

III. DoE Categorical Exclusion revision widened regulatory gap with FERC, January 4, 2021

The U.S. Department of Energy (“DoE”) relied on a flawed premise when it revised its NEPA exclusion rule. In order to avoid unnecessary duplication of NEPA reviews performed by FERC or other federal agencies, under a recent Rulemaking, the U. S. Department of Energy revised application of the B5.7 Categorical Exclusion. The problem is that, for non-FERC-jurisdictional small-scale inland LNG export production, storage and distribution facilities, the DoE is relying on non-existent NEPA reviews. Thus DoE widened the regulatory gap with FERC.

(a) “DOE revises categorical exclusion (CX) B5.7 to focus exclusively on the analysis of potential environmental impacts resulting from activities occurring at or after the point of export, which are within the scope of DOE’s export authorization authority under the NGA.”²⁴

(b) “In virtually all of its recent LNG export proceedings, DOE has referenced in its export orders the environmental documents prepared by the Federal Energy Regulatory Commission (FERC).”²⁵

(c) “FERC, not DOE, reviews the potential environmental impacts of the construction and operation of the LNG terminals. Under the revised CX, DOE’s NEPA review is tailored to its statutory authority and will not unnecessarily duplicate the documents that FERC or other agencies prepare under their statutory authorities.”²⁶

²⁴ National Environmental Policy Act Implementing Procedures A Rule by the [Energy Department](#) on [12/04/2020](#) (a) SUPPLEMENTARY INFORMATION: I. Background;(b), (c), (d) II. Comments Received and DOE’s Responses: I. Environmental Documentation Supporting Decisions Made Pursuant to DOE’s Statutory Authority; (e) IV. Compliance With Applicable NEPA Requirements: G. Comments Regarding Review by the Federal Energy Regulatory Commission, Effective January 4, 2021
<https://www.federalregister.gov/documents/2020/12/04/2020-26459/national-environmental-policy-act-implementing-procedures>

²⁵ *Ibid.*

²⁶ *Ibid.*