

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 1021

#### Request for Information Regarding Categorical Exclusions

**AGENCY:** Department of Energy.

**ACTION:** Request for information.

**SUMMARY:** The U.S. Department of Energy (DOE) requests information to help inform potential updates to categorical exclusions in its regulations implementing the National Environmental Policy Act (NEPA). DOE is considering revisions to ensure that its NEPA reviews are aligned with the latest DOE programs and initiatives for clean energy and electricity transmission projects, fully consider potential environmental impacts and community concerns, and are efficient and effective at informing DOE decisions. Through this request for information, DOE seeks recommendations and supporting information from interested individuals and organizations on establishing new categorical exclusions and revising existing ones.

**DATES:** Responses should be submitted by December 30, 2022.

**ADDRESSES:** Responses to this request for information should be submitted to [doe-nepa-rulemaking@hq.doe.gov](mailto:doe-nepa-rulemaking@hq.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** For further information on submitting responses, contact Carrie Abravanel, Office of NEPA Policy and Compliance (GC-54), (202) 586-8397, [Carrie.Abravanel@hq.doe.gov](mailto:Carrie.Abravanel@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** DOE is responsible for investing billions of taxpayer dollars in new or expanded efforts in the research and development, demonstration, and deployment of clean energy projects and clean energy infrastructure throughout the United States and its territories. DOE must comply with NEPA (42 U.S.C. 4321, *et seq.*) to inform its decisions about these actions, including decisions related to financial assistance (*e.g.*, grants, loan

guarantees) to the private and public sector. DOE also must fulfill its responsibilities under other laws such as the National Historic Preservation Act and the Endangered Species Act. In addition, DOE is committed to providing meaningful and timely opportunities for engagement with local communities, Tribal Nations, and others potentially affected by its decisions.

Central to implementation of NEPA is the principle that the extent of analysis should be proportional to the potential for significant environmental impacts. Accordingly, the Council on Environmental Quality (CEQ) established three types of NEPA review: categorical exclusion, environmental assessment, and environmental impact statement. (*See e.g.*, 40 CFR parts 1501 and 1502.) An agency prepares an environmental assessment or environmental impact statement when the proposed action may result in significant environmental impacts, or the significance of potential impacts is unknown.

A categorical exclusion is a category of actions that a federal agency has determined, in its agency NEPA procedures, normally do not have a significant effect on the human environment (40 CFR 1508.1(d)). DOE's categorical exclusions are listed in appendices A and B to subpart D of its NEPA procedures (10 CFR part 1021). Actions that qualify for a categorical exclusion do not require preparation of an environmental assessment or environmental impact statement.

A DOE proposal to establish or modify a categorical exclusion must be accompanied by technical support demonstrating why DOE has concluded that the category of actions normally does not pose the potential for significant environmental impacts. Once established in its procedures, before determining that a categorical exclusion applies to any particular proposed action, DOE evaluates whether that proposed action meets the conditions contained in the categorical exclusion and whether there are any extraordinary circumstances associated with the proposed action that pose the potential for significant environmental impacts. For more information on DOE's process for applying a categorical exclusion to a proposed action see 10 CFR 1021.410 and *Conditions That Are Integral Elements of the Classes of Action in*

*Appendix B* at the start of appendix B to subpart D of DOE's NEPA procedures in 10 CFR part 1021.

#### What information is DOE requesting?

The Infrastructure Investment and Jobs Act (aka, Bipartisan Infrastructure Law), the Inflation Reduction Act, the CHIPS and Science Act, and DOE's annual appropriations all provide funding for DOE to lead the nation's transition to a clean energy economy and improve the resilience of its energy infrastructure. DOE's website includes information on this funding, such as a general web page on the *Bipartisan Infrastructure Law, list of DOE programs funded by the Bipartisan Infrastructure Law, fact sheet on the Inflation Reduction Act, and statement regarding the CHIPS and Science Act*.

With respect to these laws and initiatives, DOE seeks information to help it identify activities associated with its furtherance of clean energy projects and clean energy infrastructure that should be considered for new or revised categorical exclusions. DOE requests that interested parties:

- Identify a specific category of actions related to clean energy projects and clean energy infrastructure that is not covered by existing DOE categorical exclusions, but that is likely to meet the standard of not having a significant effect on the human environment; and
- Provide suggestions for revising DOE's existing categorical exclusions related to clean energy projects and clean energy infrastructure.

Along with the above information, interested parties should provide:

- (1) A brief explanation of the rationale for any suggested new categorical exclusions or revisions to the existing ones,
- (2) Any limits or conditions that should be included in the new or revised categorical exclusions to ensure that the category of actions normally does not pose the potential for significant environmental impacts, and
- (3) Technical or empirical support for the suggested changes to DOE's categorical exclusions.

#### How should information be provided?

Responses should be submitted to [doe-nepa-rulemaking@hq.doe.gov](mailto:doe-nepa-rulemaking@hq.doe.gov) by December 30, 2022. Submitted information will be included in the public record of any associated rulemaking, should DOE decide to

undertake revisions to its NEPA regulations.

**Confidential Business Information:** Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

### Signing Authority

This document of the Department of Energy was signed on November 8, 2022, by Samuel Walsh, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 9, 2022.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

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## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

#### 33 CFR Part 203

[Docket ID: COE–2021–0008]

RIN 0710–AA78

### Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers

**AGENCY:** U.S. Army Corps of Engineers (Corps), Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** The Corps is proposing to revise its natural disaster procedures under this part of the Code of Federal Regulations (CFR), which implements a section of the Flood Control Act of 1941, as amended. Revisions will incorporate advances in risk-informed decision-making approaches and disaster response lessons learned, as well as recent amendments to this section of the Flood Control Act of 1941.

**DATES:** Comments must be received on or before January 17, 2023.

**ADDRESSES:** You may submit comments, identified by docket number COE–2021–0008, using any of these methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *Email:* [33CFR203@usace.army.mil](mailto:33CFR203@usace.army.mil) and include the docket number, COE–2021–0008, in the subject line of the message.

3. *Mail:* HQ, U.S. Army Corps of Engineers, ATTN: 33CFR203/CECW–HS/3D64, 441 G Street NW, Washington, DC 20314–1000.

4. *Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

**Instructions:** Direct your comments to docket number COE–2021–0008. The public docket will include all comments exactly as submitted and without change and may be made available online at <http://www.regulations.gov>. This will include any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information where disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or email. The [regulations.gov](http://www.regulations.gov) website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic

comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Mr. Willem H.A. Helms, Office of Homeland Security, Directorate of Civil Works, U.S. Army Corps of Engineers, at (202) 761–5909 or [willem.h.helms@usace.army.mil](mailto:willem.h.helms@usace.army.mil).

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#### Background

Section 5 of the Flood Control Act of 1941, as amended, (33 U.S.C. 701n), commonly and hereinafter referred to as “Public Law 84–99” authorizes the Corps to undertake certain emergency management activities. Specifically, Public Law 84–99 authorizes an emergency fund to be expended in preparation for emergency response to any natural disaster, in flood fighting and rescue operations, or in the repair or restoration of any flood control work threatened or destroyed by flood. These activities may include the strengthening, raising, extending, realigning, or other modification thereof as may be necessary in the discretion of the Chief of Engineers for the adequate functioning of the work for flood control and subject to the condition that the Chief of Engineers may include modifications to the structure or project, or in implementation of nonstructural alternatives to the repair or restoration of such flood control work if requested by the non-Federal sponsor. The emergency fund may also be expended for use in the emergency protection of federally authorized hurricane or shore protection when in the discretion of the Chief of Engineers such protection is warranted to protect against imminent