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APPENDIX C

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POTENTIALLY RELEVANT FEDERAL STATUTES AND EXECUTIVE ORDERS

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FEDERAL STATUTES

American Indian Religious Freedom Act, 42 USC §1996—Protects the spiritual beliefs and practices of Native Americans and Native Hawaiians, as guaranteed by the First Amendment of the U.S. Constitution. Although not specifically prohibiting any physical alteration of sacred sites or guarantee unlimited access to such sites, directs Federal agencies to consult with traditional religious leaders to ensure that agency policies and procedures protect and preserve traditional cultural practices through careful consultation with designated tribal representatives to make certain that the sites are not physically harmed and access and use of the sites is not impeded.

Archaeological Resources Protection Act (ARPA), 16 USC §470aa *et seq.*—Requires a permit for excavation or removal of archaeological resources from publicly held or Native American lands. Could work in tandem with American Indian Religious Freedom Act with added requirements to protect Native American cultural and religious sites.

Architectural Barriers Act, 42 USC §4151 *et seq.*—Requires access to facilities designed, built, altered, or leased with Federal funds to comply standards that ensure access to the built environment.

Clean Air Act (CAA), 42 USC §7401 *et seq.*—Establishes a nationwide Federal-state air pollution control program, generally administered by the states with EPA oversight. Would require CBP actions with air emissions to perform conformity analysis in NEPA documents for actions that occur in air quality “nonattainment” areas along the Northern Border (there are a small number of such counties and cities in New York, Montana, and Wisconsin). In addition, EPA is in the process of regulating greenhouse gases (GHGs) as air pollutants, which will require the PEIS considering the GHG-emitting potential of CBP facilities and activities collectively and cumulatively with other such local and regional GHG emissions.

Clean Water Act (CWA), 33 USC §1251 *et seq.*—Establishes a nationwide Federal-state water pollution control program, generally administered by the states with EPA oversight. Could require some CBP actions to obtain Federal/state storm water NPDES permits and Federal and/or state wetlands permits.

Coastal Zone Management Act (CZMA), 16 USC §1451 *et seq.*—Provides for management of the nation’s coastal resources, including the Great Lakes, and balances economic development with environmental conservation. Federal programs, such as those run by CBP, must comply with “Federal consistency” requirements under the Act. The following states along the Northern Border have approved Coastal Zone Management (CZM) Plans: Maine, Michigan, Minnesota, New York, Ohio, Pennsylvania, Washington, and Wisconsin (New Hampshire also has an approved CZM Plan, but it does not apply to its portion of the Northern Border).

Community Environmental Response Facilitation Act, 42 USC §9620(h)—Amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to require the Federal Government, before termination of Federal activities on any real property owned by the Government, to identify real property where no hazardous substance was stored, released, or disposed of. Would require CBP to perform environmental site assessments to identify land free of hazardous substances in land transfers when it terminates operations at a

1 location and transfers the property to a third party and be responsible for any cleanup costs
2 required after the transfer.

3 **CERCLA, 42 USC §9601 *et seq.***—Provides Federal authority over releases or threatened
4 releases of hazardous substances that may endanger public health or the environment, establishes
5 requirements for closed and abandoned hazardous waste sites, and provides for the liability of
6 persons responsible for the release of hazardous substances. Site contamination at CBP facilities
7 could trigger these requirements but would more likely have to comply with Brownfield
8 requirements designed to allow redevelopment of contaminated sites with provisions to protect
9 the public and the environment.

10 **Department of Transportation (DOT) Act, 49 USC §303 (Section 4(f)).**—Prohibits DOT
11 agencies from approving the use of land from publicly owned parks, recreational areas, wildlife
12 and waterfowl refuges, or public and private historical sites for highways unless there is no
13 feasible and prudent alternative to the use of land and the action includes all possible planning to
14 minimize harm to the property resulting from such use.

15 **Emergency Planning and Community Right-to-Know Act (EPCRA), 42 USC §1001 *et***
16 ***seq.***—Requires Federal agencies to provide information on hazardous and toxic chemicals to
17 state emergency response commissions, local emergency planning committees, and the EPA.
18 Some chemicals used at CBP facilities may require submission of relevant information to these
19 state and local authorities and to EPA.

20 **Endangered Species Act (ESA), 16 USC 1531 *et seq.***—Establishes a national program for the
21 conservation of threatened and endangered species of fish, wildlife, and plants, as well as the
22 preservation of the ecosystems on which they depend. May require CBP to consult with USFWS
23 for terrestrial species and the National Marine Fisheries Service for marine species to ensure that
24 its actions will not jeopardize endangered or threatened species or their critical habitat.

25 **Farmland Protection Policy Act (FPPA), 7 USC §4201 *et seq.***—Directs Federal agencies to
26 identify and quantify adverse impacts of Federal programs on farmlands in order to minimize the
27 unnecessary and irreversible conversion of agricultural land to non-agricultural uses. Some CBP
28 activities in rural areas might require analysis under this statute.

29 **Federal Aviation Act, 49 USC §§106(f) and (g)**—These sections give the Administrator of the
30 FAA the authority to regulate objects affecting navigable airspace. CBP would be required to
31 notify the FAA if any structure of more than 200 feet high would be constructed or for structures
32 that would be within glide paths of airports, so the FAA could then determine if the structure
33 would or would not be an obstruction to air navigation.

34 **Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC §135 *et seq.***—Sets up the basic
35 Federal system of pesticide regulation to protect applicators, consumers, and the environment,
36 administered by EPA and the appropriate state environmental agencies. CBP activities dealing
37 with pesticides would have to comply with these requirements.

38 **Federal Records Act, 44 USC §2101 *et seq.***—Requires the proper maintenance and disposition
39 of agency records to ensure adequate and proper documentation of the policies and transactions
40 of the Federal Government.

1 **Fish and Wildlife Conservation Act, 16 USC §2901 *et seq.*; and Fish and Wildlife**
2 **Coordination Act, 16 USC §661 *et seq.***—These statutes encourage Federal agencies to
3 conserve and promote conservation of non-game fish and wildlife species and their habitats, and
4 require Federal agencies undertaking projects affecting water resources to consult with USFWS
5 and the state agency responsible for fish and wildlife resources. Compliance with these statutes is
6 carried out procedurally as part of the NEPA EIS process.

7 **Migratory Bird Treaty Act (MBTA), 16 USC §703 *et seq.***—Implements treaties designed to
8 protect migratory birds and makes the taking, killing, or possessing migratory birds unlawful.
9 CBP enforces this statute along with a number of other conservation statutes (see “Summary of
10 Laws and Regulations Enforced by CBP”).

11 **National Historic Preservation Act (NHPA), 16 USC §470 *et seq.***—Promotes historic
12 preservation by ensuring that Federal agencies consider historic properties when planning and
13 making decisions and before the issuance of any license or expenditure of Federal funds on a
14 project. Section 106 of NHPA establishes a four-step process by which Federal agencies take
15 into account the effects of their actions on historic properties, consult with State and Tribal
16 Historic Preservation Offices and other appropriate consulting parties, and provide the Advisory
17 Council on Historic Preservation to comment when applicable. Although the regulations do not
18 mandate preservation in all cases, they integrate preservation values into planning and decision-
19 making.

20 **Native American Graves Protection and Repatriation Act (NAGPRA), 25 USC §3001.**—
21 Establishes the ownership and requires repatriation of archaeological and cultural items
22 excavated or discovered on Federal land. CBP would follow the provisions of this Act if any
23 excavations associated with proposed construction led to unexpected discoveries of Native
24 American graves or grave artifacts.

25 **Noise Control Act of 1972, 42 USC §4901 *et seq.***—Directs Federal agencies to carry out
26 programs in their jurisdictions to the fullest extent within their authority in a manner that furthers
27 a national policy of promoting an environment free from noise that jeopardizes health and
28 welfare. This would involve CBP complying with applicable municipal noise ordinances to the
29 maximum extent practicable.

30 **Occupational Safety and Health Act (OSHA), 29 USC §651 *et seq.***—The Act does not
31 apply to Federal agencies’ activities but does require them to develop their own
32 equivalent rules that result in the same safe work conditions that private employers must
33 provide under the Act. DHS Directive Number 066-01 (July 25, 2008) is the relevant
34 CBP OSHA rule.

35 **Pollution Prevention Act, 42 USC §13101 *et seq.***—Establishes a national policy for waste
36 management and pollution control that focuses first on source reduction and then on
37 environmentally safe waste recycling, treatment, and disposal. Guidance for complying with the
38 Act is provided by Executive Orders 12873 and 13423 (see below). These requirements could
39 affect those functions of CBP operations that involve waste generation, management, and
40 disposal at its facilities.

1 **Resource Conservation and Recovery Act (RCRA), 42 USC §6901 *et seq.***—Establishes a
2 nationwide “cradle-to-grave” Federal–state solid and hazardous waste management program,
3 generally administered by the states with EPA oversight. CBP activities would not be likely to
4 trigger any of the major Federal or state permit or corrective action requirements under RCRA,
5 but many CBP activities are likely to be small quantity generators of hazardous wastes and may
6 have underground storage tank requirements.

7 **Safe Drinking Water Act, 41 USC §201 *et seq.***—Authorizes EPA to establish
8 minimum standards to protect tap water and requires all owners or operators of public water
9 systems to comply with these primary (health-related) standards. Under the Act, EPA also
10 establishes minimum standards for state programs to protect underground sources of drinking
11 water from endangerment by underground injection of fluids. CBP actions involving providing
12 drinking water sources could have requirements under this law.

13 **Toxic Substances Control Act (TSCA), 7 USC §136 *et seq.***—Authorizes the EPA to obtain
14 data from industry on health and environmental effects of chemical substances and mixtures,
15 and, if found that unreasonable risk or injury may occur, EPA may regulate, limit, or prohibit the
16 manufacture, processing, commercial distribution, use, and disposal of such chemicals and
17 mixtures. CBP uses the material data safety sheets produced under this law to handle such
18 materials safely.

19 **Wild and Scenic Rivers Act, 16 USC §1271 *et seq.***—Preserves certain rivers with outstanding
20 natural, cultural, and recreational value in a free-flowing condition for the enjoyment of present
21 and future generations. The Act encourages river management that crosses political boundaries
22 and promotes public participation in developing goals for river protection. CBP would comply
23 with management measures applicable to designated wild and scenic rivers along the Northern
24 Border.

25 **FEDERAL EXECUTIVE ORDERS**

26 Federal Executive Orders are declarations issued by the president that have the force of law.
27 They are usually based on existing statutory authority and require no action by Congress to
28 become effective. The following Executive Orders relate to issues considered in this PEIS.

29 **Executive Order 11514**—“Protection and Enhancement of Environmental Quality,” March 5,
30 1979, amended by Executive Order 11541, July 1, 1970 and Executive Order 11991, May 24,
31 1977.

32 **Executive Order 11593**—“Protection and Enhancement of the Cultural Environment,” May 13,
33 1971.

34 **Executive Order 11988**—“Floodplain Management and Protection,” May 24, 1977, amended
35 by Executive Order 12148, July 20, 1979.

36 **Executive Order 11990**—“Protection of Wetlands,” May 24, 1977, amended by Executive
37 Order 12608, September 9, 1987.

- 1 **Executive Order 12088**—“Federal Compliance with Pollution Control Standards,” October 13,
2 1978 (amended by Executive Order 12580, January 23 1987).
- 3 **Executive Order 12114**—“Environmental Effects Abroad of Major Federal Actions,” January 9,
4 1979.
- 5 **Executive Order 12372**—“Intergovernmental Review of Federal Programs,” July 14, 1982,
6 amended by Executive Order 12416, April 8, 1983, supplemented by Executive Order 13132,
7 August 4, 1999.
- 8 **Executive Order 12856**—“Right to Know Laws and Pollution Prevention Requirements,”
9 August 3, 1993.
- 10 **Executive Order 12873**—“Federal Acquisition, Recycling, and Waste Prevention,” October 20,
11 1993.
- 12 **Executive Order 12898**—“Federal Actions to Address Environmental Justice in Minority
13 Populations and Low-Income Populations,” February 11, 1994.
- 14 **Executive Order 12938**—“Proliferation of Weapons of Mass Destruction,” November 14, 1994.
- 15 **Executive Order 12969**—“Federal Acquisition and Community Right-to-Know,” August 8,
16 1995.
- 17 **Executive Order 13007**—“Indian Sacred Sites,” May 24, 1996.
- 18 **Executive Order 13031**—“Federal Alternative Fuel Vehicle Leadership,” December 13, 1996.
- 19 **Executive Order 13045**—“Protection of Children from Environmental Health and Safety
20 Risks,” April 21, 1997, amended by Executive Order 13229, October 9, 2001 and Executive
21 Order 13296, April 18, 2003.
- 22 **Executive Order 13112**—“Invasive Species,” February 3, 1999, as amended by Executive
23 Order 13286, February 23, 2008.
- 24 **Executive Order 13132**—“Federalism,” August 4, 1999.
- 25 **Executive Order 13134**—“Development and Promotion of Biobased Products and Bioenergy,”
26 August 12, 1999.
- 27 **Executive Order 13150**—“Federal Workforce Transport.” April 21, 2000.
- 28 **Executive Order 13158**—“Marine Protection Areas,” May 26, 2000.
- 29 **Executive Order 13175**—“Consultation and Coordination with Indian Tribal Governments,”
30 November 6, 2000.
- 31 **Executive Order 13186**—“Responsibilities of Federal Agencies to Protect Migratory Birds,”
32 January 10, 2001.

- 1 **Executive Order 13211**—“Actions Concerning Regulations That Significantly Affect Energy
2 Supply, Distribution, or Use,” May 18, 2001.
- 3 **Executive Order 13212**—“Actions to Expedite Energy-Related Projects,” May 18, 2001.
- 4 **Executive Order 13228**—“Establishment of the Office of Homeland Security and the Homeland
5 Security Council,” October 8, 2001.
- 6 **Executive Order 13284**—“Amendments of Executive Orders, and Other Actions, in Connection
7 with the Establishment of the Department of Homeland Security,” January 23, 2003.
- 8 **Executive Order 13286**—“Amendment of Executive Orders, and Other Actions, in Connection
9 With the Transfer of Certain Functions to the Secretary of Homeland Security,” February 28,
10 2003.
- 11 **Executive Order 13296**—“Amendments to Executive Order 13045, Protection of Children from
12 Environmental Health and Safety Risks,” April 18, 2003.
- 13 **Executive Order 13302**—“Actions Amending Executive Order 13212, Actions to Expedite
14 Energy-Related Projects,” May 15, 2003.
- 15 **Executive Order 13352**—“Executive Order Facilitation of Cooperative Conservation,” August
16 26, 2004.
- 17 **Executive Order 13423**—“Strengthening Federal Environmental, Energy, and Transportation
18 Management,” January 26, 2007.
- 19 **Executive Order 13514**—“Federal Leadership in Environmental, Energy, and Economic
20 Performance,” October 5, 2009.
- 21 **Executive Order 13526**—“Classified National Security Information,” December 29, 2009.
- 22 **Executive Order 13546**—“Optimizing the Security of Biological Select Agents and Toxins in
23 the United States,” July 2, 2010.
- 24 **Executive Order 13547**—“Stewardship of the Oceans, Our Coasts, and the Great Lakes,” July
25 19, 2010.
- 26 **Executive Order 13549**—“Classified National Security Information Programs for State, Local,
27 Tribal, and Private Sector Entities,” August 18, 2010.