

Form name	Form No.	Grant activity/ process	Respondent universe (A)	Average time per response (in hours) (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) ²
Awardee Determination to make award before resolution of investigation one of these sections specified reasons (narrative request).	Narrative Request	Buy America Component.	1	40	40	2,474.00
Notification to FRA by Awardee to make award during pendency of investigation (narrative request).	Narrative Request	Buy America Component.	1	1	1	61.85
Request to FRA for Reconsideration of Initial Decision by Party Involved in Investigations (narrative request).	Narrative Request	Buy America Component.	1	80	80	4,948.00
Pre-Award Audit (narrative request)	Narrative Request	Buy America Component.	1	33	33	2,041.05
Final Contract between Awardee and Bidder/Offeror (narrative request).	Narrative Request	Buy America Component.	1	16	16	989.60
Post Award Audit (narrative request)	Narrative Request	Buy America Component.	1	256	256	15,833.60
Rolling Stock Domestic Content Improvement Plans (narrative request).	Narrative Request	Buy America Component.	1	120	120	7,422.00
Categorical Exclusion (Worksheet)	FRA F 6180.217 ...	Awards & Maintenance.	75	156	11,700	723,645.00
Final Performance Report	FRA F 33	Closeout	79	8	632	39,089.20
Total ⁵	4,762	21,173	1,309,550

Total Estimated Annual Responses: 4,762.

Total Estimated Annual Burden: 21,173 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$1,309,550.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,
Deputy Chief Counsel.

[FR Doc. 2024–28921 Filed 12–9–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2023–0134]

National Environmental Policy Act Implementing Procedures; Proposed Categorical Exclusions

AGENCY: Pipeline and Hazardous Materials Safety Administration

² The dollar equivalent cost is derived from the May 2023 Department of Labor, Bureau of Labor Statistics (BLS), using the median hourly wage rate for a Management Analyst 13–1111 of 47.80, plus an overhead rate of 29.4% (Employer Costs for Employee Compensation—June 2023) for a fully burdened wage rate of 47.80 + 14.05 = 61.85.

³ 125 new awardees submit each quarter—125 × 4 = 500 respondents.

⁴ 216 existing awardees submit each quarter—216 × 4 = 864 respondents.

⁵ Total may not add up due to rounding.

(PHMSA), Department of Transportation.

ACTION: Notice; request for comments.

SUMMARY: Consistent with the National Environmental Policy Act and the Council on Environmental Quality regulations implementing the National Environmental Policy Act, PHMSA is proposing to establish new categorical exclusions and agency the National Environmental Policy Act implementing procedures. Categorical exclusions are categories of actions that an agency has determined normally do not have a significant effect on the human environment, individually or in the aggregate. Categorical exclusions are a form of review that agencies use to comply with the National Environmental Policy Act for proposed actions that normally have no or minimal environmental effects. PHMSA requests the views of the public on its proposal to establish these CEs and agency National Environmental Policy Act procedures.

DATES: Submit written comments on or before January 9, 2025.

ADDRESSES: To ensure you do not duplicate your docket submissions, please submit comments by only one of the following means:

Web: <https://www.regulations.gov>.

This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, 1200

New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., EST, Monday through Friday, except Federal holidays.

Instructions: Identify docket number PHMSA–2023–0134 at the beginning of your comments. To avoid duplication, please use only one of these four methods. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You should know that anyone is able to search the comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT’s complete Privacy Act Statement (65 FR 19477) in the **Federal Register**, published on April 11, 2000, or visit <http://www.regulations.gov> before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> or DOT’s Docket Operations Office (see **ADDRESSES**). If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: “Comments on: PHMSA–2023–0134.” The Docket Clerk will date stamp the postcard prior to returning it

to you via U.S. mail. Please note that due to delays in the delivery of U.S. mail to federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) for submitting comments to the docket and ensuring their timely receipt by DOT.

Privacy Act Statement: In accordance with 5 U.S.C. 553(c), DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Carolyn Nelson, Office of Planning and Analytics, PHMSA, by email at Carolyn.Nelson@dot.gov or by phone at 202-860-6173.

SUPPLEMENTARY INFORMATION:

I. Introduction

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires Federal agencies to consider the environmental effects of their proposed actions in their decision-making processes and inform and engage the public in that process. Section 101(a) of NEPA sets forth 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 humans and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. 42 U.S.C. 4331(a). Section 102 of NEPA directs agencies to interpret and administer Federal policies, regulations and laws consistent with NEPA's policies. 42 U.S.C. 4332.

NEPA also created the Council on Environmental Quality (CEQ), which has issued regulations implementing NEPA, 40 CFR parts 1500 through 1508 (CEQ regulations). CEQ also has issued numerous guidance documents to facilitate agency implementation of NEPA. See CEQ, CEQ Guidance Documents, <https://ceq.doe.gov/guidance/guidance.html>.

To comply with NEPA, agencies determine the appropriate level of review of any major Federal action—an environmental impact statement (EIS), environmental assessment (EA), or categorical exclusion (CE). 40 CFR 1501.3. If a proposed action is likely to

have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 40 CFR 1501.3(c)(3), part 1502, 1505.2. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which is a concise public document used to support agency decision making. 40 CFR 1501.3(c)(2), 1501.5, 1508.1(j). After completing the analysis in the EA, the agency may conclude that the action will have no significant effects and document that conclusion in a finding of no significant impact, or conclude that the action is likely to have significant effects and therefore requires preparation of an EIS. 40 CFR 1501.6(a), 1508.1(j).

Under NEPA and the CEQ regulations, a Federal agency establishes categorical exclusions (CEs)—categories of actions that the agency has determined normally do not have a significant effect on the human environment, individually or in the aggregate—in its agency NEPA procedures. 42 U.S.C. 4336(e)(1); 40 CFR 1501.4(a), 1507.3(c)(8), 1508.1(e). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances, which are factors or circumstances that indicate a normally categorically excluded action may have a significant effect. 40 CFR 1501.4(b), 1508.1(o). If an extraordinary circumstance exists, the agency nevertheless may apply the CE if it conducts an analysis and determines that the proposed action does not in fact have the potential to result in significant effects notwithstanding the extraordinary circumstance, or the agency modifies the action to avoid the potential to result in significant effects. 40 CFR 1501.4(b)(1). In these cases, the agency must document such determination. *Id.* If the agency cannot categorically exclude the proposed action, it will prepare an EA or EIS, as appropriate. 40 CFR 1501.4(b)(2).

The CEQ regulations require Federal agencies to develop procedures to implement NEPA and the CEQ regulations, facilitate efficient decision making, and ensure that the agencies make decisions in accordance with the policies and requirements of NEPA. 40 CFR 1507.3. As part of their procedures, agencies must establish CEs and identify extraordinary circumstances. 40 CFR 1507.3(c)(8). When establishing new or revising existing CEs in agency NEPA procedures, agencies must substantiate the proposed new or revised CEs with sufficient information to conclude that each category of actions does not have a significant effect, individually or in

the aggregate, on the human environment, and provide this substantiation in a written record that is made publicly available as part of the notice and comment process for developing or revising proposed agency procedures. See 40 CFR 1507.3(b), (c)(8). In developing NEPA procedures, agencies must consult with CEQ and provide an opportunity for public review. 40 CFR 1507.3(b)(1)–(2). Before publishing final procedures, agencies must receive a determination from CEQ that the procedures conform with NEPA and the CEQ regulations. See 40 CFR 1507.3(b)(2).

PHMSA's mission is to protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives. To do this, the Agency establishes national policy, promulgates and enforces safety regulations, educates, and conducts research to prevent incidents. PHMSA also prepares the public and first responders to mitigate consequences if a hazardous materials incident does occur. PHMSA's Office of Planning and Analytics (OPA), Environmental Analysis and Compliance Division, conducts and manages the Agency's environmental review process to ensure compliance with NEPA and other relevant federal environmental laws; reviews and approves environmental documents; and issues associated decisions. PHMSA actions include rulemakings, special permits (also known as regulatory waivers), and certain grants. PHMSA does not have infrastructure siting or approval authority, and therefore does not conduct NEPA reviews for proposed new pipeline construction projects.

The Infrastructure Investment and Jobs Act of 2021, also known as the Bipartisan Infrastructure Law (BIL), established the Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant Program. The BIL authorized PHMSA to award \$200 million per year in NGDISM Grant funding, for a total of \$1 billion in grant funding over five years. The grant funding is available to a municipality- or community-owned utility (not including for-profit entities) to repair, rehabilitate, or replace its natural gas distribution pipeline systems or portions thereof, or to acquire equipment to (1) reduce incidents and fatalities, and (2) avoid economic losses.

In this notice, PHMSA proposes to establish its NEPA procedures as agency guidance to efficiently and effectively consider the environmental consequences of PHMSA's actions. PHMSA has not previously established Agency-specific NEPA procedures,

including CEs. When conducting NEPA reviews, PHMSA complies with DOT Order 5610.1C, “Procedures for Considering Environmental Impacts,” which establishes NEPA implementing procedures that apply to all DOT operating administrations. PHMSA’s distinct mission and the nature of its actions warrant establishing Agency-specific procedures. These Agency-specific procedures reflect how PHMSA will apply CEQ’s NEPA regulations to PHMSA’s unique programs and decision-making processes. At the same time, PHMSA will continue to comply with DOT Order 5610.1C or any successor DOT NEPA implementing procedures applicable to PHMSA. Due in part, to the significant increase in PHMSA actions as a result of the BIL’s establishment of the NGDISM Grant Program, PHMSA is establishing Agency-specific NEPA procedures, including five CEs, to efficiently and effectively consider the environmental consequences of PHMSA’s actions. CEs are listed in Appendix 1 of PHMSA’s NEPA Implementing Procedures.

PHMSA has prepared a record to substantiate the development of its new CEs, which is available for review in Docket No. PHMSA–2023–0134 or on PHMSA’s website at <https://www.phmsa.dot.gov/regulations-and-compliance>. PHMSA invites comment on the substantiation record and supporting materials. The analyses in the record are built upon assessment of previous PHMSA actions as delineated in existing NEPA documentation and implemented by PHMSA; information from PHMSA professional staff, expert opinion, and scientific analysis; and benchmarking of other federal agencies’ experiences. PHMSA also developed a list of extraordinary circumstances as part of its NEPA Implementing Procedures to provide additional safeguards to ensure that future proposed actions that are reviewed using the proposed CEs will not result in significant impacts. (See section 5. NEPA Implementing Procedures.) PHMSA has consulted with CEQ on its proposal and is seeking input from the public. PHMSA will consider input from the public and consult with CEQ for a conformity determination before finalizing its proposal.

II. PHMSA NEPA Implementing Procedures for Considering Environmental Impacts

Section 1: Purpose and Applicability

This document establishes policies, responsibilities, and procedures for the Pipeline and Hazardous Materials Safety Administration (PHMSA or Agency), an

operating administration of the U.S. Department of Transportation (DOT), to consider the environmental effects of its proposed actions in its decision-making processes and inform and engage the public in that process as required by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4336e), and consistent with the Council on Environmental Quality (CEQ) *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (CEQ Regulations), 40 CFR parts 1500–1508, and DOT Order 5610.1C, *Procedures for Considering Environmental Impacts*. The CEQ Regulations establish procedures for complying with NEPA. Consistent with 40 CFR 1507.3 of the CEQ Regulations, this order contains the PHMSA’s implementing procedures, which implement NEPA and supplement those regulations.

PHMSA’s mission is to protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives. PHMSA regulates over three million miles of pipelines and oversees the safe and secure movement of over one million daily shipments of hazardous materials by all modes of transportation. PHMSA does not site, permit, or authorize transportation infrastructure. PHMSA’s regulatory standards are intended to reduce the likelihood of a release of hazardous materials into the human environment during transportation.

PHMSA’s major Federal actions that are subject to NEPA review generally fall into three categories: regulatory actions, special permits, and natural gas distribution grant actions:

Regulatory Actions. PHMSA promulgates regulations to improve the safety of transportation of hazardous materials in all modes, including the Hazardous Materials Regulations (49 CFR parts 171–180) and the Pipeline Safety Regulations (49 CFR parts 190–199). PHMSA does not site, permit, or authorize transportation infrastructure or the transportation of hazardous materials. PHMSA’s regulatory standards are intended to reduce the likelihood of release of hazardous materials into the human environment during ongoing transportation of hazardous materials.

Special Permits. A Special Permit sets forth alternative requirements, or variances, to the requirements in the Hazardous Materials Regulations (49 CFR parts 171–180) or Pipeline Safety Regulations (49 CFR parts 190–199). PHMSA may issue such variances if the applicant demonstrates an equivalent level of safety will be achieved or, if a

required safety level does not exist, the alternative requirements are consistent with the public interest.

Natural Gas Distribution Grants. PHMSA awards grants under programs including the Natural Gas Distribution Infrastructure Safety and Modernization grant program. This program assists municipalities or community-owned utilities (not including for-profit entities) in the repair, rehabilitation, or replacement of their natural gas distribution pipeline systems or portions thereof or in the acquisition of equipment to (1) reduce incidents and fatalities and (2) avoid economic losses.

Other PHMSA actions subject to NEPA review may include administrative actions, such as administrative procurements or personnel actions.

Actions are not subject to NEPA review if they are exempted from NEPA by law; if compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of Federal law; or if any other factors stated in 40 CFR 1501.3(a) are identified. Consistent with 40 CFR 1507.3(a), the following actions by PHMSA are not subject to NEPA review pursuant to the statute and implementing CEQ Regulations:

Administrative, organizational, or procedural actions that do not result in final agency actions (40 CFR 1501.3(a)(4)). Examples include day-to-day administrative operations; routine use of PHMSA facilities consistent with their intended purpose; required hazardous material or pipeline inspections; data collection and analysis, response to data requests, and statistical work; development of informational technology systems and portals; and community outreach.

Issuance of internal and external advisory or guidance actions to aid regulated entities in complying with existing regulatory obligations, but which otherwise does not change their substantive rights and obligations, including manuals, advisory circulars and bulletins, frequently asked questions, interpretations, and other guidance documents. Examples include supplemental instructions for agency compliance with NEPA procedures, PHMSA’s *Pipeline Safety Enforcement Procedures Manual*, PHMSA’s *Part 192 Corrosion Enforcement Guidance*, PHMSA’s *Operations & Maintenance Enforcement Guidance Part 192 Subparts L and M*, PHMSA’s *Operator Qualification Enforcement Guidance*, and *Emergency Response Guidebook*. These actions are not subject to NEPA because they are not final agency actions (40 CFR 1501.3(a)(4)).

Enforcement actions such as issuance of Corrective Action Orders, Notices of Proposed Safety Orders, Notices of Probable Violation, Warning Letters, and Notices of Amendments by PHMSA's Pipeline Safety Enforcement Program, and Emergency Order Authority by PHMSA's Office of Hazardous Materials and Safety (40 CFR 1508.1(w)(2)(v)).

Section 2: Background

i. NEPA established certain policies and goals concerning the environment and requires that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with those policies and goals. Section 102 of NEPA establishes procedural requirements, applying that national policy to proposals for major federal actions significantly affecting the quality of the human environment.

ii. The CEQ Regulations direct each agency to develop procedures that implement the CEQ Regulations for the agency's specific programs to facilitate efficient decision making, and ensure that the agency makes decisions in accordance with the policies and requirements of NEPA.

iii. DOT has issued Department-wide Order 5610.1C that outlines the general processes and procedures for the Department to implement NEPA.

iv. Consistent with 40 CFR 1507.3, these PHMSA procedures implement NEPA within PHMSA, consistent with CEQ Regulations, DOT Order 5610.1C, and implementing DOT regulations, policy, or order. These procedures provide that information on environmental effects of proposed actions will be evaluated through the appropriate level of review (namely, categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs)).

v. PHMSA must adhere to all laws, regulations, and Executive Orders that address environmental protection, including environmental justice.

Section 3: Responsibilities

i. The PHMSA Administrator is responsible for ensuring Agency compliance with NEPA pursuant to delegated authority under DOT regulation 49 CFR 1.81(a)(5).

ii. The PHMSA Administrator has delegated authority to the Associate Administrator for the Office of Planning and Analytics to carry out NEPA functions. The Associate Administrator for Planning and Analytics must review and approve all final EISs (FEISs) and records of decision (RODs).

iii. The Associate Administrator for the Office of Planning and Analytics must designate an Agency Environmental Coordinator within the Environmental Analysis and Compliance Division to manage day-to-day NEPA functions, including approval of any CE determination, EA, finding of no significant impact (FONSI), or draft EIS (DEIS). The Agency Environmental Coordinator, or their designee, must lead and review development of all CEs, EAs, FONSI, EISs and RODs.

iv. The Agency Environmental Coordinator must implement the provisions of NEPA, the CEQ Regulations, and DOT Order 5610.1C on behalf of the Associate Administrator for the Office of Planning and Analytics. This includes serving as an initial point of contact for interested parties to request information or status reports on environmental documents and other elements of the NEPA process consistent with 40 CFR 1507.3(c)(11). PHMSA must post the name and contact information of this individual on PHMSA's website.

v. The Agency Environmental Coordinator must implement a training program to ensure all PHMSA personnel engaged in programs and projects that may include a federal action subject to NEPA are familiar and comply with these procedures, NEPA, DOT Order 5610.1C, and the CEQ Regulations.

vi. The Associate Administrator for the Office of Planning and Analytics must designate a Lead Environmental Protection Specialist and a Federal Preservation Officer. The Lead Environmental Protection Specialist must coordinate NEPA activities for grant programs and is authorized to approve EAs, FONSI, and CE determinations for these programs, following consultation with the Program Offices and PHMSA Office of Chief Counsel. The Federal Preservation Officer is authorized to act as the PHMSA agency official, consult on the behalf of PHMSA, sign PHMSA correspondence, and identify Program Alternatives for the purpose of compliance with section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's regulations at 36 CFR part 800.

vii. Consistent with 40 CFR 1507.2(a), PHMSA must designate a Chief Public Engagement Officer to be responsible for facilitating community engagement across the agency and, where appropriate, the provision of technical assistance to communities. PHMSA must post the name and contact information of this individual on PHMSA's website.

viii. The PHMSA Office of Chief Counsel will review all EAs, FONSI, DEISs, FEISs, RODs, and analyses under section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. 303). At its discretion, the Office of Chief Counsel may review any other environmental document, including CE determinations, to ensure legal compliance and assess legal risk.

Section 4: Procedures: PHMSA Actions

i. The Associate Administrators, Office Directors, and Other Officials ("Program Managers") must coordinate with the Agency Environmental Coordinator on all proposed actions under their jurisdiction that are, or may be, major federal actions subject to the requirements of NEPA.

ii. PHMSA must engage, as appropriate, with other federal and state agencies, Tribes, and with the public when considering the scope of the proposed action and its effects to inform the agency's determination of the appropriate level of NEPA review (40 CFR 1501.3(b)).

iii. PHMSA is responsible for the accuracy, scope, and content of all environmental documents, and must ensure they are prepared with professional and scientific integrity, using reliable data and resources. In accordance with section 107(f) of NEPA and consistent with 40 CFR 1507.3(c)(12), applicants, including applicant-directed contractors, may prepare EAs and EISs under PHMSA's supervision, subject to the following procedures.

a. If an applicant chooses to use a contractor to prepare an environmental document, PHMSA must ensure that all costs of using a contractor will be borne by the applicant.

b. PHMSA must participate in and supervise the document's preparation. PHMSA must assist contractors and applicants by providing guidance and outlining the types of information required for the preparation of the environmental document. Additionally, PHMSA must collaborate with the contractor to ensure the analysis is focused on areas where there is a higher potential for significant impacts.

c. PHMSA must review and approve the statement of purpose and need and the alternatives that will be considered in the environmental document at an early time, before the applicant (or the applicant's contractor) prepares the rest of the environmental document.

d. PHMSA must independently evaluate the environmental document and take responsibility for its accuracy, scope, and contents. PHMSA may choose in its discretion to accept, edit,

revise, or independently author sections of the document or the whole document.

e. PHMSA must include a statement in any environmental document prepared by an applicant or contractor stating that PHMSA has independently evaluated the document for its accuracy, scope, and contents.

f. The environmental document must include the names and qualifications of individuals responsible for preparing and reviewing the document, including those individuals from PHMSA responsible for conducting the Agency's independent evaluation.

g. PHMSA must independently prepare FONSI and RODs without the support of an applicant or their contractor.

h. PHMSA must ensure that the applicant preserves and includes in a decision file all factual, scientific, or technical information used, developed, or considered by the applicant in the course of preparing the draft environmental document, including any correspondence with PHMSA or with third parties.

iv. NEPA Applicability and Level of NEPA Review. The Agency Environmental Coordinator, or designated representative, must evaluate any proposed action being considered by the Agency pursuant to NEPA and these procedures to determine whether the action is subject to NEPA and determine the appropriate level of NEPA review, in consultation with the PHMSA Office of Chief Counsel and Program Offices, consistent with 40 CFR 1501.3.

a. PHMSA must assess whether NEPA applies to a proposed activity or decision in accordance with Section 1: Purpose and Applicability of these Procedures and consistent with 40 CFR 1501.3(a) and 1501.8(w).

b. Consistent with 40 CFR 1501.3(b), if NEPA is applicable, PHMSA must consider the scope of the action, including whether some aspects are non-discretionary, and its reasonably foreseeable effects to determine the appropriate level of NEPA review. PHMSA must use public and governmental engagement (consistent with 40 CFR 1501.9) and scoping (consistent with 40 CFR 1502.4), when appropriate, to inform this determination. PHMSA must consider potential temporary as well as permanent environmental effects. PHMSA must consider the direct, indirect and cumulative effects including the reasonably foreseeable effects of connected actions when making this determination. The level of NEPA review may not be made on a

“net benefit” basis and PHMSA may not offset an action's adverse effects against other beneficial effects when determining the potential for significant effects.

c. If the proposed action requires the preparation of an EA or EIS, the Agency Environmental Coordinator must notify the Program Manager of the type of environmental document required.

d. PHMSA must prepare EISs comporting with 40 CFR part 1502. Generally, consideration of reasonably foreseeable effects should include discussion of any reasonably foreseeable greenhouse gas emissions and climate change effects (including effects from climate change on the proposed action), hazardous material releases, effects on communities with environmental justice concerns, and effects on environmentally sensitive resources. Environmentally sensitive resources include, but are not limited to, properties subject to section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. 303); historic properties, as defined in the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*); threatened or endangered species or their habitat, as defined under the Endangered Species Act (16 U.S.C. 1531 *et seq.*); farmland protected under the Farmland Protection Policy Act (7 U.S.C. 4201 and 7 CFR ch. VI part 658); and wetlands, as defined in Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A; floodplains, as defined in Executive Order 11988, Floodplain Management, as amended by Executive Order 13690, and DOT Order 5650.2.

Typically, an EIS may be appropriate for a PHMSA regulatory action that requires new construction of transmission pipelines on a national scale.

e. PHMSA must prepare EAs comporting with 40 CFR 1501.5 and must briefly discuss the purpose and need for the proposed action, alternatives, and reasonably foreseeable environmental effects of the proposed action and alternatives. EAs should consider the same types of effects as EISs, as appropriate to the proposed action in question, but should include a more concise discussion, consistent with the reduced risk of significant effects. Typically, an EA would be appropriate for deregulatory rulemaking actions or construction grant projects for existing service lines outside of existing rights-of-way or easements.

f. PHMSA may apply a CE if such use is consistent with section V.

v. Categorical Exclusions. CEs are categories of actions that normally do not have a significant effect on the quality of the human environment,

individually or in the aggregate, and therefore do not require preparation of an EA or EIS unless extraordinary circumstances exist that make application of the categorical exclusion inappropriate. Consistent with 40 CFR 1507.3(c)(8), appendix 1 of these procedures lists PHMSA's CEs.

a. The Agency Environmental Coordinator, or their designee, must review the proposed action to determine if a CE covers the proposed action or to identify a CE that potentially covers the proposed action (*see* Appendix 1). They must also review the proposed action for extraordinary circumstances. If an extraordinary circumstance exists, PHMSA may nevertheless apply the CE if it conducts an analysis and determines that the proposed action does not in fact have the potential to result in significant effects notwithstanding the extraordinary circumstance, or PHMSA modifies the action to avoid the potential to result in significant effects. 40 CFR 1501.4(b)(1).

b. Additional documentation is not required to document that an action has been categorically excluded for those CEs listed in Appendix 1, Paragraph a, unless an extraordinary circumstance exists and PHMSA applies the CE notwithstanding the extraordinary circumstance consistent with 40 CFR 1501.4(b)(1). In instances where PHMSA applies a CE to an action where an extraordinary circumstance exists, PHMSA must publish this determination via PHMSA's *Notices and Rulemaking Documents* web page (<https://www.phmsa.dot.gov/regulations/federal-register-documents>).

c. CEs listed in Appendix 1, Paragraph b, require documentation, regardless of whether extraordinary circumstances exist. The Agency Environmental Coordinator must prepare documentation of potential environmental impacts.

d. If no CE covers the proposed action, or if extraordinary circumstances exist that preclude PHMSA from applying a CE, PHMSA must prepare an EA or an EIS before a proposed action may proceed.

vi. Other Agency CEs. PHMSA may adopt and apply a CE listed in another agency's NEPA procedures for a proposed action or a category of proposed actions consistent with the process outlined in 40 CFR 1501.4(e). PHMSA must publish each application of an adopted CE consistent with § 1501.4(e)(5) via PHMSA's *Notices and Rulemaking Documents* web page (<https://www.phmsa.dot.gov/regulations/federal-register-documents>). Any adopted categorical exclusion will be available for use by the agency as of

the date of the public notice consistent with 40 CFR 1501.4(e)(3).

vii. Prepare EA. PHMSA must prepare an EA when a proposed action is not categorically excluded and is not expected to result in significant environmental effects, or the significance of the effects of a proposed action is unknown. 40 CFR 1501.5. The decision-making process for the level of NEPA review determination is described in IV.b above. The Agency Environmental Coordinator, or designated representative, must determine the appropriate level of review. Consistent with 40 CFR 1501.5(g), the text of an EA may not exceed 75 pages, not including any citations or appendices.

viii. Prepare EIS. PHMSA must prepare an EIS for any proposed action that is likely to significantly affect the human environment. The decision-making process for the level of NEPA review determination is described in IV.b above. The Agency Environmental Coordinator, or designated representative, must determine the appropriate level of review. In accordance with 49 U.S.C. 304a, PHMSA must combine FEIS/ROD documents to the extent practicable. See DOT's *Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Review* (2019). Consistent with 40 CFR 1502.7, the text of an FEIS may not exceed 150 pages except for proposals of extraordinary complexity, which may not exceed 300 pages.

ix. As appropriate and where consistent with applicable statutory requirements, PHMSA must combine environmental documents with other Agency documents to facilitate sound and efficient decision making and avoid duplication. 40 CFR 1506.4, 1507.3(c)(5).

x. Timelines. The Agency Environmental Coordinator, or their designee, must review and approve timelines for EA and EIS documents. PHMSA must complete EAs and EISs within the timeframes outlined in 40 CFR 1501.10. PHMSA may extend EA and EIS deadlines in writing, subject to the Associate Administrator for the Office of Planning and Analytics' approval, consistent with 40 CFR 1501.10(b). If additional time is required, PHMSA may only utilize so much additional time as is necessary to complete the document.

a. Unless an extension is made, EAs must be completed within 1 year from the date PHMSA determines an EA is required.

b. Unless an extension is made, EISs must be completed within 2 years of the Notice of Intent to Prepare an Environmental Impact Statement.

xi. Consistent with 40 CFR 1507.3(c) and (4), the Agency Environmental Coordinator is responsible for ensuring relevant environmental documents, comments, and responses accompany the proposal through PHMSA's decision-making review processes. PHMSA must prepare EAs and EISs to encompass the range of the alternatives to be considered by the decision maker. As appropriate, PHMSA must make available to the public those portions of any additional documents provided to the decision maker in addition to the relevant environmental documents that relate to the comparison of alternatives.

xii. Prior to final approval of environmental documents, the Agency Environmental Coordinator is responsible for consulting with the Program Manager and PHMSA Office of Chief Counsel for any proposed mitigation commitments required for the proposed action.

xiii. Supplement. If new information becomes available that is relevant to the environmental process, such as changes in project scope or environmental effects, PHMSA Program Offices must coordinate with the Agency Environmental Coordinator and the PHMSA Office of Chief Counsel to determine if a supplement to or reevaluation of an EA or EIS is necessary, consistent with 40 CFR 1501.5(h) and (i) or 1502.9(d) and (e), respectively.

Section 5: Procedures: Extraordinary Circumstances

i. Extraordinary circumstances are factors or circumstances that indicate that a normally categorically excluded action may have a significant environmental effect. If an extraordinary circumstance exists, the Agency Environmental Coordinator, or designated representative, must consult the PHMSA Office of Chief Counsel and Program Offices to confirm whether the use of a CE is appropriate, consistent with 40 CFR 1501.4(b). If the Agency Environmental Coordinator or designated representative; the PHMSA Office of Chief Counsel; or Program Offices determines that use of a CE is inappropriate, the level of NEPA review must be an EA or EIS. Consistent with 40 CFR 1507.3(c)(8), PHMSA must consider circumstances including the following when determining whether extraordinary circumstances exist:

a. The proposed action is greater in scope or size than those normally covered by the category.

b. The proposed action may increase the likelihood of a reportable release under the Hazardous Materials Regulations (49 CFR parts 171–180) or Pipeline Safety Regulations (49 CFR parts 190–199).

c. The proposed action may be inconsistent with or cause a violation of a federal, state, local, or Tribal law or requirement.

d. The proposed action may result in a substantial increase in greenhouse gas emissions.

e. The proposed action may have disproportionate and adverse effects on communities with environmental justice concerns as defined at 40 CFR 1508.1(f).

f. The proposed action may have an adverse effect on an environmentally sensitive resource. Environmentally sensitive resources include, but are not limited to:

1. Wildlife or waterfowl refuges, historic sites, public parks, or other protected properties under section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. 303) or section 6(f) of the Land and Water Conservation Fund Act of 1965 (54 U.S.C. 200305(f)(3)).

2. Historic, architectural, archeological, or cultural resources subject to section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108) or the Archeological and Historic Preservation Act of 1974 (54 U.S.C. Ch. 3125).

3. Farmland protected under the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*). In this context, a potential adverse effect would involve the acquisition and irreversible conversion of non-urban land to non-agricultural uses.

4. Threatened or endangered species or their habitat, as defined under the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

5. Wetlands, as defined in Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A.

6. Floodplains, as defined in Executive Order 11988, Floodplain Management, as amended by Executive Order 13690, and DOT Order 5650.2. PHMSA's compliance with these Orders will inform its extraordinary circumstances analysis.

7. State coastal zones, as defined by state coastal zone management programs, or undeveloped coastal barriers along the Atlantic or Gulf Coasts.

8. Wild and scenic rivers in the National Inventory.

ii. Compliance with other statutes such as the National Historic Preservation Act of 1966, Archeological and Historic Preservation Act of 1974,

and the Endangered Species Act is separate from, and not displaced by, compliance with NEPA and these procedures. PHMSA will develop Standard Operating Procedures describing the necessary processes to comply with these statutes.

Section 6: Procedures: Public and Governmental Engagement

i. The Agency Environmental Coordinator must ensure that PHMSA provides the appropriate level of public and governmental engagement consistent with 40 CFR 1501.9 and other laws and regulations, regardless of the level of NEPA review. PHMSA must carry out public and governmental engagement in accordance with NEPA and must coordinate these efforts with other PHMSA public involvement opportunities when practicable.

ii. PHMSA must identify the potentially affected Federal, State, Tribal, and local governments and invite them to serve as cooperating agencies as early as practicable and as appropriate. PHMSA must also ensure that participating agencies have opportunities to provide input on the proposed action and engage in the environmental review process, as appropriate.

iii. Interested persons may obtain information or status reports on EISs, EAs, and other elements of the NEPA process by contacting PHMSA's Agency Environmental Coordinator (PHMSA Office of Planning and Analytics). See 40 CFR 1507.3(c)(11).

iv. Regulatory Actions. PHMSA promulgates regulations to advance the safe transportation of hazardous materials in all modes, including the Hazardous Materials Regulations (49 CFR parts 171–180) and the Pipeline Safety Regulations (49 CFR parts 190–199). PHMSA does not site, permit, or authorize transportation infrastructure. PHMSA's regulatory standards are intended to reduce the likelihood of a release of hazardous materials into the human environment during transportation. Consistent with 40 CFR 1507.3(c)(2), PHMSA must ensure that relevant environmental documents, comments, and responses will be part of the record in rulemaking proceedings.

a. PHMSA must notify the public of the availability of Draft EAs and DEISs for regulatory actions subject to public notice and comment, to solicit public comment. PHMSA may publish the Draft EA in the "Regulatory Notices and Analyses" section of a Notice of Proposed Rulemaking or supplemental Notice of Proposed Rulemaking, or as a standalone document in the docket for the rulemaking action, found at

www.regulations.gov (in which case PHMSA must include a citation to the docket in the "Regulatory Notices and Analyses" section). Absent special circumstances, PHMSA must allow at least 30 days for comment on Draft EAs and DEISs. PHMSA may consider longer comment periods for particularly complex proposals or when otherwise appropriate.

b. The Agency Environmental Coordinator may determine public engagement for PHMSA CEs on a case-by-case basis.

c. If the Agency Environmental Coordinator or their designee determines that a proposed action requires preparation of an EIS, PHMSA must alert the public of its intent to prepare an EIS by publishing a Notice of Intent (NOI) in the **Federal Register**. The Associate Administrator for the Office of Planning and Analytics must approve the NOI prior to publication.

d. Consistent with the CEQ Regulations, PHMSA must publish a DEIS for public review for a minimum of 45 days.

e. PHMSA must consider public comments and address them in the EA and FONSI or the FEIS.

v. Special Permits. Special permits and associated environmental documents are posted in the **Federal Register** and available at www.Regulations.gov. A special permit, or regulatory waiver, is an order by which PHMSA waives compliance with one or more of the requirements in the hazardous material regulations (49 CFR parts 171–180) or pipeline safety regulations (49 CFR parts 190–199), subject to conditions set forth in the permit.

a. PHMSA must provide the public with a 30-day opportunity to comment on EAs. For particularly complex proposals, PHMSA may extend the minimum comment periods established in these procedures.

b. PHMSA must make FONSI publicly available on PHMSA's website.

c. The Agency Environmental Coordinator must ensure that PHMSA provides the appropriate level of public and governmental engagement consistent with 40 CFR 1501.9 and other laws and regulations, regardless of the level of NEPA review.

d. If PHMSA determines the action requires an EIS, PHMSA must alert the public of its intent to prepare an EIS by publishing an NOI consistent with 40 CFR 1502.4(e) in the **Federal Register**. The Associate Administrator for the Office of Planning and Analytics must approve NOIs prior to publication.

e. Consistent with CEQ regulations, PHMSA must publish a DEIS for public review for a minimum of 45 days.

f. For these actions, PHMSA must consider public comments and address substantive comments in the EA and FONSI, or FEIS and RODs.

vi. Natural Gas Distribution Grants. For pipeline or related site-specific construction projects, PHMSA must notify the public of the availability of EAs and DEISs on PHMSA's website. PHMSA must solicit public comment on Draft EAs and DEISs. PHMSA must also make these documents available in a location that is locally accessible to where the proposed action is located.

a. PHMSA must evaluate grant projects on a case-by-case basis to determine the appropriate level of outreach, notification, and coordination consistent with 40 CFR 1501.9(c).

b. PHMSA must provide the public with a 30-day opportunity to comment on draft EAs. For particularly complex proposals, PHMSA may extend the minimum comment periods established in these procedures.

c. PHMSA must make FONSI publicly available on PHMSA's website.

d. If the action requires an EIS, PHMSA must alert the public of its intent to prepare an EIS by publishing an NOI consistent with 40 CFR 1502.4(e) in the **Federal Register**. The Associate Administrator for the Office of Planning and Analytics must approve NOIs prior to publication.

e. Consistent with CEQ regulations, PHMSA must publish a DEIS for public review for a minimum of 45 days.

f. For these actions, PHMSA must consider public comments and address substantive comments in the EA and FONSI, or FEIS and RODs.

Section 7: Procedures: Emergency Circumstances

In emergency circumstances (such as life threatening natural or human-caused disasters), where it is necessary to take an action that is likely to have a significant environmental effect, it may not be possible for PHMSA to follow the NEPA implementing procedures outlined in this document. CEQ regulations regarding emergencies permit federal agencies to consult with CEQ to discuss alternative arrangements. See 40 CFR 1506.11.

When the expected environmental effects of the proposed action are unlikely to be significant and the action cannot be categorically excluded, PHMSA must prepare a focused EA in compliance with PHMSA's NEPA implementing procedures and consistent with CEQ regulations as soon as practicable. Requests for alternative

arrangements from PHMSA Program Offices or applicant due to emergency circumstances must be referred to the Agency Environmental Coordinator for evaluation.

Alternative arrangements for such actions should focus on minimizing adverse environmental effects of the PHMSA action and the emergency. To the maximum extent practicable, the alternative arrangements should include the interagency coordination, and public and governmental engagement, that would normally be undertaken for an EA. The alternative arrangements may not alter the requirements of the CEQ regulations regarding EAs, but the level of evidence, analysis, and discussion may be limited to what is practicable under the emergency circumstances. The Agency Environmental Coordinator must approve alternative arrangements. Any alternative arrangements must be documented. The Agency Environmental Coordinator must inform CEQ of the alternative arrangement at the earliest opportunity.

If significant impacts are likely and an EIS would typically be required, the Agency Environmental Coordinator, in consultation with the Program Office and PHMSA Office of Chief Counsel, must consult with CEQ to request alternative arrangements.

Section 8: Review of Environmental Documents Prepared by Other Agencies

i. The Agency Environmental Coordinator is PHMSA's receiving official for all requests for comment on environmental documents from other agencies or requests to be a cooperating agency on a NEPA project. If a PHMSA official receives such requests from someone other than the Agency Environmental Coordinator, the request must be forwarded promptly to the Agency Environmental Coordinator. The Agency Environmental Coordinator must review all requests, in consultation with Program Managers and the Office of the Chief Counsel, to determine whether PHMSA can provide useful and constructive comments concerning the action involved. All Associate Administrators and other PHMSA officials must cooperate with the Agency Environmental Coordinator in providing comments on a timely basis so that the Agency Environmental Coordinator may respond in a similar manner (*see* paragraph 9, DOT Order 5610.1C).

ii. The Agency Environmental Coordinator must assess the comments

received from Program Managers and prepare a coordinated PHMSA response to the request. Responses must be forwarded to the PHMSA Office of Chief Counsel, Regulatory Affairs Division, and Program Managers for consultation prior to its being forwarded to the Department.

Section 9: Periodic Review

PHMSA must continue to review its NEPA implementing policies and procedures and, in consultation with CEQ, revise them as necessary to ensure compliance with NEPA. Consistent with 40 CFR 1507.3(c)(9), this review must also include periodic review of PHMSA's CEs at least every 10 years from approval of these procedures or as otherwise required by applicable law, regulations, and policies/procedures.

Appendix 1. Categorical Exclusions Summary

A. Categorical Exclusions Requiring No Further Documentation

(1) Equipment acquisition (including purchase or lease) of handheld and mobile methane detection equipment and associated vehicles.

B. Categorical Exclusions Requiring Documentation (Documented CEs)

(1) Granting, renewing, or denying a special permit related to waiving class location or odorization requirements, following the procedures set forth in 49 CFR 190.341, including the identification of any enforceable conditions, imposed pursuant to 49 CFR 190.341(d)(2), that are required to prevent and address pipeline safety and environmental risk.

(2) Rulemaking actions by the Office of Hazardous Materials Safety, other than deregulatory rulemaking actions, within one of the following categories:

(a) policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature;

(b) regulations designating, defining, or classifying regulated materials (hazardous materials, hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR part 173);

(c) regulations imposing requirements on transportation of regulated materials, including shipping papers, marking,

labeling, placarding, emergency response information, training, and safety and security plans;

(d) regulations concerning stowage and segregation of regulated materials in transportation, including rail car, portable tank, and cargo tank placement; loading, unloading, transportation, and storage of regulated materials by mode (rail, aircraft, vessel, and highway); revising standards for bulk and non-bulk packages (cylinders, portable tanks, cargo tanks, radioactive packages, intermediate bulk containers, drums, jerricans, boxes, and composite packagings, etc.); or incident reporting or tracking of regulated movements;

(e) editorial or technical revisions and clarifications to correct editorial errors and improve clarity; and

(f) training, testing, and qualification of regulated materials personnel.

(3) Rulemaking actions by the Office of Pipeline Safety, other than deregulatory rulemaking actions, within one of the following categories:

(a) policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature;

(b) regulations concerning corrosion control; training, testing, and qualification of operator personnel; or emergency response;

(c) editorial or technical revisions and clarifications to correct editorial errors and improve clarity; and

(d) revisions to civil penalty amounts that may be imposed for violations of certain DOT regulations.

(4) Repair, rehabilitation, or replacement of natural gas distribution pipelines and associated equipment within existing rights-of-way or easements. Associated actions include replacement of service lines, meters, metering stations, valves, taps, abandonment in place or abandonment by removal, minor excavation, replacement of pavement of existing roadway and/or sidewalks, and relocation within existing rights-of-way or easements. Actions will follow the applicable safety standards and requirements described at 49 CFR part 192.

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Tristan H. Brown,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

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