is provided and the documents or information being commented on refer to material incorporated by reference, this material must be reasonably available for inspection, in draft or final form, by potentially interested persons within the time allowed for comment." This better conveys USDA's intent that, when USDA solicits comment on a proposal that incorporates by reference certain documents or information, those materials must be readily available for inspection during the comment period – in draft or final form – as information relied on during a comment period may be preliminary and then updated in response to comment received. (In those instances where USDA is incorporating by reference certain documents or information but is not soliciting comment, those materials incorporated by reference will also be made readily available.) Material may also continue to be incorporated by reference after an opportunity for comment is provided, including in response to comments. Nothing in this provision requires USDA subcomponents to provide an opportunity to comment where not otherwise required or where comment would be inconsistent with USDA's NEPA procedures. 7 CFR 1b.9(e)(7)(iii) is revised with clarifying language that unredacted information that is privileged, classified, or subject to any other potential withholdings should also not be incorporated by reference.

Several commenters on the IFR did not support the removal of the Determination of NEPA Adequacy (DNA) as part of rescinding the Forest Service NEPA regulations previously found at 36 CFR 220. These commenters did not find the use of "relying on analysis" to be a sufficient substitute for the DNA, as formerly outlined in the Forest Service NEPA regulations. Commenters highlighted the efficiencies provided by use of

DNA as rationale for including this provision in the revised departmental NEPA regulations. Still other commenters disagreed with the concept of a DNA and relying on analysis altogether, asserting that NEPA does not provide for use of previously completed analysis to be applied to other actions.

The DNA only existed in the Forest Service NEPA regulations (36 CFR part 220). The DNA was a tool to help evaluate the suitability of a previously completed analysis document for potential application to a new proposed action. In the 5 years the DNA was available (from the 2020 revision to 36 CFR part 220 to the rescission of this regulation in July 2025), the agency only used this tool four times. The Department coordinated with Forest Service staff when crafting the language used in 7 CFR 1b.9(e)(8). The Forest Service does not see the elimination of the DNA as a hinderance to gaining efficiencies and conducting adequate consideration of effects given the provision included in the departmental NEPA regulations for "relying" on analysis. With the change in the regulations, the Forest Service plans to use 7 CFR 1b.9(e)(8) as a DNA-type tool for assessing and relying on previously completed analysis, either in whole or in part, whether the analysis was completed within agency or by another agency or external party. The efficiencies gained by relying on existing analyses are now appropriately expanded to all USDA subcomponents.

In the final rule, 7 CFR 1b.9(e)(8) is revised to remove the phrase "it makes sense to do so given", as recommended by some commenters on the IFR. The sentence where that phrase is found now reads as: "USDA subcomponents may rely on previous analysis completed by the subcomponent or analysis completed by any other Federal agency where the nature of the proposal, the potentially affected environment, and the anticipated effects are substantially the same for the current proposal being considered". The following sentence, which was previously included 7 CFR 1b.9(e)(8)(i), was moved to 7 CFR 1b.9(e)(8) in the final rule with minor edits: "The USDA subcomponent relying on

the previously completed analysis shall specify the reliance in the applicable environmental document or finding or decision document and provide explanation of how the nature of the proposal, the potentially affected environment, and the anticipated effects (both quantitatively and qualitatively) were determined to be substantially the same." (In the final rule, in the phrase "not included in an EA, EIS, FONSI, ROD or FANEC documentation itself", the erroneous inclusion of "documentation" was removed.)

The phrase "substantially the same" was already used in 7 CFR 1b.3(h) and was used in 7 CFR 1b.9(e)(8)(i) (as published in the IFR); therefore, this phrase is not solely introduced as part of this final rule but is appropriately used in place of language that was similar in meaning but not exact in wording. The phrase "substantially the same" is used for these revisions as it refers to retaining the main characteristics of intent, function, and impacts (effects) of a proposal while allowing minor variations for specific situations (e.g. tailoring design criteria or mitigations to account for unique aspects of the affected environment, or explaining why effects have slight variation but the same outcome with regard to degree of anticipated effect). The focus on main characteristics permits flexibility for practical application without requiring factors or terminology to be identical in every way.

7 CFR 1b.9(e)(8)(i) is revised in the final rule to not repeat discussion included in the previous paragraph and now just focuses on how EAs and EISs relied on in full should be published to a USDA website. 7 CFR 1b.9(e)(8)(ii) is revised in the final rule to specify how reliance on previous CE determinations will be documented for those CEs requiring NEPA documentation, rather than referring back to §1b.3(h), which is revised as described previously in this preamble.

7 CFR 1.9(f) outlines best practices for reducing delay. In the final rule, 7 CFR 1b.9(f)(9) is revised to remove erroneous inclusion of the word “during” in the phrase “Requiring comments received during in response to publication of a notice of intent”.

7 CFR 1b.9(g), (h), (i), and (j) emphasizes the importance of interdisciplinary preparation, methodology, scientific accuracy, and disclosing information availability. No changes have been made to these sections relative to the version released with the IFR in July 2025.

7 CFR 1b.9(k) adds public involvement discussions that encourage USDA subcomponents to consider the most effective ways of engaging and informing the public, while allowing necessary discretion on the methods to use given the nature of the proposal and the public entities most likely to be interested or affected. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.9(l) and (m) emphasize the need to eliminate duplication with State, Tribal, and local procedures and promotes timely and unified Federal reviews, to include outlining processes for identifying lead, joint, and cooperating agencies, and provides process for resolving disagreements concerning major Federal actions.

Several commenters on the IFR disagreed with the revised regulations not specifying how responsible officials must engage cooperating agencies. These commenters suggested the final rule specify how responsible officials will “request the participation of each cooperating agency at the earliest practicable time”, as required by NEPA, and ultimately how the lead agency “may… designate any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal to serve as a cooperating agency” – with some asserting that designation of cooperating agencies is required by NEPA. These commenters contend that early engagement with state, local, and Tribal governments

promotes efficiency as these entities often bring local knowledge, data, and working relationships to the NEPA process.

42 U.S.C. 4336a(a)(3) states that a "lead agency *may*, with respect to a proposed agency action, designate any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal to serve as a cooperating agency". A lead agency may, but is not statutorily required to, designate cooperating agencies; however, USDA recognizes the value of inviting eligible agencies to participate as cooperating agencies early in the proposal intake and development process, especially when an eligible agency will need to rely on an EA or EIS to authorize actions associated with the proposal for which they have jurisdiction by law. Therefore, the final rule adds a requirement for when a responsible official will extend an invitation to, or approve a request from, an eligible agency to be a cooperating agency, as described in the next paragraph.

Rather than adding unnecessary process for each and every action undergoing NEPA review, the USDA regulations align with the statutory intent and purpose of NEPA and generally promote responsible official discretion to determine when and how to invite and designate cooperating agencies. Clarification is added in the final rule at 7 CFR 1b.9(m)(1)(ii) that when a USDA subcomponent is serving as the lead agency, it will fulfill the role of lead agency as outlined at 42 U.S.C. 4336a(a)(2), which includes statutory requirements on engaging cooperating agencies if any have been designated. The cooperating agency section at 7 CFR 1b.9(m)(3) was expanded in the final rule to clarify expectations of responsible officials for considering eligible agencies, as outlined in 42 U.S.C. 4336a(a)(3), as cooperating agencies. A requirement is added that when an eligible agency will need to rely on an EA or EIS to authorize actions associated with the proposal for which they have jurisdiction by law, the responsible official for the lead

USDA subcomponent will extend an invitation to, or approve a request from, the eligible agency.

7 CFR 1b.9(n) adds additional clarification on how USDA agencies should proceed with unified documentation, as required by NEPA, where another Federal agency is the lead agency. In the final rule, 7 CFR 1b.9(n) is revised to add a sentence that specifies that when an environmental document is being developed by more than one USDA subcomponent, all USDA subcomponents shall contribute to the completion of one environmental document and shall not develop separate documents for each subcomponent, unless justified by other statutory requirements that make it more efficient to do so. This is in response to recent internal experiences where USDA subcomponents have continued to push for doing their own documents rather than unified documentation for actions covered by more than one USDA subcomponent. 7 CFR 1b.9(n)(2) was also revised to add "or authorizing" to the sentence that begins as "When multiple signature blocks are included, the document shall specify what each signing responsible official is approving [or authorizing]…". This was in response to internal feedback that there is a difference between "approving" and "authorizing" and the regulations should account for this when requiring specification of what responsible official is approving or authorizing.

7 CFR 1b.9(o) specifies the agency official at USDA who will determine when a disagreement needs to be elevated to CEQ when there are interagency disagreements concerning the designation of a lead or joint agency or disagreements over proposed major Federal actions that might cause unsatisfactory environmental effects.

7 CFR 1b.9(p), (q), and (r), outlines recommended approaches for preparing EAs and EISs for programmatic actions and provides direction for relying on and reevaluating environmental documents. No changes have been made to sections 1b.9(p) and (q) relative to the version released with the IFR in July 2025.

A commenter raised concerns that it was not clear what triggered the need to reevaluate an EIS and additionally what triggered the need to issue a supplemental EIS. In the final rule, 7 CFR 1b.9(r) is revised to clarify what triggers the need to reevaluate any environmental document, as wording in the IFR was creating both external and internal confusion. The phrase "remains to occur" was replaced with "incomplete and ongoing" to be more specific to the status of the action, which may have started but has not been completed. Paragraphs (1), (2), and (3) are added to 7 CFR 1b.9(r) provide necessary direction to USDA subcomponents on how to proceed based on the outcome of the reevaluation for environmental documents that are not an EIS that has been filed with the Environmental Protection Agency (EPA), as well as for EISs that have been filed with the EPA. In specifying procedures for EISs, it is also necessary to specify procedures for those environmental documents that are not an EIS. In addition to the public comment, since publishing the IFR, numerous USDA staffs have inquired about the process and requirements for making updates to environmental documents. Rather than having each USDA subcomponent develop this guidance, USDA has determined it is appropriate to include these procedures in the revised regulations to ensure consistency and transparency in how environmental documents are reevaluated, updated, necessary notifications considered and made, and document access provided. The revised regulations still provide for a necessary level of responsible official discretion when it comes to documentation formatting, as this is necessary to account for unique program circumstances across USDA mission areas.

7 CFR 1b.9(s) and (t) outline approaches for evaluating proposals for rules, regulations, and legislation. No changes have been made to these sections relative to the version released with the IFR in July 2025.

7 CFR 1b.9(u) specifies the need to apply unique identification numbers to EAs and EISs. In the final rule, 7 CFR 1b.9(u) is revised to change the word "on" to "for" in

the phrase “which the subcomponent will reference on other documents associated with the proposal”. This correction was necessary as it was being interpreted by Department staff that every document included in a proposal record for an EA or EIS would need to have the unique identification number added to it. The intent is that the unique identification number is used to associate other published documents with the EA or EIS, such as the FONSI (for an EA) or ROD (for an EIS). The unique identification number can also be used in the proposal record file name but does not need to be added to every document included in the proposal record.

7 CFR 1b.9(v) adds direction on how to proceed for emergencies, specifically allowing for actions to address imminent threats prior to any NEPA analysis.

Some commenters on the IFR expressed concern with the emergency authorities and the potential for responsible officials to mis-apply them. Some commenters also questioned the authority of the Department to establish emergency authorities and recommended carrying over language from the rescinded CEQ NEPA regulations.

As explained in the preamble for the IFR, some emergency authorization or emergency procedure language previously included in agency-specific NEPA regulations has been moved to this section in 7 CFR 1b, with much of the language being revised to provide for consistent department-wide language but with the intent remaining the same, as described in the agency-specific regulation changes included below. Where language and procedures were essentially the same across agencies, these procedures are now discussed only once. Where procedures differed necessarily across agencies, these different procedures are included. Specifics as to some wording changes that were made for agency-specific procedures are discussed under the applicable agency-specific regulation, listed below. This section adds a general emergency action provision for agencies that did not have such provisions in their regulations to coordinate on issuing alternative arrangements for complying with NEPA when completing a CE or EA when

reasonably foreseeable significant effects are not anticipated. It specifies that for emergency actions where reasonably foreseeable significant impacts are likely, the responsible official will consult with CEQ about alternative arrangements for NEPA compliance.

The intent of NEPA is to improve agency decision-making and inform the public of the anticipated degree of effects associated with major Federal actions. There are instances where emergency circumstances exist such that Federal agencies must make real-time decisions and implement actions to address imminent threats to life, property, or important natural, cultural, or historic resources. Examples include wildfire suppression response activities or response to natural disaster events impacting basic functionality of infrastructure and utility services that are critical to public safety and initial emergency response and recovery efforts (e.g. transmission lines, communication networks, public transportation networks and systems). The immediacy with which these actions need to be implemented makes it infeasible and impracticable to complete a NEPA analysis without incurring a high likelihood of harm to life, property, or important natural, cultural, or historic resources. Where analysis and documentation are feasible and practicable, even when focused or delayed, agencies should use 7 CFR 1b.9(v)(2) or (3), as applicable.

The need to allow for implementation of actions for emergency circumstances has been standard practice as evidenced by the rescinded Forest Service (36 CFR part 220) (73 FR 43084-01 (July 24, 2008)) and Rural Development (7 CFR Subtitle B part 1970) (81 FR 11000-01 (March 2, 2016)) NEPA regulations. While wording varied between the regulations, both included a category of emergency actions that provided for immediate implementation and did not require NEPA analysis prior to implementation, though did require that adverse effects be considered and mitigated where possible (36 CFR 220.4(b)(1); 7 CFR 1970.18(a)). Both regulations also included a category of emergency

actions that may need to be implemented before NEPA analysis was completed, but for which alternative arrangements could be approved to allow the actions to be initiated prior to documenting and disclosing the effects of those actions (36 CFR 220.4(b)(2) and (3); 7 CFR 1970.18(b) and (c)).

In response to the concerns raised, and to align with guidance issued by CEQ on January 21, 2026 regarding emergencies and NEPA, the following revisions are made to 7 CFR 1b.9(v) to better clarify the intent of emergency actions.

In the final rule, 7 CFR 1b.9(v) is revised. This section was called "Emergencies – Immediate actions" in the IFR and in the final rule is called "Emergency actions". Paragraph 1b.9(v) is now paragraph 1b.9(v)(1) and is revised to clarify that NEPA's analysis and documentation requirements should not impede timely execution of action needed to address imminent threats to life, property, or important natural, cultural, or historic resources. In the IFR, this section read as: "If emergency circumstances exist that make it necessary to take action to mitigate harm to life, property, or important natural, cultural, or historic resources, the responsible official may take such actions without preparing an environmental analysis or environmental document. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical." Paragraph 1b.9(v)(1) now reads as: "If emergency circumstances exist that make it necessary to take action to address imminent threats to life, property, or important natural, cultural, or historic resources, the responsible official may take such actions without preparing a NEPA analysis. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and consider taking steps to mitigate reasonably foreseeable adverse environmental effects to the extent practical and consistent with agency authority." The term "immediate", as it relates to describing the type of actions, has been

removed as the section is being retitled to “emergency actions”. The term “imminent threat” is added to describe why the actions need to be implemented without preparing a NEPA analysis and to align with CEQ guidance on emergencies. The term “NEPA analysis” replaces the phrases “environmental analysis or environmental documentation” to clarify the emergency action procedures are only applicable to NEPA. The phrase “and consistent with agency authority” is added to the last sentence to recognize that the responsible official’s ability to mitigate reasonably foreseeable adverse effects is also predicated on agency authority to do so.

In the final rule, 7 CFR 1b.9(w) is removed. Paragraphs 1b.9(w)(1) and (w)(2) in the IFR are now paragraphs 7 CFR 1b.9(v)(2) and (3), respectively, in the final rule.

In the final rule, the first sentence of 7 CFR 1b.9(v)(2) (formerly 1b.9(w)(1)) is revised. In the IFR, this section read as: “When urgent actions are not likely to have a reasonably foreseeable significant environmental impacts, but an emergency exists that makes it necessary to take urgently needed actions before preparing documentation associated with a categorical exclusion, environmental assessment, or finding of no significant impact, USDA subcomponents may authorize alternative arrangements for environmental compliance so long as the alternative arrangements are limited to actions necessary to address the emergency circumstance.” In the final rule, it reads as: “When taking actions other than those described in paragraph (1) that are not likely to have reasonably foreseeable significant impacts, but emergency circumstances exist that make it necessary to take actions before preparing a categorical exclusion that requires NEPA documentation, an environmental assessment, or a finding of no significant impact, USDA subcomponents may authorize alternative arrangements for NEPA compliance so long as the alternative arrangements are limited to actions necessary to address the emergency circumstance.” The term “urgent”, as it relates to describing the type of actions, has been removed as there are now only “emergency actions”. The phrase

"reasonably foreseeable significant environmental impacts" is changed to "reasonably foreseeable significant impacts" to be consistent with terminology used in statute and elsewhere in the revised regulations. The term "NEPA compliance" replaces the phrase "environmental compliance" to clarify the emergency action procedures are only applicable to NEPA.

In the final rule, 7 CFR 1b.9(v)(3) (formerly 1b.9(w)(2)) is revised. In the IFR, the first sentence read as: "When urgent actions are likely to have significant environmental impacts, but an emergency exists that makes it necessary to take urgently needed actions before preparing an environmental impact statement or record of decision, the responsible official taking the action shall request consultation...". In the final rule, the first sentence is revised to read as: "When taking actions other than those described in paragraph (1) that are likely to have reasonably foreseeable significant impacts, but emergency circumstances exist that make it necessary to take the actions before preparing an environmental impact statement or record of decision, the responsible official taking the action shall request consultation…". The term "urgent", is as it relates to describing the type of actions, has been removed as there are now only "emergency actions". The phrase "significant environmental impacts" is changed to "reasonably foreseeable significant impacts" to be consistent with terminology used in statute and elsewhere in the revised regulations. In the 1b.9(v)(3) paragraph, after references to the USDA senior agency official, "or their designee" is added as this clarification aligns with 7 CFR 1b.2(b)(2)(vi) (as renumbered in the final rule, and which did not otherwise change as part of the final rule), which allows the senior agency official to delegate certain duties for NEPA compliance.

7 CFR 1b.10 –Documents prepared by applicant or third party: This section is added to read as indicated in 7 CFR 1b.10.

This section adds procedures for EAs and EISs prepared by an applicant or third party. Specifies responsibilities of USDA subcomponents when documentation is being prepared by an applicant or third party. Recognizes that NEPA § 107(f), 42 U.S.C. § 4336a(f), allows an applicant or other third party (e.g., contractor) to complete an EA or EIS in whole or in part, under supervision of a Federal agency. For purposes of the USDA NEPA regulations, applicant or other third-party preparation is expanded to include, in whole or in part, documentation for a finding of applicability and no extraordinary circumstance for CEs requiring NEPA documentation. This is to account for the various ways USDA subcomponents currently work with applicants and third parties to complete documentation associated with a proposal, which includes more than just the preparation of EAs and EISs. Applicants often complete documentation for actions that fit CEs requiring NEPA or statutorily required environmental review documentation.

Some commenters on the IFR disagreed with documentation prepared by an applicant or third party being expanded to include documentation for CEs, alleging this is not permitted by NEPA as the Act only addresses this for EAs and EISs. However, NEPA does not speak to documentation for CEs. 42. U.S.C. 4336a(f) requires procedures for project sponsor preparation of EAs and EISs, but does not require procedures for project sponsor preparation of CEs. The absence of a requirement is not the same as a prohibition. Disallowing sponsor preparation of a lesser form of NEPA review than an EA or EIS would seem to be inconsistent with Congress's intent. The USDA NEPA regulations provide procedures for CE determinations at 7 CFR 1b.3 and therefore it is also appropriate to provide procedures for applicants or third parties who are developing NEPA documentation for those CEs that require it.

In the final rule, this section is revised to remove erroneous uses of the term "agency" and replace it with "subcomponent" for consistency with other terminology used throughout the revised regulations.

7 CFR 1b.11 – Definitions and Acronyms: This section is added to read as indicated in 7 CFR 1b.11.

This section adds cross-references to key definitions from NEPA and carries over some definitions from the 2020 CEQ NEPA Implementation Regulations (such as the definition for "effects"), with modifications made for some definitions such as: mitigation (or mitigation measure) and significance.

In the final rule the definition of "Agency" (7 CFR 1b.11(a)(3)) is revised to remove "the Unites [sic] States Department of Agriculture" and instead use the USDA acronym. This aligns with the use of "USDA" throughout the regulations.

Several commenters on the IFR stated that consideration of direct, indirect, and cumulative effects should explicitly be stated as a requirement in the revised regulations and the definition of "effects" should be revised to include these terms.

Sections 1b.5 and 1b.7 in the revised regulations include "Scope of Analysis" direction for EAs and EISs. The scope of analysis direction stems from the U.S. Supreme Court decision in *Seven County Infrastructure Coalition* v. *Eagle County, Colorado,* 145 S. Ct. 1497 (2025). The revised regulations clarify that when completing an EA or EIS, a USDA subcomponent will document where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the proposed action (and action alternatives, if any) or project at hand that extend outside the geographical territory of the proposal or might materialize later in time. To the extent it assists in reasoned decision-making, the USDA subcomponent may, but is not required to by NEPA, analyze environmental effects from other actions separate in time (i.e. temporal), or separate in place (i.e. spatial), or that fall outside of the USDA

subcomponent's regulatory authority, or that would have to be initiated by a third party. If the USDA subcomponent determines that such analysis would assist it in reasoned decision-making, it will document this determination in the EA or EIS and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate actions.

Instead of formulating the evaluation of environmental effects of USDA subcomponent actions using the artificial devices of "direct," "indirect," and "cumulative" effects that do not appear in the statute, USDA's NEPA regulations focus on the underlying principle of what constitutes an "effect". In reorienting the focus of its regulations, USDA does not change or purport to change the scope of effects that USDA subcomponents are required by statute to consider. Both before and after the updates to USDA's NEPA regulations, USDA subcomponents were and are required to consider effects that are both reasonably foreseeable and have a reasonably close causal relationship to their proposed actions and reasonable action alternatives, consistent with the statute, as clarified by the Supreme Court in the *Public Citizen* and *Seven County* decisions.

Additionally, in light of Supreme Court's *Seven County* decision, USDA elected to update its regulations to reflect the phrasing provided by the Supreme Court regarding effects. That is, "To the extent it assists in reasoned decision-making, the USDA subcomponent may, but is not required to by NEPA, analyze environmental effects from other actions separate in time, or separate in place, or that fall outside of the USDA subcomponent's regulatory authority, or that would have to be initiated by a third party. If the USDA subcomponent determines that such analysis would assist it in reasoned decision-making, it will document this determination in the environmental assessment [or environmental impact statement] and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate actions." 7 CFR

1b.5(b)(3) and 7 CFR 1b.7(g)(3). “Similarly, the USDA subcomponent will document in the environmental assessment [or environmental impact statement] where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the proposed action (and action alternatives, if any) or project at hand that extend outside the geographical territory of the proposal or might materialize later in time.” 7 CFR 1b.5(b)(2) and 7 CFR 1b.7(g)(2). *Id.* (citing *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025)).

This language, adapted directly from the *Seven County* decision, provides USDA with direction on how to consider, as appropriate, the environmental consequences of an USDA subcomponent’s action that may previously have been expressed in concepts such as “indirect effects” and “cumulative effects”. This focus on the meaning of “effect” has led USDA to restore in large part the concept of “connected action” to the way it was defined in the pre-2020 CEQ regulations, with clarifying emphasis that the subject of analysis is the Federal action, not action taken by non-Federal entities. *See* 40 CFR 1508.25(a)(1) (rescinded). Even as originally defined in the pre-2020 CEQ regulations, the term “cumulative impact” referred to the “incremental impact” of the proposed action in relation to the context within which that action was taken. *See* 40 CFR 1508.7 (rescinded). That is, the focus, even of the “cumulative impact analysis” should always have been on change wrought by the effects of the proposed action, and the *Seven County* decision merely refines that focus.

In summary, NEPA does not include a statutory requirement to analyze direct, indirect, or cumulative effects, and the Supreme Court *Seven County* decision further validates this interpretation. USDA’s Scope of Analysis provision sufficiently addresses the concept of direct, indirect, and cumulative effects and provides for their consideration in reasoned decision-making.

Some commenters assert that the revised regulations should require that NEPA effects analysis address climate change and environmental justice considerations.

NEPA does not contain any provisions addressing any specific type of environmental impact. Direction from within the executive branch may in the past have pushed agencies to place special emphasis upon certain categories of effects (i.e., "climate change," "environmental justice"), but that direction has now been rescinded. *See* 91 FR 618 (Jan. 8, 2026) (final rule rescinding CEQ's NEPA regulations); Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025) (revoking Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*; Executive Order 14154, *Unleashing American Energy*, 90 FR 8,353 (Jan. 20, 2025) (revoking Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*). In other words, the distinctions and concepts identified by commenters do not exist in statute and were conceptual creations of CEQ, some agencies, and courts to formulate analysis and guide agency decision-making.

In the final rule, the definition of "Effects" (7 CFR 1b.11(a)(12)) is revised to reword the last sentence in bullet (i). The sentence previously read as: "Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the USDA subcomponent believes that the effect will be beneficial." It now reads as: "Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values." This change better ensures a consistent definition of effects across Federal departments and agencies. In this definition, bullet (iii) was also removed as this bullet was included prior to adding the Scope of Analysis direction included for EAs and EISs. It was erroneously left in the IFR and now removed as it conflicts with that direction.

"Mitigation" (7 CFR 1b.11(a)(29)) is added to clarify mitigations are determined by the responsible official and are a reactive response to the effects analysis and are documented in the finding of no significant impact or record of decision. See further discussion below on adding the term "design criteria" to the definition section. In the final rule, the definition of "Mitigation" is revised to include the following sentence, as recommended by some commenters on the IFR: "When adopting mitigations as part of the FONSI or ROD, the statutory or regulatory authority for any mitigation must be provided." This addresses the concern that unless mitigations are tied to statute or regulation, applicants/third parties could be subject to costly and burdensome mitigations at the whim of the responsible official. Minor edits were also made to the second sentence of the definition, changing "mitigations" to "mitigation measures" and adding the acronyms for FONSI and ROD.

"Significance" (7 CFR 1b.11(a)(50)) is defined as explained under the changes made to section 7 CFR 1b.2.

This section also adds definitions for new terms introduced in the regulations, such as: design criteria (or design elements or design features), emergency, environmental review, extraordinary circumstances, finding of applicability and no extraordinary circumstance, issue, level of NEPA, NEPA process, notice of availability, proposal record, proposed action, purpose and need, scale, scope, senior agency official, and substantive.

The definition for "Design criteria" (7 CFR 1b.11(a)(11)) is added to demonstrate that when these criteria are added to proposed actions or alternatives to achieve similar outcomes of "mitigations" (7 CFR 1b.11(a)(29)), they are added in response to an issue and therefore once the issue has been addressed in this manner it is not an issue that needs to be analyzed in detail. Design criteria are proactive responses to issues identified early in the interdisciplinary process of developing the proposed action and/or action

alternatives or when conducting preliminary effects analysis, whereas adding "mitigations" (or "mitigation measures") is a reactive response by the responsible official to the effects analysis. The definition clarifies that these two terms achieve similar outcomes (for example, avoid or minimize adverse effects), yet apply in distinctly different ways, and also facilitate analytic analysis.

In the final rule, the definition for "Design criteria" is revised to include "resource protection measures" and "best management practices" as alternative terms that mean the same thing, as informed by internal feedback that these are terms used by some USDA subcomponents. The phrase "proactively added to the proposed action" in the first sentence is revised to now read as "that are included as part of the proposed action". The phrase "in coordination with the applicant if applicable" was also added to the first sentence as recommended by some commenters on the IFR, with the first sentence now reading as: "*Design criteria* (or *design elements*, *design features*, [*resource protection measures]*, [*best management practices],* or *conservation practices* etc.) means constraints or requirements proactively added to the proposed action (or action alternatives) or through an iterative interdisciplinary process, in coordination with the applicant if applicable, to avoid or minimize adverse impacts." This change was made to address the concern raised by some commenters on the IFR that USDA subcomponents could add costly and/or burdensome design criteria to proposals submitted by applicants/third parties without their input or consent. The second to last sentence in the definition paragraph is revised with wording that makes it clear design criteria are part of the proposed action (similar language was also added to the last sentence of the definition paragraph) and wording is added to clarify that recommendations for design criteria could be identified as part of interdisciplinary preparation or through external comments. Verbs in (i) through (iii) were revised to eliminate the present participle (removed "ing" endings).

Some commenters on the IFR disagreed with the revised regulations highlighting the differences between "design criteria" and "mitigation measures". Some had particular concern with the phrase used in the definition of design criteria that states, "[w]hen design criteria are added in response to an issue, that issue should no longer be analyzed in detail in the analysis process". Some also expressed concern with the definition for mitigation measures and propose it should carry forward the CEQ guidance that "[m]itigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal" – alleging the agency cannot enforce application of mitigations (or implementation of design criteria) without statutory authority.

The USDA NEPA regulations purposefully differentiate between design criteria that are intrinsic to the proposed action (i.e. proactively added to the proposed action prior to final effects analysis occurring) and mitigation measures that address effects (i.e. are reactive to the effects described in the final effects analysis). If the applicant or agency has included criteria or constraints as part of the original proposal, these are design criteria (per USDA's definition), not mitigation measures, though both design criteria and mitigation measures serve to minimize or eliminate undesired adverse effects. Section 1b.6(b)(3), which outlines the elements required for a finding of no significant impact, already includes the suggested language that the agency identify the statutory or regulatory authority for mitigations. Section 1b.8(b)(6), which outlines the elements required for a record of decision, is revised in the final rule to reflect the language already included in section 1b.6(b)(3). USDA's application of the terms "design criteria" and "mitigation measures", as well as clarification that when an issue is addressed through the addition of design criteria that issue should no longer be analyzed in detail (7 CFR 1b.11(a)(11)), is in alignment with the CEQ's 2011 guidance on mitigation and monitoring, which was cited by some commenters (CEQ Memo: *Appropriate Use of*

Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact, January 14, 2011).

The definition of "emergency" (7 CFR 1b.11(a)(13)) is added as this term was used in some of the USDA agency-specific NEPA regulations for emergency action provisions and the concept is carried forward into the USDA NEPA regulations for "emergency actions" (7 CFR 1b.9(v)). In the final rule, the definition of "Emergency" is revised to now read as: "*Emergency* means circumstances exist that make it necessary to take action where delaying action to follow standard procedures for completing NEPA analysis would be contrary to the public interest, as determined by a responsible official." This is to align with changes made to terminology and wording used in 7 CFR 1b.9(v), for the reasons described for that section.

The definition of "extraordinary circumstances" (7 CFR 1b.11(a)(17)) is a concept carried forward from the now rescinded CEQ NEPA regulations and is defined in the USDA NEPA regulations. Some USDA agency-specific NEPA regulations included a definition of extraordinary circumstances, while others did not. While these former definitions served to inform the new definition, none of the previous definitions were used in their entirety. The definition included in the USDA NEPA regulations clarifies that an extraordinary circumstance is a unique situation that exists in which actions that normally do not have significant impacts—and are therefore categorically excluded from documentation in an EA or EIS—create uncertainty whether the degree of the effect is significant. The CEQ NEPA regulations and some USDA agency-specific NEPA regulations defined or discussed extraordinary circumstances in a way that created confusion as to when an extraordinary circumstance existed. Some interpreted an extraordinary circumstance to be present when a resource considered for extraordinary circumstances, such as federally listed threatened or endangered species or wetlands, was present. It is not the mere presence of a resource that means an extraordinary

circumstance exists, but rather the cause-effect relationship between the proposed actions and the resource considered. An extraordinary circumstance exists only when there is reasonable uncertainty about whether the degree of the impact is significant for the resource being considered.

In the final rule, the definition of "Federal Agency" (7 CFR 1.11(a)(18)) is revised to remove the erroneous phrase "these USDA implementing procedures" and correctly replaced with "this part". The last sentence of the definition now begins with, "For the purposes of this part…".

The definition of "finding of applicability and no extraordinary circumstance" (7 CFR 1b.11(a)(19)) is added, as the USDA NEPA regulations clarify that the use of a CE is dependent on determinations that a category (or categories) applies to the proposed actions and no extraordinary circumstance exists. In the final rule, this definition is revised to add a sentence at the end that reads, "For those categories that require NEPA documentation, this finding must be documented." This aligns with 7 CFR 1b.3(g).

The definition of "issue" (7 CFR 1b.11(a)(23)) is added to promote analytic analysis that is focused on cause-effect relationships between the actions proposed (cause) and the reasonably foreseeable impacts (effect) on resources found in the affected environment. The purpose of considering issues is to identify opportunities to modify the proposed action, develop an action alternative, or supplement, improve, or modify the analysis to better understand the effects.

The definitions of "level of NEPA" and "NEPA process" (7 CFR 1b.11(a)(27) and (30)) are added as these terms are used in the regulations in several instances to refer to the different levels of NEPA or process to be completed, those being CE, EA, or EIS. This also helps clarify that using a CE is a NEPA process, as some entities in the past have erroneously alleged that an agency's use of a CE is "circumventing NEPA".

The definition of "proposal record" (or "project record") (7 CFR 1b.11(a)(38)) is added to standardize this term and concept for USDA as it is a key piece of the NEPA and integrated environmental review processes that can be overlooked. A well-organized and complete proposal record also can facilitate paperwork reduction.

The definition of "proposed action" (7 CFR 1b.11(a)(39)) is added to differentiate this from a proposal. "Proposal" is defined by NEPA as "a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects". The definition of proposed action takes this a step further to indicate this includes "design criteria" (where these apply) and that this is the version submitted for final interdisciplinary review and effects analysis. Defining a proposed action also can help responsible officials better determine when timelines start for EAs and EISs to track and meet the deadlines now established in NEPA.

The definition of "purpose and need" (7 CFR 1b.11(a)(41)) is added as this is a term used in NEPA (the Act itself) but not defined. The definition clarifies the purpose and need, explains the "why here, why now" rationale for proposing an action, and that this also can incorporate the goals of an applicant (when applicable) and the subcomponent's statutory duty to review an application for authorization.

In the final rule, the definition of "Record of Decision" (ROD) (7 CFR 1b.11(a)(44)) is revised to add the word "documented". The beginning of the definition now reads as "Record of decision is a documented determination by the responsible official…". This is to accurately reflect that the ROD is a document as it is not included in the definition of "environmental document", as defined in NEPA § 111(5), 42 U.S.C. 4336e(5).

The definitions of "scale" and "scope" (7 CFR 1b.11(a)(47) and (48)) are added as these terms are used in the USDA NEPA regulations when referring to the scale and scope of actions proposed and issues considered for analysis.

In the final rule, the definition of "Senior agency official" (7 CFR 1b.11(a)(49)) is revised to add the following sentence at the end of the definition: "At USDA, the Deputy Secretary is the senior agency official." This change was necessary to account for deleting the definition of "USDA senior agency official". It was found duplicative to have definitions for both of these terms when clarification could be added to the senior agency official definition to specify what position at USDA fills this role.

In the final rule, the definition of "Significance" (7 CFR 1b.11(a)(50)) is revised to remove the phrase "considering whether the reasonably foreseeable impacts of the proposed action are significant and analyzing the potentially affected environment and degree of the effects of the action" and replace it with "the degree of effects of the specific action on the potentially affected environment", as recommended during interagency review to avoid using the term "significance" in the definition and to provide greater precision with respect to the definition of this term. The definition at (iii)(A) is also revised to add the phrase "and beneficial" to the consideration of short- and long-term impacts, with the sentence now reading as: "How the unavoidable short- and long-term adverse and beneficial impacts of implementing the action…". The definition is also revised at (iii)(B) to change "or" to "and" and add the word "Federal" in the phrase "How the irreversible [and] irretrievable commitment of a [Federal] resource". These changes align with changes made to 7 CFR 1b.2(f)(3), as previously described in this preamble.

In the final rule the definition of "Subcomponent" (7 CFR 1b.11(a)(52)) is revised to remove "the United States Department of Agriculture" but keeps the USDA acronym. This aligns with the use of "USDA" throughout the regulations.

The definition of "substantive" (7 CFR 1b.11(a)(53)) is added to promote analytic analysis that focuses on information that meaningfully informs the consideration of reasonably foreseeable impacts on the human environment and the resulting significance determination or decisions on how to proceed. Not all issues need the same level of attention and analysis. Rather, it is substantive issues that should be the focus when conducting effects analysis and making iterative and final decisions on how to design, analyze, and implement an action. In the final rule, the definition of "Substantive" is revised to add "or compliance with applicable laws, executive orders, and regulations" to the end of the definition as this is something that must also be considered by the responsible official when reviewing substantive information, as pointed out by some commenters on the IFR.

In the final rule, the definition of "USDA Senior Agency Official" is removed at 7 CFR 1b.11(a)(54) and replaced by the definition of "USDA website" to clarify how the requirement for publishing environmental documents or otherwise making information available to the public on a USDA website can be met as this was not clear to Department staff implementing the IFR. The definition clarifies the information or document required to be made available to the public can also be published on another entity's website so long as a USDA website directs to that other entity's website.

7 CFR 1b.11(b) adds a list of acronyms that may appear throughout 7 CFR 1b or that may be used when applying 7 CFR 1b during the applicable NEPA process. No changes have been made to this section relative to the version released with the IFR in July 2025.

7 CFR 1b.12 – Severability: This section is added to read as indicated in 7 CFR 1b.12.

7 CFR 1b.12 adds a severability clause that clarifies that the sections of the USDA NEPA Implementing Regulations are separate and severable from one another

and describes how other sections or portions may remain valid if another section or portion is stayed or determined to be invalid. No changes have been made to this section relative to the version released with the IFR in July 2025.

3. Agricultural Research Service Procedures for Implementing NEPA (previously at 7 CFR 520)

The Agriculture Research Service (ARS) NEPA regulations are rescinded in full except for the following sections that have been consolidated in the 7 CFR 1b regulations: 7 CFR 520.5(b)(2)(i) and (iii).

– 7 CFR 520.5(b)(2)(i) and (iii) were moved to examples of activities under one of the CEs previously codified at 7 CFR 1b.3 (department-wide CEs previously under section 1b.3 are now moved to section 1b.4). (now 7 CFR 1b.4(c)(3)(iv) and (v))

4. Animal and Plant Health Inspection Service NEPA Implementing Procedures (previously at 7 CFR 372)

The Animal and Plant Health Inspection Service's (APHIS) NEPA Implementing Procedures at 7 CFR part 372 are rescinded in full except for the following sections that have been moved to 7 CFR part 1b: 7 CFR 372.5(c)(1) through (3) and 7 CFR 372.5(c)(5) (any previously reserved sections are removed as new numbering is applied under 7 CFR 1b); and 7 CFR 372.10(b). Previously codified APHIS CEs are now found at 7 CFR 1b.4(c)(08) through (11).

Minor changes were made to former 7 CFR 372.5(c)(1) through (3) and 7 CFR 372.5(c)(5) as follows when they were moved over to 7 CFR 1b:

– 372.5(c)(1)(i): some terms were removed from this paragraph and added them to examples of activities under department-wide CEs previously codified at 7 CFR 1b.3 (department-wide CEs previously under § 1b.3 are now moved to § 1b.4). The example now reads as: "Identifications,

inspections, surveys, sampling, testing, and monitoring that does not cause physical alteration of the environment." (now 7 CFR 1b.4(c)(3)(i))

– 372.5(c)(1)(ii): revised "Examples of routine measures include" to now read as "Examples of routine measures include but are not limited to". (now 7 CFR 1b.4(c)(8)(ii))

– 372.5(c)(2)(i)(B) and (D) were moved to examples of activities under one of the CEs previously codified at 7 CFR 1b.3 (department-wide CEs previously under § 1b.3 are now moved to § 1b.4). (now 7 CFR 1b.4(c)(3)(ii) and (iii))

– 372.5(c)(2)(i) and 372.5(c)(5): revised "Examples are" to now read as "Examples include but are not limited to". (now 7 CFR 1b.4(c)(9) and (11))

– 372.5(c)(3)(ii) and (iii): modified by removing erroneous "or" in (ii) and removing erroneous "and" in (iii) and replacing it with "or". (now 7 CFR 1b.4(c)(10))

Former section 372.10(b) had more extensive changes when it was moved to 7 CFR 1b.9(v)(2)(i). It is revised as follows:

– Eliminates language regarding EAs as this discussion is now covered for all USDA agencies;; uses more generalized language about who can approve alternative arrangements for emergency actions not anticipated to have a reasonably foreseeable significant effect given the ongoing organizational restructuring at USDA that could affect office names or staff position titles; and, eliminates the requirement to document and report to CEQ the alternative arrangements approved at the agency level. (USDA agencies will continue to coordinate with CEQ on alternative arrangements for those activities anticipated to have reasonably foreseeable significant effects.)

5. Farm Service Agency General Implementing Regulations for NEPA (previously at 7 CFR 799)

The Farm Service Agency (FSA) NEPA regulations are rescinded in full except for the following sections that have been moved to the 7 CFR 1b regulations: 7 CFR 799.12(b), 7 CFR 799.31(b)(1)(2) and (4) through (6), 7 CFR 799.32(d)(1)(2) and (3), 7 CFR 799.32(e)(1)(2) and (3). Previously codified FSA CEs are now found at 7 CFR 1b.4(c)(12) through (16) and (30) and (d)(1) and (2).

7 CFR 799.12(b) was moved to 7 CFR 1b.9(v) but is incorporated into the overall Department guidance for Emergencies, with one paragraph 1b.9(v)(2)(ii) clarifying how the FSA should coordinate alternative arrangements for urgent actions not anticipated to have reasonably foreseeable significant effects.

CEs moved to 7 CFR 1b.4(c) (CEs not requiring documentation under NEPA) because they are historically low impact actions:

– 7 CFR Part 799.31(b)(1) Loan Actions (combined with other "Loan Actions" categories under one category at 7 CFR 1b.4(c)(30)).

– 7 CFR Part 799.31(b)(2) Repair, improvement, or minor modification actions (now 7 CFR 1b.4(c)(13))

– 7 CFR Part 799.31(b)(3) Administrative actions are deleted as a category and added as examples under one of the CEs previously codified at 7 CFR 1b.3. (now 7 CFR 1b.4(c)(1)(i) through (iii))

– 7 CFR Part 799.31(b)(4) Planting actions. (now 7 CFR 1b.4(c)(14))

– 7 CFR Part 799.31(b)(5) Management actions. (now 7 CFR 1b.4(c)(15))

– 7 CFR Part 799.31(b)(6) Other FSA actions (now labeled "Miscellaneous FSA Actions"). 799.31(b)(6)(vi) is revised to read as: Safety net programs without ground disturbance. "Without ground disturbance" is added as a clarifier, as the sentence providing this clarification is not moved to 7 CFR

1b. 7CFR 799.31(b)(6)(x) is removed because the adoption provision is no longer needed here. (now 7 CFR 1b.4(c)(16))

– 7 CFR 799.32(d)(1) Loan Actions (combined with other "Loan Actions" categories under one category at 7 CFR 1b.4(c)(30)).

– 7 CFR 799.32(d)(2) Minor management, construction, or repair actions (now 7 CFR 1b.4(c)(12))

– 7 CFR 799.32(d)(3) Other FSA actions (combined in list with categories labeled "Miscellaneous FSA Actions") (now 7 CFR 1b.4(c)(16))

– 7 CFR 799.32(d)(3)(iv): Removed as it is duplicative to another category already included in the now combined "Miscellaneous FSA Actions" list and the phrase "(this proposed action, in particular, has the potential to cause effects to historic properties and therefore requires analysis under section 106 of NHPA (54 U.S.C. 306108), as well as under the ESA and wetland protection requirements)" is not necessary as the determination for when compliance with NHPA (National Historic Preservation Act) and ESA (Endangered Species Act) is needed is appropriately done on a case-by-case or programmatic basis and is not appropriate to include in NEPA regulations.

– 7 CFR 799.32(e)(1) Loan Actions (combined with other "Loan Actions" categories under one category at 7 CFR 1b.4(c)(30)).

CEs moved to 7 CFR 1b (CEs requiring documentation under NEPA):

– 7 CFR 799.32(e)(2) Construction or ground disturbance actions (now 7 CFR 1b.4(d)(1))

– 7 CFR 799.32(e)(3) Management and planting type actions (now 7 CFR 1b.4(d)(2))

FSA is applying the definition of major Federal action, as established in the FRA (Public Law 118-5), which also amended NEPA. The agency has determined that several types of loan actions fall within one or more of the exclusions in the definition of major Federal actions and will be treating them as such; however, it's possible not all types of loans fall within the exclusions. For this reason, FSA is retaining the existing categories titled "Loan Actions". FSA will continue to make case-by-case or programmatic determinations as to whether certain loans and potentially other programs or actions meet the statutory definition of major Federal action. Justifications for these and any other programmatic determinations will be made in agency-issued guidance.

6. National Institute of Food and Agriculture Implementation of NEPA Regulations (previously at 7 CFR 3407)

The National Institute of Food and Agriculture (NIFA) regulations are rescinded in full except for the following sections that have been moved to the 7 CFR 1b regulations: 7 CFR 3407.6(a)(2)(i)(A) and (C).

– 7 CFR 3407.6(a)(2)(i)(A) and (C) were moved to examples of activities under one of the CEs previously codified at 7 CFR 1b.3 (department-wide CEs previously under § 1b.3 are now moved to § 1b.4). (now 7 CFR 1b.4(c)(3)(iv) and (v))

7. Natural Resources Conservation Service Compliance with NEPA Regulations (previously at 7 CFR 650)

The Natural Resources Conservation Service (NRCS) regulations are rescinded in full except for the following sections that have been consolidated in the 7 CFR 1b regulations: 7 CFR 650.6(a) and (d)(1) through (21). Previously codified NRCS CEs are now found at 7 CFR 1b.4(d)(3) through (23).

Minor changes were made to the CE sections as follows when they were moved over to 7 CFR 1b:

– 7 CFR 650.6(a): This section was moved to examples of activities under one of the CEs previously codified at 7 CFR 1b.3. (now 7 CFR 1b.4(c)(3)(vi) through (x))

– 7 CFR 650.6(d)(14): Revised as follows. In the phrase "Work will be confined to the existing footprint of the dam…", "existing" is replaced with "construction" to now read as "Work will be confined to the construction footprint of the dam". (now 7 CFR 1b.4(d)(16))

– 7 CFR 650.6(d)(15): Revised as follows. In the phrase "Work will be confined to the dam or abutment areas…", the language "construction footprint of the" was inserted, to now read as "Work will be confined to the construction footprint of the dam or abutment areas…" (now 7 CFR 1b.4(d)(17))

– 7 CFR 650.6(d)(16): Revised as follows. In the phrase "Repairing embankment slope failures on structures…", the language "or reshaping the embankment" was inserted to now read as "Repairing embankment slope failures on structures or reshaping the embankment…." (now 7 CFR 1b.4(d)(18))

– 7 CFR 650.6(d)(17): Revised as follows. In the phrase "Work will be confined to the existing dam and abutment areas…", "existing" is replaced with "construction footprint of" to now read as "Work will be confined to the construction footprint of the dam and abutment areas…." (now 7 CFR 1b.4(d)(19))

These CEs focus on routine actions for the repair or updating of existing structures constructed under the Watershed Protection and Flood Prevention Act, Public Law 83-566, or the Flood Control Act, Public Law 78-534. The purpose of rehabilitation projects is to comply with current State safety standards and Federal performance

standards, as well as the protection of environmental values associated with the project's structures.

Upon review of the substantiation records associated with the development of these CEs and the NRCS staff's professional knowledge and experience, NRCS determined it needed additional clarity to better define the appropriate scope of these CEs. The term "existing," in reference to the dam structure, leads to an overly restrictive interpretation that does not meet standard maintenance procedures associated with rehabilitation actions, thus unintentionally restricting the scope and application of the CEs. NRCS completed an analysis of 47 recent site-specific dam rehabilitation EAs, all resulting in a finding of no significant impact. 38 of 47 EAs included one or more actions (NRCS practices) that could qualify for a proposed revised CE. NRCS concluded that 21 of these 38 projects could have been categorically excluded because the proposed action was limited to the dam construction footprint, which was previously disturbed during construction. 17 of those 38 EAs included some actions that could fit the revised CE. Thus, NRCS used the EA analysis to support the conclusion that as individual actions, these actions would not normally lead to significant impacts. The remaining 9 project-specific EAs did not meet the CE criteria because the rehabilitation construction footprint exceeded the original dam construction footprint or involved other actions outside the scope of the CE. These CEs are limited to developed areas, so this modification is not expected to create any new development. Therefore, NRCS determined that when applying these CEs, clarifying the parameters to account for the previously disturbed areas surrounding the finished dam, abutment, or dam slope does not typically result in a significant impact on the human environment and, therefore, justifies changes to the CEs.

The minor modifications reflect an effort by NRCS to provide further clarity and provide transparency regarding the activities, including the associated workspace, covered by the CEs. For actions under these CEs, NRCS personnel will continue to

evaluate proposed actions for potential impacts and extraordinary circumstances, including responsibility of the agency to comply with the National Historic Preservation Act and the Endangered Species Act. A copy of the substantiation record for these modifications can be found at https://www.nrcs.usda.gov/resources/guides-and-instructions/nrcs-environmental-evaluation-cpa-52-worksheet-tools-and-training.

Additionally, for the final rule NRCS reconsidered whether 7 CFR 650.6(c)(3) needed to be retained in the 7 CFR 1b as this section outlined conditions that must be met before using the CEs listed at § 650.6(d). Rationale was provided in the IFR as to why NRCS did not find it necessary to include this language from an agency perspective; however, in discussions with other USDA subcomponents that may use the NRCS CEs and other federal agencies interested in adopting some of the NRCS CEs, NRCS has determined it appropriate to include revised language in 7 CFR 1b.4(d), as modified by this final rule, that clarifies the need to consider application of a NRCS Conservation Practice Standard or an agency-equivalent technical guideline when using the CEs. NRCS Conservation Practice Standards are regularly updated through a rigorous interdisciplinary national review process and require scientific validity, technical feasibility, and alignment with agency conservation objectives and statutory authorities. Accordingly, although USDA subcomponents or other federal agencies may apply NRCS CEs listed in § 1b.4 (d)(3)-(24), the subcomponent's or federal agency’s responsible official must determine that either an applicable NRCS Conservation Practice Standard(s), a comparable subcomponent technical guideline(s), or similar agency-specific conservation or best management practice(s), sufficiently supports its use.

8. Rural Development Environmental Policies and Procedures (previously at 7 CFR 1970)

The Rural Development regulations are rescinded in full except for the following sections that have been moved to the 7 CFR 1b regulations: 7 CFR 1970.11(b); 7 CFR

1970.18(b); 1970.53(a)(1) through (a)(7), (c)(1) through (c)(9), (d)(1) through (11), (e), (f), and (g); 1970.54(a) through (c). Previously codified Rural Development CEs are now found at 7 CFR 1b.4(c)(17) and (18) and (31) through (40) and (d)(24). The CE at 7 CFR 1b.4(d)(25) in the IFR was moved to 7 CFR 1b.4(c)(39) as part of the final rule as these actions do not require NEPA documentation. 1b.4(d)(25) now shows [Reserved] so as not to require the CEs to be renumbered.

Through this final rule, Rural Development is rescinding the process by which it determined which actions require environmental review as previously codified at 7 CFR 1970.8 and implementing the definition of major Federal action as established in the FRA (Public Law 118-5), which also amended NEPA. Rural Development will make case-by-case or programmatic determinations of which programs or actions do not meet the statutory definition of major Federal action. Justifications of programmatic determinations will be made in agency-issued guidance.

In the IFR, Rural Development removed several CEs for actions that the mission area had determined did not meet the definition of major Federal action under NEPA and, therefore, did not require NEPA analysis. However, recent experiences have indicated there may still be unique circumstances in which some actions do not meet the exclusions for a major Federal action and would therefore be considered a major Federal action and subject to NEPA review. Rural Development has decided, as part of this final rule, to keep the following actions previously codified at: 7 CFR 1970.53(a)(1) through (a)(6), (b)(3), (c)(8), (c)(9), (d)(1), and (f). These categories are added at 7 CFR 1b.4(c)(18)(xviii) through (xx) and 7 CFR 1b.4(c)(33) through (40). The actions are included exactly as they were promulgated in the 7 CFR part 1970 regulations, except for one that required a change (7 CFR 1970.53(a)(2)), as described below. For actions covered by these CEs, Rural Development will make case-by-case or programmatic determinations of which actions do not meet the statutory definition of major Federal

action, and where actions are determined to be major Federal actions, the applicable CE can be applied.

Actions previously codified at 1970.53(b)(1) and (2), 1970.53(h), and 1970.55 were removed in the IFR and remain removed as part of this final rule. These actions are already covered by previously promulgated Department-wide categories or are for actions that clearly do not meet the definition of major Federal action.

7 CFR 1970.11(b) is moved to 7 CFR 1b.2(h)(3) verbatim except for the addition of the following phrase at the beginning of the section to indicate it applies to the Rural Development mission area: “When agencies under the Rural Development mission area are obligating funds”.

7 CFR 1970.18(b) is revised and moved to 7 CFR 1b.9(v)(2)(iii) to align with the overarching Department guidance for Emergencies. Adds clarification for how to coordinate to get alternative arrangements approved for emergency actions not anticipated to have a reasonably foreseeable significant effect.

7 CFR 1970.53(a)(2)(i) is revised and moved to 7 CFR 1b.4(c)(34). The original language in paragraph 1970.53(a)(2)(i) is removed and labeled [Reserved] as Rural Development has determined that the actions described are not major Federal actions. The original language also cited two regulations that are now rescinded (40 CFR 1506.1(d) and 7 CFR 1970.12).

7 CFR 1970.53(d)(4) is revised to change the phrase “Includes pole replacements but does not include overhead-to-underground conversions” to now read as “Includes pole replacements and overhead-to-underground conversions”. (Now 7 CFR 1b.4(c)(18)(x).) The equipment used in overhead-to-underground is the same equipment used to install telecommunication fiber, which is covered by other agency CEs (for example, 7 CFR 1970.53(d)(1) (now 7 CFR 1b.4(c)(18)(xx) and (2) (now 7 CFR 1b.4(c)(18)(viii) for both aerial and buried fiber cable within existing rights-of-way). The

action of installing underground electric is normally does not have a significant effect on the environment when performed in an existing previously disturbed utility right-of-way. Pole replacements and overhead-to-underground conversions are not significant construction activities with the potential to cause significant effects on the environment when constructed within a previously disturbed right-of-way and do not always require environmental documentation, provided that the activities are reviewed to rule out extraordinary circumstances. This revises the previous codification at 7 CFR 1970.53(d)(4), which required an environmental report. Since 2016, the agency has reviewed numerous projects of this type (overhead-to-underground conversion) as a CE without significant impact on the environment and therefore has determined they were improperly excluded in previous rulemaking [March 2, 2016, 81 FR 11032].

7 CFR 1970.54(b)(2)(i) is revised to change the phrase "Within one mile of currently served areas irrespective of the percent of increase in new capacity" to now read as "Within 20 miles of currently served areas irrespective of the percent of increase in new capacity". (Now 7 CFR 1b.4(d)(24)(ii)(B).) The change from one (1) mile to twenty (20) miles is based on the review and analysis of EAs issued by the agency, as well as other Federal agency CEs. In addition, the removal of small-scale corridor development that increased capacity by more than 30 percent of the existing user population as a threshold requiring an EA, as previously codified at 7 CFR 1970.54(b)(2)(ii), is based on the review and analysis of EAs issued by the agency, which documents that making the modifications will not normally result in significant effects on the environment. Rural Development has the administrative record of applying 7 CFR1970.53(b)(2) since the promulgation of 7 CFR 1970 and has found no instances where the review was elevated to an EA due to extraordinary circumstances. Further, the agency has reviewed records for over 100 EAs completed for projects that proposed expansion of the distribution or collection system past one mile of the currently served areas or otherwise increased the

capacity by more than 30 percent of the existing user population and found all of these to have concluded in a finding of no significant impact on the environment. As none of these projects has documented a significant impact on the environment, the agency is removing the population threshold.

7 CFR 1970.54(a)(4) is revised to remove the last sentence in the following: "Infrastructure to support utility systems such as water or wastewater facilities; headquarters, maintenance, equipment storage, or microwave facilities; and energy management systems. This does not include proposals that either create a new or relocate an existing discharge to or a withdrawal from surface or ground waters, or cause substantial increase in a withdrawal or discharge at an existing site." (Now 7 CFR 1b.4(d)(24)(i)(D).) The agency has reviewed more than 300 EAs for the activities described in the last sentence and found all of these to have concluded in a finding of no significant impact on the environment. Therefore, the agency has determined these activities do not normally result in a reasonably foreseeable significant effect and it is now appropriate for these actions to occur as part of using this category.

The substantiation record for these modifications can be found at https://www.rd.usda.gov/resources/environmental-studies/environmental-guidance.

Some commenters on the IFR expressed concern regarding the following language included in the CE now listed at 7 CFR 1b.4(c)(18) (USDA-18c-RD): "In accordance with section 106 of the National Historic Preservation Act [NHPA] (54 U.S.C. 300101 – 306108) and its implementing regulations under 36 CFR 800.3(a), the agency has determined that the actions in this section are undertakings, and in accordance with 36 CFR 800.3(a)(1) has identified those undertakings for which no further review under 36 CFR part 800 is required because they have no potential to cause effects to historic properties. In accordance with section 7 of the Endangered Species Act [ESA] (16 U.S.C. 1531-1544) and its implementing regulations at 50 CFR part 402, the agency

has determined that the actions in this section are actions for purposes of the Endangered Species Act, and in accordance with 50 CFR 402.06 has identified those actions for which no further review under 50 CFR part 402 is required because they will have no effect to listed threatened and endangered species". As part of the final rule, this language has been removed from the CE and Rural Development agencies will determine if NHPA or ESA apply to proposals and, if applicable, determine compliance based on the anticipated effects of the proposed actions.

In the final rule, 7 CFR 1b.4(c)(18) (USDA-18c-RD) was also revised to add "or for energy or telecommunication proposals" to the end of the first sentence. In the IFR, the CEs for financial assistance for minor construction and energy or telecommunication proposals were combined under one category in the new regulations, but the IFR erroneously only referred to minor construction projects.

9. U.S. Forest Service NEPA Compliance Regulations (previously at 36 CFR 220)

The U.S. Forest Service regulations are rescinded in full except for the following sections that are moved to the 7 CFR 1b regulations: 36 CFR 220.6(d)(1) through (12) and (e)(1) through (25) (any previously reserved sections are removed); and 220.4(b)(2). Previously codified Forest Service CEs are now found at 7 CFR 1b.4(c)(19) through (29) and (d)(26) through (47).

Minor changes were made to the CE sections, 36 CFR 220.6(d) and (e), as follows when they were moved over to 7 CFR 1b.4(c) and (d): Generalized the requirement, or lack thereof, for documentation for CEs. The CEs requiring documentation did not change. Where the discussion of documentation used Forest Service-specific terminology (for example, decision memo), this terminology has been removed, and the 7 CFR 1b regulations just state that documentation is required. This aligns with the 7 CFR 1b regulations, which establish consistent CE documentation requirements for all USDA agencies.

36 CFR 220.6(e)(9) In the phrase, “Implementation or modification of minor management practices to improve allotment condition or animal distribution when an allotment management plan is not yet in place”, the following language was removed: “when an allotment management plan is not yet in place”. (Now 7 CFR 1b.4(d)(33).) An allotment management plan (AMP) is a document that specifies how the components of the program action will be implemented to reach a given set of objectives. An AMP is prepared in consultation with the permittee(s) associated with the allotment, and it prescribes the manner and extent to which livestock operations will be conducted; describes the type, location, and construction specifications for rangeland improvements; and contains such other provisions relating to livestock grazing on the associated allotment (see 36 CFR 222.1(b)). AMPs are created after a unit’s land management plan and a site-specific grazing decision, both of which undergo their own NEPA analysis. An AMP is the outcome of the grazing decision process. The presence or absence of an AMP does not change the on-the-ground effects of a rangeland improvement because AMPs do not override land management plans or grazing decisions. As such, the revision of language in the CE is a minor change and technical in nature and does not modify the way rangeland improvements are designed or implemented, nor what is authorized in the land management plan or the grazing decision. Currently, most Forest Service grazing allotments have AMPs in place, making this CE unavailable to them. The proposed minor wording change will allow Federal agencies to efficiently maintain or improve rangeland conditions and animal distribution by eliminating a restriction based on paperwork requirements rather than indicators of whether the action may have significant effects, as was considered when initially establishing the category.

36 CFR 220.6(e)(16) is revised to clarify that the land management plan approval document required by 36 CFR part 219 satisfies the documentation requirement for this CE. (Now 7 CFR 1b.4(d)(38).) In the phrase, “…are outside the scope of this category

and shall be considered separately under Forest Service NEPA procedures," "Forest Service" was replaced with "USDA" to now read as, "…are outside the scope of this category and shall be considered separately under USDA NEPA procedures". An update to recordkeeping procedures does not change the significance determination made when establishing this CE.

36 CFR 220.4(b)(2) is revised as follows when moved to 7 CFR 1b.9(v)(2)(iv): eliminates language regarding CEs, EAs, and findings of no significant impact as this discussion is now covered for all USDA agencies; and, uses more generalized language about the process for approving alternative arrangements for emergency actions not anticipated to have reasonably foreseeable significant effects given the ongoing organizational restructuring at USDA that could affect office names and staff position titles.

Based on comments received on the IFR, the Forest Service has determined it is appropriate to remove the CE listed at USDA-27c-USFS given these activities are statutorily exempt from NEPA in accordance with 16 U.S.C. § 497c(i) - Ski area permit rental charge. Inclusion of this CE removal in this final rule is consistent with 7 CFR 1b.3(d) and CEQ guidance to provide public notice of the removal in the *Federal Register*. In the final rule, USDA is removing the CE USDA-27c-USFS in response to comments stating that the existing CE is for an action that has statutorily been identified as no longer being a major Federal action. 16 U.S.C. § 497(c)(i) states that "[t]o reduce Federal costs in administering the provisions of this section, the reissuance of a ski area permit to provide activities similar in nature and amount to the activities provided under the previous permit shall not constitute a major Federal action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.)." While the Forest Service recognizes that the existing CE uses the term "issuance of a new permit," while 16 U.S.C. § 497c(i) uses the term "reissuance," the CE clarifies the issuance of a new

permit is for "an existing ski area when such issuance is a purely ministerial action to account for administrative changes, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit". This is, for all intents and purposes, a reissuance of a permit for an existing ski area, though that permit may be issued to a new owner to conduct the same activities, issued to the same owner under a new term (similar to reissuing a driver's license that is set to expire), or issued under a new authority but for the same scope of activities – as outlined in the examples. The activities outlined in the CE are clearly not intended for a permit issued for a new ski area that does not already exist; therefore, any permit issued for an existing ski area is considered a reissuance. The USDA NEPA regulations at 7 CFR 1b.2(e)(2) states that NEPA does not apply to proposals exempted from NEPA by law, which this category of proposals is. Therefore, there is no need for the CE as it covers the activities now identified as not being a major Federal action for the purposes of NEPA in 16 U.S.C 497c(i) and there is no need for the agency to engage in the NEPA process when reviewing these ski area permit reissuances.

On January 13, 2026, after the promulgation of the IFR at 90 Fed Reg 29632, the United States District Court for the District of Oregon held that the CE at 7 CFR 1b.4(d)(30) (USDA-30d-USFS), formerly codified at 36 CFR 220.6(e)(6), did not comply with the APA, and set aside and remanded the CE, *Oregon Wild v. USFS*, No. 1:22-1007 (D. Or.). On March 16, 2026, the court clarified, however, that decisions that had been signed as of the date of the order could proceed. The Department is currently evaluating whether to appeal the district court ruling. Given the ongoing evaluation of the court's decision, including the possibility of appeal and the ability of certain existing signed decisions to proceed, the language for that CE is included in this rule at 7 CFR 1b.4(d)(30). If USDA decides not to appeal the decision, or if an appeal is unsuccessful, the rule will be amended to reflect the legal status of the CE.

The Forest Service recognizes that the rescission of the 36 CFR 220 regulations has implications on the 36 CFR 218 regulation for the project-level pre-decisional administrative review process. The Forest Service published a proposed rule on February 6, 2026 to revise 36 CFR 218. While the 7 CFR 1b regulations do not include a "decision notice" for EAs, the revised regulations do clarify at 7 CFR 1b.6(c) that, "If a statute or regulation explicitly requires a decision document to approve actions analyzed in an EA, the finding of no significant impact can be retitled to indicate its function as a decision document." This is to account for continued application of the 36 CFR 218 regulations for EAs that required issuance of a decision notice under the 36 CFR 220 regulations (§ 220.7(c)), until such time as the 36 CFR 218 regulations are revised to account for this change.

Some commenters on the IFR disagreed with elimination, as part of rescinding the 36 CFR 220 regulations, of what commenters characterized as the Forest Service's requirements for public comment on EAs and EISs, the mandated scoping requirement for all levels of NEPA review, and the removal of the requirement for a "schedule of proposed actions" (SOPA). Other commenters supported their understanding of these changes, highlighting that what they understood to be requirements in the Forest Service's now rescinded NEPA regulations went above and beyond the statutory requirements of NEPA and the regulatory requirements outlined in the now rescinded CEQ NEPA regulations.

This final rule does not revise the Forest Service 36 CFR 218 or 219 regulations, which include public comment opportunities on some EAs and EISs.

Upon reviewing the USDA agency-specific NEPA regulations, USDA determined the Forest Service regulations went well beyond the statutory requirements for public comment. Scoping for an EIS is not a statutory requirement; however, the Forest Service NEPA regulations made scoping a requirement for all levels of NEPA review, to include

CEs and EAs, and were the only USDA agency-specific NEPA regulations to do so. While the agency established a practice of frequently soliciting written comments during the scoping process, this was never required by the text of 36 CFR 220. Rather, the practice emerged from an understanding of how the Forest Service's regulations interacted with CEQ's NEPA regulations. Those CEQ regulations have now been rescinded. Nothing in the statutory text of NEPA as amended requires either scoping or solicitation for public comment for CE determinations or for EAs. Furthermore, the term "scoping" is not and should not be conflated with statutorily required opportunities for comment on certain EAs and EISs, as reflected in provisions of 36 CFR parts 218 and 219; such opportunities remain unaffected by this rulemaking.

Rather than adding undue process for each and every action undergoing NEPA review, the USDA regulations align with the statutory requirements of NEPA and promote responsible official discretion to determine when and how to apply scoping on a project-by-project basis.

While the requirement in the Forest Service NEPA regulations to publish a SOPA has been rescinded, this does not preclude the agency from continuing to provide this information publicly – whether through the SOPA or continued publication of project information to a forest/grassland's public webpage. The ability and capacity of the agency to provide this information may vary based on funding and staffing levels; therefore, the decision to provide this service should not be predetermined in regulation but appropriately decided on a recurring basis. Furthermore, USDA is currently coordinating with CEQ on the *Permitting Technology Action Plan* that responds to the Presidential Memorandum on *Updating Permitting Technology for the 21st Century*. This permitting technology update is departmental in scope. This update aims to identify the capabilities of existing agency systems that can be replicated, using modern technology and software, to enhance the efficiency, transparency, and effectiveness of environmental

reviews across USDA in alignment with this final rule. This effort will inevitably lead to the decommissioning of outdated system platforms that require costly maintenance. This is yet another reason to remove regulatory requirements for systems that may not continue to exist in their current form, but whose capabilities may be replicated and expanded through current information technology modernization efforts.

C. Transition Period for USDA NEPA Regulations

Where a CE is anticipated and NEPA documentation is required by statute, in accordance with 7 CFR 1b.4(d), or as required by the Federal agency regulations or procedures from which a category was adopted, if the proposal has been accepted and a final proposed action is already being analyzed for CE applicability and extraordinary circumstances, the USDA subcomponent has the discretion to apply 7 CFR 1b as published in this final rule or to continue applying the versions of NEPA regulations being applied prior to publication of this final rule.

Where a CE is anticipated and NEPA documentation is not required in accordance with statute, 7 CFR 1b.4(c), or as required by the Federal agency regulations or procedures from which a category was adopted, the USDA subcomponent shall apply 7 CFR 1b as published in this final rule. Any proposals that are accepted after the publication of this final rule and for which a CE applies, the USDA subcomponent shall apply 7 CFR 1b as published in this final rule.

Where an EA is anticipated and publishes to a USDA website more than 45 calendar days after publication of this final rule, the EA (and associated FONSI) shall comply with 7 CFR 1b as published in this final rule. If an EA publishes to a USDA website within 45 calendar days of this final rule publishing, the USDA subcomponent has discretion to continue applying the versions of NEPA regulations being applied or to switch to applying 7 CFR 1b as published in this final rule.

Where an EIS is anticipated and a Notice of Intent (NOI) to prepare an EIS has not yet published or the NOI published 90 days or less prior to this final rule publishing, the proposal shall apply 7 CFR 1b as published in this final rule. If the NOI for an EIS published more than 90 days prior to the publication of this final rule, the USDA subcomponent has discretion to continue applying the versions of NEPA regulations being applied before publication of the NOI or to switch to applying 7 CFR 1b as published in this final rule. If the NOI stated the version of the regulations being applied and the EIS is prepared under a different version of regulations, the EIS will clarify the regulations being applied. USDA subcomponents should post notification of the change to the USDA website, as specified in the NOI, where information about the proposal can be found and may provide notification of the change to any parties that submitted comments on the NOI.

To the extent any prior regulation is being applied because a project passed the milestones described above for a CE, EA, or EIS, and those regulations conflict with the statute, as amended, or the U.S. Supreme Court decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), the statute governs and the Supreme Court's interpretation of that statute governs.

III. Regulatory Certifications

A. Regulatory Planning and Review

Executive Order (EO) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by EO 12866 and will review significant regulatory actions. OIRA has determined that this final rule is a significant regulatory action as defined by EO 12866. EO 13563 reaffirms the principles of EO 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least

burdensome tools for achieving regulatory ends. The Department has developed the final rule consistent with EO 13563.

B. National Environmental Policy Act

This final rule is procedural in its entirety and therefore does not require preparation of a NEPA analysis. NEPA does not require environmental analysis or documentation when establishing procedural guidance. The determination that establishing department-level NEPA regulations does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 230 F.3d 947, 954-55 (7th Cir. 2000).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act only applies to general notices of proposed rulemaking. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this final rule. See 5 U.S.C. 601(2), 603(a).

D. Federalism

The Department has considered this final rule under the requirements of EO 13132, *Federalism*. The Department has determined that the final rule conforms with the federalism principles set out in this EO; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that this final rule will not have federalism implications, and no further assessment of federalism implications is necessary.

E. Consultation and Coordination with Indian Tribal Governments

EO 13175, *Consultation and Coordination with Indian Tribal Governments*, requires Federal agencies to consult and coordinate with Tribes on a government-to-

government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule does not impose substantial direct compliance costs on Tribal governments and does not preempt Tribal law. The Department has reviewed this final rule in accordance with the requirements of EO 13175 and has determined that this final rule will not have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments is not required for this final rule.

F. Energy Effects

The Department has reviewed the final rule under EO 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Department has determined that the final rule will not constitute a significant energy action as defined in EO 13211.

G. Civil Justice Reform

The Department has analyzed the final rule in accordance with the principles and criteria in EO 12988, *Civil Justice Reform*. Upon publication of the final rule, (1) all State and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Under section 3(a) EO 12988, agencies must review their regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear

legal standard for affected conduct. Section 3(b) provides a list of specific issues for review to conduct the reviews required by section 3(a). USDA has conducted this review and determined that this final rule complies with the requirements of EO 12988.

H. Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), the Department has assessed the effects of the final rule on State, local, and Tribal governments and the private sector. The final rule will not compel the expenditure of $100 million or more, adjusted annually for inflation, in any one (1) year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required. This action also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect subject to the requirements of 2 U.S.C. 1531-1538.

I. Paperwork Reduction Act

The final rule does not contain any recordkeeping or reporting requirements, or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects

7 CFR parts 1b

Environmental impact statements.

Therefore, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301 and 42 U.S.C. 4321-4347, the Department revises 7 CFR part 1b to read as follows:

Title 7--Agriculture

PART 1b—NATIONAL ENVIRONMENT POLICY ACT

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. §§ 4321-4347; EO 11514, 3 CFR, 1966-1970 Comp., p. 902, as amended by EO 11991, 3 CFR, 1978 Comp., p. 123; EO 12114, 3 CFR, 1980 Comp., p. 356; 40 CFR 1507.3.

§ 1b.1 Purpose.

(a) *Purpose*. The purpose of this part is to outline the procedures by which the U.S. Department of Agriculture (hereinafter USDA or the Department) will integrate the National Environmental Policy Act (NEPA) into decision-making processes. Specifically, this part: describes the process by which USDA determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review; ensures that relevant environmental information is identified and considered early in the process in order to ensure informed decision making; enables USDA to conduct coordinated, consistent, predictable and timely environmental reviews; reduces unnecessary burdens and delays; and implements NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and sponsor preparation of environmental assessments and environmental impact statements.

(b) *Procedural and interpretive rule*. This part sets forth USDA's procedures and practices for implementing NEPA. It further explains USDA's interpretation of certain key terms in NEPA. It does not, nor does it intend to, govern the rights and obligations of

any party outside the Federal government. It does, however, establish the procedures under which USDA will typically fulfill its requirements under NEPA.

(c) *Applicability*. This part is applicable to all mission areas, agencies and general offices (hereinafter USDA subcomponent or subcomponent) of USDA.

(d) *Authority*. NEPA imposes certain procedural requirements on the exercise of USDA's existing legal authority in relevant circumstances. Nothing contained in these procedures is intended, nor should be construed to limit, USDA's other authorities or legal responsibilities.

§ 1b.2 Policy.

(a) *USDA compliance with NEPA*. It is the policy of USDA that all USDA subcomponents' policies and programs shall be planned, developed, and implemented to comply with Congress' directives in NEPA, as amended, with the understanding that NEPA is a purely procedural statute that imposes no substantive environmental obligations or restrictions.

(1) The USDA Senior Agency Official is responsible for ensuring that these USDA NEPA regulations are consistent with NEPA and will coordinate compliance for the Department.

(2) The USDA Senior Agency Official may engage the Agricultural Council on Environmental Quality (7 U.S.C. 5401, Pub. L. 101-624) when developing, revising, or amending the necessary processes to be used by the Office of the Secretary in reviewing, implementing, and planning its NEPA activities, determinations, and policies.

(3) The USDA Senior Agency Official will consult with the Council on Environmental Quality (CEQ) while developing or revising the USDA NEPA regulations, as established in this part, in accordance with NEPA section 102(2)(B), 42 U.S.C. 4332(B).

(b) *Managing NEPA compliance*. Within USDA, the Deputy Secretary shall perform all of the duties and exercise all of the powers and functions of the Senior Agency Official to ensure compliance with NEPA and the Department's policies for NEPA, including resolving implementation issues.

(1) The Senior Agency Official shall:

(i) Administer the implementation of NEPA for USDA, to include USDA subcomponent adherence to this part and approving all revisions to this part;

(ii) Centralize information technology and databases regarding documentation and analyses required by NEPA and this part; and

(iii) Compile and submit the annual report to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate that identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in NEPA section 107(g), 42 U.S.C. 4336a(g) and provides an explanation for any failure to meet such deadline.

(2) The Senior Agency Official may delegate authority to any mission area Under Secretary, or other USDA official for a subcomponent with NEPA responsibilities, to perform the duties of the Senior Agency Official for the following:

(i) Ensuring that subcomponent staff have the resources and competencies necessary to produce timely, concise, and effective environmental documents;

(ii) Reviewing and approving the adoption or modification of any subcomponent-specific NEPA guidance (as permitted in paragraph (c) of this section);

(iii) Determining that an environmental impact statement is of extraordinary complexity and therefore, pursuant to NEPA section 107(e)(1)(B), 42 U.S.C. 4336a(e)(1)(B), may exceed 150 pages but not exceed 300 pages;

(iv) Reviewing and determining whether to authorize any deviation from the time limit for preparation of environmental assessments and environmental impacts statements, as established by NEPA section 107(g), 42 U.S.C. 4336a(g);

(v) Resolving implementation issues concerning documentation prepared by applicants and third parties (e.g., contractors), as well as ensuring NEPA analyses for proposals of private applicants or other non-Federal entities commence at the earliest reasonable time;

(vi) Approving, or identifying a designee to approve, alternative arrangements for complying with NEPA for emergency actions when a reasonably foreseeable significant impact is not anticipated, as described in § 1b.9(v);

(vii) Receiving or responding to written requests that a lead agency be designated when requests are received from any Federal agency, or any State, Tribal, or local agency, or private person substantially affected by the absence of lead agency designation; and

(viii) Facilitating interagency disagreements concerning designation of a lead or joint agency or disagreements over proposed major Federal actions that might cause reasonably foreseeable significant impacts and determining whether the disagreement needs elevated to the Council on Environmental Quality.

(c) *Subcomponent-specific NEPA guidance*. It is the policy of USDA that USDA subcomponents may establish subcomponent-specific NEPA guidance when necessary to refine NEPA processes and practices to address subcomponent-specific laws and program efficiency. Additional subcomponent-specific guidance shall avoid creating unnecessary process and should not repeat the requirements, definitions, or other matters that are set forth in this part or the Act itself.

(d) *Annual report to Congress*. NEPA section 107(h)(1)(A) and (B), 42 U.S.C. 4336a(h)(1)(A) and (B), requires the head of each lead agency to annually submit to the

Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in NEPA section 107(g), 42 U.S.C. 4336a(g) and provides an explanation for any failure to meet such deadline.

(1) The USDA Senior Agency Official (or their designee) shall coordinate USDA subcomponent responses for the annual report to Congress and consolidate these into one response that will be provided to Congress to ensure departmental awareness and oversight of environmental assessments and environmental impact statements not completed within the required deadlines established in NEPA section 107(g), 42 U.S.C. 4336a(g).

(2) Each USDA mission area that contains subcomponents with NEPA responsibilities will submit a report to the USDA Senior Agency Official, or their designee, following guidance provided by the Department on an annual basis.

(i) For those USDA mission areas with more than one subcomponent contributing to the report, subcomponent responses shall be consolidated and one response provided for the mission area.

(ii) The USDA Senior Agency Official, or their designee, shall ensure the final report meets the requirements of NEPA section 107(h), 42 U.S.C. 4336a(h).

(e) *Determining when NEPA applies*. Threshold determinations of whether NEPA applies may be made on a case-by-case or programmatic basis and record keeping of the justifications for these determinations is advisable. In determining whether NEPA applies, a USDA subcomponent will consider only the proposed action or project at hand. NEPA does not apply to a proposal when:

(1) The proposal is not a “major Federal action”. The terms “major” and “Federal action,” each have independent force. NEPA applies only when both of these two criteria

are met. Such a determination is inherently bound up in the facts and circumstances of each individual situation, and is thus reserved to the judgment of a USDA subcomponent in each instance;

(2) The proposal or decision is exempted from NEPA by law;

(3) The proposal or decision do not result in final Federal agency action under the Administrative Procedure Act, see 5 U.S.C. 704, or other relevant statute that also includes a finality requirement;

(4) In circumstances where Congress, by statute, has prescribed decisional criteria with sufficient completeness and precision such that a Federal agency retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of a USDA subcomponent is nondiscretionary within the meaning of NEPA section 106(a)(4) and/or section 111(10)(B)(vii) (42 U.S.C. 4336(a)(4) and 4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;

(5) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law; or

(6) The proposal is an action for which another statute's requirements serve the function of the Federal agency's compliance with the Act.

(f) *Determining the appropriate level of NEPA review*. At all steps in the following process, USDA subcomponents will consider the nature of the proposal or project at hand, the potentially affected environment, and the anticipated degree of effect:

(1) In accordance with NEPA section 106(b)(3), 42 U.S.C. 4336(b)(3), when making a determination on the level of review needed, a USDA subcomponent:

(i) May make use of any reliable data source; and

(ii) Is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable.

(2) If a USDA subcomponent determines under § 1b.2(e) that NEPA applies to a proposal or decision, the subcomponent will then determine the appropriate level of NEPA review in the following sequence and manner:

(i) If the subcomponent has established, or adopted pursuant to NEPA section 109, 42 U.S.C. 336c, a categorical exclusion that covers the proposed action, the subcomponent will analyze whether to apply the categorical exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to § 1b.3(f) and (g).

(ii) If another agency has already established a categorical exclusion that covers the proposed action, the subcomponent will consider whether to adopt that exclusion pursuant to § 1b.3(c) so that it can be applied to the proposed action at issue, and to future activities or decisions of that type.

(iii) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to § 1b.3(b), the subcomponent will consider whether to establish, or revise, and then apply the categorical exclusion to the proposed action pursuant to § 1b.3(f) and (g).

(iv) If a USDA subcomponent cannot apply a categorical exclusion to the proposed action consistent with paragraph (f)(2)(i) through (iii) of this section, the subcomponent will consider the proposed action's reasonably foreseeable significant impacts consistent with paragraph (f)(3) of this section, and then will:

(A) if the proposed action is not likely to have reasonably foreseeable significant impacts or the significance of the impacts is unknown, develop an environmental assessment, as described in § 1b.5; or

(B) if the proposed action is likely to have reasonably foreseeable significant impacts, develop an environmental impact statement, as described in § 1b.7.

(3) When considering whether the reasonably foreseeable impacts of an action are significant, USDA subcomponents will consider and analyze the potentially affected environment and degree of the effects of the action.

(i) Potentially affected environment means the condition of the physical, biological, social, and economic factors that may be impacted by an action.

(ii) In considering the degree of effects, USDA subcomponents should consider the following, as appropriate to the specific action and in the context of the potentially affected environment:

(A) Both short- and long-term effects.

(B) Both beneficial and adverse effects.

(C) Effects on public health and safety.

(D) Economic effects.

(E) Effects on the quality of life of the American people.

(iii) In providing rationale for whether the degree of effect is significant, responsible officials shall consider:

(A) How the unavoidable short- and long-term adverse and beneficial impacts of implementing the action compares to the short- and long-term adverse or beneficial consequences of not implementing the action; and

(B) How the irreversible and irretrievable commitment of a Federal resource, as part of the action, contributes to a loss of long-term productivity for the human environment.

(g) *Integrated environmental review and compliance*. It is the policy of USDA that, to the fullest extent possible, USDA subcomponents should conduct NEPA reviews concurrent and integrated with other environmental effects analyses and related surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposal, including the Fish and Wildlife Coordination Act (16 U.S.C.

661 et seq.), the National Historic Preservation Act of 1966 (54 U.S.C. 300101 – 306108), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the Clean Water Act of 1972 (33 U.S.C. 1251 et seq.).

(h) *Limitations on actions during the NEPA process*. It is the policy of USDA that, except as provided in § 1b.9(v), while a NEPA review is ongoing a USDA subcomponent will take no action concerning a proposal that would have an adverse environmental effect or limit the choice of reasonable alternatives when alternatives are necessary.

(1) For proposals that are initially developed by applicants or other non-Federal entities, USDA subcomponents will:

(i) Coordinate with the non-Federal entity at the earliest reasonable time in the planning process to inform the entity what information a USDA subcomponent might need to comply with NEPA, as well as any other applicable environmental review processes, and establish a schedule for completing steps in the NEPA review process consistent with NEPA's statutory deadlines and any internal subcomponent NEPA schedule requirements; and

(ii) Begin the NEPA process by determining whether NEPA applies, as described in paragraph (e) of this section, and if it does, determine the appropriate level of NEPA review, as described in paragraph (f) of this section, as soon as practicable after receiving the complete application.

(2) If a USDA subcomponent is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within the subcomponent's jurisdiction that would meet either of the criteria in paragraph (h) of this section, the subcomponent will promptly notify the applicant that the subcomponent will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs

or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. When considering a proposed action for Federal funding, a subcomponent may authorize such activities, including, but not limited to, acquisition of interests in land (e.g., fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants.

(3) When agencies under the Rural Development mission area are obligating funds, the environmental review process must be concluded before the obligation of funds except for infrastructure projects where the assurance that funds will be available for community health, safety, or economic development has been determined as necessary by the Agency Administrator. At the discretion of the Agency Administrator, funds may be obligated contingent upon the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives. Funds so obligated shall be rescinded if the agency cannot conclude the environmental review process before the end of the fiscal year after the year in which the funds were obligated, or if the agency determines that it cannot proceed with approval based on findings in the environmental review process. For the purposes of this section, infrastructure projects shall include projects such as broadband, telecommunications, electric, energy efficiency, smart grid, water, sewer, transportation, and energy capital investments in physical plant and equipment, but not investments authorized in the Housing Act of 1949.

(4) An adjudication may be a multi-member commission that employs staff recommendations as described here. For adjudication, the environmental document will normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances, the document may follow preliminary hearings designed to gather information for use in the statements.

§ 1b.3 Categorical exclusions and findings of applicability and no extraordinary circumstance.

(a) *Generally*. This section describes the process USDA uses for establishing and revising categorical exclusions (CEs), for adopting other agencies' CEs, for removing CEs, for applying CEs to a proposed action, for considering extraordinary circumstances, and for relying on another Federal agency's CE determination. USDA categorical exclusions, including CEs USDA established and substantiated consistent with CEQ's previous NEPA procedures, are listed at § 1b.4. Notification of CEs adopted by a USDA subcomponent from other agencies will be in accordance with paragraph (c) of this section and tracked by USDA for use by any other USDA subcomponent.

(b) *Establishing and revising categorical exclusions*. To establish or revise a categorical exclusion, USDA subcomponents will determine that the category of actions normally does not have reasonably foreseeable significant impacts that affect the quality of the human environment. In making this determination, subcomponents will:

(1) Develop a written record containing information to substantiate its determination;

(2) Consult with CEQ on its proposed categorical exclusion, including the written record, for a period not to exceed 30 days prior to providing public notice as described in paragraph (b)(3) of this section; and

(3) Provide public notice in the *Federal Register* of USDA's establishment or revision of the categorical exclusion and location of availability of any additional written record.

(c) *Adopting categorical exclusions from other Federal agencies*. Consistent with NEPA section 109, 42 U.S.C. 4336c, USDA subcomponents may adopt a categorical exclusion listed in another agency's NEPA procedures. When adopting a categorical exclusion, USDA subcomponents will:

(1) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its category of proposed or related actions;

(2) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate; and

(3) Provide public notification of the categorical exclusion that USDA is adopting, including a brief description of the proposed action or category of proposed actions to which USDA intends to apply the adopted categorical exclusion.

(i) Public notification will be provided on a USDA website and the adoption of the category will be tracked by USDA.

(ii) Once a categorical exclusion is adopted by one USDA subcomponent, it will be available for use to all other USDA subcomponents.

(iii) Non-USDA categorical exclusions that were already adopted by a USDA subcomponent prior to the 2025 revision of this part are tracked by USDA and may be used by any other USDA subcomponent on proposed actions that fit the categorically excluded actions. Adopted categorical exclusions will be listed on a USDA website.

(d) *Removal of categorical exclusions*. To remove a categorical exclusion from § 1b.4 of this part, a USDA subcomponent will:

(1) Develop a written justification for the removal;

(2) Consult with CEQ on its proposed removal of the categorical exclusion, including the written justification, for a period not to exceed 30 days prior to providing public notice as described in paragraph (d)(3) of this section; and

(3) Provide public notice of USDA's removal of the categorical exclusion and the written justification in the *Federal Register*.

(e) *Applying categorical exclusions*. If a USDA subcomponent determines that one or more categorical exclusions applies to a proposed action, the subcomponent will evaluate the action for extraordinary circumstances. USDA subcomponents may apply

any of the categorical exclusions listed at § 1b.4. If a USDA subcomponent determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed USDA to establish, covers a proposed agency action, USDA will conclude review consistent with applicable law. If appropriate, USDA may examine extraordinary circumstances, modify the proposed action, or document the determination that the legislative categorical exclusion applies, consistent with paragraph (g) of this section and the legal authority for the establishment of the legislative categorical exclusion.

(f) *Extraordinary circumstances*. When applying categorical exclusions, USDA subcomponents shall consider relevant resources in the potentially affected environment for which an extraordinary circumstance may exist that would require the action to instead be documented in an environmental assessment (when there is uncertainty regarding the degree of effect) or an environmental impact statement (if it is determined there is a reasonably foreseeable significant impact). Resources for consideration for extraordinary circumstances will be determined at the responsible official's sole discretion, as informed by interdisciplinary review, and shall be based on the nature of the actions proposed and in the context of the potentially affected environment.

(1) The resources to screen for in the potentially affected environment when considering extraordinary circumstances may include, but are not limited to:

(i) Federally listed threatened or endangered species or designated critical habitat or species proposed for Federal listing or proposed critical habitat;

(ii) Flood plains, wetlands, or other such sensitive areas;

(iii) Special sources of water, such as sole-source aquifers, wellhead protection areas, municipal watersheds, or other water sources that are vital in a region;

(iv) Areas having formal Federal or state designations, such as wilderness areas, parks, or wildlife refuges; wild and scenic rivers; marine sanctuaries; national natural landmarks; inventoried roadless areas; or national recreation areas;

(v) Specially managed areas, such as designated research or experimental areas, coral reefs, coastal barrier resources, or, unless exempt, coastal zone management areas;

(vi) Prime, unique, or important farmland as defined by and subject to the provisions of the Farm Protection Policy Act;

(vii) Property (e.g., sites, buildings, structures, and objects) of historic, archeological, or architectural significance, as designated by Federal, Tribal, State, or local governments, or property eligible for or listed on the National Register of Historic Places; or

(viii) American Indian and Alaska Native religious or cultural sites.

(2) The mere presence of one or more of the resources listed in paragraph (f)(1) of this section, or as otherwise identified at the sole discretion of the responsible official, does not mean an extraordinary circumstance exists. If there is a cause-effect relationship (impact) between the proposed actions and the resource considered, the responsible official should consider if there is something unique to the actions proposed or to the condition of the affected environment or resource(s) considered that creates uncertainty about the degree of potential effect or would lead to a reasonably foreseeable significant effect. An extraordinary circumstance exists only when there is reasonable uncertainty whether the degree of the effect is significant or certainty that the degree of effect is significant.

(3) If an extraordinary circumstance exists, the responsible official may modify the proposed action, or take other steps, such that certainty is created regarding the degree of effect and it is determined the degree of effect is not a reasonably foreseeable significant impact for the resource(s) considered that initially led to the existence of an

extraordinary circumstance. With this outcome, the extraordinary circumstance will be considered to no longer exist and use of the categorical exclusion may proceed.

(4) When effects analysis is completed to demonstrate compliance with other applicable environmental laws, regulations, or executive orders (e.g., analysis completed for Endangered Species Act, National Historic Preservation Act, Clean Water Act, etc.) and already addresses one of the resources in paragraph (f)(1) of this section or as identified at the sole discretion of the responsible official, and it is clear from that analysis and compliance discussion that no extraordinary circumstance exists for the resource considered, the responsible official may rely on that analysis to inform their finding of no extraordinary circumstance.

(g) *Findings of applicability and no extraordinary circumstances (FANEC).* To apply a categorical exclusion, a responsible official must determine that one or more categorical exclusions apply to a proposed action and that no extraordinary circumstance exists. For those categories that require NEPA documentation, as specified in § 1b.4(d), responsible officials shall document these determinations as outlined in paragraphs (g)(1) and (2) of this section.

(1) A USDA subcomponent shall document a finding of applicability and no extraordinary circumstance (FANEC) if the subcomponent determines, based on the NEPA review, that:

(i) An action is categorically excluded from documentation in an environmental assessment or environmental impact statement;

(ii) No extraordinary circumstance exists; and

(iii) The category requires NEPA documentation in accordance with statute, § 1b.4(d), or as required by the Federal agency regulations or procedures from which a category was adopted.

(2) USDA subcomponents may apply any format they choose to document the finding of applicability and no extraordinary circumstance, but shall address the following elements at a minimum:

(i) Incorporate by reference any other relevant documentation developed as part of the environmental review process and contained in the proposal record, such as documentation of compliance with other applicable laws or regulations as deemed necessary by the responsible official;

(ii) State the category or categories being used. If a category being used is adopted from another non-USDA agency, specify that it was adopted;

(iii) Describe the proposed action and state how the category or categories used are applicable to the actions;

(iv) State the resources that the responsible official considered in determining whether an extraordinary circumstance exists;

(v) State that no extraordinary circumstances exist, as informed by the interdisciplinary review; and

(vi) Include the date issued and signature of the responsible official.

(h) *Reliance on categorical exclusion determinations*. Responsible officials may also rely on a previous determination by the USDA subcomponent or another agency that:

(1) A category or categories applies to the activities being proposed when the activities are substantially the same as those activities being proposed by the USDA subcomponent; or

(2) A category or categories applies to the activities being proposed when the activities are substantially the same as those activities being proposed by the USDA subcomponent and no extraordinary circumstance exists when the potentially affected

environment and resources considered for extraordinary circumstances are substantially the same.

(i) *Other documentation considerations*. If use of a categorical exclusion requires documentation in addition to those items listed in paragraph (g)(2) of this section, as specified in statute or regulation, USDA subcomponents may add them to the documentation for the finding of applicability and no extraordinary circumstance as needed.

(j) *Timing of action*. Once the responsible official has signed the documentation for the finding of applicability and no extraordinary circumstance, and unless other statutes or regulations require otherwise, the USDA subcomponent or applicant may begin implementing the action. When NEPA documentation is not required for a categorical exclusion, once the responsible official has determined one or more categorical exclusions applies to a proposed action and no extraordinary circumstance exists and has completed any other necessary environmental review documentation, and unless other statutes or regulations require otherwise, the USDA subcomponent or applicant may begin implementing the action.

§ 1b.4 Categorical exclusion of USDA subcomponents and actions.

(a) The USDA subcomponents listed in paragraphs (a)(1) through (9) of this section conduct programs and activities that do not normally result in reasonably foreseeable significant impacts on the natural or physical environment. As such, these subcomponents' actions are excluded from the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Programs and activities of the USDA subcomponents listed in this paragraph may utilize categorical exclusions, as described in this part, but do not require the preparation of an EA or EIS unless the subcomponent determines that an extraordinary circumstance exists for an individual

action and obtains the concurrence of the USDA Senior Agency Official (or their designee):

(1) Agricultural Marketing Service

(2) Economic Research Service

(3) Federal Crop Insurance Corporation

(4) Food and Nutrition Service

(5) Food Safety and Inspection Service

(6) Foreign Agricultural Service

(7) National Agricultural Library

(8) National Agricultural Statistics Service

(9) The following general offices of the Department: Office of the Chief Economist, Office of the Chief Financial Officer, Office of the Chief Information Officer, Office of the General Counsel, Office of the Inspector General, National Appeals Division, Office of Budget and Program Analysis, Office of Communications, Office of Partnerships and Public Engagement, Office of Tribal Relations, and Office of Small and Disadvantaged Business Utilization.

(b) The categories in paragraphs (c) and (d) of this section are for activities which have been determined by USDA to not have a reasonably foreseeable significant impact on the human environment and are excluded from the preparation of an environmental assessment or environmental impact statement. Categories have been assigned unique numbers for ease of reference. The following acronyms at the end of the number sequence indicate the USDA subcomponent that originally promulgated the category. These acronyms are used in the numbering sequence for USDA subcomponent tracking and continuity purposes and do not imply that the subcomponent indicated is the only USDA subcomponent that may use the category:

(1) OSEC (Office of the Secretary)

(2) APHIS (Animal and Plant Health Inspection Service)

(3) FSA (Farm Service Agency)

(4) NRCS (Natural Resources Conservation Service)

(5) RD (Rural Development)

(6) USFS (U.S. Forest Service)

(c) The following categorical exclusions do not require NEPA documentation.

(1) (USDA-01c-OSEC) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions. Examples include, but are not limited to:

(i) Issuing minor technical corrections to regulations, handbooks, and internal guidance, as well as amendments to them;

(ii) Personnel actions, reduction-in-force, or employee transfers; and

(iii) Procurement actions for goods and services conducted in accordance with applicable laws, regulations, and executive orders.

(2) (USDA-02c-OSEC) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds.

(3) (USDA-03c-OSEC) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity. Examples include, but are not limited to:

(i) Identifications, inspections, surveys, sampling, testing, and monitoring that does not cause physical alteration of the environment;

(ii) Laboratory research involving the evaluation and use of chemicals in a manner not specifically listed on the product label pursuant to applicable Federal authorizations;

(iii) Research evaluating wildlife management products or tools, such as animal repellents, frightening devices, or fencing, that is carried out in a manner and area designed to eliminate the potential for harmful environmental effects and in accordance with applicable regulatory requirements;

(iv) Research operations conducted within any laboratory, greenhouse or other contained facility where research practices and safeguards prevent environment impacts, such as the release of hazardous materials into the environment;

(v) Testing outside of the laboratory, such as in small, isolated field plots, which involves the routine use of familiar chemicals or biological materials and does not involve the use of control agents requiring containment or a special license or a permit from a regulatory agency.

(vi) Soil surveys;

(vii) Snow surveys and water supply forecasts;

(viii) Plant materials for conservation;

(ix) Inventory and monitoring;

(x) River Basin Studies under section 6 of Pub. L. 83-566, as amended.

(4) (USDA-04c-OSEC) Educational and informational programs and activities.

(5) (USDA-05c-OSEC) Civil and criminal law enforcement and investigative activities.

(6) (USDA-06c-OSEC) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counselling and representation.

(7) (USDA-07c-OSEC) Activities related to trade representation and market development activities abroad.

(8) (USDA-08c-APHIS) Routine measures, such as, seizures, quarantines, removals, sanitizing, inoculations, and control employed by agency programs to pursue their missions and functions.

(i) Such measures may include the use—according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions—of chemicals, pesticides, or other potentially hazardous or harmful substances, materials, and target-specific devices or remedies, provided that such use meets all of the following criteria (insofar as they may pertain to a particular action):

(A) The use is localized or contained in areas where humans are not likely to be exposed, and is limited in terms of quantity, i.e., individualized dosages and remedies;

(B) The use will not cause contaminants to enter water bodies, including wetlands;

(C) The use does not adversely affect any federally protected species or critical habitat; and

(D) The use does not cause bioaccumulation.

(ii) Examples of routine measures include, but are not limited to:

(A) Inoculation or treatment of discrete herds of livestock or wildlife undertaken in contained areas (such as a barn or corral, a zoo, an exhibition, or an aviary);

(B) Use of vaccinations or inoculations including new vaccines (e.g., genetically engineered vaccines) and applications of existing vaccines to new species provided that the project is conducted in a controlled and limited manner, and the impacts of the vaccine can be predicted; and

(C) Isolated (e.g., along a highway) weed control efforts.

(9) (USDA-09c-APHIS) Research and development activities limited in magnitude, frequency, and scope that occur in laboratories, facilities, pens, or field sites. Examples include, but are not limited to:

(i) Vaccination trials that occur on groups of animals in areas designed to limit interaction with similar animals, or include other controls needed to mitigate potential risk.

(ii) The development and/or production (including formulation, packaging or repackaging, movement, and distribution) of articles such as program materials, devices, reagents, and biologics that were approved and/or licensed in accordance with existing regulations, or that are for evaluation in confined animal, plant, or insect populations under conditions that prevent exposure to the general population.

(iii) Development, production, and release of sterile insects.

(10) (USDA-10c-APHIS) Licensing and permitting.

(i) Issuance of a license, permit, authorization, or approval to ship or field test previously unlicensed veterinary biologics, including veterinary biologics containing genetically engineered organisms (such as vector-based vaccines and nucleic acid-based vaccines);

(ii) Issuance of a license, permit, authorization, or approval for movement or uses of pure cultures of organisms (relatively free of extraneous micro-organisms and extraneous material) that are not strains of quarantine concern and occur, or are likely to occur, in a State's environment;

(iii) Permitting for confined field releases of genetically engineered organisms and products; or

(iv) Permitting of:

(A) Importation of nonindigenous species into containment facilities,

(B) Interstate movement of nonindigenous species between containment facilities, or

(C) Releases into a State's environment of pure cultures of organisms that are either native or are established introductions.

(11) (USDA-11c-APHIS) Minor renovation, improvement, and maintenance of facilities. Examples include, but are not limited to:

(i) Renovation of existing laboratories and other facilities.

(ii) Functional replacement of parts and equipment.

(iii) Minor additions to existing facilities.

(iv) Minor excavations of land and repairs to properties.

(12) (USDA-12c-FSA) Minor management, construction, or repair actions.

(i) Minor construction, such as a small addition;

(ii) Drain tile replacement;

(iii) Erosion control measures;

(iv) Grading, leveling, shaping, and filling;

(v) Grassed waterway establishment;

(vi) Hillside ditches;

(vii) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting (without stump removal) is to be conducted on a sustainable basis and according to a Federal, State, Tribal, or other governmental unit approved forestry management plan;

(viii) Nutrient management;

(ix) Permanent establishment of a water source for wildlife (not livestock);

(x) Restoring and replacing property;

(xi)Soil and water development;

(xii) Spring development;

(xiii) Trough or tank installation; and

(xiv) Water harvesting catchment.

(13) (USDA-13c-FSA) Repair, improvement, or minor modification actions.

(i) Existing fence repair;

(ii) Improvement or repair of farm-related structures under 50 years of age; and

(iii) Minor amendments or revisions to previously approved projects, provided such proposed actions do not substantively alter the purpose, operation, location, impacts, or design of the project as originally approved.

(14) (USDA-14c-FSA) Planting actions.

(i) Bareland planting or planting without site preparation;

(ii) Bedding site establishment for wildlife;

(iii) Chiseling and subsoiling;

(iv) Clean tilling firebreaks;

(v) Conservation crop rotation;

(vi) Contour farming;

(vii) Contour grass strip establishment;

(viii) Cover crop and green manure crop planting;

(ix) Critical area planting;

(x) Firebreak installation;

(xi) Grass, forbs, or legume planting;

(xii) Heavy use area protection;

(xiii) Installation and maintenance of field borders or field strips;

(xiv) Pasture, range, and hayland planting;

(xv) Seeding of shrubs;

(xvi) Seedling shrub planting;

(xvii) Site preparation;

(xviii) Strip cropping;

(xix) Wildlife food plot planting; and

(xx) Windbreak and shelterbelt establishment.

(15) (USDA-15c-FSA) Management actions.

(i) Forage harvest management;

(ii) Integrated crop management;

(iii) Mulching, including plastic mulch;

(iv) Netting for hard woods;

(v) Obstruction removal;

(vi) Pest management (consistent with all labelling and use requirements);

(vii) Plant grafting;

(viii) Plugging artesian wells;

(ix) Residue management including seasonal management;

(x) Roof runoff management;

(xi) Thinning and pruning of plants;

(xii) Toxic salt reduction; and

(xiii) Water spreading.

(16) (USDA-16c-FSA) Miscellaneous FSA actions.

(i) Fence installation and replacement;

(ii) Fish stream improvement;

(iii) Grazing land mechanical treatment; and

(iv) Inventory property disposal or lease without protective easements or covenants;

(v) Conservation easement purchases with no construction planned;

(vi) Emergency program proposed actions (including Emergency Conservation Program and Emergency Forest Restoration Program) that have a total cost share of less than $5,000;

(vii) Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost and supply of such commodities or programs of a similar nature or intent (that is, price support programs);

(viii) Individual farm participation in Farm Service Agency programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation;

(ix) Safety net programs without ground disturbance;

(x) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur, including air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small scale air, water, or weather monitoring equipment;

(xi) Stand analysis for forest management planning; and

(xii) Tree protection including plastic tubes.

(17) (USDA-17c-RD) A guarantee provided to the Federal Financing Bank pursuant to Section 313A(a) of the Rural Electrification Act of 1936 for the purpose of:

(i) Refinancing existing debt instruments of a lender organized on a not-for-profit basis; or

(ii) Prepaying outstanding notes or bonds made to or guaranteed by the Agency.

(18) (USDA-18c-RD) Financial assistance for minor construction proposals or for energy or telecommunication proposals. The CEs in this section are for proposals for financial assistance that involve no or minimal alterations in the physical environment and typically occur on previously disturbed land. These actions normally do not require an applicant to submit environmental documentation with the application. However, based on the review of the project description, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist.

(i) Minor amendments or revisions to previously approved projects provided such activities do not alter the purpose, operation, geographic scope, or design of the project as originally approved;

(ii) Repair, upgrade, or replacement of equipment in existing structures for such purposes as improving habitability, energy efficiency (including heat rate efficiency), replacement or conversion to enable use of renewable fuels, pollution prevention, or pollution control;

(iii) Any internal modification or minimal external modification, restoration, renovation, maintenance, and replacement in-kind to an existing facility or structure;

(iv) Construction of or substantial improvement to a single-family dwelling, or a Rural Housing Site Loan project or multi-family housing project serving up to four families and affecting less than 10 acres of land;

(v) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use;

(vi) Replacement of existing water and sewer lines within the existing right-of-way and as long as the size of pipe is either no larger than the inner diameter of the existing pipe or is an increased diameter as required by Federal or state requirements. If a larger pipe size is required, applicants must provide a copy of written administrative requirements mandating a minimum pipe diameter from the regulatory agency with jurisdiction;

(vii) Modifications of an existing water supply well to restore production in existing commercial well fields, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the replacement well;

(viii) Burying new facilities for communication purposes in previously developed, existing rights-of-way and in areas already in or committed to urbanized development or rural settlements whether incorporated or unincorporated that are characterized by high human densities and within contiguous, highly disturbed environments with human-built

features. Covered actions include associated vaults and pulling and tensioning sites outside rights-of-way in nearby previously disturbed or developed land;

(ix) Changes to electric transmission lines that involve pole replacement or structural components only where either the same or substantially equivalent support structures at the approximate existing support structure locations are used;

(x) Phase or voltage conversions, reconductoring, upgrading, or rebuilding of existing electric distribution lines that would not affect the environment beyond the previously developed, existing rights-of-way. Includes pole replacements and overhead-to-underground conversions;

(xi) Collocation of telecommunications equipment on existing infrastructure and deployment of distributed antenna systems and small cell networks provided the latter technologies are not attached to and will not cause adverse effects to historic properties;

(xii) Siting, construction, and operation of small, ground source heat pump systems that would be located on previously developed land;

(xiii) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on or adjacent to an existing structure and that would not affect the environment beyond the previously developed facility area and are not attached to and will not cause adverse effects to historic properties;

(xiv) Siting, construction, and operation of small biomass projects, such as animal waste anaerobic digesters or gasifiers, that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy;

(xv) Construction of small standby electric generating facilities with a rating of one average megawatt (MW) or less, and associated facilities, for the purpose of providing emergency power for or startup of an existing facility;

(xvi) Additions or modifications to electric transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock, grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms;

(xvii) Safety, environmental, or energy efficiency (including heat rate efficiency) improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations), that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluent discharges, or waste products;

(xviii) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities;

(xix) Upgrading or rebuilding existing telecommunication facilities (both wired and wireless) or addition of aerial cables for communication purposes to electric power lines that would not affect the environment beyond the previously-developed, existing rights-of-way; and

(xx) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest.

(19) (USDA-19c-USFS) Orders issued pursuant to 36 CFR part 261: Prohibitions to provide short-term resource protection or to protect public health and safety. Examples include, but are not limited to:

(i) Closing a road to protect bighorn sheep during lambing season, and

(ii) Closing an area during a period of extreme fire danger.

(20) (USDA-20c-USFS) Rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions. Examples include, but are not limited to:

(i) Adjusting special use or recreation fees using an existing formula;

(ii) Proposing a technical or scientific method or procedure for screening effects of emissions on air quality related values in Class I wildernesses;

(iii) Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default;

(iv) Proposing changes in contract terms and conditions or terms and conditions of special use authorizations;

(v) Establishing a service-wide process for responding to offers to exchange land and for agreeing on land values; and

(vi) Establishing procedures for amending or revising forest land and resource management plans.

(21) (USDA-21c-USFS) Repair and maintenance of administrative sites. Examples include, but are not limited to:

(i) Mowing lawns at a district office;

(ii) Replacing a roof or storage shed;

(iii) Painting a building; and

(iv) Applying registered pesticides for rodent or vegetation control.

(22) (USDA-22c-USFS) Repair and maintenance of roads, trails, and landline boundaries. Examples include, but are not limited to:

(i) Authorizing a user to grade, resurface, and clean the culverts of an established National Forest System (NFS) road;

(ii) Grading a road and clearing the roadside of brush without the use of herbicides;

(iii) Resurfacing a road to its original condition;

(iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and

(v) Surveying, painting, and posting landline boundaries.

(23) (USDA-23c-USFS) Repair and maintenance of recreation sites and facilities. Examples include, but are not limited to:

(i) Applying registered herbicides to control poison ivy on infested sites in a campground;

(ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;

(iii) Repaving a parking lot; and

(iv) Applying registered pesticides for rodent or vegetation control.

(24) (USDA-24c-USFS) Acquisition of land or interest in land. Examples include, but are not limited to:

(i) Accepting the donation of lands or interests in land to the NFS, and

(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

(25) (USDA-25c-USFS) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include, but are not limited to:

(i) Selling or exchanging land pursuant to the Small Tracts Act;

(ii) Exchanging NFS lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices;

(iii) Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity; and

(iv) Exchange of administrative sites involving other than NFS lands.

(26) (USDA-26c-USFS) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide;

(ii) Approving the use of NFS land for apiaries; and

(iii) Approving the gathering of forest products for personal use.

(27) [Reserved]

(28) (USDA-28c-USFS) Issuance of a new special use authorization to replace an existing or expired special use authorization, when such issuance is to account only for administrative changes, such as a change in ownership of authorized improvements or expiration of the current authorization, and where there are no changes to the authorized facilities or increases in the scope or magnitude of authorized activities. The applicant or holder must be in compliance with all the terms and conditions of the existing or expired special use authorization. Subject to the foregoing conditions, examples include, but are not limited to:

(i) Issuing a new authorization to replace a powerline facility authorization that is at the end of its term;

(ii) Issuing a new permit to replace an expired permit for a road that continues to be used as access to non-NFS lands; and

(iii) Converting a transitional priority use outfitting and guiding permit to a priority use outfitting and guiding permit.

(29) (USDA-29c-USFS) Issuance of a new authorization or amendment of an existing authorization for recreation special uses that occur on existing roads or trails, in existing facilities, in existing recreation sites, or in areas where such activities are allowed. Subject to the foregoing condition, examples include, but are not limited to:

(i) Issuance of an outfitting and guiding permit for mountain biking on NFS trails that are not closed to mountain biking;

(ii) Issuance of a permit to host a competitive motorcycle event;

(iii) Issuance of an outfitting and guiding permit for backcountry skiing;

(iv) Issuance of a permit for a one-time use of existing facilities for other recreational events; and

(v) Issuance of a campground concession permit for an existing campground that has previously been operated by the Forest Service.

(30) (USDA-30c-FSA) FSA Loan Actions

(i) Closing cost payments;

(ii) Commodity loans;

(iii) Debt set asides;

(iv) Deferral of loan payments;

(v) Youth loans;

(vi) Loan consolidation;

(vii) Loans for annual operating expenses, except livestock;

(viii) Loans for equipment;

(ix) Loans for family living expenses;

(x) Loan subordination, with no or minimal construction below the depth of previous tillage or ground disturbance, and no change in operations, including, but not limited to, an increase in animal numbers to exceed the current CAFO designation (as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23);

(xi) Loans to pay for labor costs;

(xii) Loan (debt) transfers and assumptions with no new ground disturbance;

(xiii) Partial or complete release of loan collateral;

(xiv) Re-amortization of loans;

(xv) Refinancing of debt;

(xvi) Rescheduling loans;

(xvii) Restructuring of loans; and

(xviii) Writing down of debt.

(xix) Farm storage and drying facility loans for added capacity;

(xx) Loans for livestock purchases;

(xxi) Release of loan security for forestry purposes;

(xxii) Reorganizing farm operations; and

(xxiii) Replacement building loans;

(xxiv) Loans and loan subordination with construction, demolition, or ground disturbance planned;

(xxv) Real estate purchase loans with new ground disturbance planned; and

(xxvi) Term operating loans with construction or demolition planned;

(31) (USDA-31c-RD) The promulgation of rules or formal notices for policies or programs that are administrative or financial procedures for implementing Agency assistance activities.

(32) (USDA-32c-RD) Agency proposals for legislation that have no potential for significant environmental impacts because they would allow for no or minimal construction or change in operations.

(33) (USDA-33c-RD) Financial assistance for the purchase, transfer, lease, or other acquisition of real property when no or minimal change in use is reasonably foreseeable.

(i) Real property includes land and any existing permanent or affixed structures.

(ii) "No or minimal change in use is reasonably foreseeable" means no or only a small change in use, capacity, purpose, operation, or design is expected where the foreseeable type and magnitude of impacts would remain essentially the same.

(34) (USDA-34c-RD) Financial assistance for the purchase, transfer, or lease of personal property or fixtures where no or minimal change in operations is reasonably foreseeable. These include:

(i) [Reserved]

(ii) Acquisition of end-user equipment and programming for telecommunication distance learning;

(iii) Purchase, replacement, or installation of equipment necessary for the operation of an existing facility (such as Supervisory Control and Data Acquisition Systems (SCADA), energy management or efficiency improvement systems (including heat rate efficiency), replacement or conversion to enable use of renewable fuels, standby internal combustion electric generators, battery energy storage systems, and associated facilities for the primary purpose of providing emergency power);

(iv) Purchase of vehicles (such as those used in business, utility, community, or emergency services operations);

(v) Purchase of existing water rights where no associated construction is involved;

(vi) Purchase of livestock and essential farm equipment, including crop storing and drying equipment; and

(vii) Purchase of stock in an existing enterprise to obtain an ownership interest in that enterprise.

(35) (USDA-35c-RD) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses.

(36) (USDA-36c-RD) Sale or lease of Agency-owned real property, if the sale or lease of Agency-owned real property will have no or minimal construction or change in current operations in the foreseeable future.

(37) (USDA-37c-RD) The provision of additional financial assistance for cost overruns where the purpose, operation, location, and design of the proposal as originally approved has not been substantially changed.

(38) (USDA-38c-RD) Rural Business Investment Program (7 U.S.C. 1989 and 2009cc *et seq.*) actions as follows:

(i) Non-leveraged program actions that include licensing by USDA of Rural Business Investment Companies (RBIC); or

(ii) Leveraged program actions that include licensing by USDA of RBIC and Federal financial assistance in the form of technical grants or guarantees of debentures of an RBIC, unless such Federal assistance is used to finance construction or development of land.

(39) (USDA-39c-RD) Repairs made because of an emergency situation to return to service damaged facilities of an applicant's utility system or other actions necessary to preserve life and control the immediate impacts of the emergency.

(40) (USDA-40c-RD) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur. This includes, but is not limited to, air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; and installation of small-scale air, water, or weather monitoring equipment.

(d) The following categorical exclusions require NEPA documentation, which will be completed as set forth at § 1b.3(g). For CEs promulgated by Natural Resources and Conservation Service (indicated by NRCS at the end of the category number), USDA subcomponents must adhere to NRCS Conservation Practice Standards, or to

comparable technical guidelines, or similar agency-specific conservation or best management practices, as determined at the sole discretion of the subcomponent's responsible official.

(1) (USDA-01d-FSA) 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.

(2) (USDA-02d-FSA) Management and planting type actions.

(i) Establishing or maintaining wildlife plots in areas not previously tilled or disturbed;

(ii) Prescribed burning;

(iii) Tree planting when trees have root balls of one gallon container size or larger; and

(iv) Wildlife upland habitat management.

(3) (USDA-03d-NRCS) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services.

(4) (USDA-04d-NRCS) 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.

(5) (USDA-05d-NRCS) Plugging and filling excavated drainage ditches to allow hydrologic conditions to return to pre-drainage conditions to the extent practicable.

(6) (USDA-06d-NRCS) Replacing and repairing existing culverts, grade stabilization, and water control structures and other small structures that were damaged by natural disasters where there is no new depth required and only minimal dredging, excavation, or placement of fill is required.

(7) (USDA-07d-NRCS) Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes.

(8) (USDA-08d-NRCS) Removing or relocating residential, commercial, and other public and private buildings and associated structures constructed in the 100-year floodplain or within the breach inundation area of an existing dam or other flood control structure in order to restore natural hydrologic conditions of inundation or saturation, vegetation, or reduce hazards posed to public safety.

(9) (USDA-09d-NRCS) Removing storm debris and sediment following a natural disaster where there is a continuing and eminent threat to public health or safety, property, and natural and cultural resources and removal is necessary to restore lands to pre-disaster conditions to the extent practicable. Excavation will not exceed the pre-disaster condition.

(10) (USDA-10d-NRCS) Stabilizing stream banks and associated structures to reduce erosion through bioengineering techniques following a natural disaster to restore pre-disaster conditions to the extent practicable, e.g., utilization of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, rip-rap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

(11) (USDA-11d-NRCS) 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.

(12) (USDA-12d-NRCS) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats. Examples of activities include installation of fences and construction of small berms, dikes, and associated water control structures.

(13) (USDA-13d-NRCS) Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition.

(14) (USDA-14d-NRCS) Repairing or maintenance of existing constructed fish passageways, such as fish ladders or spawning areas impacted by natural disasters or human alteration.

(15) (USDA-15d-NRCS) Repairing, maintaining, or installing fish screens to existing structures.

(16) (USDA-16d-NRCS) 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

construction footprint of the dam, and no major change in reservoir or downstream operations will result.

(17) (USDA-17d-NRCS) 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 construction footprint of the dam or abutment areas, and no major change in reservoir or downstream operation will result.

(18) (USDA-18d-NRCS) Repairing embankment slope failures on structures or reshaping the embankment, originally built to NRCS standards, where the work is confined to the embankment or abutment areas.

(19) (USDA-19d-NRCS) 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 construction footprint of the 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.

(20) (USDA-20d-NRCS) Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards.

(21) (USDA-21d-NRCS) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration. Examples of these practices include: mowing, haying, grazing, fencing, off-stream watering facilities, and invasive species control which are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes.

(22) (USDA-22d-NRCS) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting.

(23) (USDA-23d-NRCS) Implementing water conservation activities on existing agricultural lands, such as minor irrigation land leveling, irrigation water conveyance (pipelines), irrigation water control structures, and various management practices.

(24) The CEs in this section are for proposals for financial assistance that require an applicant to submit environmental documentation with their application to facilitate agency determination of extraordinary circumstances. At a minimum, the environmental documentation will include a complete description of all components of the applicant's proposal and any connected actions, including its specific location on detailed site plans as well as location maps equivalent to a U.S. Geological Survey (USGS) quadrangle map; and information from authoritative sources acceptable to the agency confirming the presence or absence of sensitive environmental resources in the area that could be affected by the applicant's proposal. The environmental documentation submitted must be accurate, complete, and capable of verification. The agency may request additional information as needed to make an environmental determination. Failure to submit the required environmental documentation will postpone further consideration of the applicant's proposal until the environmental documentation is submitted, or the agency may deny the request for financial assistance. The agency will review the environmental

documentation and determine if extraordinary circumstances exist. The agency's review may determine that classification as an environmental assessment or an environmental impact statement is more appropriate than a categorical exclusion classification.

(i) (USDA-24-1d-RD) 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 (d)(24)(i)(A) through (J). This paragraph does not apply to new industrial proposals (such as ethanol and biodiesel production facilities).

(A) Multi-family housing and Rural Housing Site Loans.

(B) Business development.

(C) Community facilities such as municipal buildings, libraries, security services, fire protection, schools, and health and recreation facilities.

(D) Infrastructure to support utility systems such as water or wastewater facilities; headquarters, maintenance, equipment storage, or microwave facilities; and energy management systems.

(E) Installation of new, commercial-scale water supply wells and associated pipelines or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection.

(F) Construction of telecommunications towers and associated facilities, if the towers and associated facilities are 450 feet or less in height and would not be in or visible from an area of documented scenic value.

(G) 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.

(H) 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.

(I) 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).

(J) Vegetative biomass harvesting operations of no more than 15 acres, provided any amount of land involved in harvesting is to be conducted managed on a sustainable basis and according to a Federal, state, or other governmental unit approved management plan.

(ii) (USDA-24-2d-RD) Financial assistance for small-scale corridor development.

(A) Construction or repair of roads, streets, and sidewalks, including related structures such as curbs, gutters, storm drains, and bridges, in an existing right-of-way with minimal change in use, size, capacity, purpose, or location from the original infrastructure;

(B) Improvement and expansion of existing water, wastewater, and gas utility systems: within 20 miles of currently served areas irrespective of the percent of increase in new capacity;

(C) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocation of lines either within or immediately adjacent to the new road easement or right-of-way; and

(D) Installation of new linear telecommunications facilities and related equipment and infrastructure.

(iii) (USDA-24-3d-RD) Financial assistance for small-scale energy proposals.

(A) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations, switchyards, and support facilities;

(B) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(*1*) Less than 69 kilovolts (kV);

(*2*) Less than 230 kV if no more than 25 miles of line are involved; or

(*3*) 230 kV or greater involving no more than three miles of line, but not for the integration of major new generation resources into a bulk transmission system;

(C) Reconstruction (upgrading or rebuilding) or minor relocation of existing electric transmission lines (230 kV or less) 25 miles in length or less to enhance environmental and land use values or to improve reliability or access. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts on environmentally sensitive areas;

(D) Repowering or uprating modifications or expansion of an existing unit(s) up to a rating of 50 average MW at electric generating facilities in order to maintain or improve the efficiency, capacity, or energy output of the facility. Any air emissions from such activities must be within the limits of an existing air permit;

(E) Installation of new generating units or replacement of existing generating units at an existing hydroelectric facility or dam which results in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(F) Installation of a heat recovery steam generator and steam turbine with a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(G) Construction of small electric generating facilities (except geothermal and solar electric projects), including those fueled with wind or biomass, with a rating of 10 average MW or less. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(H) Siting, construction, and operation of small biomass projects (except small electric generating facilities projects fueled with biomass) producing not more than 3 million gallons of liquid fuel or 300,000 million British thermal units annually, developed on up 10 acres of land;

(I) Geothermal electric power projects or geothermal heating or cooling projects developed on up to 10 acres of land and including installation of one geothermal well for the production of geothermal fluids for direct use application (such as space or water heating/cooling) or for power generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(J) Solar electric projects or solar thermal projects developed on up to 10 acres of land including all supporting facilities and new related electric transmission lines 10 miles in length or less;

(K) Distributed resources of any capacity located at or adjacent to an existing landfill site or wastewater treatment facility that is powered by refuse-derived fuel. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(L) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 average MW using an existing conduit such as an irrigation ditch or a pipe

into which a turbine would be placed for the purpose of electric generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included; and

(M) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency (including heat rate efficiency), promoting pollution prevention or control, safety, reliability, or security. This includes, but is not limited to, retrofitting existing facilities to produce biofuels and replacing fossil fuels used to produce heat or power in biorefineries with renewable biomass. This also includes installation of fuel blender pumps and associated changes within an existing fuel facility.

(25) [Reserved]

(26) (USDA-26d-USFS) Construction and reconstruction of trails. Examples include, but are not limited to:

(i) Constructing or reconstructing a trail to a scenic overlook, and

(ii) Reconstructing an existing trail to allow use by handicapped individuals.

(27) (USDA-27d-USFS) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor. Examples include, but are not limited to:

(i) Replacing an underground cable trunk and adding additional phone lines, and

(ii) Reconstructing a power line by replacing poles and wires.

(28) (USDA-28d-USFS) Approval, modification, or continuation of special uses that require less than 20 acres of NFS lands. Subject to the preceding condition, examples include but are not limited to:

(i) Approving the construction of a meteorological sampling site;

(ii) Approving the use of land for a one-time group event;

(iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history;

(iv) Approving the use of land for a utility corridor that crosses a national forest;

(v) Approving the installation of a driveway or other facilities incidental to use of a private residence; and

(vi) Approving new or additional communication facilities, associated improvements, or communication uses at a site already identified as available for these purposes.

(29) (USDA-29d-USFS) Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides or result in vegetation type conversion. Examples include, but are not limited to:

(i) Planting seedlings of superior trees in a progeny test site to evaluate genetic worth, and

(ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.

(30) (USDA-30d-USFS) (See discussion in the preamble for the final rule regarding the status of this CE.)

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.

(31) (USDA-31d-USFS) Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include, but are not limited to:

(i) Reconstructing a gabion with stone from a nearby source;

(ii) Adding brush to lake fish beds; and

(iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.

(32) (USDA-32d-USFS) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads. Examples include, but are not limited to:

(i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes;

(ii) Gathering geophysical data using shot hole, vibroseis, or surface charge methods;

(iii) Trenching to obtain evidence of mineralization;

(iv) Clearing vegetation for sight paths or from areas used for investigation or support facilities;

(v) Redesigning or rearranging surface facilities within an approved site;

(vi) Approving interim and final site restoration measures; and

(vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of 1/3 mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.

(33) (USDA-33d-USFS) Implementation or modification of minor management practices to improve allotment condition or animal distribution. Examples include, but are not limited to:

(i) Rebuilding a fence to improve animal distribution;

(ii) Adding a stock watering facility to an existing water line; and

(iii) Spot seeding native species of grass or applying lime to maintain forage condition.

(34) (USDA-34d-USFS) 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.

(35) (USDA-35d-USFS) Harvest of live trees not to exceed 70 acres, requiring no more than 1/2 mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(36) (USDA-36d-USFS) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, and

(ii) Harvest of fire-damaged trees.

(37) (USDA-37d-USFS) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and

(ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

(38) (USDA-38d-USFS) Land management plans, plan amendments, and plan revisions developed in accordance with 36 CFR part 219 et seq. that provide broad guidance and information for project and activity decision-making in a NFS unit. (The plan approval document required by 36 CFR part 219 satisfies the documentation requirement for this categorical exclusion.) Proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal

instruments, are outside the scope of this category and shall be considered separately under USDA NEPA procedures.

(39) (USDA-39d-USFS) Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following:

(i) One mile of new road construction;

(ii) One mile of road reconstruction;

(iii) Three miles of individual or co-located pipelines and/or utilities disturbance; or

(iv) Four drill sites.

(40) (USDA-40d-USFS) 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.

(41) (USDA-41d-USFS) Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes. Examples include but are not limited to:

(i) Removing an unstable debris jam on a river following a flood event and relocating it back in the floodplain and stream channel to restore water flow and local bank stability;

(ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete, culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and

(iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

(42) (USDA-42d-USFS) Activities that restore, rehabilitate, or stabilize lands occupied by roads and trails, including unauthorized roads and trails and National Forest System (NFS) roads and NFS trails, to a more natural condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing

vegetation, reshaping natural contours and slopes, reestablishing drainage-ways, or other activities that would restore site productivity and reduce environmental impacts. Examples include but are not limited to:

(i) Decommissioning a road to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and culverts to reestablish natural drainage patterns;

(ii) Restoring a trail to a natural state by reestablishing natural drainage patterns, stabilizing slopes, reestablishing vegetation, and installing water bars; and

(iii) Installing boulders, logs, and berms on a road segment to promote naturally regenerated grass, shrub, and tree growth.

(43) (USDA-43d-USFS) Construction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing administrative site, as that term is defined in section 502(1) of Public Law 109-54 (119 Stat. 559; 16 U.S.C. 580d note). Examples include but are not limited to:

(i) Relocating an administrative facility to another existing administrative site;

(ii) Construction, reconstruction, or expansion of an office, a warehouse, a lab, a greenhouse, or a fire-fighting facility;

(iii) Surface or underground installation or decommissioning of water or waste disposal system infrastructure;

(iv) Disposal of an administrative building; and

(v) Construction or reconstruction of communications infrastructure.

(44) (USDA-44d-USFS) Construction, reconstruction, decommissioning, or disposal of buildings, infrastructure, or improvements at an existing recreation site, including infrastructure or improvements that are adjacent or connected to an existing recreation site and provide access or utilities for that site. Recreation sites include but are not limited to campgrounds and camping areas, picnic areas, day use areas, fishing sites,

interpretive sites, visitor centers, trailheads, ski areas, and observation sites. Activities within this category are intended to apply to facilities located at recreation sites managed by the Forest Service and those managed by concessioners under a special use authorization. Examples include but are not limited to:

(i) Constructing, reconstructing, or expanding a toilet or shower facility;

(ii) Constructing or reconstructing a fishing pier, wildlife viewing platform, dock, or other constructed feature at a recreation site;

(iii) Installing or reconstructing a water or waste disposal system;

(iv) Constructing or reconstructing campsites;

(v) Disposal of facilities at a recreation site;

(vi) Constructing or reconstructing a boat landing;

(vii) Replacing a chair lift at a ski area;

(viii) Constructing or reconstructing a parking area or trailhead; and

(ix) Reconstructing or expanding a recreation rental cabin.

(45) (USDA-45d-USFS) Road management activities on up to 8 miles of National Forest System (NFS) roads and associated parking areas. Activities under this category cannot include construction or realignment. Examples include but are not limited to:

(i) Rehabilitating an NFS road or parking area where management activities go beyond repair and maintenance;

(ii) Shoulder-widening or other safety improvements within the right-of-way for an NFS road; and

(iii) Replacing a bridge along an NFS road.

(46) (USDA-46d-USFS) Construction and realignment of up to 2 miles of National Forest System (NFS) roads and associated parking areas. Examples include but are not limited to:

(i) Constructing an NFS road to improve access to a trailhead or parking area;

(ii) Rerouting an NFS road to minimize resource impacts; and

(iii) Improving or upgrading the surface of an NFS road to expand its capacity.

(47) (USDA-47d-USFS) Forest and grassland management activities with a primary purpose of meeting restoration objectives or increasing resilience. Activities to improve ecosystem health, resilience, and other watershed and habitat conditions may not exceed 2,800 acres.

(i) Activities to meet restoration and resilience objectives may include, but are not limited to:

(A) Stream restoration, aquatic organism passage rehabilitation, or erosion control;

(B) Invasive species control and reestablishment of native species;

(C) Prescribed burning;

(D) Reforestation;

(E) Road and/or trail decommissioning (system and non-system);

(F) Pruning;

(G) Vegetation thinning; and

(H) Timber harvesting.

(ii) The following requirements or limitations apply to this category:

(A) Projects shall be developed or refined through a collaborative process that includes multiple interested persons representing diverse interests;

(B) Vegetation thinning or timber harvesting activities shall be designed to achieve ecological restoration objectives, but shall not include salvage harvesting as defined in Agency policy; and

(C) Construction and reconstruction of permanent roads is limited to 0.5 miles. Construction of temporary roads is limited to 2.5 miles, and all temporary roads shall be decommissioned no later than 3 years after the date the project is completed. Projects

may include repair and maintenance of National Forest System (NFS) roads and trails to prevent or address resource impacts; repair and maintenance of NFS roads and trails is not subject to the above mileage limits.

§ 1b.5 Environmental assessments.

(a) *Generally*. If an action is subject to NEPA, as determined following § 1b.2(e), and unless a USDA subcomponent finds that the proposed action is excluded from having to prepare an environmental assessment or environmental impact statement pursuant to a categorical exclusion as determined following § 1b.2(f), or by another provision of law, when USDA is the lead agency the USDA subcomponent will prepare an environmental assessment with respect to a proposed action that does not have a reasonably foreseeable significant impact on the quality of the human environment, or if the significance of such effect is unknown. USDA is mindful of Congress' direction that environmental assessments are to be "concise" and set forth the basis of the subcomponent's analysis to support, if appropriate, a finding of no significant impact (NEPA section 106(b)(2); 42 U.S.C. 4336(b)(2).

(b) *Scope of analysis.* (1) In preparing the environmental assessment, the USDA subcomponent will focus its analysis on whether the environmental effects of the proposed action (and action alternatives, if any) or project at hand are significant.

(2) Similarly, the USDA subcomponent will document in the environmental assessment where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the proposed action (and action alternatives, if any) or project at hand that extend outside the geographical territory of the proposal or might materialize later in time.

(3) To the extent it assists in reasoned decision-making, the USDA subcomponent may, but is not required to by NEPA, analyze environmental effects from other actions separate in time, or separate in place, or that fall outside of the USDA subcomponent's

regulatory authority, or that would have to be initiated by a third party. If the USDA subcomponent determines that such analysis would assist it in reasoned decision-making, it will document this determination in the environmental assessment and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate actions.

(c) *Elements*. For the purpose of providing evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, USDA subcomponents may apply any format they choose for the environmental assessment, but shall address the scope of analysis required in paragraph (b) of this section and the following elements at a minimum:

(1) *Purpose and need for the proposal*. The purpose and need should generally be based on the USDA subcomponent's statutory authority. When a subcomponent's statutory duty is to review an application for authorization, the subcomponent may base the purpose and need on the goals of the applicant and the subcomponent's authority.

(2) *No action, proposed action, and alternatives (if any)*. (i) No action may be listed as a stand-alone alternative but is not required. The consequences of taking no action, however, shall be included as part of the environmental impacts analysis to contrast the impacts of the proposed action, and any alternative(s) if developed, with the current condition and expected future condition if the proposed action or alternative were not implemented.

(ii) Alternatives may be included to the extent required by NEPA section 102(2)(H), 42 U.S.C. 4332(2)(H). When there are no unresolved conflicts concerning alternative uses of available resources, the environmental assessment need only analyze the proposed action and may proceed without consideration of additional alternatives.

(iii) Where conflicts have been resolved during development of the proposed action or during the environmental analysis process through iterative modifications to the

proposed action – such as addition of design criteria for the proposed action, changing the activities proposed, or adjusting locations of where activities are proposed – this should be described in the environmental assessment as rationale for why additional alternatives were not developed.

(3) *Potentially affected environment and environmental impacts*. Succinctly describe the potentially affected environment that may be affected by the proposed action and alternatives (if any) under consideration. The environmental assessment may combine the potentially affected environment description with evaluation of the environmental impacts, and it should be no longer than is necessary to provide context for the effects of the proposed action and alternatives (if any). Briefly discuss the reasonably foreseeable environmental impacts of the proposed action and alternatives (if any) and provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, taking into consideration the potential for reasonably foreseeable significant impacts as outlined in § 1b.2(f)(3).

(4) *Agencies and persons consulted*. Provide a succinct list of agencies and persons consulted.

(5) *Other environmental reviews*. Briefly document determinations for compliance with other applicable laws or regulations, as deemed necessary by the responsible official. When effects analysis is completed to demonstrate compliance with other applicable environmental laws, regulations, or executive orders and already addresses a resource being considered for effects under NEPA (e.g., analysis completed for Endangered Species Act, National Historic Preservation Act, Clean Water Act, etc.) and it is clear from that analysis and compliance discussion that no reasonably foreseeable significant impact exists, the responsible official may rely on that analysis to inform their finding of no significant impact.

(6) *Certifying statements for page limit and deadline*. The responsible official shall certify the environmental assessment complies with the page limit and deadline required by NEPA. Certification statements shall apply the criteria in paragraphs (d)(4) and (h) of this section. The certifying statement does not require a signature. Approval to publish the environmental assessment to a USDA website indicates the responsible official has reviewed the environmental assessment and concurs with the certifying statement.

(7) *Unique identification number*. The USDA subcomponent shall include a unique identification number on the environmental assessment, as required by § 1b.9(u).

(d) *Page limits* —(1) *Length of text.* The text of an environmental assessment will not exceed 75 pages (NEPA section 107(e)(2), 42 U.S.C. 4336a(e)(2)), not including citations or appendices.

(2) *Appendices.* Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the Congressionally mandated page limits.

(3) *Page formatting.* Environmental assessments shall be formatted for an 8.5 by 11 inches page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10- point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5 by 11 inches, each such item will count as one page.

(4) *Certification related to page limits*. The breadth and depth of analysis in an environmental assessment will be tailored to ensure that the environmental analysis does

not exceed this page limit. In this regard, as part of the finalization of the environmental assessment, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that the USDA subcomponent has considered the factors mandated by NEPA; that the environmental assessment represents the subcomponent's good-faith effort to prioritize documentation of the substantive issues and most important considerations required by the Act within the congressionally mandated page limits; that this prioritization reflects the subcomponent's expert judgment; and that any issues or considerations addressed briefly or left unaddressed were, in the subcomponent's judgment, comparatively not of a substantive nature (see § 1b.11(53) of this part).

(e) *Deadlines*. As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason" and Congress established deadlines for the environmental assessment process in the 2023 revision of NEPA (NEPA section 107(g), 42 U.S.C. 4336a(g)).

Thus, USDA subcomponents will complete the environmental assessment not later than the date that is one (1) year after the sooner of, as applicable:

(1) The date on which such agency (or subcomponent) determines that NEPA section 106(b)(2), 42 U.S.C. 4336(b)(2) requires the preparation of an environmental assessment with respect to such action. For internally driven proposals, this determination should not be made until a proposed action is finalized and determined by the responsible official to be ready for interdisciplinary review of environmental impacts. For externally-driven proposals (e.g., applications) submitted to a USDA subcomponent which require preparation of an environmental assessment, the responsible official should not make a determination that an action requires the issuance of an environmental assessment until receiving an application the responsible official deems complete and final;

(2) The date on which such agency (or subcomponent) notifies the applicant that the application to establish a right-of-way for such action is complete; or

(3) The date on which such agency (or subcomponent) issues a notice of intent to prepare the environmental assessment for such action. If the subcomponent determines that it will prepare an environmental assessment for a proposed action, the subcomponent may publish notice of intent to publish an environmental assessment.

(i) Publication of a notice of intent in the *Federal Register* for an environmental assessment should be the exception rather than the norm and should only be done for those proposals that are of a more complex scope or scale, such as proposals that are national or regional in scope or other instances for which there are numerous cooperating agencies, or interested or affected parties, given the scope of the actions or scale of the proposal.

(ii) Publication of a notice of intent for an environmental assessment shall be at the sole discretion of the responsible official. When opting to publish a notice of intent for an environmental assessment, the responsible official will publish the notice in the *Federal Register* and include the following:

(A) The purpose and need for the proposed action;

(B) A preliminary description of the proposed action and known alternatives, if any, that will be considered in the environmental assessment;

(C) A schedule for the decision-making process on whether to issue a finding of no significant impact or prepare an environmental impact statement;

(D) A link to the USDA website where additional information about the proposal can be found, to include publication of the environmental assessment and finding of no significant impact, as required by paragraph (f) of this section and § 1b.6(d); and

(F) Contact information for a person within the lead agency who can answer questions about the proposed action and the environmental assessment.

(iii) Notwithstanding other statutory or regulatory requirements, the decision to solicit public comment in the notice of intent for an environmental assessment shall be at the sole discretion of the responsible official.

(f) *Publication of the environmental assessment*. USDA subcomponents shall make the environmental assessment available to the public on a USDA website. At the time the environmental assessment is published on the website, it shall be considered complete and conclude the timeline for the environmental assessment. The USDA subcomponent will publish the environmental assessment (unless the deadline is extended pursuant to paragraph (g) of this section), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

(g) *Deadline extensions*. The deadlines described in paragraph (e) of this section indicate Congress' determination that an agency has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances an extension will be given only for such time as is necessary to complete the analysis. If a USDA subcomponent determines it is not able to meet the deadline prescribed by NEPA section 107(g)(1)(B), 42 U.S.C. 4336a(g)(1)(B), it must consult with the applicant, if any, pursuant to NEPA section 107(g)(2), 42 U.S.C. 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. If an extension is approved, the new deadline will be documented in writing and included in the proposal record. The documentation of the new deadline will specify the reason why the environmental assessment was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline. The responsible official should consider if other agencies or persons consulted as part of preparing the environmental assessment need to be notified of the change in the deadline.

(1) Cause for establishing a new deadline is only established if the environmental assessment is so incomplete, at the time at which the USDA subcomponent determines it

is not able to meet the statutory deadline, that publication pursuant to paragraph (f) of this section would, in the responsible official's judgment, result in an inadequate analysis that does not meaningfully inform the responsible official's final decision regarding the proposed action or selected alternative (if applicable). Such new deadline must provide only so much additional time as is necessary to complete such environmental assessment.

(2) USDA subcomponents shall coordinate with the USDA Senior Agency Official , or the applicable mission area Under Secretary or other USDA official with delegated authority, prior to extending the deadline for an environmental assessment, in accordance with § 1b.2(b)(5)(iv).

(h) *Certification Related to Deadline*. When the environmental assessment (EA) is published, the responsible official will certify (and the certification will be incorporated into the environmental assessment) that the resulting EA represents the USDA subcomponent's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in the subcomponent's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the responsible official's judgment, the analysis contained therein is adequate to inform and reasonably explain the responsible official's finding regarding the proposed action or selected alternative.

§ 1b.6 Finding of no significant impact.

(a) *General*. When a USDA subcomponent is the lead agency, it will prepare a finding of no significant impact if the subcomponent determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action or selected alternative, or project at hand, will not have a reasonably foreseeable significant impact on the quality of the human environment. When it will not prevent the USDA subcomponent from meeting the deadline in § 1b.5(e), the finding of no significant impact may be prepared in conjunction with the environmental assessment

and included in the same document and will not count towards the page limits in § 1b.5(d).

(b) *Elements*. USDA subcomponents may apply any format they choose for the FONSI, but shall address the following elements at a minimum:

(1) Incorporate by reference the environmental assessment and note any other documentation related to it, such as documentation contained in the proposal record. The finding need not repeat any of the discussion in the environmental assessment;

(2) Include a statement of the selected alternative if other alternatives were considered and analyzed in detail in addition to the proposed action;

(3) Document the reasons why the responsible official has determined that the proposed action or selected alternative will not have a reasonably foreseeable significant impact on the quality of the human environment, based on analysis and evidence provided in the environmental assessment, and conclude with a statement that for these reasons an environmental impact statement will not be prepared. If the responsible official finds no significant impacts based on mitigation, state the authority for any mitigation that the responsible official has adopted and any applicable monitoring or enforcement provisions.

(4) A statement regarding when implementation of the action is anticipated to begin; and

(5) Include the date issued and the signature of the responsible official.

(c) *Other documentation consideration*. If a statute or regulation explicitly requires a decision document to approve actions analyzed in an environmental assessment, the finding of no significant impact can be retitled to indicate its function as a decision document.

(d) *Publication of the finding of no significant impact (FONSI)*. When the FONSI is not included in the same document as the environmental assessment, as permitted in

paragraph (a) of this section, the USDA subcomponents shall make the FONSI available to the public on the USDA website where the environmental assessment is published.

(e) *Notification*. The responsible official shall notify any agencies or persons consulted, as identified in the environmental assessment, that the FONSI is available. Notification shall be in the manner of communication used to consult with the agency or person.

(f) *Timing of action*. Once the USDA subcomponent has published the FONSI on the USDA website and provided necessary notifications (as required in paragraph (e) of this section), and unless other statutes or regulations require otherwise, the USDA subcomponent or applicant may begin implementing the action.

§ 1b.7 Environmental impact statements.

(a) *Generally*. A USDA subcomponent will prepare an environmental impact statement only with respect to proposed actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant impact on the quality of the human environment (NEPA section 106(b)(1); 42 U.S.C. 4336(b)(1)). Whether an action rises to the level of significant is a matter of the responsible official's expert judgment, as informed by interdisciplinary analysis. Environmental impact statements will discuss effects in proportion to their reasonably foreseeable significance. With respect to issues that are not of a substantive nature (see § 1b.11(53)) there will be no more than the briefest possible discussion to explain why those issues are not substantive and therefore not deemed necessary, at the sole discretion of the responsible official, of any further analysis. Environmental impact statements will be analytic, concise, and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

(b) *Notice of intent*. As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an

environmental impact statement, when a USDA subcomponent is the lead agency it will publish a notice of intent in the *Federal Register* to prepare an environmental impact statement. Where there is a lengthy delay between the USDA subcomponent's decision to prepare an environmental impact statement and the time of actual preparation, the subcomponent may publish the notice of intent at a reasonable time in advance of preparation of the statement.

(1) The notice of intent to publish an environmental impact statement shall include:

(i) The purpose and need for the proposed action;

(ii) A preliminary description of the proposed action and any known alternatives the environmental impact statement will consider;

(iii) A preliminary list of substantive issues to be analyzed in detail, with a brief summary of expected impacts for each issue;

(iv) Anticipated permits and other authorizations (i.e., anticipated related actions);

(v) A schedule for the decision-making process;

(vi) A description of the public scoping process, if any, including any scoping meeting(s);

(vii) Identification of any cooperating and participating agencies (i.e., agencies responsible for related actions), and any information that such agencies require in the notice to facilitate their decisions or authorizations;

(viii) a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposal (NEPA section 107(c); 42 U.S.C. 4336a(c));

(ix) A link to the website where additional information about the proposal can be found, to include publication of the environmental impact statement and record of decision, as required by paragraph (n) of this section and § 1b.8(c); and

(x) Contact information for a person within the lead agency who can answer questions about the proposed action and the environmental impact statement.

(2) A USDA subcomponent may publish a notice in the *Federal Register* to inform the public of a pause in its preparation of an environmental impact statement.

(3) USDA subcomponents shall publish a notice of intent in the *Federal Register* if a decision is made to withdraw the intent to complete an environmental impact statement, or to withdraw an environmental impact statement already filed with the Environmental Protection Agency (see paragraph (o) of this section).

(c) *Scoping*. When a USDA subcomponent is the lead agency, the subcomponent may use an early and open process to determine the scope of issues and alternatives for analysis in an environmental impact statement, including identifying substantive issues (see § 1b.11(23) and (53)) and eliminating from further study non-substantive issues and action alternatives that are not technically or economically feasible or do not meet the purpose and need of the proposal (NEPA section 102(2)(C)(iii), 42 U.S.C. 4332(2)(C)(iii)). Scoping may begin as soon as practicable after the proposal is sufficiently developed for consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent. Scoping is not a statutorily required step in the NEPA review procedures and there is no prescribed process or procedure required for scoping. If a USDA subcomponent is the lead agency, and the responsible official chooses to apply a scoping process, the subcomponent may, as appropriate:

(1) Invite the participation of likely affected Federal, State, Tribal, and local agencies and governments, the applicant, and other likely affected or interested persons;

(2) Hold a scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected, which the subcomponent may integrate with any other early planning meeting; and

(3) Take responsibility for the following:

(i) Allocate assignments for preparation of the environmental impact statement when there are joint and/or cooperating agencies, with the lead agency retaining responsibility for the statement;

(ii) Identify and eliminate from detailed study the issues that are not substantive or have been covered by prior environmental review(s), narrowing the discussion of these issues in the environmental impact statement to a brief presentation of why they are not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed;

(iii) Identify and eliminate from detailed study action alternatives that are not technically or economically feasible or do not meet the purpose and need of the proposal (NEPA section 102(2)(C)(iii), 42 U.S.C. 4332(2)(C)(iii));

(iv) Indicate any public environmental assessments and other environmental impact statements that are being or will be prepared and are related to, but are not part of, the scope of the impact statement under consideration;

(v) Identify other environmental review, authorization, and consultation requirements to allow for other required analyses and studies to be prepared concurrently and integrated with the environmental impact statement and ensure any joint and/or cooperating agencies have shared understanding of their role in meeting these requirements;

(vi) Indicate the relationship between the timing of the preparation of the environmental impact statement and the subcomponent's (or agencies') tentative planning and decision-making schedule; and

(vii) Specify the USDA website where additional information will be provided as the environmental impact statement is developed.

(d) *Requesting comments*. During the process of preparing an environmental impact statement, when a USDA subcomponent is the lead agency, it:

(1) Will request the comments of (NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C)):

(i) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact resulting from the proposed action (or action alternatives), or project at hand, or is authorized to develop and enforce environmental standards that govern the proposed action (or action alternatives), or project at hand; and

(ii) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.

(2) May request the comments of the following in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action or action alternatives:

(i) State, Tribal, or local governments that may be affected by the proposed action;

(ii) Any agency that has requested it receive statements on actions of the kind proposed;

(iii) The applicant, if any; and

(iv) The public.

(3) The process of obtaining and requesting comments may be undertaken at any time that is determined reasonable by the responsible official in the process of preparing the environmental impact statement.

(4) The USDA subcomponent shall ensure that the process of obtaining and requesting comments, and the responsible official's subsequent consideration of those comments (as outlined in paragraph (f) of this section), does not cause the subcomponent

to violate the congressionally mandated deadline for completion of an environmental impact statement, as specified in paragraph (k) of this section.

(e) *Electronic submission and publication of comments*. USDA subcomponents shall:

(1) Provide for electronic submission of comments.

(2) Electronically publish all substantive comments received on an environmental impact statement, including those received in response to the notice of intent to prepare an environmental impact statement, or any other opportunities for comment. If a USDA subcomponent does not have the capability or capacity to publish substantive comments electronically, the subcomponent shall include a summary of substantive comments received, including those received in response to the notice of intent publication or any other opportunities for comment, as an appendix in the environmental impact statement.

(f) *Considering and addressing substantive comments*. A USDA subcomponent preparing an environmental impact statement:

(1) Shall consider and should address in writing comments that raise substantive issues and/or recommendations.

(i) Comments shall be analyzed to determine substantive issues raised (see § 1b.11(23) and (53)) and, if applicable, recommendations made to remedy the issues.

(ii) Multiple comments regarding the same or similar substantive issues and/or recommendations may be grouped and paraphrased as one issue or recommendation. The USDA subcomponent need not address every comment individually. Rather, the manner and degree to which comments should be addressed should be commensurate with the degree to which the comments raise issues and/or recommendations that have bearing on the proposed action, development of alternatives, or analysis of the reasonably foreseeable significant impacts of the proposed action or alternatives.

(2) When addressing in writing substantive issues raised and/or recommendations made, documentation should focus on identifying the action the responsible official took in response to the issue and/or recommendation. The action taken in response to a substantive issue or recommendation may include:

(i) Modifying alternatives, including the proposed action;

(ii) Developing and evaluating alternatives not previously given serious consideration by the subcomponent;

(iii) Supplementing, improving, or modifying analyses;

(iv) Consideration of science or literature not previously considered, if the commenter clearly identifies cause-and-effect issues relating the literature to the environmental analysis;

(v) Making factual corrections; or

(vi) No action needed. The USDA subcomponent may provide brief rationale for taking no action, such as: the comment is outside the scope of what is being proposed; there is no cause-effect relationship between the actions the subcomponent is proposing and the issue raised and/or recommendation made; the commenter misinterpreted the information provided; or the recommendation made does not comply with applicable laws or regulations and/or is not feasible to implement (technically or economically) or does not meet the purpose and need of the proposal, etc.

(3) Where action was taken and when substantive issues and recommendations are addressed in writing, the USDA subcomponent should, where feasible, cite to where in the environmental impact statement or supporting proposal record the indicated action taken is accounted for.

(4) The USDA subcomponent's documentation of how substantive issues and recommendations were addressed should be included as an appendix in the environmental impact statement when this will not prevent the subcomponent from

publishing the environmental impact statement within the deadlines specified in paragraph (k) of this section.

(g) *Scope of analysis.* (1) In preparing the environmental impact statement, the USDA subcomponent will focus its analysis on whether the environmental effects of the proposed action and action alternatives, or project at hand, are significant.

(2) Similarly, the USDA subcomponent will document in the environmental impact statement where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the proposed action and action alternatives, or project at hand, that extend outside the geographical territory of the proposal or might materialize later in time.

(3) To the extent it assists in reasoned decision-making, the USDA subcomponent may, but is not required to by NEPA, analyze environmental effects from other actions separate in time, or separate in place, or that fall outside of the USDA subcomponent's regulatory authority, or that would have to be initiated by a third party. If the USDA subcomponent determines that such analysis would assist it in reasoned decision-making, it will document this determination in the environmental impact statement and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate actions.

(h) *Elements*. Environmental impact statements shall state the alternatives considered and disclose the difference in anticipated effects between alternatives. USDA subcomponents may apply any format they choose for the environmental impact statement, but shall address the scope of analysis required in paragraph (g) of this section and the following elements at a minimum:

(1) *Cover*. The cover shall not exceed two pages, front and back, and should include the following to convey necessary information associated with the proposal:

(i) The title of the proposal that is the subject of the statement;

(ii) A list of the responsible agencies, including the lead agency and any joint or cooperating agencies. Where the number of cooperating agencies is excessive, the list need only include the types of agencies participating as cooperating agencies;

(iii) Specification of where the action is located, such as the State(s), county(ies), or other applicable jurisdiction(s); and

(iv) The name, mailing address, email address, and telephone number of the person at the lead agency who can supply further information about the proposal.

(v) The unique identification number, as required by § 1b.9(u).

(2) *Purpose and need for the proposal*. The purpose and need should generally be based on the USDA subcomponent's statutory authority. When a USDA subcomponent's statutory duty is to review an application for authorization, the subcomponent may base the purpose and need on the goals of the applicant and the subcomponent's authority.

(3) *Proposed action and alternatives* (NEPA sections 102(2)(C)(iii) and 102(2)(E), 42 U.S.C. 4332(2)(C)(iii) and (2)(E)). The alternatives section should list the no action alternative and describe the proposed action and the action alternatives in comparative form based on the difference in scope and scale of the activities proposed. Consequences of not implementing the proposed action may be discussed in this section of the environmental impact statement or in conjunction with environmental impacts, as specified in paragraph (h)(5)(iv) of this section. In this section, USDA subcomponents shall:

(i) Evaluate a reasonable range of alternatives, in addition to the proposed action. Alternatives analyzed in detail must be technically and economically feasible and meet the purpose and need of the proposal (NEPA section 102(2)(C)(iii), 42 U.S.C. 4332(2)(C)(iii)) and recommend alternative uses of available resources for unresolved conflicts associated with the proposed action (NEPA section 102(2)(H)), 42 U.S.C. 4332(2)(H));

(ii) Not commit resources prejudicing selection of alternatives before making a final decision;

(iii) Briefly discuss the reasons the subcomponent eliminated alternatives from detailed study; and

(iv) Discuss each alternative considered in detail, including the proposed action, so that the responsible official may evaluate their comparative merits.

(4) *Potentially affected environment*. Succinctly describe the environment of the area(s) that may potentially be affected by the alternatives under consideration. The environmental impact statement may combine the potentially affected environment description with evaluation of the environmental impacts, and it should be no longer than is necessary to provide context for the effects of the alternatives.

(5) *Environmental impacts*. The environmental impacts section forms the scientific and analytic basis for the comparisons under paragraph (h)(3) of this section. It shall consolidate the discussions of those elements required by NEPA sections 102(2)(C)(i), (ii), (iv), and (v), 42 U.S.C. 4332(2)(C)(i)(ii)(iv) and (v), and that are within the scope of the statement and as much of section 102(2)(C)(iii) of NEPA, section 4332(2)(C)(iii), as is necessary to support the comparisons. This section should not duplicate discussions outlined in paragraph (h)(3) of this section. When conducting analysis and documenting determinations for compliance with other applicable environmental laws, regulations, or executive orders (e.g., analysis completed for Endangered Species Act, National Historic Preservation Act, Clean Water Act, etc.), as deemed necessary by the responsible official, that analysis may be relied on to inform discussions of significance in the environmental impact statement. The discussion shall include:

(i) Reasonably foreseeable environmental impacts of the proposed action and alternatives;

(ii) Any means identified to reduce adverse environmental effects, such as design criteria included in the proposed action or action alternatives;

(iii) Any reasonably foreseeable adverse environmental impacts which cannot be avoided should the proposed action or alternatives be implemented;

(iv) Consequences of taking no action to contrast the impacts of the proposed action and alternatives with the current condition and expected future condition if the proposed action or alternative were not implemented;

(v) Any adverse environmental impacts or consequences of not implementing the proposed action or alternatives;

(vi) Any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed action, or an action alternative, should it be implemented; and

(vii) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(6) *Environmental review and consultation requirements, to include a list of agencies and persons consulted*. The environmental impact statement shall document compliance with other applicable laws or regulations, as deemed necessary by the responsible official, and list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposed action. If it is uncertain whether a Federal permit, license, or other authorization is necessary, the environmental impact statement shall so indicate. Provide a succinct list of agencies and persons consulted.

(7) *Appendices (if any)*. (i) Appendices in the environmental impact statement may consist of:

(A) Material prepared in connection with an environmental impact statement (as distinct from material that is not incorporated by reference);

(B) Material substantiating any analysis fundamental to the environmental impact statement; and

(C) Material relevant to the decision to be made.

(ii) See paragraph (e) of this section regarding the need to provide a summary of comments received in response to the publication of the notice of intent, or any other opportunities for public comment, as an appendix in the environmental impact statement if comments cannot be electronically published.

(iii) See paragraph (f)(4) regarding the recommendation to provide documentation of how comments were addressed as an appendix in the environmental impact statement.

(iv) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the Congressionally mandated page limits.

(8) *Certifying statements for page limit and deadline*. The responsible official shall certify the environmental impact statement complies with the page limit and deadline required by NEPA. Certification statements shall apply the criteria in paragraphs (j) and (m) of this section. The certifying statement does not require a signature. Approval to publish the environmental impact statement to a USDA website indicates the responsible official has reviewed the environmental impact statement and concurs with the certifying statement.

(i) *Page limits*. Except as provided in paragraph (i)(1) of this section, the text of an environmental impact statement will not exceed 150 pages (NEPA section 107(e)(1)(A), 42 U.S.C. 4336a(e)(1)(A)), not including citations or appendices.

(1) An environmental impact statement for a proposal of extraordinary complexity will not exceed 300 pages (NEPA section 107(e)(1)(B), 42 U.S.C. 4336a(e)(1)(B)), not including any citations or appendices.

(2) USDA subcomponents shall coordinate with the USDA Senior Agency Official , or the applicable mission area Under Secretary or other USDA official with delegated authority, prior to determining that an environmental impact statement is of extraordinary complexity.

(3) Environmental impact statements shall be prepared on 8.5 inch by 11-inch paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5 by 11 inches, each such item shall count as one page.

(j) *Certification related to page limits*. The breadth and depth of analysis in an environmental impact statement will be tailored to ensure that the environmental analysis does not exceed the page limit. In this regard, as part of the finalization of the environmental impact statement, a responsible official will certify (and the certification will be incorporated into the environmental impact statement) that the USDA subcomponent has considered the factors mandated by NEPA; that the environmental impact statement represents the subcomponent's good-faith effort to prioritize documentation of the substantive issues and most important considerations required by the Act within the congressionally mandated page limits; that this prioritization reflects the subcomponent's expert judgment; and that any issues or considerations addressed briefly or left unaddressed were, in the subcomponent's judgment, comparatively not of a substantive nature (see § 1b.11(53)).

(k) *Deadlines*. As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason" and Congress established deadlines for the environmental impact statement process in the 2023 revision of NEPA (NEPA section 107(g), 42 U.S.C. 4336a(g)). A USDA subcomponent will complete the environmental impact statement not later than the date that is 2 years after the sooner of, as applicable:

(1) The date on which the subcomponent determines that section 102(2)(C) requires the issuance of an environmental impact statement with respect to such action. For internally driven proposals, this determination should not be made until a proposed action is finalized and determined by the responsible official to be ready for interdisciplinary review. For externally-driven proposals (e.g., applications) to a USDA subcomponent which require preparation of an environmental impact statement, the responsible official should not make a determination that an action requires the issuance of an environmental impact statement until receiving an application the responsible official deems complete and final.

(2) The date on which the subcomponent notifies the applicant that the application to establish a right-of-way for such action is complete; or

(3) The date on which the subcomponent issues a notice of intent to prepare the environmental impact statement for such action.

(l) *End of deadline*. The environmental impact statement will be considered complete at the time it is published on a USDA website and is not indicated to be a draft. The USDA subcomponent will publish the environmental impact statement (unless the deadline is extended pursuant to paragraph (l)(1) of this section) on the day the deadline elapses, in as substantially complete form as is possible.

(1) *Deadline extensions*. The deadlines described in paragraph (k) of this section indicate Congress' determination that an agency has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual

circumstances. In such circumstances, an extension will be given only for such time as is necessary to complete the analysis. If a USDA subcomponent determines it is not able to meet the deadline prescribed by NEPA section 107(g)(1)(A), 42 U.S.C. 4336a(g)(1)(A), it must consult with the applicant, if any, pursuant to NEPA section 107(g)(2), 42 U.S.C. 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline by getting approval from the USDA official delegated authority for extending deadlines as specified in 1b.2(b)(2)(iv). If an extension is approved, the new deadline will be documented in writing and included in the proposal record. The documentation of the new deadline will specify the reason why the environmental impact statement was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline. The documentation for extending an environmental impact statement deadline shall be posted on the USDA website specified in the notice of intent to prepare an environmental impact statement. The responsible official should consider if other agencies or persons consulted as part of preparing the environmental impact statement need to be notified of the change in the deadline.

(2) *Cause for deadline extension.* Cause for establishing a new deadline is only established if the environmental impact statement is so incomplete, at the time at which the USDA subcomponent determines it is not able to meet the statutory deadline, that issuance pursuant to paragraph (l) of this section would, in the responsible official's judgment, result in an inadequate analysis that does not meaningfully inform the responsible official's final decision regarding the proposed action or selected alternative. Such new deadline must provide only so much additional time as is necessary to complete such environmental impact statement.

(m) *Certification related to deadlines*. When the environmental impact statement is published, a responsible official will certify (and the certification will be incorporated into the environmental impact statement) that the resulting environmental impact

statement represents the USDA subcomponent's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in the subcomponent's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the responsible official's judgment, the analysis contained therein is adequate to inform and reasonably explain the responsible official's final decision regarding the proposed action or selected alternative.

(n) *Publishing the environmental impact statement*. (1) During the process of preparing the environmental impact statement, a responsible official may choose to publish a draft environmental impact statement and any other pre-decisional materials that, in their judgment, may assist in fulfilling their responsibilities under NEPA and in facilitating the request for comments. Any draft environmental impact statement will be published to the USDA website that was specified in the notice of intent to prepare an environmental impact statement and will not be filed with the Environmental Protection Agency until such time it is considered complete. The responsible official shall ensure that the process of publishing a draft environmental impact statement does not cause the subcomponent to violate the congressionally mandated deadline for completion of an environmental impact statement as specified in paragraph (k) of this section.

(2) If the responsible official does not publish a draft environmental impact statement, they will publish the completed environmental impact statement to the USDA website that was specified in the notice of intent to prepare an environmental impact statement. The same version published to the USDA website must also be filed with the Environmental Protection Agency in accordance with the provision at paragraph (o) of this section.

(o) *Filing the environmental impact statement*. USDA subcomponents shall file completed environmental impact statements with the Environmental Protection Agency (EPA) consistent with EPA's procedures. Subcomponents may file environmental impact

statements with the EPA at the same time they are transmitted to participating agencies and made available to the public. When the record of decision is included in the same document as the environmental impact statement, as permitted in paragraph (a) of § 1b.8, it shall also be filed.

§ 1b.8 Records of decision.

(a) *General*. Upon completing the environmental impact statement, at the time of its decision a USDA subcomponent, if the lead agency, shall prepare and publish a record of decision or joint record of decision. When it will not prevent the USDA subcomponent from meeting the deadline in § 1b.7(k), the record of decision may be prepared in conjunction with the environmental impact statement and included in the same document and will not count towards the page limits in § 1b.7(i). When including the record of decision in the environmental impact statement (EIS), the EIS cover page should be updated to reflect the document also includes the record of decision.

(b) *Elements*. USDA subcomponents may apply any format they choose for the record of decision, but shall address the following elements at a minimum:

(1) Incorporate by reference the environmental impact statement and note any other documentation related to it, such as documentation contained in the proposal record. The record of decision need not repeat any of the discussion in the environmental impact statement;

(2) Certify that the subcomponent has considered all the substantive alternatives, information, and analyses submitted by State, Tribal, and local governments and public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement;

(3) State the decision, that is, the alternative selected;

(4) Provide explanation on how the responsible official considered significance, in accordance with § 1b.2(f)(3), relative to the alternatives described in the environmental impact statement;

(5) Identify and discuss all such factors, including any essential considerations of national policy, that the responsible official balanced in making the decision and state how those considerations informed the decision. The discussion may include preferences among alternatives based on other relevant factors, such as environmentally preferable, economic and technical feasibility considerations, and subcomponent statutory missions;

(6) State any means identified to mitigate adverse environmental effects of the proposed action or selected alternative. The responsible official is mindful in this respect that NEPA imposes no substantive environmental obligations or restrictions and does not require or authorize the subcomponent to impose any mitigation measures. If the responsible official decides to adopt any mitigation, state the statutory or regulatory authority for the mitigation. The subcomponent shall adopt and summarize, where applicable, a monitoring and enforcement program for any enforceable mitigation requirements or commitments;

(7) A statement regarding when implementation of the action is anticipated to begin; and

(8) Include the date issued and the signature of the responsible official.

(c) *Publication of the ROD*. When the ROD is not included in the same document as the environmental impact statement, as permitted in paragraph (a) of this section, USDA subcomponents shall make the record of decision available to the public on the USDA website that was specified in the notice of intent to prepare an environmental impact statement.

(d) *Notification*. The responsible official shall notify any agencies or persons consulted, as listed in the environmental impact statement, and any parties that submitted

comments in response to publication of the notice of intent or any other opportunities for comment on the environmental impact statement, that the record of decision has been signed and is available on a USDA website. Notification shall be in the manner of communication used to consult with the agency, person, or party.

(e) *Timing of action*. The Environmental Protection Agency publishes a notice of availability in the *Federal Register* each week of the environmental impact statements filed since its prior notice. Once the Environmental Protection Agency publishes the notice of availability in the *Federal Register* for the environmental impact statement filed by the USDA subcomponent and the subcomponent has published the record of decision on a USDA website and provided necessary notifications (as required in paragraph (d) of this section), and unless other statutes or regulations require otherwise, the USDA subcomponent or applicant may begin implementing the action.

§ 1b.9 Efficient and effective environmental reviews.

(a) *Proposal Record*. Upon determining NEPA applies and an environmental document must be developed, USDA subcomponents should begin compiling the proposal record early in the process. The proposal record should be maintained throughout the NEPA process to ensure the responsible official has all necessary information available on which they base iterative decisions during the NEPA process, required findings and determinations (to include those required for other applicable laws or regulations), and approval of the action. The proposal record is not determinative of the scope and content of an administrative record prepared for litigation pursuant to the Administrative Procedure Act or other law. The proposal record should include the following:

(1) Internal communications that contain substantive information demonstrating why the responsible official proceeded the way it did, to include briefing papers,

presentations, emails, or other documented communications that capture rationale and decisions made at key points in the NEPA process;

(2) Necessary documentation generated by applicants or contractors, where documentation is determined not to be a potentially privileged information (see paragraph (c) of this section);

(3) Technical information, to include sampling results, survey information, engineering reports, applicable resource and program assessments, maps, etc.;

(4) Cost-benefit analysis if completed, as well as any technical or feasibility studies completed to inform development of the proposed action or action alternatives;

(5) External communications that contain substantive information about the proposal, to include a notice of intent to prepare an environmental impact statement and other such documents that invite feedback from the public or other external parties, and consultation communications with regulatory agencies and tribes (where information is not determined to be a potential withholding or privileged, as specified in paragraph (c) of this section);

(6) Comments or other submissions received from external parties or the public, as well as documentation, if any, of how substantive issues raised and/or recommendations made were considered and the action taken;

(7) Draft versions of any documents circulated externally for comment or review;

(8) Documents containing guidance or information that the USDA subcomponent relied on when developing the proposed action (or action alternatives) or conducting analysis, to include literature and scientific papers;

(9) Environmental documents, to include updated or supplemental versions when applicable, as specified in paragraph (r) of this section;

(10) Finding and determination documents, as well as decision documents; and

(11) Any other information deemed applicable by the responsible official.

(b) *Freedom of Information Act requests*. USDA subcomponents shall make documents associated with the NEPA review and integrated environmental review, comments received, and any other underlying documents available pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552), and in accordance with the subcomponent's statutory authority for protecting certain information.

(c) *Potential withholdings and privileges*. USDA subcomponents shall identify data or information with potential withholdings or privileges – such as potentially sensitive information about threatened or endangered species locations, cultural or heritage sites when certain conditions are met, third-party proprietary information, or personally identifiable information – and mark it as such in the proposal record to ensure it is properly reviewed prior to responding to Freedom of Information Act requests or other such requests for documentation regarding the NEPA process and other environmental analysis, consultation, or compliance efforts occurring commensurate with the NEPA process.

(d) *Classified information*. To the extent practicable, USDA subcomponents shall segregate any information that has been classified pursuant to Executive order or statute. Subcomponents shall maintain the confidentiality of such information in a manner required for the information involved. Such information may not be included in any publicly disclosed documents. If such material cannot be reasonably segregated, or if segregation would leave essentially meaningless material, the subcomponent must withhold the entire analysis document from the public; however, the subcomponent shall otherwise prepare the analysis documentation in accord with applicable regulations.

(e) *Reducing paperwork*. USDA subcomponents should avoid excessive paperwork and shall ensure environmental assessments and environmental impact statements meet specified page limits established by NEPA section 107(e), 42 U.S.C.

4336a(e). Recommended best practices for reducing paperwork include, but are not limited to:

(1) Preparing analytic and concise environmental documents by using web-based collaboration and document management platforms that allow for interdisciplinary review and analysis to occur in a centralized document that reduces redundant and contradictory discussions that can occur when analysis is documented in a partitioned and individualized manner;

(2) Compiling and maintaining the proposal record throughout the NEPA process so information can be efficiently incorporated by reference when it is appropriate to do so and meets the requirements specified in paragraph (c)(7) of this section;

(3) Discussing only briefly issues that are not identified as substantive issues and eliminating from further study non-substantive issues;

(4) Writing environmental documents and associated analyses in plain language;

(5) Following a clear format for environmental documents and associated decision documents that is tailored to address only the minimum requirements outlined in NEPA and this part;

(6) Integrating NEPA requirements with other environmental review and consultation requirements, and where appropriate to do so relying on analyses done to demonstrate compliance with other laws and regulations to inform findings and determinations made for NEPA;

(7) Incorporating (by reference), into an environmental document, any applicable material – such as planning studies, analyses, or other relevant information –that specifically supports the environmental document or associated finding or decision document when the effect will be to cut down on bulk without impeding other agency and public review of the action; and

(i) USDA subcomponents shall cite the incorporated material in the document in a manner that identifies the content it contains and make the materials reasonably available for review by potentially interested parties.

(ii) When an opportunity for comment is provided and the documents or information being commented on refer to material incorporated by reference, this material must be reasonably available for inspection, in draft or final form, by potentially interested persons within the time allowed for comment.

(iii) Subcomponents should not incorporate by reference unredacted information that is privileged, classified, or subject to any other potential withholdings (see paragraphs (c) and (d) of this section) as such material is not available for review and comment.

(8) Relying on an existing environmental assessment (EA), environmental impact statement (EIS), finding of no significant impact (FONSI), record of decision (ROD), documentation of a finding of applicability and no extraordinary circumstance (FANEC), or a portion thereof – to include supporting analysis documentation not included in an EA, EIS, FONSI, ROD or FANEC itself – provided that the assessment, statement, finding, decision, analyses, or portion thereof provides the information necessary to inform the required findings or conclusions required for the level of NEPA being completed. USDA subcomponents may rely on previous analysis completed by the subcomponent or analysis completed by any other Federal agency where the nature of the proposal, the potentially affected environment, and the anticipated effects are substantially the same for the current proposal being considered. The USDA subcomponent relying on the previously completed analysis shall specify the reliance in the applicable environmental document or finding or decision document and provide explanation of how the nature of the proposal, the potentially affected environment, and

the anticipated effects (both quantitatively and qualitatively) were determined to be substantially the same.

(i) *When relying on environmental impact statements and environmental assessments in full*. For an environmental impact statement relied on in full, the document need not be refiled with the Environmental Protection Agency but shall be published, with the new record of decision, on a USDA website and included in the proposal record. For an environmental assessment relied on in full, the document shall be published, with the new finding of no significant impact, on a USDA website and included in the proposal record.

(ii) *Relying on categorical exclusion determinations*. For categorical exclusions requiring documentation in accordance with legislation, § 1b.4(d), or as required by the agency from which a category was adopted, the responsible official will document their reliance on categorical exclusion determinations (as discussed in § 1b.3(h)) when completing NEPA documentation in accordance with § 1b.3(g).

(iii) *Other analysis or portions of environmental documents*. USDA subcomponents may also rely on other analysis or portions of environmental documents when these contain information that supports necessary NEPA or other environmental law conclusions or determinations required by provisions of environmental law other than NEPA's procedural requirements (e.g., those required by Endangered Species Act, National Historic Preservation Act, Clean Water Act, etc.). The analysis or environmental document(s) relied upon shall be included in the proposal record.

(iv) *Adequacy of analysis and inclusion in the proposal record*. A brief description shall be provided in the environmental document being completed as to how the effects analysis being relied on is adequate (both quantitatively and qualitatively) given the actions being proposed. The other analysis or environmental documents being

relied on shall be included in the proposal record (as outlined in paragraph (a) of this section).

(v) *Programmatic documents*. Refer to paragraph (q) of this section for discussion on relying on programmatic environmental documents.

(vi) *Identification of certain circumstances*. When relying on another environmental document, other analysis, or portion thereof, USDA subcomponents shall specify if the subcomponent is relying on an environmental document, other analysis, or portion thereof that is:

(A) Not final within the agency that prepared it;

(B) The subject of an adequacy referral to the Council on Environmental Quality for NEPA or a referral to the applicable regulatory agency for other laws (e.g., U.S. Fish and Wildlife Service for Endangered Species Act compliance); or

(C) The subject of a judicial action that is not final.

(f) *Reducing delay*. USDA subcomponents should reduce delay in the environmental review process. For environmental assessments and environmental impact statements, subcomponents shall ensure documents are completed within the deadlines specified in NEPA section 107(g), 42 U.S.C. 4336a(g). Recommended best practices for reducing delay include, but are not limited to:

(1) Establishing (§ 1b.3(b)), adopting (§ 1b.3(c)), and applying (§ 1b.3(e)) categorical exclusions for categories of actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an environmental assessment or environmental impact statement;

(2) Completing an environmental assessment when an action, which is not otherwise categorically excluded, is not anticipated to have a significant effect on the human environment and therefore is not expected to require preparation of an environmental impact statement;

(3) Integrating considerations of the applicable NEPA process early in proposed action development;

(4) Integrating NEPA requirements with other environmental review and consultation requirements;

(5) Designating a person to manage and expedite the NEPA and overall environmental review process, such as a project manager or an individual with adequate NEPA and environmental review experience;

(6) Engaging in interagency cooperation before or as the environmental impact statement is prepared, rather than awaiting submission of comments;

(7) Identifying and eliminating from detailed study the issues that are not substantive or have been covered by prior environmental review(s), and narrowing the discussion of these issues in the effects analysis to a brief presentation of why they are not of a substantive nature;

(8) Ensuring swift and fair resolution of lead agency disputes;

(9) Requiring comments received in response to publication of a notice of intent to prepare an environmental impact statement, or other opportunities for comment, to be as specific as possible and, if documenting how substantive comments were considered, focusing on documenting the action taken in response to the substantive issues raised and/or recommendations made; and

(10) Eliminating duplication with State, Tribal, and local procedures by providing for joint preparation of environmental documents where practicable (see paragraph (l) of this section), and with other Federal procedures, by providing that a USDA subcomponent may rely on appropriate environmental documents or analysis prepared by another agency (see paragraph (e)(8) of this section).

(g) *Interdisciplinary preparation*. As required in NEPA section 102(2)(A), 42 U.S.C. 4332(2)(A), USDA subcomponents shall prepare environmental documents using

an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers should be appropriate to the scope and issues identified at the sole discretion of the responsible official.

(h) *Methodology*. As required by NEPA section 102(2)(D), 42 U.S.C. 4332(2)(D), USDA subcomponents:

(1) Shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents;

(2) May make use of any reliable data sources, such as remotely gathered information or statistical models;

(3) Should identify any methodologies used and make explicit reference to the scientific and other sources relied upon for conclusions in the environmental document; and

(4) May place discussion of methodology used or list references cited in the proposal record or include these as an appendix in an environmental assessment or environmental impact statement.

(i) *Scientific accuracy*. USDA subcomponents should make use of existing credible and reliable scientific resources, data, and evidence that is relevant to evaluating the reasonably foreseeable impacts on the human environment. Subcomponents should not undertake new scientific and technical research to inform its analyses unless it is essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable.

(j) *Information availability*. When a USDA subcomponent is evaluating a proposed action's reasonably foreseeable impacts on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the

means to obtain it are unknown, the subcomponent should make clear in the relevant environmental document that such information is lacking.

(k) *Public involvement*. USDA subcomponents may host or sponsor public hearings, public meetings, or other opportunities for public involvement as deemed necessary by the responsible official to inform the decision-making process or in accordance with statutory requirements applicable to the subcomponent. Subcomponents may conduct public hearings and public meetings by means of electronic communication except where another format is required by law. When selecting appropriate methods for public involvement, subcomponents should consider the ability of affected entities to access the methods used. USDA subcomponents:

(1) Should announce opportunities for public involvement on USDA websites where environmental documents are published.

(2) May provide additional guidance as needed to ensure interested persons can get information or status reports on environmental documents and other elements of the NEPA process.

(3) Should establish online platforms or systems that facilitate the sharing of environmental documents and other information pertinent to the management of environmental reviews conducted in conjunction with the applicable level of NEPA.

(l) *Elimination of duplication with State, Tribal, and local procedures*. USDA subcomponents may cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents, including those prepared pursuant to NEPA section 102(2)(G), 42 U.S.C. 4332(2)(G). To the fullest extent practicable, unless specifically prohibited by law, USDA subcomponents will cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:

(1) Joint planning processes;

(2) Joint environmental research and studies;

(3) Joint public hearings (except where otherwise provided by statute); or

(4) Joint environmental documents.

(m) *Timely and unified Federal reviews*. In many instances, a proposal or decision is undertaken in the context which entails activities or decisions undertaken by other Federal agencies (for example, where multiple Federal authorizations or analyses are required with respect to a proposal sponsor's overall purpose and goal). These activities and decisions are "related actions," in that they are each the responsibility of a particular agency but they are all related in a matter relevant to NEPA by their relationship with one overarching proposal. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA section 107(a)(1)(A), 42 U.S.C. 4336a(a)(1)(A). When serving as the lead agency, a USDA subcomponent is ultimately responsible for completing the NEPA process. When a joint lead relationship is established pursuant to NEPA section 107(a)(1)(B), 42 U.S.C. 4336a(a)(1)(B), a USDA subcomponent and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

(1) *Lead agency*. If a USDA subcomponent is participating in developing a proposal and there are two or more participating Federal agencies, the lead agency shall be determined in accordance with NEPA section 107(a)(1)(A), 42 U.S.C. 4336a(a)(1)(A). A lead agency shall fill the role described in NEPA section 107(a)(1)(B)(2), 42 U.S.C. 4336a(a)(1)(B)(2).

(i) Any Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation of a lead agency with respect to a proposal, as described in paragraph (m) of this section, may submit a written request for such a designation to a participating Federal agency. An agency that receives a request under

this paragraph shall transmit such request to each participating Federal agency and to the Council on Environmental Quality, in accordance with NEPA section 107(a)(4), 42 U.S.C. 4336a(a)(4).

(ii) When serving as the lead agency, the USDA subcomponent will fulfill the role of lead agency as outlined in NEPA section 107(a)(2) and determine the scope of the analysis for the proposal in accordance with sections 1b.5(b) and 1b.7(g) and document the scope of the project at hand.

(2) *Joint lead agencies*. In making a determination under paragraph (m) of this section, the participating Federal agencies may appoint such State, Tribal, or local agencies as joint lead agencies as the involved Federal agencies shall determine appropriate. Joint lead agencies shall jointly fulfill the role described in NEPA section 107(a)(1)(B)(2), 42 U.S.C. 4336a(a)(1)(B)(2).

(3) *Cooperating agencies*. In accordance with NEPA section 107(a)(3), 42 U.S.C. 4336a(a)(3), the lead USDA subcomponent may, with respect to a proposal, designate as a cooperating agency any Federal, State, Tribal, or local agency that has eligibility based on their jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal.

(i) The responsible official for a lead USDA subcomponent may invite eligible agencies to participate as cooperating agencies when a USDA subcomponent is developing an environmental assessment or environmental impact statement. When it will be necessary for an eligible agency to rely on an environmental assessment or environmental impact statement to authorize actions associated with the proposal for which they have jurisdiction by law, the responsible official for the lead USDA subcomponent shall invite the eligible agency to be a cooperating agency.

(ii) The responsible official for the lead USDA subcomponent must consider any request by an eligible agency to participate in a particular environmental assessment or

environmental impact statement as a cooperating agency. Such request shall not be arbitrarily denied. When it will be necessary for the requesting agency to rely on an environmental assessment or environmental impact statement to authorize actions associated with the proposal for which they have jurisdiction by law, the responsible official for the lead USDA subcomponent shall accept the agency's request to be a cooperating agency. If the responsible official for the lead USDA subcomponent denies a request, they must communicate the reasons to the requesting agency and ensure the reasons are documented in the proposal record. Denial of a request for cooperating agency status is not subject to any internal administrative review process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

(iii) USDA subcomponents within the Department will be cooperating agencies with other USDA subcomponents when requested.

(iv) USDA subcomponents should work with cooperating agencies to develop and adopt appropriate documentation that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Such documentation must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the USDA subcomponent of any environmental document, including drafts that may be circulated for review, to the extent permitted by the Freedom of Information Act and other applicable law. However, no documentation can require a cooperating agency to waive the right to judicial review.

(v) A lead USDA subcomponent shall consider comments from cooperating agencies that have been submitted no later than a date specified in the established schedule.

(n) *Unified documentation*. If a USDA subcomponent proposal will require action by more than one Federal agency and the lead agency, as described in NEPA section 107(A), 42 U.S.C. 4336a(A), has determined that it requires preparation of an environmental document, the lead and cooperating agencies should evaluate the proposed action (and any action alternatives) in a single environmental document. If an environmental document is being developed by more than one USDA subcomponent, all USDA subcomponents shall contribute to the completion of one environmental document and shall not develop separate documents for each subcomponent, unless other statutory requirements demonstrate it is more efficient to do so. If a USDA subcomponent is not the lead agency and the lead agency's NEPA implementing procedures specify:

(1) Format requirements for documenting categorical exclusion considerations, environmental assessments, or environmental impact statements, the USDA subcomponent should follow the formatting requirements for the lead agency.

(2) Format and signature requirements for findings of no significant impact or records of decision (and for categorical exclusion NEPA documentation if required), the USDA subcomponent should follow the format and signature requirements for the lead agency's finding or decision document. If more than one responsible official needs to sign a document, multiple signature blocks should be added to the one document created by the lead agency. When multiple signature blocks are included, the document shall specify what each signing responsible official is approving or authorizing given the nature of the actions proposed and the responsible official's statutory authority.

(o) *Disagreement concerning proposed major Federal actions*. In the event there are interagency disagreements concerning designation of a lead or joint agency or disagreements over proposed major Federal actions that might cause significant environmental effects, these matters shall be referred to the USDA Senior Agency Official for determination on whether the disagreement needs elevated to the Council on

Environmental Quality. The USDA Senior Agency Official may delegate this authority to the applicable mission-area Undersecretary or other USDA official for a subcomponent with NEPA responsibilities, per § 1b.2(b)(2)(ix)).

(p) *Programmatic actions*. Environmental impact statements and environmental assessments may be prepared for programmatic Federal actions. When USDA subcomponents prepare such statements, they should be relevant to the program decision and timed to coincide with meaningful points in subcomponent planning and decision-making. When preparing statements on programmatic actions (including proposed actions by more than one agency), USDA subcomponents may find it useful to evaluate the proposed actions in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area;

(2) Generically, including actions that have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter; or

(3) By stage of technological development including Federal or federally assisted research, development or demonstration programs for new technologies that, if applied, could significantly affect the quality of the human environment. Statements on such programs should be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(q) *Relying on programmatic documents*. Consistent with NEPA section 108, 42 U.S.C. 4336b, and paragraph (e)(8) of this section, after completing a programmatic environmental assessment or environmental impact statement, USDA subcomponents may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse impacts that bear on the analysis. After 5 years, as long as the subcomponent reevaluates the analysis (see paragraph (r) of this

section regarding reevaluation of environmental documents) in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any new and substantial information or circumstances, the subcomponent may continue to rely on the document. Determinations of whether the analysis in the programmatic document and reliance on any underlying assumptions remains valid may be made on a case-by-case or programmatic basis and record keeping of the justifications for these determinations is advisable.

(r) *Reevaluation of environmental documents*. Responsible officials shall reevaluate environmental documents for which a USDA subcomponent was the lead agency if a major Federal action or portion thereof is incomplete and ongoing, and the USDA subcomponent makes substantial changes to the major Federal action, or there are new circumstances or information with relevance to the proposal and these have bearing on the major Federal action, such that there is potential to alter the disclosure of adverse effects. USDA subcomponents will proceed as follows depending on the outcome of the reevaluation:

(1) *Reevaluation determines updates are not necessary.* If the responsible official determines after reevaluation that it is not necessary to correct, revise, or supplement an environmental document, implementation of the major Federal action may continue. The USDA subcomponent may document the reevaluation determination in the proposal record in a format deemed sufficient by the responsible official.

(2) *Reevaluation determines updates are necessary for documents other than a filed EIS.* If the responsible official determines an environmental document, other than an environmental impact statement that has been filed with the Environmental Protection Agency, requires corrections, revisions, or supplements, updates should be made as follows:

(i) If updates, such as minor corrections or revisions, do not substantially change the major Federal action and do not substantially alter the disclosure of adverse effects, the subcomponent may continue to implement the major Federal action, or portion thereof, and shall document the reevaluation and description of updates in the proposal record in a format deemed sufficient by the responsible official. The reevaluation documentation shall be posted to the USDA website along with the original environmental document. The responsible official should consider if courtesy notification of the updates needs to be provided to any joint, cooperating, or participating agencies or other pertinent parties that that may be affected by the updates.

(ii) If updates substantially change the major Federal action or substantially alter the disclosure of adverse effects, the USDA subcomponent should not continue implementing those portions of the action that are changing or that have been materially affected by new circumstances or information unless the subcomponent invokes an emergency authority, as identified in paragraph (v) of this section, or a NEPA exemption. The responsible official shall supplement the published environmental document and shall consider whether the updates warrant a higher level of NEPA review. Supplemental NEPA may require notifications to any joint, cooperating, or participating agencies, or other pertinent parties that will be directly affected by the updates. The USDA subcomponent shall:

(A) Consider feedback received from joint, cooperating, or participating agencies or other pertinent parties, if applicable;

(B) Post the supplemental document(s) to the USDA website as a separate version from the original posted; and

(C) Notify joint, cooperating, or participating agencies or other pertinent parties, if applicable, of the availability of the updated document(s).

(3) *Reevaluation determines updates are necessary for a filed EIS*. If the responsible official determines an environmental impact statement that has been filed with the Environmental Protection Agency requires corrections, revisions, or supplements, updates should be made as follows:

(i) If minor corrections or revisions do not substantially change the major Federal action and do not substantially alter or add disclosure of significant adverse impacts, the subcomponent may continue to implement the major Federal action, or portion thereof, and shall file an errata sheet with the Environmental Protection Agency (EPA), following the EPA filing guidance. The errata sheet may be completed in any format so long as it includes and is made available as follows:

(A) The title of the environmental impact statement, as it appears on the document filed with the EPA;

(B) A citation to the notice of availability the EPA published in the Federal Register after the environmental impact statement was filed;

(C) Citations to the pages and sections in the environmental impact statement where information is being updated;

(D) Clear descriptions of what is being updated and an explanation of why the update is needed;

(E) A statement by the responsible official that the updates do not substantially change the proposed action (or selected alternative), do not add disclosure of additional significant adverse impacts, and do not change the determinations made in the Record of Decision;

(F) Date and signature of the responsible official;

(G) A copy of the errata sheet is published to the USDA website where a copy of the environmental impact statement is also published; and

(H) Notification of the updates is provided, if necessary, to any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards, or to appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards, or other pertinent parties.

(ii) If updates substantially change the major Federal action or substantially alter or add disclosure of significant adverse impacts, the USDA subcomponent should not continue implementing those portions of the action that are changing or that have been materially affected by new circumstances or information unless the subcomponent invokes an emergency authority, as identified in paragraph (v) of this section, or a NEPA exemption. The USDA subcomponent shall prepare a supplemental EIS in accordance with § 1b.7.

(s) *Proposals for rules or regulations*. Where the proposal is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or Executive order requirements may satisfy one or more requirements of this part. When a procedure or document satisfies one or more requirements of this part, a USDA subcomponent may substitute it for the corresponding requirements in this part and need not carry out duplicative procedures or documentation. Subcomponents will identify which corresponding requirements in this part are satisfied and consult with CEQ to confirm such determinations. For informal rulemaking conducted pursuant to the Administrative Procedure Act, 5 U.S.C. 553, the environmental document will normally accompany the proposed rule.

(t) *Proposals for legislation*. When developing legislation, USDA subcomponents shall integrate the NEPA process for proposals for legislation significantly affecting the quality of the human environment with the legislative process of the Congress. Technical drafting assistance does not by itself constitute a legislative proposal. Only the Federal

agency that has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

(1) A legislative environmental impact statement is the detailed statement required by law to be included in a Federal agency's recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement that can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(2) Preparation of a legislative environmental impact statement shall conform to the requirements of the regulations in this subchapter, except there need not be a scoping process.

(u) *Unique identification numbers*. For environmental assessments and environmental impacts statements, USDA subcomponents will provide a unique identification number for tracking purposes, which the subcomponent will reference for other documents associated with the proposal and in any database or tracking system for such documents. A subcomponent may provide a unique identification number on documentation for a finding of applicability and no extraordinary circumstances where useful to do so. The unique identification number may be a number generated by a USDA subcomponent system used to track environmental reviews or an identification numbering process specified by the USDA Senior Agency Official or the Council on Environmental Quality.

(v) *Emergency actions*. (1) If emergency circumstances exist that make it necessary to take action to address imminent threats to life, property, or important natural, cultural, or historic resources, the responsible official may take such actions without preparing a NEPA analysis. When taking such actions, the responsible official

shall take into account the probable environmental consequences of the emergency action and consider taking steps to mitigate reasonably foreseeable adverse environmental effects to the extent practical and consistent with agency authority.

(2) When taking actions other than those described in paragraph (v)(1) of this section that are not likely to have a reasonably foreseeable significant impacts, but emergency circumstances exist that make it necessary to take actions before preparing a categorical exclusion that requires NEPA documentation, an environmental assessment, or a finding of no significant impact, USDA subcomponents may authorize alternative arrangements for NEPA compliance so long as the alternative arrangements are limited to actions necessary to address the emergency circumstance. Alternative arrangements will, to the extent practicable, attempt to achieve the substantive requirements of this part for the level of NEPA being completed. USDA subcomponents should proceed as follows:

(i) Animal and Plant Health Inspection Services. The responsible official shall consult with the APHIS official who is delegated the authority to oversee NEPA compliance for the environmental unit. The APHIS official who is delegated the authority may authorize emergency alternative arrangements for completing the required NEPA compliance documentation.

(ii) Farm Service Agency. The responsible official shall consult the National Environmental Compliance Manager (or designee) who, with direction from the FSA Administrator (or designee), will identify alternative arrangements for compliance with this part with the appropriate subcomponents.

(iii) Rural Development. (Rural Business-Cooperative Service, Rural Housing Service, and Rural Utility Service.) The responsible official shall consult the National Director for Environmental and Historic Preservation (or designee) who, in coordination with the Administrator (or designee) and appropriate subcomponents, will identify alternative arrangements for compliance with this part.

(iv) U.S. Forest Service. The responsible official shall consult with the national headquarters office about alternative arrangements. Consultation with national headquarters shall be coordinated through the applicable regional (or equivalent) office. The Chief or Associate Chief of the Forest Service may grant emergency alternative arrangements under NEPA for categorical exclusions, environmental assessments, and associated findings.

(v) All other USDA subcomponents. The responsible official shall consult with the national program manager for environmental review, NEPA compliance, or other equivalent program to determine the appropriate mission area official who can authorize alternative arrangements for categorical exclusions, environmental assessments, and findings of no significant impact. When the national program manager is unsure how to proceed, they should consult the USDA Senior Agency Official (or their designee).

(3) When taking actions other than those described in paragraph (v)(1) of this section that are likely to have reasonably foreseeable significant impacts, but emergency circumstances exist that make it necessary to take the actions before preparing an environmental impact statement or record of decision, the responsible official taking the action shall request consultation with the Council on Environmental Quality (CEQ) about alternative arrangements for compliance with NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C). Consultation with CEQ shall be requested through the USDA Senior Agency Official , or their designee. The USDA Senior Agency Official, or their designee, will coordinate with the applicable USDA mission area when arranging consultation with CEQ. The USDA Senior Agency Official, or their designee, and CEQ will limit such arrangements to actions necessary to address the emergency circumstance prior to preparing the environmental impact statement.

§ 1b.10 Documentation prepared by applicant or third party.

(a) *Environmental assessments and environmental impact statements*. In accordance with NEPA section 107(f), 42 U.S.C. 4336a(f), USDA subcomponents may allow an applicant or other third party (e.g., contractor) to prepare an environmental assessment or environmental impact statement, in whole or in part, under their supervision. Each USDA subcomponent is responsible for the accuracy, scope, and content of documentation prepared by an applicant or third party under the supervision of the subcomponent. USDA subcomponents shall ensure applicants or third parties apply the process and documentation criteria set forth in this part and comply with all other applicable environmental laws, regulations, or executive orders under the subcomponent's purview. The subcomponent may provide additional guidance to the applicants or third parties. Applicant and third-party preparation is subject to the following:

(1) A USDA subcomponent may require an applicant to submit environmental information for possible use by the subcomponent in preparing an environmental assessment or environmental impact statement. The subcomponent may also direct an applicant or authorize a third party to prepare an environmental assessment or environmental impact statement under the supervision of the subcomponent.

(2) The subcomponent will assist the applicant by outlining the types of information required or, for the preparation of an environmental assessment or environmental impact statement, should provide guidance to the applicant or third party and participate in their preparation.

(3) The subcomponent may also provide appropriate guidance and assist in preparation of an environmental assessment or environmental impact statement, to the extent that the subcomponent's resources and policy priorities admit. The subcomponent will work with the applicant to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need.

(4) The subcomponent shall independently evaluate the information or documentation submitted to determine if the accuracy, scope, and contents are sufficient and comply with USDA documentation criteria for an environmental assessment or environmental impact statement, and it shall take responsibility for its contents.

(5) Applicants or third parties preparing an environmental assessment or environmental impact statement shall submit a disclosure statement to the lead agency that specifies any financial or other interest in the outcome of the action. Such statement need not include privileged or confidential trade secrets or other confidential business information.

(6) Nothing in this section is intended to prohibit any USDA subcomponent from requesting any person, including the applicant, to submit information to it or to prohibit any person from submitting information to any subcomponent for use in preparing an environmental assessment or environmental impact statement.

(7) The USDA subcomponent will work with the applicant to develop a schedule for preparation of an environmental assessment or an environmental impact statement. Major changes to the schedule or related matters will be documented through written correspondence in accordance with § 1b.5(g) and § 1b.7(l)(1).

(b) *NEPA documentation for categorical exclusions.* For purposes of this part, subcomponents may also allow an applicant or other third party to complete, in whole or in part, documentation for a finding of applicability and no extraordinary circumstance for categorical exclusions requiring NEPA documentation. Applicant and third-party preparation of categorical exclusion NEPA documentation is also subject to paragraphs (a)(1) through (6) of this section, as it would pertain to NEPA documentation for a categorical exclusion.

§ 1b.11 Definitions and acronyms.

(a) *Definitions*. As used in this part, terms have the meanings provided in NEPA section 111, 42 U.S.C. 4336(e). The following definitions apply to this part. USDA subcomponents shall use these terms uniformly throughout the Department.

(1) *Act* or *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. 4321-4347).

(2) *Action alternative* (or *alternative*) means an alternate means of implementing actions that is different from the agency's proposed action. Alternatives are developed in response to a substantive issue(s) and should demonstrate a clear difference in impacts when compared to the proposed action.

(3) *Agency* means a subcomponent of USDA.

(4) *Affecting* means will or may have an effect on.

(5) *Alternative*. See action alternative.

(6) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action or selected alternative.

(7) *Categorical exclusion (CE)*. See NEPA section 111(1), 42 U.S.C. 4336e(1).

(8) *Control agents* means biological material or chemicals that are intended to enhance the production efficiency of an agricultural crop or animal such as through elimination of a pest.

(9) *Cooperating agency*. See NEPA section 111(2), 42 U.S.C. 4336e(2).

(10) *Council* means the Council on Environmental Quality established by title II of NEPA.

(11) *Design criteria* (or *design elements*, *design features*, *resource protection measures*, *best management practices,* or *conservation practices* etc.) means constraints or requirements that are included as part of the proposed action (or action alternatives) through an iterative interdisciplinary process, in coordination with the applicant if

applicable, to avoid or minimize adverse impacts. The need for design criteria is informed by the need to comply with other laws, regulations, or executive orders; interdisciplinary discussions that identify best management practices or other design recommendations; feedback from the public or external parties; or other input provided during proposed action development and preliminary effects analysis phases. When design criteria are added to the proposed action in response to an issue raised during interdisciplinary preparation or through external comments submitted regarding the proposal, that issue should no longer be analyzed in detail in the analysis process. Design criteria include constraints or requirements as part of the proposed action that:

(i) Avoid the adverse impact altogether;

(ii) Minimize adverse impacts by limiting the degree or magnitude of the action and its implementation; or

(iii) Reduce or eliminate the adverse impact over time by preservation and maintenance operations during the life of the action.

(12) *Effect* or *impact* means changes to the human environment from the proposed action or action alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

(i) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

(ii) A ‘‘but for’’ causal relationship is insufficient to make a USDA subcomponent responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the subcomponent has no

ability to prevent due to the limits of its regulatory authority or that would occur regardless of the proposed action or selected alternative, or that would need to be initiated by a third party.

(13) *Emergency* means circumstances exist that make it necessary to take action where delaying action to follow standard procedures for completing NEPA analysis would be contrary to the public interest, as determined by a responsible official.

(14) *Environmental assessment (EA)*. See NEPA section 111(4), 42 U.S.C. 4336e(4). An EA is also an environmental document. (Refer to the definition for "environmental documents" in paragraph (a)(15) of this section.)

(15) *Environmental document*. See NEPA section 111(5), 42 U.S.C. 4336e(5).

(16) *Environmental impact statement (EIS)*. See NEPA section 111(6), 42 U.S.C. 4336e(6). An EIS is also an environmental document. (Refer to the definition for "environmental documents" in paragraph (a)(15) of this section.)

(17) *Extraordinary circumstance* means a unique situation exists in which actions that normally do not have significant impacts – and are therefore categorically excluded from documentation in an environmental assessment or environmental impact statement – create uncertainty whether the degree of the effect is significant, or certainty that the degree of effect is significant, for the relevant resources considered.

(18) *Federal agency* means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. For the purposes of this part, Federal agency also includes States, units of general local government, and Tribal governments assuming NEPA responsibilities from a Federal agency pursuant to statute.

(19) *Finding of applicability and no extraordinary circumstance (FANEC)* means a determination by a USDA subcomponent that a category (or categories) fits the proposed actions and extraordinary circumstances (as defined in paragraph (a)(17) of this

section) do not exist for a categorically excluded action, and therefore the issuance of an environmental assessment or environmental impact statement is not required. For those categories that require NEPA documentation, this finding must be documented.

(20) *Finding of no significant impact (FONSI)*. See NEPA section 111(7), 42 U.S.C. 4336e(7). A FONSI is also an environmental document. (Refer to the definition for "environmental documents" in paragraph (a)(15) of this section.)

(21) *Human environment* means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment. (See also the definition of "effects" in paragraph (a)(12) of this section.)

(22) *Impact*. See *Effect*.

(23) *Issue* means a logical cause-effect relationship between the actions proposed (cause) and the reasonably foreseeable impacts (effect) on resources found in the affected environment. An issue may be addressed by modifying the proposed action, developing an action alternative, or supplementing, improving, or modifying the analysis to better understand the effects.

(24) *Jurisdiction by law (or statutory authority)* means Federal agency authority to approve, veto, or finance all or part of the proposal.

(25) *Lead agency.* See NEPA section 111(9), 42 U.S.C. 4336e(9).

(26) *Legislation* means a bill or legislative proposal to Congress developed by a Federal agency but does not include requests for appropriations or legislation recommended by the President.

(27) *Level of NEPA* refers to categorical exclusion, environmental assessment, or environmental impact statement.

(28) *Major Federal action*: See NEPA section 111(10), 42 U.S.C. 4336e(10).

(29) *Mitigation (or mitigation measure)* means constraints or requirements that avoid, minimize, or compensate for adverse impacts caused by a proposed action or selected alternative. Mitigation is documented in a finding of no significant impact (FONSI) or record of decision (ROD) and is determined by the responsible official in reaction to the effects described in an environmental assessment or environmental impact statement. When adopting mitigation measures as part of the FONSI or ROD, the statutory or regulatory authority for any mitigation must be provided. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:

(i) Avoiding the adverse impact altogether by not taking a certain action or parts of an action;

(ii) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation;

(iii) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment;

(iv) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action; or

(v) Compensating for the adverse impact by replacing or providing substitute resources or environments.

(30) *NEPA process* means all the steps necessary to complete a level of NEPA (categorical exclusion, environmental assessment, or environmental impact statement) and issue the associated finding or decision document (finding of applicability and no extraordinary circumstance when NEPA documentation is required for a categorical exclusion, finding of no significant impact, or record of decision) to conclude the process.

(31) *Notice of availability* means a public announcement in the *Federal Register* that a document, generally an environmental impact statement (EIS), is available for review.

(32) *Notice of intent* means a public notice in the *Federal Register* that an agency will prepare an environmental impact statement (EIS), is pausing or resuming preparation of an EIS, or is withdrawing an EIS. In limited situations it can mean a public notice in the *Federal Register* that an agency will prepare an environmental assessment.

(33) *Page* means 8.5 by 11 inches paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information. When an item of graphical material is larger than 8.5 by 11 inches, each such item shall count as one page.

(34) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

(35) *Potentially affected environment* means the condition of the physical, biological, social, and economic factors that may be impacted by a proposed action (or action alternative).

(36) *Programmatic environmental document*. See NEPA section 111(11), 42 U.S.C. 4336e(11).

(37) *Proposal (or Project)*. See NEPA section 111(12), 42 U.S.C. 4336e(12).

(38) *Proposal record (or project record)* means all relevant documentation and records, including all environmental analysis documents and comment submissions, that contain information the responsible official relies on to make iterative decisions throughout the NEPA process or to determine if and how the action will be approved.

(39) *Proposed action* means the set of actions, to include design criteria when applicable, that is submitted for final interdisciplinary environmental review and effects analysis.

(40) *Publish* and *publication* mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.

(41) *Purpose and need* means the reason action is needed in a location at this time. The purpose and need should generally be based on the USDA subcomponent's statutory authority. When a subcomponent's statutory duty is to review an application for authorization, the subcomponent may base the purpose and need on the goals of the applicant and the subcomponent's authority.

(42) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposal, and, where applicable, meet the goals of the applicant.

(43) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

(44) *Record of decision* is a documented determination by the responsible official on how to proceed with respect to a proposed action and action alternatives that have reasonably foreseeable significant impacts on the quality of the human environment, as described in an environmental impact statement.

(45) *Related action* means an action undertaken by an agency, such as a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, whereas the set of related actions are all related to one overarching proposal.

(46) *Responsible official* means the USDA subcomponent employee who has the authority to determine: when NEPA applies, what level of NEPA review is appropriate,

the extent of environmental review; the final NEPA finding and compliance with other applicable laws, regulations, and executive orders; and, how to proceed for a proposed action or action alternative(s).

(47) *Scale* refers to the spatial extent or magnitude of the actions being proposed.

(48) *Scope* consists of the range of actions and alternatives developed for a proposal or the issues and impacts to be considered in an environmental analysis.

(49) *Senior agency official* means an official of assistant secretary rank or higher (or equivalent) that is designated for overall agency NEPA compliance, including resolving implementation issues. At USDA, the Deputy Secretary is the senior agency official.

(50) *Significance* means the degree of effects of the specific action on the potentially affected environment.

(i) Potentially affected environment means the condition of the physical, biological, social, and economic factors that may be impacted by an action.

(ii) In considering the degree of effects, USDA subcomponents should consider the following, as appropriate to the specific action and in the context of the potentially affected environment:

(A) Both short- and long-term effects.

(B) Both beneficial and adverse effects.

(C) Effects on public health and safety.

(D) Economic effects.

(E) Effects on the quality of life of the American people.

(iii) In providing rationale for whether the degree of effect is significant, responsible officials shall consider:

(A) How the unavoidable short- and long-term adverse and beneficial impacts of implementing the action compares to the short- and long-term adverse or beneficial

consequences of not implementing the action as it relates to effects on public health and safety, economics, and the quality of life of the American people; and

(B) How the irreversible and irretrievable commitment of a Federal resource, as part of the action, contributes to a loss of long-term productivity for the human environment.

(51) *Special expertise* means statutory responsibility, agency mission, or related program experience.

(52) *Subcomponent* means a mission area, agency, or staff office of USDA.

(53) *Substantive* means information that meaningfully informs the consideration of reasonably foreseeable impacts on the human environment, the resulting significance determination, decisions on how to proceed (i.e., alternatives to be considered or analyzed or the alternative selected for implementation), or compliance with applicable laws, executive orders, and regulations.

(54) *USDA website* means a website managed by USDA or a USDA subcomponent or the website of a proponent or other federal agency when a USDA website redirects to the proponent or other agency website to find the information or environmental documents required to be published and accessible to the public.

(b) *Acronyms*. The following acronyms may appear throughout this part or may be used when applying this part during the applicable NEPA process:

(1) APHIS – Animal and Plant Health Inspection Service

(2) CE – Categorical Exclusion

(3) CEQ – Council on Environmental Quality

(4) CFR – Code of Federal Regulations

(5) EA – Environmental Assessment

(6) EIS – Environmental Impact Statement

(7) FANEC – Finding of Applicability and No Extraordinary Circumstance

(8) FONSI – Finding of No Significant Impact

(9) FSA – Farm Service Agency

(10) NEPA – National Environmental Policy Act

(11) NRCS – Natural Resources Conservation Service

(12) RD – Rural Development

(13) ROD – Record of Decision

(14) OSEC – Office of the Secretary

(15) USDA – U.S. Department of Agriculture

(16) USFS – U.S. Forest Service

§ 1b.12 Severability.

The sections of this part are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is USDA's intention that the validity of the remainder of those parts will not be affected, with the remaining sections and all applications thereof to continue in effect.

Stephen Vaden,
Deputy Secretary,
U.S. Department of Agriculture.
[FR Doc. 2026-06537 Filed: 4/2/2026 8:45 am; Publication Date: 4/3/2026]