

DEPARTMENT OF AGRICULTURE**7 CFR Parts 1b, 372, 520, 650, 799, 1970, and 2407****36 CFR Part 220****[USDA–2025–0008]****RIN 0503–AA86****National Environmental Policy Act****AGENCY:** Agriculture (USDA).**ACTION:** Interim final rule; request for public comment.

SUMMARY: This interim final rule modifies the U.S. Department of Agriculture (USDA) regulations implementing the National Environmental Policy Act (NEPA) and removes various USDA agency regulations for implementing NEPA. USDA is taking this action in response to the Council on Environmental Quality's rescission of its NEPA implementing regulations (which USDA's NEPA regulations were designed to supplement), statutory changes to NEPA, executive orders, and case law. Comments are voluntarily requested on this action to inform USDA's decision-making.

DATES: This rule is effective July 3, 2025. Comments concerning this rule must be received by July 30, 2025.

ADDRESSES: Comments, identified by USDA–2025–0008, should be sent via one of the following methods:

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

- *Mail:* USDA, 1400 Independence Ave. SW, Washington, DC 20250–0108.

Comments should be confined to issues pertinent to the interim final rule, explain the reasons for any recommended changes, and reference the specific section and wording being addressed, where possible. All timely comments will be placed in the record and be available for public inspection at <https://www.regulations.gov>, including any personal information provided. Do not submit any information you consider to be private, confidential business information, or other information whose disclosure is restricted by statute.

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:**I. Background**

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

CEQ's interim final rule rescinded its NEPA implementing regulations, including 40 CFR parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508.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, interim final rule support the rationale underlying this interim final rule.

The Department of Agriculture (USDA) is issuing this interim final rule to revise, move and republish, or remove 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, as well as add new portions to the USDA NEPA implementing regulations for three independent reasons.

First, CEQ's regulations were repealed effective April 11, 2025; see *Removal of National Environmental Policy Act Implementing Regulations*, 90 FR 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 provide a valid foundation for USDA NEPA regulations. Second, Congress recently amended NEPA in significant part, in the Fiscal Responsibility Act of 2023 (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 now rescinded, and with USDA's NEPA implementing procedures still unmodified more than two years after this significant legislative overhaul, it is

exigent that USDA move quickly to conform its procedures 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 procedures, availing itself of the latest information and guidance from the Court for its future NEPA application.

These reasons now prompt USDA to publish this interim final rule 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 procedures for, NEPA. NEPA is a vital part of Federal agency planning and decision-making, and 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. Conducting a standard rulemaking process would impede USDA's planning and decision-making for longer than necessary and would be impracticable and contrary to the public interest. For these reasons, USDA is using the interim final rule process. (Also see discussion under Section III. for additional rationale for using the interim rule process.)

National Environmental Policy Act

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).

As amended by the Fiscal Responsibility Act of 2023, Public Law 118–5, NEPA furthers this national policy by requiring Federal agencies to prepare a “detailed statement” for proposed “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C). This statement must address: (1) the reasonably foreseeable environmental impacts of the proposed agency action; (2) the reasonably foreseeable adverse environmental impacts that cannot be avoided; (3) a reasonable range of alternatives to the proposed agency action that are technically and economically feasible and meet the purpose and need of the proposal, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative; (4) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action (or action alternatives). 42 U.S.C. 4332(2)(C).

NEPA further mandates that Federal agencies ensure the professional and scientific integrity of environmental documents; use reliable data and resources when carrying out NEPA; and study, develop, and describe technically and economically feasible alternatives. 42 U.S.C. 4332(2)(D)–(F). NEPA provides procedures for making threshold determinations about whether an environmental document must be prepared and, if so, which type of environmental document. 42 U.S.C. 4336(a)–(b).

NEPA identifies three levels of review—categorical exclusion, environmental assessment, and environmental impact statement. NEPA § 107, 42 U.S.C. 4336a. A categorical exclusion is a “a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of [NEPA] section 102(2)(C).” NEPA § 111(1), 42 U.S.C. 4336e(1). An environmental assessment is a “concise” document “set[ting] forth the basis of [an] agency’s finding of no significant impact or determination that an environmental impact statement is necessary,” prepared in connection with

a proposed agency action that does not have a significant impact or the significance of whose impact is unknown. NEPA § 106(b)(2), 42 U.S.C. 4336(b)(2). An environmental impact statement is a detailed statement analyzing a proposed agency action with reasonably foreseeable significant impacts, governed by the provisions of NEPA §§ 102(2)(C), 106(b)(1); 42 U.S.C. 4332(2)(C), 4336(b)(1).

NEPA does not mandate particular results or substantive outcomes. *Seven County*, 145 S. Ct., at 1510. Rather, NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of Federal agency decision-making processes. As amended by the Fiscal Responsibility Act, NEPA provides additional requirements to facilitate timely and unified Federal reviews, including provisions clarifying lead, joint lead, and cooperating agency designations, generally requiring the development of a single environmental document, directing agencies to develop procedures for proposal sponsors to prepare environmental assessments and environmental impact statements, and prescribing page limits and deadlines. NEPA § 107, 42 U.S.C. 4336a. NEPA also sets forth the circumstances under which agencies may rely on programmatic environmental documents, NEPA § 108, 42 U.S.C. 4663b, and adopt and use another agency’s categorical exclusions, NEPA § 109, 42 U.S.C. 4336c.

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 National Environmental Policy Act (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 the Council on Environmental Quality’s (CEQ) 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 44 FR 44802, 46 FR 47747, 48 FR 11403, 60 FR 66481, 76 FR 4802.

USDA promulgated its current regulations in 1995 (60 FR 66481, 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 (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);

(2) Animal Plant Health and 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);

(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);

(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);

(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);

(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); 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).

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 the CEQ’s interim 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 agency with NEPA responsibilities across the Department to supplement the Department NEPA regulations. Therefore, USDA is proposing to correct course and right-size its NEPA regulations consistent with applicable law.

B. USDA Agency-Specific NEPA Regulation Summaries

1. Statement of Purpose

USDA’s new NEPA implementing procedures, as adopted via this interim final rule, are a more faithful implementation of the statute as amended in 2023 than its old procedures. These procedures implement major structural features of the 2023 amendments, such as deadlines and page limits for environmental assessments and environmental impact statements, as directed at NEPA § 107(g), 42 U.S.C. 4336(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, as codified at NEPA § 111(10), 42 U.S.C. 4336e(10). They provide procedures governing project-sponsor-prepared environmental assessments and environmental impact statements, as directed at NEPA § 107(f), 42 U.S.C. 4336a(f). And they incorporate Congress’s revision to the requirements for what an agency must address in its environmental impact statements, 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 environmental impact statement, 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, all of these respond to the President’s directive in E.O. 14154; and all of these 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 procedures, 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.

In reaching this decision, USDA acknowledges that third parties may claim to have reliance interests in USDA’s existing NEPA procedures. But revised agency procedures will have no effect on ongoing NEPA reviews, where USDA, following CEQ guidance, has held it will continue to apply existing applications. Moreover, as the Supreme Court has just explained, NEPA “is a purely procedural statute” that “imposes no substantive environmental obligations or restrictions.” *Seven County*, 145 S. Ct. at 1507. Any asserted reliance interests grounded in substantive environmental concerns are not in accord with the best meaning of the law and are entitled to “no . . . weight.” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1914 (2020).

Because reliance interests are inherently backward-looking, it is unclear how any party could assert reliance interests in *prospective* procedures. To the extent such interests exist, the Department holds that they are “outweigh[ed]” by “other interests and policy concerns.” *Id.* Namely, the complex web of regulations that preexisted the 2023 amendments to NEPA and the new Procedures repeatedly “led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation,” which in turn has meant that “[f]ewer projects make it to the finish line,” or even “to the starting line.” *Seven County*, 145 S. Ct. at 1513–14. This has increased the cost of projects dramatically, “both for the agency preparing the EIS and for the builder of the project,” resulting in systemic harms to America’s infrastructure and

economy. *Id.* Correspondingly, the wholesale revision and simplification of this regime, effectuated by these procedures, is necessary to ensure efficient and predictable reviews, with significant upsides for the economy and for projects of all sorts. This set of policy considerations drastically outweighs any claimed reliance interests in the preexisting procedures.

USDA has revised its NEPA implementing regulations to conform to the 2023 statutory amendments, to respond to President Trump's direction in E.O. 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," 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 procedures, 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 would primarily retain and move the placement of the following information currently contained in 7 CFR 1b and the individual agency NEPA regulations below: categorical exclusions, which includes a list of USDA agencies and offices excluded from completing an environmental assessment or environmental impact statement; 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 will be 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 procedures 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.

The following provides a summary of what is included or being 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 and this section is now revised to read as indicated in 7 CFR 1b.1.

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. This section specifies the mission areas, agencies, and staff offices (hereinafter USDA subcomponents or subcomponent) the part applies to.

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. The Under Secretary of Natural Resources and Environment continues to hold responsibility for ensuring overall Department compliance with NEPA. This section provides clarification on the issuance of agency-specific NEPA guidance for processes and practices that address agency-specific laws and program efficiency.

USDA adds requirements to this section to submit to Congress on an annual basis a report that identifies any environmental assessment and environmental impact statement 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. Specifies USDA roles and responsibilities for completing this report.

This section 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, as the definition of major Federal action was added to NEPA, as amended by the Fiscal Responsibility Act of 2023. 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.

This section 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 environmental assessment or environmental impact statement, 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 environmental assessment or environmental impact statement 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 categorical exclusion, 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 categorical exclusion applies to a proposed action, and therefore does not require preparation of an environmental assessment or environmental impact statement, an agency should evaluate the action for extraordinary circumstances that indicate a normally excluded action is likely to have reasonably foreseeable significant adverse effect. Determinations of whether to prepare an environmental assessment or environmental impact statement should be based on the anticipated degree of effect, in accordance with NEPA, not on the type of action. An environmental assessment shall be prepared when a Federal agency finds that a categorical exclusion 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)(iv)(A)) and 1b.5(a)). An environmental impact statement shall be issued when a Federal agency finds that a categorical exclusion 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)(iv)(B) and 1b.7(a)). This policy accurately reflects the statutory requirements of NEPA for determining the appropriate level of NEPA review (categorical exclusion, environmental assessment, or environmental impact statement).

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.

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 environmental impact statement, 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 or 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.

Specifies that as part of USDA subcomponent decision-making, NEPA should be integrated with other environmental analyses to demonstrate compliance with other laws. Also adds limitations on actions taken during the NEPA process.

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 categorical exclusions 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.

Adds procedures for establishing, revising, adopting, removing, and applying categorical exclusions, as well as relying on other agency categorical exclusion determinations.

Adds clarification that USDA subcomponents may use any of the categorical exclusions listed at 7 CFR 1b.4, as well as use non-USDA categories that were adopted by any other USDA subcomponent. The USDA NEPA regulations have always included Department-wide CEs (now moved to § 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 categorical exclusions where it makes sense to do so for the actions proposed by the subcomponent.

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. 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 environmental assessment or environmental impact statement, create uncertainty whether the degree of the impact is significant for the relevant resources considered (7 CFR 1b.11(a)(17)). Previously, some agencies had mandated lists of resources to consider for extraordinary circumstances while other agencies had no list. 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. 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.

Adds the concept of a finding of applicability and no extraordinary circumstance (FANEC), which applies

to all categorical exclusions. For those categories requiring NEPA documentation, specifies 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. Gives agencies flexibility on how to document these determinations so long as certain items are addressed. Clarifies documentation considerations for other applicable environmental laws and regulations and timing of action.

7 CFR 1b.4—Categorical Exclusion of USDA Subcomponents and Actions: Revises the title of this section 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. This section is revised to read as indicated in 7 CFR 1b.4. Paragraphs (b), (c), and (d) are added to this section.

Paragraphs (a) include the list of USDA subcomponents generally excluded from preparing an environmental assessment or environmental impact statement and adds general offices of the Department to this list.

The department-level categorical exclusions previously listed in § 1b.3 have been moved to paragraph (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 categorical exclusions 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.

Categorical exclusions previously codified in USDA agency-specific NEPA regulations are now consolidated under paragraphs (c) and (d) in this section. Any changes to the categorical exclusion 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 by those that do or do not require NEPA documentation. New numbering was assigned to each categorical exclusion to make it easier to

reference categories across the Department as any USDA subcomponent may utilize the categorical exclusions 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.

7 CFR 1b.5—Environmental Assessments: This section is added to read as indicated in 7 CFR 1b.5.

Adds procedures for issuing environmental assessments. Reinforces the role of an environmental assessment (EA). Gives agencies flexibility on how to format the EA so long as certain items are addressed. 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).

States that subcomponents are to adhere to the statutory deadlines and publish an EA “in as substantially complete form as is possible.” Requires responsible officials to certify that they made a good faith effort to satisfy the requirements in the statute. 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 (2004). In establishing deadlines for the environmental assessment 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)). Clarifies when it may be appropriate to publish a notice of intent to prepare an EA. Provides direction on making the EA available to the public.

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

Adds procedures for issuing findings of no significant impact. Reinforces the role of a finding of no significant impact (FONSI). Gives agencies flexibility on how to format the FONSI so long as certain items are addressed. Provides direction on making the FONSI available to the public, providing notifications, and timing of the action.

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

Adds procedures for issuing environmental impact statements.

Reinforces the role of an environmental impact statement (EIS). Provides direction on lead agency responsibilities for publication of the notice of intent, and scoping if conducted, including how to address delays, pauses, or withdrawals regarding intent to prepare an EIS.

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); (NEPA § 107(c), 42 U.S.C. 4336a(2)(C)).

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 (the Act itself) 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** 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.

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. Specifies that subcomponents shall consider comments and should address comments raising substantive issues or recommendations. Focuses the subcomponent on addressing comments by capturing the action the responsible official took in response to the issue raised or recommendation made. Recommends documentation of how comments were addressed should be included as an appendix in the EIS.

Requires electronic publication of substantive comments and provides an alternative course of action if USDA subcomponents do not have the capability or capacity to electronically publish comments.

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 or capricious; 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 mandated in 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 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, this section 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 demonstrating how the responsible official responded to the substantive issue raised and/or recommendation made to improve the decision made on how to proceed (for example, issues to be analyzed in detail, alternatives to be considered or analyzed, or the alternative selected for implementation).

Gives subcomponents flexibility on how to format the EIS so long as certain items are addressed. 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.

Reiterates deadline and page limit requirements from NEPA, as amended in 2023. 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 publishing the EIS on a USDA website. States that agency 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. 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 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 environmental impact statement 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.8—Records of decision: This section is added to read as indicated in 7 CFR 1b.8.

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

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.

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

Adds best practices for efficient and effective environmental reviews.

Provides best practices for managing the proposal record. 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.

Outlines best practices for reducing paperwork. For clarity, USDA has revised its 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) 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, the term “adopting” is only used in reference to adopting another Federal agency’s categorical exclusions (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.

Outlines best practices for reducing delay.

Emphasizes the importance of interdisciplinary preparation, methodology, scientific accuracy, and disclosing information availability.

Public involvement discussions are reduced to the most pertinent points 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.

Emphasizes the need to eliminate duplication with State, Tribal, and local procedures, outlines process for identifying lead, joint, and cooperating agencies, promotes timely and unified Federal reviews, and provides process

for resolving disagreements concerning major Federal actions.

Adds additional clarification on how USDA agencies should proceed with unified documentation, as required by NEPA, where another Federal agency is the lead agency. 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.

Outlines recommended approaches for preparing environmental assessments and environmental impact statements for programmatic actions and provides direction for relying on and reevaluating programmatic (and non-programmatic) documents.

Outlines approaches for evaluating proposals for rules, regulations, and legislation.

Specifies need to apply unique identification numbers to environmental assessments and environmental impact statements.

Adds direction on how to proceed for emergencies, with a distinction provided between “immediate actions” and “urgent but not immediate actions”. 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, 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. 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 categorical exclusion or environmental assessment when significant effects are not anticipated.

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

Adds procedures for environmental assessments and environmental impact statements 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 environmental assessment or environmental impact statement 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 categorical exclusions 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 environmental assessments and environmental impact statements. Applicants often complete documentation for actions that fit categorical exclusions requiring NEPA documentation.

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

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

“Mitigation” (7 CFR 1b.11(a)(29)) was edited 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.

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

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.

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 “immediate actions” and “urgent but not immediate actions” (7 CFR 1b.9(v) and (w)).

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 environmental assessment or environmental impact statement—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.

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 categorical exclusion is dependent on determinations that a category (or categories) applies to the proposed actions and no extraordinary circumstance exists.

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 categorical exclusion, environmental assessment, or environmental impact statement. This also helps clarify that using a categorical exclusion is a NEPA process, as some entities in the past have erroneously alleged that an agency’s use of a categorical exclusion 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 environmental assessments and environmental impact statements 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.

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.

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.

Adds a list of acronyms (7 CFR 1b.11(b)) that may appear throughout 7 CFR 1b or that may be used when applying 7 CFR 1b during the applicable NEPA process.

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

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 categorical exclusions 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 categorical exclusions 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 categorical exclusions 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(w)(1)(i). It was revised as follows:

- Eliminates language regarding environmental assessments 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 categorical exclusions 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) and (w) but is incorporated into the overall Department guidance for Emergencies, with one paragraph 1b.9(w)(1)(ii) clarifying how the FSA should coordinate alternative arrangements for urgent actions not anticipated to have reasonably foreseeable significant effects.

Categorical Exclusions (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 categorical exclusions 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” was 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))

—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 Fiscal Responsibility Act of 2023 (Pub. L. 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 categorical exclusions 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 categorical exclusions are now found at 7 CFR 1b.4(d)(3) through (23).

Minor changes were made to the categorical exclusion 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 categorical exclusions 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 51 recent site-specific dam rehabilitation EAs, all resulting in a finding of no significant impact. NRCS concluded that 34 of these projects could have been categorically excluded because the proposed action was limited to the dam construction footprint, which was previously disturbed during construction. The remaining 17 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 categorical exclusions, 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.

Additionally, NRCS considered 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 categorical exclusions listed at § 650.6(d). Section 650.6(c)(3)(i) through (iii) do not warrant separate inclusion on the list because each of these is already addressed by the NRCS conservation practice standards and planning policies, which set forth minimum criteria and technical requirements for conservation projects nationwide. These standards are regularly updated through a rigorous national review process and require that all conservation practices be designed to mitigate soil erosion, sedimentation, and downstream flooding. Likewise, the standards mandate that disturbed areas be vegetated with adapted, non-invasive, and non-noxious species to ensure ecological compatibility and long-term site stability. Furthermore, NRCS standards and technical guides are built upon current industry standard engineering principles of natural stream dynamics and processes and are subject to ongoing review to reflect advances in resource management and restoration science.

Additionally, § 650.6(c)(3)(iv), “incorporate the applicable NRCS conservation practice standards as found in the Field Office Technical Guide,” is already built into NRCS planning procedures. These procedures specifically require an evaluation of alternative methods to meet conservation objectives and minimize negative impacts on the environment.

Lastly, § 650.6(c)(3)(v) (“Not require substantial dredging, excavation, or placement of fill”); and (vi) (“Not involve a significant risk of exposure to toxic or hazardous substances”) are already evaluated as part of the agency’s Determination of Significance or Extraordinary Circumstances, which must be considered by the agency’s Responsible Federal Official as part of the environmental review analysis.

NRCS has found that including these conditions as sideboards to applying the categorical exclusions is redundant and could create unnecessary regulatory overlap, as the NRCS Field Office Technical Guide and national standards already require adherence to these criteria as a prerequisite for all conservation planning, design, and implementation efforts. Recent coordination with another Federal agency adopting some of NRCS’

categorical exclusions reached the same conclusion as other Federal agencies have similar agency-specific conservation or best management practices as those outlined by NRCS.

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)(7), (c)(1) through (c)(7) and (c)(9), (d)(2) through (11), (e), (f), and (g); 1970.54(a) through (c). Previously codified Rural Development categorical exclusions are now found at 7 CFR 1b.4(c)(17) and (18) and (d)(24) and (25).

Through this interim 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(c) and implementing the definition of major Federal action as established in the Fiscal Responsibility Act of 2023 (Pub. L. 118–5), which also amended NEPA. The agency has determined that several types of actions fall within one or more of the exclusions in the definition of major Federal action, and will be treating them as such. 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.

Due to these changes, Rural Development is removing several CEs for actions that the agency has determined do not meet the definition of major Federal action under NEPA and, therefore, do not require NEPA analysis. As such, actions previously codified at 7 CFR 1970.53(a)(1) through (a)(6), (b)(1) through (b)(3), (c)(8), (c)(9), (d)(1), and (f) through (h); and 1970.55 are being removed.

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(w)(1)(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(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 categorical exclusions (for example, 7 CFR 1970.53(d)(1) and (2) 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 categorical exclusion 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 environmental assessments issued by the agency, as well as other Federal agency categorical exclusions. 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 environmental assessment, as previously codified at 7 CFR 1970.54(b)(2)(ii), is based on the review and analysis of environmental assessments 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 CFR 1970.53(b)(2) since the promulgation of 7 CFR 1970 and has found no instances where the review was elevated to an environmental assessment due to extraordinary circumstances. Further, the agency has reviewed records for over 100 environmental assessments 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 environmental assessments 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.

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 categorical exclusions are now found at 7 CFR 1b.4(c)(19) through (29) and (d)(26) through (47).

Minor changes were made to the categorical exclusion 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 categorical exclusions. The categorical exclusions 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 categorical exclusion 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 categorical exclusion 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) was revised to clarify that the land management plan approval document required by 36 CFR part 219 satisfies the documentation

requirement for this categorical exclusion. (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) was revised as follows when moved to 7 CFR 1b.9(w)(1)(iv): eliminates language regarding categorical exclusions, environmental assessments, 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.

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. Until the 36 CFR 218 regulation is revised to align with 7 CFR 1b, the Forest Service will continue to apply 36 CFR 218 as currently required. While the 7 CFR 1b regulations do not include a “decision notice” for environmental assessments, 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 environmental assessment, 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 environmental assessments that required issuance of a decision notice under the 36 CFR 220 regulations (§ 220.7(c)).

C. Transition Period for USDA NEPA Regulations

The Department intends to provide USDA subcomponents with discretion to determine which NEPA procedures to apply to individual proposals, given the widely varying circumstances and stages of pending NEPA analyses. To ensure an orderly transition without undue impact on the USDA mission, USDA subcomponents have discretion to continue using the versions of USDA and agency-specific NEPA regulations in place before publication of this

interim final rule, as well as the 2020 version of the CEQ NEPA regulations, where it makes sense for proposals that are at a certain stage in the applicable NEPA process (categorical exclusion, environmental assessment, or environmental impact statement). To the extent any of these prior regulations conflict with the statute, as amended by the Fiscal Responsibility Act in 2023 or the U.S. Supreme Court decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), the statute governs. USDA subcomponents also have the discretion to begin applying the USDA NEPA regulations, as revised, effective immediately upon publication of this interim final rule where it makes sense to do so for new proposals and applications, or for existing proposals or applications that are in the early stages of the applicable NEPA process and can easily transition to using the revised USDA NEPA regulations. Upon the effective date of a final rule, USDA subcomponents will be expected to apply the revised 7 CFR 1b when initiating proposals and accepting new applications. The final rule will contain additional transition language.

III. Request for Comments

A. Notice-and-Comment Rulemaking Is Not Required

USDA is revising its prior procedures and practices for implementing NEPA, a “purely procedural statute” which “simply prescribes the necessary process for an agency’s environmental review of a project”—a review that is, even in its most rigorous form, “only one input into an agency’s decision and does not itself require any particular substantive outcome.” *Seven County*, 145 S. Ct., at 1510–11 (internal quotation marks omitted). “NEPA imposes no substantive constraints on the agency’s ultimate decision to build, fund, or approve a proposed project,” and “is relevant only to the question of whether an agency’s final decision—i.e., that decision to authorize, fund, or otherwise carry out a particular proposed project or activity—“was reasonably explained.” *Id.* at 1511. Procedures for implementing a purely procedural statute must be, by their nature, procedural rules. And even if that were not universally true, the new rules adopted in this notice are purely procedural.

Thus, unsurprisingly, both the prior and revised versions of USDA’s NEPA regulations do not dictate what outcomes such consideration must produce, nor do they impose binding legal obligations on private citizens.

Rather, they prescribe how USDA will conduct NEPA reviews: detailing the structure of environmental impact statements, specifying submission requirements, and directing the timing of public comment periods. These are procedural provisions, not substantive environmental ones. Thus, because procedural rules do not require notice and comment, they do not require notice and comment to be revised. *See* 5 U.S.C. 553(b)(A).

Moreover, even if (and to the extent that) USDA’s regulations are not procedural rules, they may be characterized as interpretive rules or general statements of policy under 5 U.S.C. 553(b)(A). An interpretive rule provides an interpretation of a statute, rather than make discretionary policy choices that establish enforceable rights or obligations for regulated parties under delegated congressional authority. The definitions section at 7 CFR 1b.11, for instance, may be classified as such. General statements of policy, meanwhile, provide notice of an agency’s intentions as to how it will enforce statutory requirements, again without creating enforceable rights or obligations for regulated parties under delegated congressional authority. 7 CFR 1b.1 and 1b.2, for instance, may be classified as general statements of policy. Both of these types of agency actions are expressly exempted from notice and comment by statute. 5 U.S.C. 553(b)(A).

Accordingly, although USDA is voluntarily providing notice and an opportunity to comment on this interim final rule, it has determined that notice-and-comment procedures prior to issuance are not required. The fact that USDA previously undertook notice-and-comment rulemaking in promulgating these regulations is immaterial. As the Supreme Court has held, where notice-and-comment procedures are not required, prior use of them in promulgating a rule does not bind the agency to use such procedures in making future changes. *See Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015).

B. USDA Has Good Cause for Proceeding With an Interim Final Rule

Moreover, USDA also finds that, to the extent that 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 satisfies the “good cause” exceptions in 5 U.S.C. 553(b)(B) and (d). The 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). As discussed in Sections I and II, above, USDA’s prior rules were promulgated as a “supplement[.]” to the Council on Environmental Quality’s (CEQ’s) NEPA regulations, and USDA also “adopt[ed]” the CEQ’s regulations by incorporation. 7 CFR 1b.1(a) Following the rescission of CEQ’s regulations, USDA’s current rules are left to supplement a NEPA framework that no longer exists. USDA, thus far and as a temporary, emergency measure, has been continuing to operate under its prior procedures as if the CEQ NEPA framework still existed. This is not, however, tenable. As soon as proper procedures are available—which they are now—this makeshift framework needs to be rescinded immediately.

That being so, rescinding the old procedures immediately without replacing them could create a vacuum that would inflict immense uncertainty on agencies and regulated parties and potentially grind all projects under USDA’s purview to a halt. So, pairing the rescission with a new structure immediately is absolutely critical. Because of this need for speed and certainty, notice-and-comment is, 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 finds that “good cause” exists under 5 U.S.C. § 553(d)(3) to waive the 30-day delay of the effective date that would otherwise be required. This interim final rule will accordingly be effective immediately.

C. USDA Voluntarily Solicits Comment

As explained above, comment is not required prior to issuance because USDA’s NEPA procedures were and are procedural and because, even if comment were otherwise required under the APA, good cause exists to forego it. Nevertheless, USDA has elected to voluntarily solicit comment on this interim final rule and encourages public comments on all aspects of this interim final rule. However, USDA emphasizes that reconsideration of CEQ rulemakings and actions, for example, CEQ’s determination to rescind its NEPA regulations, are beyond the scope of this interim final rule. USDA is not soliciting comment on any of CEQ’s prior rulemakings or amendments to CEQ’s NEPA regulations. Nor does this interim final rule take a position on the

Department’s or any USDA agency’s prior interpretations of NEPA’s procedural requirements. Comments are requested for 30 days and must be submitted timely by July 30, 2025 to receive proper consideration by the Department. The Department may, after consideration of comments received, make changes accordingly to the interim final rule.

IV. Regulatory Certifications

A. Regulatory Planning and Review

Executive Order (E.O.) 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 E.O. 12866 and will review significant regulatory actions. OIRA has determined that this interim final rule is significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 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 interim final rule consistent with E.O. 13563.

B. Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), OIRA has designated this interim final rule as not a major rule as defined by 5 U.S.C. 804(2). This procedural action, in any event, is not a rule at all under 5 U.S.C. 804(3)(C).

C. National Environmental Policy Act

This interim 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 procedures 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).

D. 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 interim final rule. See 5 U.S.C. 601(2), 603(a).

E. Federalism

The Department has considered this interim final rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the interim final rule conforms with the federalism principles set out in this E.O.; 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 interim final rule will not have federalism implications, and no further assessment of federalism implications is necessary.

F. Consultation and Coordination With Indian Tribal Governments

E.O. 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 interim final rule does not impose substantial direct compliance costs on Tribal governments and does not preempt Tribal law. The Department has reviewed this interim final rule in accordance with the requirements of E.O. 13175 and has determined that this interim 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 interim final rule.

G. Energy Effects

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

H. Civil Justice Reform

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

Under section 3(a) E.O. 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 interim final rule complies with the requirements of E.O. 12988.

I. 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 interim final rule on State, local, and Tribal governments and the private sector. The interim 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.

J. Paperwork Reduction Act

The interim 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 and 372

Environmental impact statements.

7 CFR Part 520

Agricultural research, Environmental impact statements.

7 CFR Part 650

Environmental impact statements, Flood plains.

7 CFR Part 799

Environmental impact statements, Organization and functions (Government agencies).

7 CFR Part 1970

Administrative practice and procedure, Buildings and facilities, Environmental impact statements, Environmental protection, Grant programs, Housing, Loan programs, Natural resources, Utilities.

7 CFR Part 3407

Agricultural research, Environmental impact statements, Grant programs—agriculture.

36 CFR Part 220

Administrative practice and procedure, Environmental impact statements, Environmental protection, National forests, Science and technology.

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, and removes and reserves 7 CFR parts 372, 520, 650, 799, 1970, 3407, and 36 CFR part 220 as follows:

Title 7—Agriculture

■ 1. Revise part 1b to read as follows:

PART 1b—NATIONAL ENVIRONMENT POLICY ACT

Sec.

1b.1 Purpose.

1b.2 Policy.

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

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

1b.5 Environmental assessments.

1b.6 Finding of no significant impact.

1b.7 Environmental impact statements.

1b.8 Records of decision.

1b.9 Efficient and effective environmental reviews.

1b.10 Documentation prepared by applicant or third party.

1b.11 Definitions and acronyms.

1b.12 Severability.

Authority: 5 U.S.C. 301; 42 U.S.C. 4321 *et seq.*; E.O. 11514, 3 CFR, 1966–1970 Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1978 Comp., p. 123; E.O. 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 the U.S. Department of Agriculture.

(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 by the Fiscal Responsibility Act of 2023, with the understanding that NEPA is a purely procedural statute that imposes no substantive environmental obligations or restrictions.

(1) The Under Secretary of Natural Resources and Environment (NRE) is responsible for ensuring that these USDA NEPA regulations are consistent with NEPA and will coordinate compliance for the Department.

(2) The Under Secretary of NRE 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 Under Secretary of NRE 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 Under Secretary of NRE 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 another 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) Establishing subcomponent procedures for appropriate bonding or other security;

(vii) 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(w)(1);

(viii) 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

(ix) 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, USDA will consider only the proposed action or a 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 USDA 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 USDA 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 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 or irretrievable commitment of a 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) and

(w), 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 USDA is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within USDA's jurisdiction that would meet either of the criteria in § 1b.2.h, USDA will promptly notify the applicant that USDA 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, USDA 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) *Adjudication.* 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's Natural Resources and Environment mission area for use by any other USDA agency.

(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 of USDA's establishment or revision of the categorical exclusion and the written justification in the **Federal Register**.

(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's Natural Resources and Environment mission area. Once a categorical exclusion is adopted by one USDA subcomponent, it will be available for use to all other USDA subcomponents.

(ii) Non-USDA categories that were already adopted by a USDA subcomponent prior to the 2025 revision of this part are tracked by USDA's Natural Resources and Environment mission area and may be used by any other USDA subcomponent on proposed actions that fit the categorically excluded actions. Adopted categories 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 subparagraph (3) below; 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 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) Important or prime agricultural, forest, or range lands; or

(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 listing on the National Register of Historic Places.

(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, 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 certify 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 of other agencies.* Responsible officials may also rely on another agency's determination that a categorical exclusion applies, and no extraordinary circumstance exists, for a particular proposed action if the agency action covered by those determinations and the USDA subcomponent's proposed actions and potentially affected environment are substantially the same. The responsible official will document their reliance on another agency's categorical exclusion determination and include this in the proposal record.

(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 (Undersecretary of Natural Resources and Environment) (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. 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. In accordance with section 106 of the National Historic Preservation Act (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 (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.

(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; and

(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.

(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) (USDA–27c–USFS) Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) 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. Examples include, but are not limited to:

- (i) Issuing a permit to a new owner of ski area improvements within an

existing ski area with no changes to the master development plan, including no changes to the facilities or activities for that ski area;

(ii) Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the master development plan, including changes to the facilities or activities; and

(iii) Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the master development plan.

(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.
- (xiv) 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.
- (d) The following categorical exclusions require NEPA documentation, which will be completed as set forth at § 1b.3(g).
- (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–NRCS) 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 subparagraphs (A) through (J) of this subparagraph (i). 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 to 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) (USDA–25d–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.

(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) 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 ½ 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 ½ 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 ½ 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 the policy in § 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 the policy in § 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 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 consequences, 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.

(d) *Page limits—(1) Length of text.* The text of an environmental assessment will not exceed 75 pages, 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. 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. 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 regional or national 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.

(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 as 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 (Undersecretary of Natural Resources and Environment), 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. 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.

(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:

(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, 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.

(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 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.

(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. Negative environmental impacts 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));

(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 consequences, 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 subparagraph (3) above. 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.

(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, not including citations or appendices.

(1) An environmental impact statement for a proposal of extraordinary complexity will not exceed 300 pages, not including any citations or appendices.

(2) USDA subcomponents shall coordinate with the USDA Senior Agency Official (Undersecretary of Natural Resources and Environment), 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 as 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), Office of Federal Activities, 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. 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 during 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 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—developed specifically to support that environmental document or associated 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.

(ii) 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.

(iii) Subcomponents should not incorporate by reference material with potential withholdings or privileges or that is classified (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 documentation 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 it makes sense to do so given the nature of the proposal, the potentially affected environment, and the anticipated effects.

(i) *Environmental impact statements and environmental assessments.* When relying on a previous environmental impact statement or environmental assessment in full, if the actions covered by the original document and anticipated effects are substantially the same for the current proposal being considered, the USDA subcomponent relying on the previously completed document shall specify the reliance in the applicable finding or decision document and provide explanation of how the actions were determined similar and the effects determined adequate (both quantitatively and qualitatively). For an environmental impact statement, 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, the document shall be published, with the new finding of no significant impact, on a USDA website and included in the proposal record.

(ii) *Categorical exclusions.* Refer to § 1b.3(h).

(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 during 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

determine the scope of the analysis for the proposal in accordance with §§ 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 agency may, with respect to a proposal, 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 cooperating agency may, not later than a date specified in the schedule established by the lead agency, submit comments to the lead agency.

(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 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 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.* USDA subcomponents shall reevaluate, and if necessary, correct, revise, or supplement (hereinafter update) environmental documents, if a major Federal action or portion thereof remains to occur, and:

(1) The subcomponent makes changes to the proposed action, or selected alternative, that have the potential to change the anticipated degree of effect; or

(2) There are new circumstances or information with relevance to the proposal and these have bearing on the proposed action (or selected alternative) or potential to change the anticipated degree of effect.

(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 on 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) *Emergencies—Immediate actions.* 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.

(w) *Emergencies—Urgent but not immediate actions.* If emergency circumstances exist that make it necessary to take urgently needed actions before the NEPA process can be

completed, the responsible official shall proceed as follows:

(1) 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. 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 Utilities 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).

(2) 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 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 (Undersecretary of Natural Resources and Environment). The USDA Senior Agency Official will coordinate with the applicable USDA mission area when arranging consultation with CEQ. The USDA Senior Agency Official and CEQ will limit such arrangements to urgent 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 agency. 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 agency 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 agency.

(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 agency 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 the United States Department of Agriculture.

(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*, or *conservation practices* etc.) means constraints or requirements proactively added to the proposed action (or action alternatives) or through an iterative interdisciplinary process 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 in response to an issue, that issue should no longer be analyzed in detail in the analysis process. Design criteria include:

(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; or

(iii) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.

(12) *Effects 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 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.

(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.

(iii) A USDA subcomponent's analysis of effects shall be consistent with this paragraph.

(13) *Emergency* means a situation demanding immediate or urgent action, where delaying action to follow standard procedures 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 subparagraph (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 these USDA implementing procedures, 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.

(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. Mitigations are documented in a finding of no significant impact or record of decision and are determined by the responsible official in reaction to the effects described in an environmental assessment or environmental impact statement. 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 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.

(50) *Significance* means 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.

(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 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 or irretrievable commitment of a 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 the United States Department of Agriculture (USDA).

(53) *Substantive* means 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 (*i.e.*,

alternatives to be considered or analyzed or the alternative selected for implementation).

(54) *USDA Senior Agency Official* means the Under Secretary of Natural Resources and Environment.

(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.

Part 372 [Removed and Reserved]

■ 2. Remove and reserve part 372.

Part 520 [Removed and Reserved]

■ 3. Remove and reserve part 520.

Part 650 [Removed and Reserved]

■ 4. Remove and reserve part 650.

Part 799 [Removed and Reserved]

■ 5. Remove and reserve part 799.

Part 1970 [Removed and Reserved]

■ 6. Remove and reserve part 1970.

Part 3407 [Removed and Reserved]

■ 7. Remove and reserve part 3407.

Title 36—Parks, Forests, and Public Property

Part 220 [Removed and Reserved]

■ 8. Remove and reserve part 220.

Kristin Sleeper,

Deputy Under Secretary, Natural Resources and Environment.

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