

National Institute of Standards and Technology

**National Environmental Policy Act
Procedures**

ACRONYMS AND ABBREVIATIONS

CE	Categorical Exclusion
CEQ	Council on Environmental Quality
C.F.R.	Code of Federal Regulations
DAO	Department Administrative Order
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Executive Order
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act of 1973
FONSI	Finding of No Significant Impact
FR	Federal Register
FWS	U.S. Fish and Wildlife Service
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOI	Notice of Intent
REC	Record of Environmental Consideration
ROD	Record of Decision
SEIS	Supplemental Environmental Impact Statement
U.S.C.	United States Code

Table of Contents

1.	Purpose, Scope, and Policy.....	1
2.	Determining When NEPA Applies	2
	A. Determining When NEPA Does Not Apply To an Action	2
	B. Complying with NEPA for Actions Developed by Non-Federal Entities	4
	C. Limitations on Actions During the NEPA Process.....	4
3.	Determining the Scope of the Proposed Action.....	5
4.	Determining the Appropriate Level of NEPA Review.....	5
5.	How to Apply Categorical Exclusions	6
	A. Determine Whether the Proposed Action Fits Within the Terms of the CE	6
	B. Consider Extraordinary Circumstances	6
	C. When Required, Document the Use of the CE	7
	D. Modifying, Removing, or Adding CEs	8
	E. Applying legislative categorical exclusions.....	8
6.	Preparing Environmental Assessments and Environmental Impact Statements	8
	A. Defining the Purpose and Need for the Proposed Action	8
	B. Identifying Reasonable Alternatives.....	9
	C. Describing the Affected Environment	9
	D. Analyzing the Environmental Effects of the Proposed Action and Alternatives	10
	E. Determining Significance	11
	F. NEPA Schedules and Deadlines	11
	G. Page Limits	12
	H. Engaging the Public and Other Governments.....	12
	I. NEPA Coordination within NIST	13
	J. Relying Upon Another Agency’s NEPA Analyses; Cooperation with State, Tribal, and Local Agencies	13
7.	Preparing an Environmental Assessment	14
	A. Contents of an EA	14
	B. Documenting the Finding of No Significant Impact.....	14
	C. Notifying the Public of a FONSI	14
	D. Certifications.....	14
8.	Preparing an Environmental Impact Statement	15
	A. Issuing a Notice of Intent to Prepare an EIS	15
	B. Scoping Requirements for an EIS.....	16
	C. Preparing the EIS	17
	D. Filing the Notice of Availability with EPA	18
	E. Preparing the Record of Decision	18
	F. Certifications.....	19
9.	Programmatic NEPA Documents and Existing Environmental Analyses	19
	A. Programmatic NEPA Reviews and Tiering	19
	B. Analyzing Adequacy of Existing NIST Documents for New Proposed Actions.....	20
	C. Incorporation by Reference.....	21
	D. Supplementing an EIS/EA	21

10.	NEPA and Collaboration.....	22
	A. Using Applicant- and Contractor-Prepared NEPA Documents	22
	B. Use of Third-Party Contractors.....	23
	C. Cooperating with Other Agencies.....	24
11.	Commenting on Another Agency’s EIS.....	26
12.	Referring Matters to CEQ for Environmentally Unsatisfactory Effects	26
13.	Integrating NEPA with Other Environmental Requirements.....	26
14.	Emergency Situations and Alternative Arrangements	27
15.	Terminating the NEPA Process	28
16.	Classified Proposals	28

1. PURPOSE, SCOPE, AND POLICY

The National Institute of Standards and Technology (NIST) was founded in 1901 and is now an agency of the U.S. Department of Commerce. NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. Historically, NIST has carried out this mission through activities such as operation of the NIST Laboratories, which conduct world-class research, often in close collaboration with industry, that advances the nation's technology infrastructure and helps U.S. companies continually improve products and services.

In August 2022, Congress passed the CHIPS and Science Act of 2022, which amended Title XCIX of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 15 U.S.C. § 4651 *et seq.*, also known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America Act. The law provides the Department of Commerce with \$50 billion for a suite of programs to strengthen and revitalize the U.S. position in semiconductor research, development, and manufacturing. The CHIPS for America program encompasses two offices within NIST responsible for implementing the law: the CHIPS Research and Development Office is investing \$11 billion into developing a robust domestic semiconductor R&D ecosystem, while the CHIPS Program Office is dedicating \$39 billion to provide incentives for investment in semiconductor facilities and equipment in the United States. NIST is uniquely positioned to successfully administer the CHIPS for America program because of its strong relationships with U.S. industries, its deep understanding of the semiconductor ecosystem, and its reputation for fairness and trustworthiness.

The National Environmental Policy Act of 1969 (NEPA) as amended, 42 U.S.C. § 4321 *et seq.*, requires federal agencies to consider the reasonably foreseeable environmental effects of their actions and inform and engage the public in the decision-making processes for those actions. Section 101(a) of NEPA sets forth a national policy to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. 42 U.S.C. § 4331(a). Section 102 of NEPA directs agencies to interpret and administer federal policies, regulations, and laws consistent with NEPA's policies. 42 U.S.C. § 4332. NEPA also created the Council on Environmental Quality (CEQ). As explained below, NEPA applies to NIST's major federal actions, which may include activities NIST conducts on its campuses in Gaithersburg, MD, and Boulder, CO, as well as activities for which NIST provides more than minimal federal financial assistance, except where excluded by law.

The purpose of these procedures is to integrate NEPA into NIST's decision-making processes. Specifically, the procedures: describe the process by which NIST determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review; ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making; enable NIST to conduct coordinated, consistent, predictable and timely environmental reviews; reduce unnecessary burdens and delays; and implement NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and sponsor preparation of environmental documents.

These Procedures serve as a repository for guidance and resources to aid NIST in implementing NEPA. Each operating unit (OU) within NIST has a subject matter expert, or "NEPA Coordinator," who is assigned

responsibility for that OU's environmental compliance.¹ NEPA Coordinators are responsible for, among other things: assisting NIST in applying NEPA; developing or supervising the development of NEPA documents; and coordinating NEPA reporting and comments on NEPA documents prepared by NIST or other agencies. In addition to using these Procedures, NEPA Coordinators should consult the CEQ NEPA guidance available at www.nepa.gov. NEPA Coordinators should consult with the Department's Office of General Counsel whenever there are questions regarding how these Procedures or other NEPA guidance should be applied.

In addition to the process for establishing or revising categorical exclusions set forth in Section V, NOAA will consult with the Council on Environmental Quality ("CEQ") while developing or revising its proposed NEPA implementing procedures, in accord with NEPA § 102(2)(B), 42 U.S.C. § 4332(B).

2. DETERMINING WHEN NEPA APPLIES

NEPA applies when an agency is considering a proposal to take a major federal action. NEPA defines the term "major Federal action" to mean "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility." 42 U.S.C. § 4336e(10)(A). The same section of NEPA provides multiple exclusions from the definition of "major federal action." Additionally, the statute provides multiple circumstances under which an agency has no obligation to prepare an environmental document under NEPA. 42 U.S.C. § 4336(a)(1)-(4).

A proposal that involves providing more than a minimal amount of federal financial assistance, including through grants, cooperative agreements, loans, loan guarantees, or other forms of financial assistance, is a major federal action where NIST has the authority to deny in whole or in part the assistance due to environmental effects, has authority to impose conditions on the receipt of the financial assistance to address environmental effects, or otherwise has sufficient control and responsibility over the subsequent use of the financial assistance or the effects of the activity for which it is providing the financial assistance so that the environmental information gathered in a NEPA review may meaningfully inform NIST's exercise of discretion with respect to its action.

A. DETERMINING WHEN NEPA DOES NOT APPLY TO AN ACTION

Decision makers will determine that NEPA does not apply to a proposed action when:

1. The proposed action is not a final agency action within the meaning of such term in the Administrative Procedure Act, 5 U.S.C. § 704, or other relevant statute that also includes a finality requirement;
2. The proposed action is exempted from NEPA by law, including but not limited to, the provision of federal financial assistance for certain semiconductor projects under the CHIPS Incentives Program, 15 U.S.C. § 4652, under the terms of which a proposed action does not meet the definition of a major federal action (and therefore is not subject to NEPA) if:
 - a. the activity described in the application for that project has commenced not later than December 31, 2024;

¹ NIST OUs may develop separate documents further describing NEPA roles and responsibilities and their internal processes.

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- b. the federal financial assistance provided is in the form of a loan or loan guarantee; or
 - c. the federal financial assistance provided, excluding any loan or loan guarantee, comprises not more than 10 percent of the total estimated cost of the project.

15 U.S.C. § 4652(h)(1). However, a semiconductor project being considered for CHIPS financial assistance may still require NEPA review if it is the subject of a major federal action for a reason other than CHIPS eligibility, including a major federal action of another federal agency. 15 U.S.C. § 4652(h)(2).

- 3. Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;
- 4. The proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act;
- 5. The proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action; or
- 6. The proposed action is not a "major Federal action,"
 - (i) A decision maker may determine—on a case-by-case or program-specific basis—that a non-Federal action receives "minimal Federal funding" and is thus not a "major Federal action," as outlined in Section 111(10) of NEPA, 42 U.S.C. § 4336e(10)(B)(i)(I). "Minimal," under this section, can be determined in two ways: (1) A percent threshold of the overall costs of the project; or (2) A specific dollar amount. A determination of "minimal Federal funding" will be a fact-specific inquiry.
 - (ii) There are several other general categories of exemptions set forth in Section 111(10) of NEPA, 42 U.S.C. § 4336e(10), including:
 - 1) Non-Federal actions with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project;
 - 2) Loans, loan guarantees, or other forms of financial assistance where the Federal agency does not exercise sufficient control and responsibility over the effects of such assistance;
 - 3) Judicial or administrative civil or criminal enforcement actions;
 - 4) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States; and
 - 5) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority.
- 7. The issuance or update of NIST's NEPA procedures is not subject to NEPA review.

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8. In determining whether NEPA applies to a proposed agency action, NIST will consider only the action or project at hand.

NIST will determine whether a proposed action is subject to NEPA at the earliest reasonable time in the planning process. For questions on applicability of any of the following statutory exemptions, decision makers and staff should consult with their Chief Counsel and/or NEPA Coordinator.

B. COMPLYING WITH NEPA FOR ACTIONS DEVELOPED BY NON-FEDERAL ENTITIES

Many NIST proposed actions are initially developed by applicants (e.g., entities that submit applications for federal financial assistance) or other non-federal entities. NIST will coordinate with the non-federal entity at the earliest reasonable time in the planning process to inform the entity what information NIST might need to comply with NEPA and establish a schedule for completing steps in the NEPA review process, consistent with the deadlines and NEPA schedule requirements. For applications to the agency requiring an EA or EIS, NIST will begin the NEPA process as soon as practicable after receiving the complete application. In addition, an applicant or a contractor hired by the applicant may prepare an EA or EIS under NIST's supervision. NIST's procedures for applicant-prepared EAs and EISs are included in Section 10, below.

C. LIMITATIONS ON ACTIONS DURING THE NEPA PROCESS

Except as provided in this section, until NIST issues a record of decision or finding of no significant impact, or makes a categorical exclusion (CE) determination, as applicable NIST will take no action concerning a proposal that would: (1) have an adverse environmental effect; or (2) limit the choice of reasonable alternatives. If NIST is considering an application from a non-federal entity and becomes aware that the applicant is about to take an action within NIST's jurisdiction that would meet either of these criteria, NIST will promptly notify the applicant that NIST 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, NIST 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. The notice to the applicant will include the following statement, as appropriate:

NIST is issuing this notice to [applicant] regarding NIST's ongoing NEPA review of [applicant's] application. NIST is responsible for ensuring that no action is taken prior to the completion the NEPA process that would have an adverse environmental effect or limit NIST's choice of reasonable alternatives. Although privately financed construction-related activities may proceed during the NEPA review process, [applicant] should be aware that it is proceeding at its own risk. NIST retains discretion to select any reasonable alternative or the no action alternative regardless of any activity taken by the applicant prior to the conclusion of the NEPA process. If any such activities have an adverse environmental effect or limit NIST's choice of reasonable alternatives to the proposed action under consideration for financial assistance, they may result in NIST's inability to issue such financial assistance.

While a NEPA review is ongoing, NIST may authorize interim 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. These Procedures do not preclude applicants from developing plans or designs or performing other activities necessary to support an

application for federal, state, Tribal, or local permits or assistance—in short, activities that are not likely to have an adverse environmental effect or limit the choice of reasonable alternatives.

3. DETERMINING THE SCOPE OF THE PROPOSED ACTION

If NIST determines that NEPA applies, the next step is to consider the scope of the proposed action to inform NIST’s determination of the appropriate level of NEPA review, and whether aspects of the action are non-discretionary.

This also includes identifying that the proposed action is not part of a larger action and can therefore be reviewed independently from other actions under NEPA.

4. DETERMINING THE APPROPRIATE LEVEL OF NEPA REVIEW

If NEPA applies to the proposed action, NIST will determine the appropriate level of NEPA review—whether to apply a categorical exclusion (CE) or to prepare either an environmental assessment (EA) or an environmental impact statement (EIS). This Section provides criteria to assist NIST NEPA Coordinators in making this determination. In making this determination, NIST may use any reliable data source and does not have to undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable. At all steps in the following process, NIST will consider the proposed action or project at hand and *its* effects.

If the decision maker determines that NEPA applies to a proposed action, NIST will then determine the appropriate level of NEPA review in the following sequence and manner:

1. If NIST has established, or adopted pursuant to Section 109 of NEPA, 42 U.S.C. § 4336c, a categorical exclusion (CE) that covers the proposed action (see Section 5 and Appendix A-D), the decision maker will analyze whether to apply the CE to the proposed action and apply the CE, if appropriate, pursuant to Section 5.
2. If another agency has already established a CE that covers the proposed action, the decision maker will consider whether to adopt that CE pursuant to Section 5.C so that it can be applied to the proposed action at issue, and to future actions or decisions of that type.
3. If the proposed action warrants the establishment of a new CE, or the revision of an existing CE, pursuant to Section 5.D, the decision maker will consider whether to so establish or revise, and then apply the CE to the proposed action pursuant to Section 5.A-C.
4. If the decision maker cannot apply a CE to the proposed action consistent with paragraphs (1) – (3) above, the decision maker will consider the proposed action’s reasonably foreseeable effects consistent with Section 6.D, and:
 - a. If the proposed action is not likely to have reasonably foreseeable significant effects (See Section 6.E) or the significance of the effects is unknown, develop an environmental assessment (EA), as described in Section 7; or
 - b. If the proposed action is likely to have reasonably foreseeable significant effects (See Section 6.E), develop an environmental impact statement (EIS), as described in Section 8.

5. HOW TO APPLY CATEGORICAL EXCLUSIONS

This section describes the process NIST uses for establishing and revising categorical exclusions, for adopting other agencies' categorical exclusions, and for applying categorical exclusions to a proposed agency action. NIST's categorical exclusions, including CEs NIST established and substantiated consistent with its NEPA procedures, legislative CEs, and CEs adopted from other agencies, are listed in Appendix A.

To determine whether NIST can apply a CE to a proposed action, the NEPA Coordinator should take the following steps.

A. DETERMINE WHETHER THE PROPOSED ACTION FITS WITHIN THE TERMS OF THE CE

Some proposed actions may fit within more than one CE. In determining the appropriate CE to use, NIST should select the CE that most closely matches the objectives of the proposed action. When considering whether a proposed action to provide federal financial assistance can be categorically excluded, NIST should examine the underlying activity proposed to be funded to determine whether that activity falls within one or more of the established CEs. Additionally, NIST may determine that multiple CEs applied in combination to a proposed action may collectively exclude that action from an obligation to prepare an environmental document, *see* NEPA 106(a)(2), (b)(2).

B. CONSIDER EXTRAORDINARY CIRCUMSTANCES

If NIST determines that the proposed action fits within the terms of a CE, NIST will also evaluate the proposed action for the presence of any of the 12 extraordinary circumstances listed below. Extraordinary circumstances indicate that a normally categorically excluded action may have a significant effect.

The mere presence of one or more of the below extraordinary circumstances does not preclude the use of a CE. If an extraordinary circumstance exists, NIST nevertheless may apply the categorical exclusion if NIST conducts an analysis and determines that the proposed action does not in fact have the potential to result in significant effects notwithstanding the extraordinary circumstance, or NIST modifies the action to avoid the potential to result in significant effects. In these cases, NIST will document this determination.

Before applying a CE, NIST will consider whether the proposed action involves one or more extraordinary circumstances. Examples of extraordinary circumstances include:

1. The action has the potential to adversely affect human health or safety.
2. The action is located in or may affect an area with unique environmental characteristics, such as: historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; or other ecologically significant or critical areas.
3. The action is located in the critical habitat of such a species.
4. The action has an adverse effect on properties that are listed or eligible for listing on the National Register of Historic Places.
5. The action has the potential to affect lands owned by or held in trust for a federally recognized Tribe.

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6. The action has the potential to restrict access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007).
 7. The action has the potential to violate a federal, state, Tribal, or local law or requirement imposed for protection of the environment.

For a CE that NIST has adopted from another federal agency pursuant to Section 109 of NEPA, 42 U.S.C. § 4336c, NIST will consider extraordinary circumstances in the manner described in the Federal Register notice announcing the adoption of that CE.

C. WHEN REQUIRED, DOCUMENT THE USE OF THE CE

Some activities, such as routine personnel actions or purchases of small amounts of supplies, may carry no risk of significant environmental effects, such that there is no benefit from preparing additional documentation when applying a CE to those activities. NIST will, however, prepare a separate document to evaluate the applicability of a CE (known as a record of environmental consideration, or REC) in each of the following cases:

1. For any application of a CE designated by NIST as requiring documentation, as indicated by an asterisk in Appendix A;
2. For any application of a CE adopted from another federal agency pursuant to Section 109 of NEPA, 42 U.S.C. § 4336c; and
3. For any case in which NIST determines that applying a CE is appropriate notwithstanding the existence of an extraordinary circumstance, as described in Section 5.B.

The REC will include the following:

1. a description of the proposed action;
2. the CE category number, title, and CE text that applies to the action;
3. a brief summary of NIST's rationale for determining that the proposed action is consistent with the terms of the CE, including a description of how the action complies with any limitations in the CE (e.g., surface disturbance limitations);
4. a brief summary of NIST's review of the extraordinary circumstances described in Section 5.B (or, for an adopted CE, in the manner described in the Federal Register notice announcing the adoption of that CE); and
5. where NIST has determined that one or more extraordinary circumstance exists, NIST's rationale for its determination that the proposed action does not in fact have the potential to result in significant effects notwithstanding the extraordinary circumstance, or a description of the modifications that NIST has made to the action to avoid the potential to result in significant effects.

The REC may take the form of a memorandum, a completed form, or other similar document, so long as the above components are included. Before the action is implemented, the appropriate NIST official will sign and date the REC to attest that the use of the CE is appropriate. NIST will keep the original, signed document as part of the record for the action.

D. MODIFYING, REMOVING, OR ADDING CES

NIST will consult with CEQ whenever they amend their NEPA procedures, including when they establish new or revised categorical exclusions. NIST must also prepare a substantiation record when establishing a new CE. NIST will only establish new or revised CEs after CEQ has issued a determination that its revised procedures are in conformity with NEPA.

E. APPLYING LEGISLATIVE CATEGORICAL EXCLUSIONS

If NIST determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed NIST to establish, covers a proposed agency action, NIST will conclude review consistent with applicable law. If appropriate, NIST may examine extraordinary circumstances, modify the proposed agency action, or document the determination that the legislative categorical exclusion applies, consistent with the legal authority for the establishment of the legislative categorical exclusion.

6. PREPARING ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS

There are some common steps in developing a NEPA analysis that are applicable to preparation of both EAs and EISs. This section describes the general approach to preparing both EAs and EISs. Section 7 provides further instructions on the development of EAs, and Section 8 addresses EISs.

A. DEFINING THE PURPOSE AND NEED FOR THE PROPOSED ACTION

A proposed action includes anything the federal agency funds, performs (e.g., construction, research, management actions, etc.), or authorizes (e.g., issues permits, regulations, etc.). The use of the term “proposed” indicates that the agency has yet to make a decision, which allows the environmental analysis to inform the decision when it is made.

As described in Section 3 (Determining the Scope of the Proposed Action), NIST will evaluate proposed actions or parts of proposed actions that are closely related enough to be, in effect, a single course of action in a single NEPA document or review and will also evaluate connected actions in a single NEPA document or review. For EISs, NIST will also follow the scoping process, which includes public and governmental engagement, as described below in Section 8.B. NIST may also follow this scoping process for certain EAs, as explained in Section 7.B.

An EA or an EIS will clearly identify the purpose and need for the action. The “purpose” is the goal that NIST seeks to achieve through the proposed action (for example, to provide additional laboratory space for NIST employees, or to decide whether to fund a certain proposal from an outside applicant), whereas the “need” is the underlying problem that the proposed action would address (for example, to resolve overcrowding in a particular existing laboratory and enable the agency to carry out certain additional experiments, or to support certain third party activities in accordance with a congressional directive).

NIST will draft a purpose and need statement early in the NEPA process, because the purpose and need statement will help to define the scope of the NEPA analysis, including the range of alternatives that NIST will consider.

When more than one agency is involved in a NEPA review, the lead agency may determine the purpose and need (and alternatives) in consultation with any cooperating agency. In addition, when NIST is

engaging in scoping (Sections 7.B and 8.B), NIST should consider changes to the preliminary purpose and need statement in response to public and governmental engagement.

B. IDENTIFYING REASONABLE ALTERNATIVES

When preparing an EIS, NIST must consider and analyze the reasonably foreseeable effects of a reasonable range of alternatives to the proposed action that are technically and economically feasible and meet the purpose and need of the proposal. Although not required in all cases, an EIS also may include and evaluate the effects of a “no action” alternative, regardless of whether the no action alternative would meet the purpose and need.

The broader the purpose and need statement, the broader the range of alternatives that will be analyzed. The range of alternatives that NIST should consider should be proportional to the potential for significant effects.

When preparing an EA, alternatives analyses are only required as necessary to comply with NEPA § 102(2)(H), 42 U.S.C. § 4332(2)(H). If an alternatives analysis is included, it should include, at a minimum, the preferred alternative and may include a no action alternative.

Identifying the No Action Alternative

Although not statutorily required, to aid in comparative analysis, NIST may include and evaluate the effects of a no action alternative even if such an alternative would not meet the purpose and need for the action. The decision of whether to include evaluation of a no action alternative can be made on a case-by-case basis. If a no action alternative is evaluated, it may assist NIST by providing a baseline for a comparison of environmental effects. *See* CEQ Memorandum to Federal NEPA Contacts: Emergency Actions and NEPA (Sept. 8, 2005) (including guidance on evaluating a no action alternative in an EA).

In many cases, identifying the no action alternative is straightforward: no action means that the proposed activity would not take place, and the environmental effects of the no action alternative may be the same as the baseline conditions of the affected environment. For example, if the proposed action is to construct and operate a facility, the no action alternative would be a scenario in which the facility is not constructed. When NIST is considering a proposed action to modify an ongoing federal action that would otherwise remain in effect, such as an existing facility management plan, the no action alternative may be a scenario in which the current, ongoing management continues without modification. When NIST is considering a proposed action involving federal financial assistance, NIST may work with applicants to determine which components of a proposed project, if any, would occur in the absence of a financial assistance award, and may consider those components to be part of the no action alternative or environmental baseline. NIST may consider multiple types of “no action” alternatives in the same analysis if appropriate.

Although NEPA does not require an agency to select any alternative, the alternatives analysis is a core part of the NEPA process. An EIS should identify the reasonably foreseeable environmental effects of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment and the environmental consequences.

C. DESCRIBING THE AFFECTED ENVIRONMENT

NIST will describe the environment of the area to be affected by the alternatives under consideration. The affected environment encompasses all physical environmental conditions, including all natural resources, and cultural heritage or built resources, and the relationship of people with that environment. The description of the affected environment should be succinct, with the level of information provided

commensurate with the importance of the potential effects but should be robust enough and use high-quality information to facilitate an analysis of the effects of the alternatives under consideration. NIST should focus the description of the affected environment on those resources or components of the environment that are most important or most likely to be affected by the proposed action or the alternatives.

D. ANALYZING THE ENVIRONMENTAL EFFECTS OF THE PROPOSED ACTION AND ALTERNATIVES

In preparing the environmental document, NIST will focus its analysis on whether the environmental effects of the action or project at hand are significant.

Similarly, NIST will document in the environmental document where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

To the extent it assists in reasoned decision-making, NIST may, but is not required to by NEPA, analyze environmental effects from other projects separate in time, or separate in place, or that fall outside of NIST's regulatory authority, or that would have to be initiated by a third party. If NIST determines that such analysis would assist it in reasoned decision-making, it will document this determination in the environmental document and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects.

The environmental effects analysis will address the reasonably foreseeable environmental effects caused by the proposed action and the alternatives, in clear terms and with sufficient information to ensure the professional and scientific integrity of the discussion and analysis. The analysis will address both adverse and beneficial effects and, in the case of the no action alternative, include any negative environmental effects of not implementing the proposed action.

The amount of data and analysis included will be commensurate with the significance of the reasonably foreseeable effects and will provide support for any conclusions drawn. NIST will use high quality information and analysis to present the environmental effects of the proposed action and alternatives in comparative form, providing a clear basis for choosing among the alternatives.

An EIS will, and an EA may, include discussion of the following considerations:

1. Any adverse environmental effects that cannot be avoided should the proposal be implemented;
2. The effects of the no action alternative, including any adverse environmental effects;
3. The relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity;
4. Any irreversible or irretrievable commitments of federal resources that would be involved in the proposal should it be implemented;
5. Where applicable, possible conflicts between the proposed action and the objectives of federal, regional, state, Tribal, and local plans, policies, and controls for the area concerned;
6. Where applicable, energy requirements and conservation potential of various alternatives and mitigation measures;
7. Where applicable, natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;

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8. Where applicable, relevant risk reduction, resiliency, or adaptation measures incorporated into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions;
 9. Where applicable, urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;
 10. Means to mitigate adverse environmental effects;
 11. Where applicable, economic and technical considerations, including the economic benefits (e.g. employment) of the proposed action.

When NIST is evaluating reasonably foreseeable significant effects 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, NIST will make clear in the relevant NEPA document that such information is lacking. For an EIS, NIST will also explain the relevance of the incomplete or unavailable information to the analysis; summarize existing credible scientific evidence that is relevant to the analysis; and discuss its evaluation of such effects based upon theoretical approaches or research methods generally accepted in the scientific community. If the incomplete information is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable, NIST will include the information in the EIS.

E. DETERMINING SIGNIFICANCE

When considering whether the reasonably foreseeable effects of the proposed action are significant, NIST will analyze the potentially affected environment and degree of the effects of the action. NIST may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.

In considering the potentially affected environment, NIST may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.

In considering the degree of the effects, NIST may consider the following, as appropriate to the specific action:

- (i) Both short- and long-term effects.
- (ii) Both beneficial and adverse effects.
- (iii) Effects on public health and safety.
- (iv) Economic Effects on employment.
- (v) Effects on the quality of life of the American people.

F. NEPA SCHEDULES AND DEADLINES

EAs must be completed within 1 year and EISs within 2 years, unless the lead agency extends the deadline in writing and in consultation with any applicant and establishes a new deadline that provides only so much additional time as is necessary to complete the NEPA document. 42 U.S.C. § 4336a(g). Cause for establishing a new deadline is only established if the environmental document is so incomplete, at the time at which NIST determines it is not able to meet the statutory deadline, that issuance on or before the deadline would, in NIST's view, result in an inadequate analysis. The environmental document will publish (unless

the deadline is extended), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

As the Supreme Court has repeatedly held, NEPA is governed by a “rule of reason.” Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA § 107(g) of NEPA, 42 U.S.C. § 4336a(g). These deadlines indicate Congress’s 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 time as is necessary to complete the analysis.

For EAs, the deadline is measured from the date on which NIST determines that NEPA requires an EA for the proposed action. For an EIS, the deadline is measured from the date on which NIST determines that NEPA requires an EIS for the proposed action or issues a notice of intent (NOI) to prepare an EIS, whichever is sooner. The FONSI for an EA and the Final EIS (FEIS) mark the end points for these time limits, respectively. NIST must identify missed deadlines for EAs and EISs in its annual report to Congress as required by NEPA Section 107(h). 42 U.S.C. § 4336a(h). Deadlines that are extended in accordance with 42 U.S.C. § 4336a(g) are not considered missed deadlines. When NIST is the lead agency for a NEPA review, NIST will work to develop and modify, as appropriate, a schedule in consultation with, as applicable, any cooperating agency, applicant, and such other entities as NIST determines appropriate, for completing any environmental review, permit, or authorization required to carry out the proposed agency action. *See* 42 U.S.C. § 4336a(a)(2). In developing this schedule, NIST must set milestones for completing the NEPA review and any required permits or authorizations and should seek the concurrence of all joint lead, cooperating, and participating agencies with the schedule and milestones as soon as practicable. NIST may consider several factors in developing the schedule and deadlines and must include certain milestones specific to EAs and EISs. NIST must make the schedule for completing in the NOI.

G. PAGE LIMITS

Not including citations or appendices, the text of an EA is strictly prohibited from exceeding 75 pages, and the text of an EIS is strictly prohibited from exceeding 150 pages, except for EISs for proposals of extraordinary complexity, which are strictly prohibited from exceeding 300 pages. 42 U.S.C. § 4336a(e). They will be formatted for an 8.5”x11” 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”x11”, each such item will count as one page.

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 document. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

H. ENGAGING THE PUBLIC AND OTHER GOVERNMENTS

Requirements for engaging the public and other governments are described in Sections 7 and 8, below.

NEPA documents and any other related information that NIST publishes online must comply with Section 508 of the Rehabilitation Act of 1973.

I. NEPA COORDINATION WITHIN NIST

NIST will ensure that the NEPA process begins at the earliest reasonable time. When considering applications for financial assistance, NIST will begin its NEPA review as soon as its proposed action is sufficiently defined to allow for a meaningful review. NIST's environmental review will be integrated into the decision-making process, and all relevant environmental review documents, comments, and responses will accompany proposed actions through the applicable NIST review and approval process.

When a proposed action requires preparation of an EIS or EA, NIST will keep the FEIS and ROD or Final EA and FONSI in the agency's records for the action. If NIST is adopting another agency's NEPA document (*see* subsection J, below), then an electronic copy of the other agency's FEIS and signed ROD, or Final EA and the signed FONSI, will similarly be kept in NIST's records for the action. Operating units (OUs) within NIST may develop more specific procedures, roles, and responsibilities that can be included in a separate document.

J. RELYING UPON ANOTHER AGENCY'S NEPA ANALYSES; COOPERATION WITH STATE, TRIBAL, AND LOCAL AGENCIES

NIST may rely upon all or portions (e.g., specific analyses, appendices, or specific sections) of a draft or final EA or EIS prepared by another agency, regardless of cooperating agency status, if the action addressed in the relied upon document (or portion) is substantially the same as that being considered or proposed by NIST and NIST determines that the document (or portion) meets all NEPA requirements. NEPA analyses by another agency that include a proposed NIST action as a subset of the analysis may be considered "substantially the same." When relying upon another agency's document, NIST should determine whether the other agency's EA or EIS (or portion thereof) fully covers the scope of NIST's proposed action and alternatives and environmental effects. If the actions evaluated in the document are not substantially the same or NIST determines that the document requires supplementation, NIST will supplement or reevaluate the document as necessary, and either republish and file it (EIS) or provide notice (EA). In the case of an EIS, NIST will treat a relied upon EIS that requires supplementation as a draft.

When participating as a cooperating agency, NIST may rely upon an EA or EIS of the lead agency when, after an independent review of the document, NIST concludes that its comments and suggestions have been satisfied and that the analysis includes the appropriate scope and level of environmental effect evaluation for NIST's proposed action and alternatives. If NIST elects to rely upon another agency's EA or EIS, and the other agency has already issued its FONSI or ROD, NIST will prepare and sign its own FONSI or ROD. If NIST participates as a cooperating agency on an EIS but does not issue a joint ROD, it may rely upon the EIS and issue its own ROD without republishing the EIS.

NIST will identify if any of the following circumstances are present: NIST is relying upon an EA or EIS that is not final within the agency that prepared it, the action assessed in the EA or EIS is the subject of a referral to CEQ, or the EA's or EIS's adequacy is the subject of a judicial action that is not final.

NIST may also rely upon another agency's CE determination for a particular proposed action if the action covered by that determination is substantially the same as NIST's proposed action, or if NIST's proposed action is a subset of agency action covered by that determination. A decision maker may determine the actions are substantially the same when:

1. NIST and another agency are reviewing different Federal actions under NEPA for the same project (e.g., one agency may be funding the project while another may be considering a permit for the same project); or
2. The proposed NIST action is a subset of the action subject to another agency's CE determination; or

3. NIST is conducting a joint Federal action with another agency.

The decision maker will document any reliance on another agency's CE determination and state that the NIST proposed action is substantially the same as the action covered by the original CE determination and that, considering NIST's list of extraordinary circumstances, there are no extraordinary circumstances present that require the preparation of an EA or EIS.

NIST may also, to the fullest extent practicable unless specifically prohibited by law, cooperate with State, Tribal and local agencies to reduce duplication between NEPA and comparable environmental review requirements. This may include use of studies, analysis and decisions developed by State, Tribal or local agencies in the preparation of NIST's environmental documents. This may also include joint planning processes, joint environmental research and studies, joint public hearings, joint EAs, and joint EISs.

7. PREPARING AN ENVIRONMENTAL ASSESSMENT

A. CONTENTS OF AN EA

An EA will contain a brief discussion of the purpose and need for the proposed action; alternatives, when required by section 102(2)(H) of NEPA for a proposal which involves unresolved conflicts concerning alternative uses of available resources; an analysis of the environmental effects of the proposed action and any alternatives; a listing of agencies, governments, and persons consulted; and a unique identification number for tracking purposes. EAs should be concise documents; to avoid undue length the EA may incorporate by reference background data to support its succinct discussion of the proposal and relevant issues.

B. DOCUMENTING THE FINDING OF NO SIGNIFICANT IMPACT

The FONSI documents the reasons why NIST has determined that the selected alternative will not have a significant effect on the quality of the human environment, indicates that an EIS will not be prepared, and concludes the NEPA process for that action. NIST NEPA Coordinators should prepare a stand-alone document that incorporates the EA by reference. The FONSI will also identify any other environmental documents related to it.

In the case of a mitigated FONSI, where NIST has relied on implementing mitigation to support the finding no significant impacts from the proposed action, NIST will identify the enforceable mitigation requirements and NIST's authority to enforce them. NIST is mindful in this respect that NEPA itself does not require or authorize NIST to impose any mitigation measures.

C. NOTIFYING THE PUBLIC OF A FONSI

Final EAs and signed FONSIs will be made available to the public. NIST will generally notify the public by posting on a publicly available NIST website, such as <https://www.nist.gov/chips/national-environmental-policy-act-nepa> or <https://www.nist.gov/ofpm/nist-extramural-construction-projects/environmentalhistorical-review-documents>, but may also use one of the other methods identified. If the EA is associated with a rulemaking, this notification may be combined with the Federal Register publication of the final rule.

D. CERTIFICATIONS

Certification Related to Page Limits. The breadth and depth of analysis in an EA will be tailored to ensure that the environmental analysis does not exceed the statutory page limit. In this regard, as part of the

finalization of the EA, the decision maker will certify (and the certification will be incorporated into the EA) that NIST has considered the factors mandated by NEPA; that the EA represents NIST's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects NIST's expert judgment; and that any considerations addressed briefly or left unaddressed were, in NIST's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

Certification Related to Deadline. When the EA is published, the decision maker will certify (and the certification will be incorporated into the EA) that the resulting EA represents NIST's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in NIST's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in NIST's judgment, the analysis contained therein is adequate to inform and reasonably explain NIST's final decision regarding the proposed federal action.

8. PREPARING AN ENVIRONMENTAL IMPACT STATEMENT

NIST will prepare EISs in plain language, to the extent possible.

A. ISSUING A NOTICE OF INTENT TO PREPARE AN EIS

NIST will publish an NOI to prepare an EIS in the Federal Register as soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an EIS. NIST is encouraged to consider additional methods to notify interested parties of the intent to prepare an EIS. NIST may also combine the NOI with similar notices required for preparation of other documents to reduce duplication and avoid delays. The NOI will include, as appropriate:

1. The purpose and need for the proposed action;
2. A preliminary description of the proposed action and alternatives the environmental impact statement will consider;
3. A brief summary of expected effects;
4. Anticipated permits and other authorizations;
5. A schedule for the decision-making process;
6. A description of the public scoping process, including any scoping meetings;
7. A request for comment on alternatives and effects, as well as on relevant information, studies, or analyses with respect to the proposed action;
8. Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement;
9. Identification of any cooperating and participating agencies, and any information that such agencies require in the notice to facilitate their decisions or authorizations that will rely upon the resulting environmental impact statement; and
10. A unique identification number for tracking purposes, which the agency shall reference on all environmental documents prepared for the proposed action and in any database or tracking system for such documents.

B. SCOPING REQUIREMENTS FOR AN EIS

Scoping is an early, discretionary process designed to determine the scope of issues to be addressed in depth in the analyses that may be included in the EIS. Scoping is not required by the NEPA statute. If conducted, scoping should begin as soon as practicable after the proposal for action is sufficiently developed for agency consideration and under no circumstances should cause a violation of the statutory deadlines.

The purpose of scoping is to:

1. define the alternatives that will be analyzed;
2. identify the concerns of the other entities, including other OUs, federal, State, and local agencies; Tribal governments; nongovernmental organizations; and individuals; and invite participation from affected entities;
3. identify the likely geographic area of potential environmental effects;
4. identify the environmental issues that are pertinent to the proposed action; and
5. determine if the proposed action will trigger the compliance requirements of other environmental statutes, regulations, or Executive Orders.

Scoping for an EIS will incorporate public and governmental engagement. NIST may hold scoping meetings, publish scoping information, or use other methods to communicate with persons or entities who may be interested in or affected by a proposed action. NIST will invite participation of likely affected federal, State, Tribal, and local agencies and governments as cooperating or participating agencies, as appropriate; any applicant; and other likely affected or interested persons. As part of the scoping process, NIST will also:

1. Identify and eliminate from detailed study the issues that are not important 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 will not be important or providing a reference to their coverage elsewhere.
2. Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
3. 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 environmental impact statement under consideration.
4. Identify other environmental review, authorization, and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently and integrated with the environmental impact statement.
5. Indicate the relationship between the timing of the preparation of environmental analyses and the agencies' tentative planning and decision-making schedule.

A scoping public comment period of at least 30 days is recommended to provide an adequate opportunity for interested parties to comment.

Government and Public Engagement

During the process of preparing an EIS, NIST:

1. Will obtain the comments of:

-
- (i) any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact of by the action or project at hand or is authorized to develop and enforce environmental standards that govern the action or project at hand.
 - (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.

This process of obtaining and requesting comments may be undertaken at any time that is reasonable in the process of preparing the environmental impact statement. NIST will ensure that the process of obtaining and request comments and NIST's analysis of and response to those comments, does not cause NIST to violate the congressionally mandated deadline for completion of an environmental impact statement.

One potential means of obtaining public comment is to prepare and publish a draft EIS (DEIS).

When publishing a DEIS, generally, a decision maker will send the entire document to the following parties and should specify a deadline for a 30-day comment period.

1. Environmental Protection Agency (EPA) to have Notice of Availability (NOA) for the DEIS published in the *Federal Register*. The procedures for filing the DEIS with EPA are available on EPA's website;
2. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards;
3. State, Tribal, or local governments that may be affected by the proposed action;
4. Any agency that has requested it receive statements on actions of the kind proposed;
5. The applicant, if any; and
6. Any person, organization, or agency requesting the entire EIS.

When not required by other statutory processes or deemed necessary to meet the deadlines specified in Section 6.F, alternate approaches may be followed. A decision maker seeking an alternate process will first consult with their General Counsel to ensure NEPA compliance.

C. PREPARING THE EIS

NIST will assess and consider substantive comments timely submitted during any comment period. The EIS will include all individual substantive comments or summaries of substantive comments received during the comment period as well as agency responses to comments or groups of comments.

NIST will respond by one or more of the following means:

1. modify the alternatives, including the proposed action;
2. develop and evaluate alternatives not previously given serious consideration by the agency;
3. supplement, improve, or modify its analyses;
4. make factual corrections; or
5. explain why the comments do not warrant further agency response, and where possible, cite the sources, authorities, or reasons that support the agency's position. The agency is not required to respond to each comment.

D. FILING THE NOTICE OF AVAILABILITY WITH EPA

After comments are considered and addressed, NIST will file the EIS with EPA. The procedures for filing the EIS with EPA are available on EPA's website (<https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>). EPA will then publish a NOA for the EIS. NIST may use other notification methods in addition to the EPA NOA.

E. PREPARING THE RECORD OF DECISION

The ROD should be completed concurrent with the EIS and circulated with the EIS. The ROD concludes the NEPA process for an EIS. The NIST NEPA Coordinator should prepare a ROD that is a separate document from the EIS.

The ROD will:

1. state the decision;
2. identify alternatives considered by the agency in reaching its decision;
3. identify and discuss all factors that were balanced by the agency in making its decision, including any essential considerations of national policy, and state how any such considerations entered into its decision; and
4. state whether all practicable means to mitigate environmental harm from the selected alternative have been adopted and, if not, why not. A monitoring and enforcement program will be adopted and summarized where applicable for any mitigation, and the authority for enforceable mitigation will be identified.

Where mitigation has been committed to and will be implemented by the lead agency or other appropriate consenting agency, the lead agency will: include appropriate conditions in grants, permits, or other approvals; and condition funding of actions on mitigation. The lead or cooperating agency should, where relevant and appropriate, incorporate mitigation measures that address or ameliorate significant adverse human health and environmental effects of proposed federal actions.

NIST will make a notice of the ROD available to the public. Although not required, publication of the notice in the Federal Register is encouraged. Transmission of the ROD to other parties need not delay finalization of the decision/action.

F. CERTIFICATIONS

Certification Related to Page Limits. The breadth and depth of analysis in an EIS will be tailored to ensure that the EIS does not exceed the statutory page limits. In this regard, as part of the finalization of the EIS, the decision maker will certify that NIST has considered the factors mandated by NEPA; that the EIS represents NIST's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects NIST's expert judgment; and that any considerations addressed briefly or left unaddressed were, in NIST's judgment, comparatively unimportant or frivolous.

Certification Related to Deadlines. When the EIS is published, the decision maker will certify (and the certification will be incorporated into the EIS) that the resulting EIS represents NIST's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in NIST's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in NIST's judgment, the analysis contained therein is adequate to inform and reasonably explain NIST's final decision regarding the proposed federal action.

9. PROGRAMMATIC NEPA DOCUMENTS AND EXISTING ENVIRONMENTAL ANALYSES

NIST is encouraged to make use of existing NIST environmental analyses (EAs and EISs) to analyze effects associated with a proposed action, when doing so would build on work that has already been done, avoid redundancy, and provide a coherent and logical record of the analytical and decision-making process. There are several ways to use existing environmental analyses including tiering, incorporation by reference, and supplementation.

A. PROGRAMMATIC NEPA REVIEWS AND TIERING

Programmatic reviews are broad or high-level NEPA reviews that assess the environmental effects of proposed policies, plans, programs, or projects. For subsequent actions with environmental effects that are fully considered in a programmatic EA (PEA) or programmatic EIS (PEIS), an additional NEPA review is not required. For actions with environmental effects that are partially considered in a PEA or PEIS, NIST should complete additional NEPA reviews that are tiered to the PEA or PEIS (e.g., a site- or project-specific document). Programmatic NEPA reviews can provide the basis to approve broad or high-level decisions such as identifying geographically bounded areas within which future proposed activities may be taken or identifying broad mitigation and conservation measures that may be applied in subsequent tiered reviews. Other approaches include analyzing proposals thematically or by sector, such as actions that have common timing, impacts, alternatives, methods of implementation, or subject matter, or by stage of technological development.

Effective programmatic NEPA analyses should present document reviewers with NIST's anticipated timing and sequence of decisions, which decisions are supported by the programmatic NEPA document and which decisions are deferred for some later time, and the time-frame or triggers for a tiered NEPA review.

Programmatic reviews should be considered, in particular, when NIST is (1) initiating or revising a national or regional rulemaking, policy, plan, or program; (2) adopting a plan for managing a range of resources; or (3) making decisions on common elements or aspects of a series or suite of closely related projects. The decision maker should consider including other NIST programs that may benefit from a cooperative approach to the broader or programmatic EIS or EA.

After completing a PEA or PEIS, NIST may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After 5 years, NIST may rely on the document as long as NIST reevaluates the analysis 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.

Tiering is a process by which an agency uses existing analysis of general matters from broader or programmatic NEPA documents in subsequent narrower NEPA reviews. Tiering allows NIST to narrow the scope of the subsequent analysis and focus on issues that are ripe for decision-making, excluding those that are already decided; avoid repetitive discussion of the same issues; and focus on issues, effects, or alternatives not fully addressed in a programmatic document, EIS, or EA prepared at an earlier phase or stage.

Tiering is appropriate when the analysis for the proposed action will be a more site-specific or project-specific refinement or extension of the existing, broader NEPA document, so long as the existing NEPA document remains timely.

When NIST prepares a subsequent statement or assessment that tiers to analysis from a programmatic review, NIST should first determine whether the existing analysis adequately covers the new proposed action (see Section 9.B). The tiered document will also discuss the relationship between the tiered document and the previous review; summarize and incorporate by reference the issues discussed in the broader document; concentrate on the issues specific to the subsequent action, analyzing site-, phase-, or stage-specific conditions and reasonably foreseeable effects; and identify where the earlier document is publicly available. NIST will provide for public engagement opportunities consistent with the type of environmental document prepared and appropriate for the location, phase, or stage of the proposal.

B. ANALYZING ADEQUACY OF EXISTING NIST DOCUMENTS FOR NEW PROPOSED ACTIONS

When reviewing existing NEPA analyses, NIST will consider the following to determine whether those analyses adequately cover a new proposed action under consideration:

1. Is the new proposed action a feature of, or essentially similar to, the prior proposed action or an alternative analyzed in the existing NEPA document? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document? If there are differences, can NIST explain why those differences are not substantial? As a general rule, when a previously approved NIST environmental planning documentation was prepared or approved 5 or more years prior to the scheduled implementation of a proposed action, NIST should evaluate the continued validity of the analysis for future decision-making or for incorporation by reference into new environmental planning documents.
2. Is the range of alternatives analyzed in the existing NEPA document appropriate with respect to the new proposed action, given the environmental concerns, interests, and resource values relevant to the proposed action?
3. Is the existing analysis valid considering any new information or circumstances?
4. Are the effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

If the answers to all these questions are yes, additional NEPA analyses may not be necessary. However, NIST will document this examination of the project in a memo to the record for the administrative record to demonstrate that the existing NEPA documents sufficiently cover the proposed action. If the answers to all these questions are yes except that some of the effects of the proposed action are not fully discussed in the previous analysis, the additional NEPA analysis may be limited to those issues that are not adequately covered in the previous analysis.

C. INCORPORATION BY REFERENCE

NIST may incorporate material into a NEPA document by reference to reduce the length of the document, so long as doing so does not impede agency and public review of the proposed action. Scientific and technical publications, planning studies, analyses, prior environmental reviews, or other relevant information and documents may all be incorporated by reference. The incorporated material will be cited, the content briefly described, and the relevance to the environmental document briefly explained. The material incorporated by reference will be reasonably available for inspection by potentially interested parties within the time allowed for comment. NIST is encouraged to provide digital references to the incorporated material, and to cite relevant materials within the incorporated document with specificity, such as with a page number or page range.

Incorporating an existing document by reference is not the same as relying upon or tiering to a previous environmental analysis. While NIST does not need to satisfy the requirements for reliance or tiering each time it incorporates a document by reference, incorporating existing documents by reference does not by itself satisfy NIST's analytical obligations under NEPA, but rather is a tool for completing that analysis more efficiently.

D. SUPPLEMENTING AN EIS/EA

NIST will prepare a supplement to an EIS or EA if, after preparation of the document but prior to completion of the federal action analyzed in the EIS or EA:

1. NIST makes substantial changes to the proposed action that are relevant to environmental concerns;
or
2. there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis.

Supplemental EISs and EAs will reference the original analyses. NIST will complete the supplemental analysis with a new ROD or FONSI, as applicable. In determining whether supplementation is necessary, the NIST NEPA Coordinator may choose to prepare a Supplemental Information Report (SIR). A SIR is a concise document that NIST uses to reevaluate an EIS or an EA. A SIR describes NIST's evaluation of new information, changed circumstances, or proposed changes to an action and assists NIST in determining and documenting whether a supplemental NEPA document is necessary. A SIR is a decision tool, not a NEPA document. Standing alone, a SIR cannot repair deficiencies in the original environmental analysis or documentation, nor can it change a decision to implement an action made pursuant to appropriate NEPA procedures. A SIR should be reviewed by the NIST NEPA Coordinator's supervisor, as well as the appropriate office within the Office of General Counsel.

During the process of preparing any environmental document provided for by these procedures, NIST may publish such draft, pre-decisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA and these Procedures.

10. NEPA AND COLLABORATION

A. USING APPLICANT- AND CONTRACTOR-PREPARED NEPA DOCUMENTS

In accordance with section 107(f) of NEPA, 42 U.S.C. § 4336a(f), NIST has established procedures allowing applicants, or contractors hired by applicants, to prepare EAs or EISs under NIST’s supervision. These procedures do not apply to use of agency-directed third-party contractors, as discussed below.

NIST’s section 107(f) procedures are included below. For projects planned by private applicants and other non-federal entities, NIST will consult early with appropriate State, Tribal, and local governments and interested private persons and organizations when their involvement is reasonably foreseeable. NIST will also commence its NEPA process at the earliest reasonable time.

Section 107(f) Procedures

Purpose and Authority: These procedures implement section 107(f) of NEPA by prescribing procedures for project sponsors or contractors operating under the direction of project sponsors (“sponsor-hired contractors”) to prepare an EA or an EIS (“environmental document”) under the supervision of NIST. These procedures do not apply to third-party contractors preparing an environmental document under the immediate direction of NIST, even if those third-party contractors are paid by project sponsors.

1. Authorization: Section 107(f) of NEPA, 42 U.S.C. § 4336a(f), requires NIST to “prescribe procedures to allow a project sponsor to prepare an environmental assessment or an environmental impact statement under the supervision of the agency.” In addition to facilitating compliance with NEPA, NIST may use the information provided by the project sponsor under this provision to inform consultations or other agency processes required under the National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and other statutes or executive orders that address the environment or cultural resources. Project sponsors may also use this information to support permit or other authorization applications that are within the project sponsor’s responsibilities, such as applications for permits under the Clean Water Act. Nothing in this document is intended to delegate, or authorize NIST to delegate, to a project sponsor or a sponsor-hired contractor any agency obligation apart from preparation of a draft environmental document, including any obligations to consult with other federal, Tribal, or State entities under the NHPA or ESA or the obligation to engage in government-to-government consultation with Tribes.
2. Use of Experienced Contractors: If a project sponsor chooses to use a sponsor-hired contractor, it will select a contractor with corporate and staff experience in preparing complex environmental documents. The project sponsor should provide the credentials and experience of its proposed contractor to NIST, in order to demonstrate that the proposed contractor satisfies the requirements of this paragraph. All costs of using a contractor to prepare an environmental document will be borne by the project sponsor. NIST reserves the right to advise the project sponsor that a sponsor-hired contractor does not appear to be qualified for the designated task, which could put the NEPA review and issuance of an award at risk.
3. Responsibility: NIST is responsible for the accuracy, scope, and content of all environmental documents and supporting information, and will ensure that each environmental document is prepared with professional and scientific integrity using reliable data and resources. NIST will independently evaluate the draft environmental document and supporting information submitted, determine whether the draft document meets all applicable standards under NEPA and CEQ’s implementing regulations for NEPA, and document its evaluation in the final environmental document. 42 U.S.C. § 4336a(f). NIST may choose in its discretion to accept, edit, revise, or

independently author sections of the document or the whole document. NIST will prepare any finding of no significant impact or record of decision.

4. Assistance: NIST will assist project sponsors and sponsor-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. NIST will also participate in and supervise the document's preparation. NIST will work with the project sponsor to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need. NIST will explicitly approve the purpose and need and reasonable alternatives to be considered. Additionally, NIST will collaborate with the project sponsor to ensure the analysis is focused on areas where there is a higher potential for significant effects.
5. Preparers: To allow NIST to comply with its obligation to include in the environmental document the names and qualifications of the persons preparing environmental documents, the project sponsor shall include the names and qualifications of the persons who were primarily responsible for preparing the document or significant background papers.
6. Schedule changes and updates: NIST will work with the project sponsor to develop a schedule for preparation of the draft environmental document. Major changes to the schedule or related matters will be documented through written correspondence.
7. Communication: Communication with the project sponsor may be in an electronic format.
8. Decision File: The project sponsor is responsible for ensuring that any factual, scientific, or technical information used, developed, or considered by the project sponsor or the sponsor-hired contractor in the course of preparing the draft environmental document, including any correspondence with NIST or with third parties, is preserved and included in a contemporaneously assembled decision file. This decision file will be transmitted to NIST within 30 days after the final environmental document is issued by NIST and at any other time as requested by NIST. The project sponsor should be prepared to discuss its strategy for ensuring compliance with this paragraph at any time requested by NIST. The project sponsor is advised that any materials included in the decision file may be subject to Freedom of Information Act requests or included in a subsequent administrative record. Any proprietary or other sensitive information, including sensitive cultural or natural resources information, should be clearly marked; segregated from other materials; and recorded in a contemporaneously prepared document log.

B. USE OF THIRD-PARTY CONTRACTORS

NIST may also authorize a contractor to prepare an environmental document under the supervision and direction of the agency; such a contractor may be paid for by NIST or the applicant. NIST will provide guidance to the contractor and participate in and supervise the preparation of the environmental document. NIST is responsible for the accuracy, scope, and content of all environmental documents and supporting information and will ensure that each environmental document is prepared with professional and scientific integrity using reliable data and resources. NIST will independently evaluate the draft environmental document and supporting information submitted and determine whether the document meets all applicable standards under NEPA and CEQ's implementing regulations for NEPA, and will document its evaluation in the environmental document. NIST will include in the environmental document the names and qualifications of preparers of the document, as well as those individuals who conducted review of the documents, and conducting the independent evaluation of any information submitted or environmental document prepared by the contractor, such as in the list of preparers for environmental impact statements. NIST will also prepare a disclosure statement for the agency-directed contractor's execution specifying that the contractor has no 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.

C. COOPERATING WITH OTHER AGENCIES

Agency cooperation early in the NEPA process is encouraged. A lead agency supervises the development of an EIS or EA if more than one federal agency proposes or is involved in the same action or is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity. Federal, State, Tribal, or local agencies may serve as joint lead agencies. The agencies may decide which agency or agencies will be the lead, and may document that decision. The lead agency may determine which agencies will be cooperating agencies. Any disagreement among the agencies regarding who will be the lead agency may be resolved pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A). To the extent practicable, if a proposal will require action by more than one federal agency and the lead agency determines that it requires preparation of an EA or EIS, the lead and cooperating agencies may evaluate the proposal in a single environmental document and issue a joint decision document, except where inappropriate or inefficient with respect to a ROD.

Upon request of the lead agency, any other federal agency which has jurisdiction by law will be invited to be a cooperating agency. An agency has jurisdiction by law when it has authority to approve, veto, or finance all or part of the proposal. In addition, any other federal agency which has special expertise with respect to any environmental issue may be a cooperating agency upon request of the lead agency. “Special expertise” means statutory responsibility, agency mission, or related program experience. CEQ provides a list of federal and federal-state agencies with jurisdiction by law or special expertise on environmental quality issues (<https://ceq.doe.gov/nepa-practice/agency-jurisdiction-and-expertise.html>). An agency may also request the lead agency to designate it a cooperating agency. A State, Tribal, or local agency of similar qualifications may become a cooperating agency by agreement with the lead agency. In establishing cooperating agency status, it is recommended that the cooperating agency’s roles and responsibilities be documented through a Memorandum of Understanding or similar document. In particular, it may be useful to document any agreed upon timeframes for completion of tasks.

i. Determining When NIST Will Be the Lead Agency

NIST may elect to be the lead (or the joint lead) agency when the proposed action is within NIST’s control and responsibility. The lead agency is ultimately responsible for completing the NEPA process. When a joint lead relationship is established, NIST and the other joint lead agency or agencies are collectively responsible for completing the NEPA process. NIST may only establish a joint lead relationship with a non-Federal agency when that agency has a duty to comply with a similar environmental planning requirement for the same action.

If a lead agency cannot be determined by considering the factors identified in NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A), NIST may file a request with CEQ to determine which agency will be the lead agency.

ii. Inviting Other Agencies to Cooperate When NIST Is the Lead Agency

When NIST is a lead agency, NIST should consider inviting eligible governmental entities (federal, State, local, and Tribal) to participate as cooperating agencies when preparing an EIS. In determining whether an agency is eligible, NIST should consider the following factors:

1. whether the potential cooperating agency has jurisdiction by law, including, but not limited to, the authority to approve, finance, or issue permits for the proposed action;
2. whether the potential cooperating agency has special expertise related to the proposed action; and,

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3. whether the potential cooperating agency can provide personnel, expertise, funding, data, facilities, equipment, or other resources to support the NEPA process to proceed in a timely manner.

As a lead agency, NIST will:

1. Request the participation of each cooperating agency in the NEPA process at the earliest practicable time;
2. Consider any analysis or proposal created by a cooperating agency and, to the maximum extent practicable, use the environmental analysis, proposal, and information provided by cooperating agencies;
3. Meet with a cooperating agency at the latter's request; and
4. Determine the purpose and need, and alternatives in consultation with any cooperating agency.

NIST will also consider any requests by such entities to participate as a cooperating agency with respect to a particular EIS, and either accept or deny such requests. If such a request is denied, NIST will inform the entity, in writing, the reasons for such denial. Throughout the preparation of an EIS, NIST will collaborate, to the fullest extent practicable, with all cooperating agencies concerning those issues relating to their jurisdiction or special expertise.

iii. Deciding If NIST Will Be a Cooperating Agency

NIST should consider requesting cooperating agency status from the lead agency if NIST has jurisdiction by law or has special expertise, or if cooperation would otherwise further the NIST mission. If invited by the lead agency, NIST will agree to serve as a cooperating agency when NIST has jurisdiction by law. NIST has jurisdiction by law when it has authority to approve, veto, or finance all or part of the proposal. If a lead agency requests NIST be a cooperating agency for a NEPA document in which NIST has special expertise, but does not have jurisdiction by law, NIST may decline if program commitments preclude NIST from any involvement or the degree of involvement requested by the lead agency. In these cases, NIST will decline the request from the lead agency in writing. If NIST declines to cooperate on an EIS, the NIST NEPA Coordinator will send a copy of the written response declining cooperating status to CEQ and to the senior agency official of the lead agency.

As a cooperating agency, NIST will have several obligations: participate in the scoping process; if requested by the lead agency, assume responsibility for developing information and preparing environmental analyses, including portions of the EIS or EA concerning which NIST has special expertise, and make available staff support to enhance the lead's interdisciplinary capability; normally use its own funds; consult with the lead agency in developing the schedule, meet the schedule, and elevate to the senior agency official of the lead agency any issues relating to purpose and need, alternatives, or scheduling issues; meet the lead agency's schedule for providing comments; and jointly issue environmental documents with the lead agency, to the maximum extent practicable. NIST should consider these obligations of cooperating agencies in deciding whether or not to become a cooperating agency.

If NIST elects to become a cooperating agency but cannot meet a lead agency's request for assistance in preparing an environmental document, it may reply that other program commitments preclude all assistance or some assistance. NIST will then submit a copy of this reply to CEQ and the senior agency official of the lead agency.

11. COMMENTING ON ANOTHER AGENCY’S EIS

NIST should, when requested by another agency, consider commenting on that agency’s EIS when NIST has jurisdiction by law or special expertise with respect to any environmental impact involved. When NIST is a cooperating agency or is authorized to develop and enforce an environmental standard, NIST will comment on an EIS within its jurisdiction, expertise, or authority within the time period specified for comment. NIST can reply that it has no comment.

In addition to commenting on other agency NEPA documents, NIST should also serve as a resource for agencies when NIST’s scientific expertise and available resources and information may be of assistance.

Commenting Under Laws with Accelerated Project Delivery Requirements

The Fixing America’s Surface Transportation Act (“FAST Act,” 23 U.S.C. § 139 and 42 U.S.C. § 4370m) requires “accelerated project delivery” of surface transportation (Title 1 of FAST Act) and large-scale infrastructure (Title 41 of FAST Act). For actions subject to these statutes, NIST may be deemed a “participating” or “cooperating” agency, and as such may be subject to specific procedural requirements in addition to those required under NEPA. For example, NIST offices may be asked to concur on project-specific schedules, may be subject to shorter than typical comment deadlines, and may be obligated to participate in specified dispute resolution procedures. Whenever NIST has an interest in a qualifying surface transportation, infrastructure, or water resources development project, NIST should consult the lead agency to ensure that it is aware of its obligations with respect to the project.

12. REFERRING MATTERS TO CEQ FOR ENVIRONMENTALLY UNSATISFACTORY EFFECTS

At its discretion, NIST may bring to CEQ interagency disagreements concerning proposed actions that might cause unsatisfactory environmental effects. CEQ referrals may be made only after all other efforts to resolve the dispute have been exhausted. A referral initiated by NIST will be signed by the NIST Director.

EPA may also refer NIST FEISs to CEQ if NIST does not make improvements recommended by EPA for documents rated as inadequate following their review of an FEIS.

13. INTEGRATING NEPA WITH OTHER ENVIRONMENTAL REQUIREMENTS

To the fullest extent possible, draft NEPA documents should be prepared concurrently with and integrated with analyses and related surveys and studies required by other federal statutes, including the National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.*, and the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* Additionally, agencies should combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, NIST may combine a NEPA document with related plans, rules, or amendments as a single consolidated document. The consolidated document will contain and clearly identify the required sections of the NEPA document and should stand on its own as an analytical document which fully informs NIST and the public of the environmental effects of the proposal and those of the reasonable alternatives.

When scoping identifies consultations, permits, or licenses necessary under other environmental laws, the EA/EIS should contain a section briefly listing the applicable requirements and how they have been or will be met (e.g., permits applied for or received, consultations initiated or concluded). The EA/EIS should also contain a section listing the agencies or persons consulted regarding these requirements. In the case of financial assistance awards, the EA/EIS should note which requirements are the responsibility of the action

agency and which are the responsibility of the awardee/applicant. The FONSI/ROD should also note whether other environmental documents are related to the scope of the action.

Examples of consultation and permitting requirements that are commonly applicable to NIST actions include, but are not limited to, the following:

- Consultation with the relevant State Historic Preservation Office or Tribal Historic Preservation Officer under the National Historic Preservation Act when a proposed action has the potential to affect a historic property; 36 C.F.R. §§ 800.3 – 800.8.
- Consultation with the relevant office of the National Marine Fisheries Service’s (NMFS) Office of Protected Resources and/or the U.S. Fish and Wildlife Service under the Endangered Species Act when a proposed action may affect species listed as threatened or endangered, or any designated critical habitat;
- Consultation with federally recognized Tribes when a proposed action may have Tribal implications as defined by E.O. 13175. If a proposed action may have Tribal implications, NIST should consult the DOC Tribal Consultation and Coordination Policy and any OU-specific Tribal consultation procedures.

14. EMERGENCY SITUATIONS AND ALTERNATIVE ARRANGEMENTS

If a proposed action to respond to an emergency situation is expected to have a significant effect on the human environment, NIST will immediately contact CEQ to consult regarding alternative arrangements for compliance with NEPA. Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance for responsive action with significant environmental impacts.

Alternative arrangements for compliance with NEPA are limited to the actions necessary to control the immediate impacts of the emergency. The arrangements will be developed, based upon the specific facts and circumstances, during the consultation with CEQ. Once the alternative arrangements are established, CEQ will provide documentation outlining the alternative arrangements and the considerations on which they are based. Factors to be addressed when developing alternative arrangements are:

1. the nature and scope of the emergency;
2. actions necessary to control the immediate impacts of the emergency;
3. potential adverse effects of the proposed action;
4. components of the NEPA process that can be followed and provide value to decision- making;
5. duration of the emergency; and
6. potential mitigation measures.

Alternative arrangements may also be available for those actions that are likely to result in significant environmental effects and would therefore require consideration in an EIS. If the emergency action is not likely to result in significant environmental effects and is not an action that would be covered by one of NIST’s CEs, NIST should prepare a concise and focused EA. NIST may consult with CEQ on alternative arrangements.

15. TERMINATING THE NEPA PROCESS

NIST may terminate the NEPA process at any stage if the proposed action or program goals change, support for a proposed action or program diminishes, original analyses become outdated (e.g., the environmental effects analysis is no longer relevant), or other circumstances occur.

If the NEPA process is terminated after the publication of an NOI or a DEIS, NIST will notify EPA or CEQ, as appropriate. NIST will publish an updated notice in the Federal Register, and may notify interested parties of the termination of the NEPA process through additional methods if necessary.

16. CLASSIFIED PROPOSALS

Some aspects of a proposed action may involve information not releasable to the public because it is classified. This does not relieve NIST of the duty to comply with the requirements of NEPA, where applicable. Personnel preparing material that may be classified are responsible for the proper handling, control, and safeguarding of all information and analyses that may be classified pursuant to appropriate NIST and Department of Commerce requirements and subject to all applicable laws and regulations relating to classified material.

NIST may safeguard and restrict from public dissemination NEPA and related environmental review documents, including EAs and EISs, or portions thereof, that address classified proposals. Classified proposals are proposed actions specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute.

Where feasible and when classified information can be reasonably separated from other information and a meaningful environmental analysis produced, NIST will endeavor to organize an environmental review document so that classified or sensitive unclassified portions are included as annexes, so that NIST can make unclassified portions available to the public. If classified information will be included in an environmental review document, in an annex or otherwise, NIST NEPA Coordinators will consult with NIST's Associate Director for Laboratory Programs or other official responsible regarding special handling procedures for classified information.

Appendix A – Categorical Exclusions

All CEs marked with an asterisk () require documentation as described in Section 5 of NIST's NEPA Procedures*

A. Categorical Exclusions Established by NIST – Apply Extraordinary Circumstances as Described in Section 5 of the NIST NEPA Procedures

I. Administrative Activities

I-1. Preparation, modification, and issuance of policy directives, rules, regulations, procedures, guidelines, guidance documents, bulletins, and informational publications that are of an administrative, financial, legal, technical, or procedural nature, for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be, in whole or part, subject later to the NEPA process, either collectively or on a case-by-case basis.

I-2. Planning, educational, informational, or advisory activities provided to other agencies, public and private entities, visitors, individuals, or the public, including training exercises and simulations conducted under appropriately controlled conditions and in accordance with all applicable laws, regulations, and requirements.

I-3. Preparation and dissemination of scientific results, studies, surveys, audits, reports, plans, papers, recommendations, and technical advice.

I-4. Technical assistance to other federal, Tribal, State, and local agencies or the public.

I-5. Contracts, collaborative research agreements, cooperative research and development agreements, interagency agreements, and other agreements that do not concern environmental matters or where the environmental effects are negligible.

II. Operations

II-1. Routine procurement, use, storage, transportation, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with Executive Orders and Federal procurement guidelines. Examples include office supplies and furniture; equipment; mobile assets (i.e., vehicles, vessels, aircraft); utility services; and deployable emergency response supplies and equipment.

II-2. Routine use of hazardous materials (including procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and requirements. Examples include use of chemicals for laboratory applications; refueling of storage tanks; temporary storage and disposal of solid waste; disposal of waste through manufacturer return and recycling programs; and hazardous waste minimization activities, including source reduction activities and recycling.

II-3. Maintenance of facilities, equipment, and grounds limited to existing uses and facility conditions and would not expand the footprint of the facility. Examples include interior utility work, road maintenance, window washing, lawn mowing, landscaping, weed management/maintenance, trash collecting, facility cleaning, and snow removal.

III. Facility Modernization

III-1. Internal modifications, renovations, or additions (e.g., computer facilities, relocating interior walls) to structures or buildings that do not result in a change in the functional use of the property.

III-2.* Exterior renovation, addition, repair, alteration, safety and environmental improvements, and demolition projects affecting buildings, roads, grounds, equipment, and other facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials, lead, or asbestos. Hazardous materials must be disposed of at approved sites in accordance with all applicable laws, regulations, and requirements. These actions do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed, and they do not include rebuilding or modifying substantial portions of a facility (such as replacing a reactor vessel). Examples include the following:

- a) Painting, roofing, siding, or alterations to an existing building;
- b) Adding a small storage shed to an existing building;
- c) Retrofitting for energy and water conservation and efficiency, including weatherization, installation of timers on hot water heaters, installation of energy efficient lighting, and installation of low flow plumbing fixtures;
- d) Closing and demolishing a building not eligible for listing under the National Register of Historic Places;
- e) Replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping, provided that there is no evidence of leakage, based on testing in accordance with applicable requirements (such as 40 CFR 265, “Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities” and 40 CFR 280, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks”); or
- f) Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); power storage (such as flywheels and batteries, generally less than 10 megawatt equivalent); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects.

III-3.* Minor improvements to existing steam plants and cooling water systems (including, but not limited to, modifications of existing cooling towers and ponds) supporting building, commercial, laboratory or industrial spaces, provided that the improvements would not:

- a) Create new sources of water or involve new receiving waters;
- b) Have the potential to significantly alter water withdrawal rates;

c) Exceed the permitted temperature of discharged water; or

d) Increase introductions of, or involve new introductions of, hazardous substances, pollutants, contaminants, or Comprehensive Environmental Response, Compensation, and Liability Act-excluded (CERCLA) petroleum and natural gas products.

III-4.* Installation or relocation and operation of machinery and equipment (including, but not limited to, laboratory equipment, electronic hardware, manufacturing machinery, maintenance equipment, and health and safety equipment), provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure. Covered actions include modifications to an existing building, within or contiguous to a previously disturbed or developed area, that are necessary for equipment installation and relocation. Such modifications would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental effects.

IV. Real Property

IV-1.* Acquisition or use of existing facilities or portions thereof by purchase, lease, or use agreement where use or operation will remain unchanged. Examples include acquiring office space through lease, purchase, or use agreement, and acquisition of laboratory space through lease, purchase, or use agreement.

IV-2.* Decisions and actions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment, including office equipment, telecommunications equipment, and computer equipment, is not used to prevent or control environmental effects.

V. Research

V-1.* Proposed new and recurring activities and operations conducted in laboratories and facilities where research practices and safeguards (including but not limited to environmental permits for operation) prevent environmental effects, would be consistent with previously established safety levels, and would not result in a change in use of the facility. Examples include types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing facilities designed to support research and development activities. Such facilities could be used for indoor small-scale research and development projects and small-scale pilot projects using nanoscale materials in accordance with applicable requirements (such as engineering, worker safety, procedural, and administrative regulations) necessary to ensure the containment of any hazardous materials. Not included in this category are demonstration actions, meaning actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment.

V-2.* Outdoor research activities conducted in compliance with all applicable laws, regulations, and requirements. Examples include types of research, development, testing, and evaluation activities conducted outdoors where no new ground disturbance occurs and no sensitive resources (e.g., threatened or endangered species, archaeological sites, Tribal resources, wetlands, and waterbodies) are present, such as radar testing, radio noise measurements, and public safety communications research.

VI. Facility Construction

VI-1.* New construction or improvement of buildings or experimental equipment (e.g., trailers, prefabricated buildings, and test slabs) on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance in previously disturbed areas, where the proposed facility use is generally

compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

VII. Federal Assistance

VII-1. Actions related to financial assistance administration performed at any stage during the financial assistance lifecycle, such as the development and issuance of guidance; announcements of availability of funds; project reviews for program eligibility; provision of technical assistance; conducting inspections, financial audits, and monitoring activities; development of information technology systems for financial assistance management; close-out activities; and actions taken in situations where an awardee is in non-conformance with program requirements, such as disallowances, recoupment of funds, and debarment.

B. Categorical Exclusions Established by 15 U.S.C. § 4659(d)(1) – Apply Extraordinary Circumstances as Described in Section 5 of the NIST NEPA Procedures

Each of the following categorical exclusions was established for the National Institute of Standards and Technology with respect to a covered activity, defined as any activity relating to the construction, expansion, or modernization of a facility, the investment in which is eligible for Federal financial assistance under 15 U.S.C. §§ 4652 or 4656, and is available for use by the Secretary:

NIST B-1. Acquisition of machinery and equipment (M&E) unless these require applications for or amendments to existing air, water or solid waste permits.

NIST B-2. Information gathering (including, but not limited to, literature surveys, inventories, site visits, and audits), data analysis (including, but not limited to, computer modeling), document preparation (including, but not limited to, conceptual design, feasibility studies, and analytical energy supply and demand studies), and information dissemination (including, but not limited to, document publication and distribution, and classroom training and informational programs), but not including site characterization or environmental monitoring.

NIST B-3. Transfer, lease, disposition, or acquisition of interests in personal property (including, but not limited to, equipment and materials) or real property (including, but not limited to, permanent structures and land), provided that under reasonably foreseeable uses (1) there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment and (2) the covered actions would not have the potential to cause a significant change in impacts from before the transfer, lease, disposition, or acquisition of interests.

NIST B-4. Installation or relocation and operation of machinery and equipment (including, but not limited to, laboratory equipment, electronic hardware, manufacturing machinery, maintenance equipment, and health and safety equipment), provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure. Covered actions include modifications to an existing building, within or contiguous to a previously disturbed or developed area, that are necessary for equipment installation and relocation. Such modifications would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts.

NIST B-5. Safety and environmental improvements of a facility (including, but not limited to, replacement and upgrade of facility components) that do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed. Improvements include, but are not limited to, replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing

to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping, provided that there is no evidence of leakage, based on testing in accordance with applicable requirements (such as 40 CFR part 265, “Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities” and 40 CFR part 280, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks”). These actions do not include rebuilding or modifying substantial portions of a facility (such as replacing a reactor vessel).

NIST B-6. Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy efficiency that would not have the potential to cause significant changes in the indoor or outdoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as state, local, and Tribal). Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); power storage (such as flywheels and batteries, generally less than 10 megawatt equivalent); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors.

NIST B-7. Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.

NIST B-8. Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs; however, in the case of equipment, compliance with 24 C.F.R. § 50.4(b)(1) is required.

NIST B-9. Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste.

NIST B-10. Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building.

NIST B-11. Installing on previously developed land, equipment that does not substantially alter land use (i.e., land use of more than one acre). This includes outgrants to private lessees for similar construction.

C. Categorical Exclusions Adopted from the Department of Energy – Apply Extraordinary Circumstances as Described in 88 FR 64884

The following CEs are not part of NIST’s NEPA Procedures, but are reproduced here for convenience.

NIST C-1. Information Gathering, Analysis, and Dissemination. Information gathering (including, but not limited to, literature surveys, inventories, site visits, and audits), data analysis (including, but not limited to, computer modeling), document preparation (including, but not limited to, conceptual design, feasibility studies, and analytical energy supply and demand studies), and information dissemination (including, but not limited to, document publication and distribution, and classroom training and informational programs), but not including site characterization or environmental monitoring. *[DOE A9]*

NIST C-2. Technical Advice and Assistance to Organizations. Technical advice and planning assistance to international, national, state, and local organizations. *[DOE A11]*

NIST C-3. Existing Steam Plants and Cooling Water Systems. Minor improvements to existing steam plants and cooling water systems (including, but not limited to, modifications of existing cooling towers and ponds), provided that the improvements would not: (1) Create new sources of water or involve new receiving waters; (2) have the potential to significantly alter water withdrawal rates; (3) exceed the permitted temperature of discharged water; or (4) increase introductions of, or involve new introductions of, hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products. *[DOE B1.5]*

NIST C-4. Demolition and Disposal of Buildings. Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces), provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment. *[DOE B1.23]*

NIST C-5. Property Transfers. Transfer, lease, disposition, or acquisition of interests in personal property (including, but not limited to, equipment and materials) or real property (including, but not limited to, permanent structures and land), provided that under reasonably foreseeable uses (1) there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment and (2) the covered actions would not have the potential to cause a significant change in impacts from before the transfer, lease, disposition, or acquisition of interests. *[DOE B1.24]*

NIST C-6. Installation or Relocation of Machinery and Equipment. Installation or relocation and operation of machinery and equipment (including, but not limited to, laboratory equipment, electronic hardware, manufacturing machinery, maintenance equipment, and health and safety equipment), provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure. Covered actions include modifications to an existing building, within or contiguous to a previously disturbed or developed area, that are necessary for equipment installation and relocation. Such modifications would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts. *[DOE B1.31]*

NIST C-7. Facility Safety and Environmental Improvements. Safety and environmental improvements of a facility (including, but not limited to, replacement and upgrade of facility components) that do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed. Improvements include, but are not limited to, replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping, provided that there is no evidence of leakage, based on testing in accordance with applicable requirements (such as 40 CFR part 265, “Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities” and 40 CFR part 280, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks”). These actions do not

include rebuilding or modifying substantial portions of a facility (such as replacing a reactor vessel). [DOE B2.5]

NIST C-8. Site Characterization and Environmental Monitoring. Site characterization and environmental monitoring (including, but not limited to, siting, construction, modification, operation, and dismantlement and removal or otherwise proper closure (such as of a well) of characterization and monitoring devices, and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis). Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance. Covered activities include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. (This class of actions excludes activities in aquatic environments. See B3.16 of this appendix for such activities.) Specific activities include, but are not limited to:

- (a) Geological, geophysical (such as gravity, magnetic, electrical, seismic, radar, and temperature gradient), geochemical, and engineering surveys and mapping, and the establishment of survey marks. Seismic techniques would not include large-scale reflection or refraction testing;
- (b) Installation and operation of field instruments (such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools);
- (c) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells;
- (d) Aquifer and underground reservoir response testing;
- (e) Installation and operation of ambient air monitoring equipment;
- (f) Sampling and characterization of water, soil, rock, or contaminants (such as drilling using truck- or mobile-scale equipment, and modification, use, and plugging of boreholes);
- (g) Sampling and characterization of water effluents, air emissions, or solid waste streams;
- (h) Installation and operation of meteorological towers and associated activities (such as assessment of potential wind energy resources);
- (i) Sampling of flora or fauna; and
- (j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7. [DOE B3.1]

NIST C-9. Small-scale Research and Development, Laboratory Operations, and Pilot Projects. Siting, construction, modification, operation, and decommissioning of facilities for small-scale research and development projects; conventional laboratory operations (such as preparation of chemical standards and sample analysis); and small-scale pilot projects (generally less than 2 years) frequently conducted to verify a concept before demonstration actions, provided that construction or modification would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Not included in this category are demonstration actions, meaning actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment. [DOE B3.6]

NIST C-10. Small-scale Indoor Research and Development Projects Using Nanoscale Materials. Siting, construction, modification, operation, and decommissioning of facilities for indoor small-scale research and development projects and small-scale pilot projects using nanoscale materials in accordance with applicable requirements (such as engineering, worker safety, procedural, and administrative regulations) necessary to ensure the containment of any hazardous materials. Construction and modification activities would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). [DOE B3.15]

NIST C-11. Actions to Conserve Energy or Water.

(a) Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy-efficiency that would not have the potential to cause significant changes in the indoor or outdoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as state, local, and Tribal). Covered actions include, but are not limited to, weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); power storage (such as flywheels and batteries, generally less than 10 megawatt equivalent); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors. Covered actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) of this appendix.

(b) Covered actions include rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not: (1) have the potential to cause a significant change in manufacturing infrastructure (such as construction of new manufacturing plants with considerable associated ground disturbance); (2) involve significant unresolved conflicts concerning alternative uses of available resources (such as rare or limited raw materials); (3) have the potential to result in a significant increase in the disposal of materials posing significant risks to human health and the environment (such as RCRA hazardous wastes); or (4) have the potential to cause a significant increase in energy consumption in a state or region. [DOE B5.1]

D. Department of Commerce Categorical Exclusions Available for Use by NIST – Apply Extraordinary Circumstances as Described in Section 5 of the NIST NEPA Procedures

The following CEs are not part of NIST's NEPA Procedures, but are reproduced here for convenience.

DOC A-1. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g. realigning interior spaces of an existing building, adding a small storage shed to an existing building, retrofitting for energy conservation, or installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the installation). This Categorical Exclusion does not apply where the

project must be submitted to the National Capital Planning Commission (NCPC) for review and NCPC determines it does not have an applicable categorical exclusion.

DOC A-2. New construction upon or improvement of land where all of the following conditions are met:

- (a) The site is in a developed area and/or a previously disturbed site,
- (b) The structure and proposed use are compatible with applicable Federal, Tribal, state, and local planning and zoning standards and consistent with federally approved state coastal management programs,
- (c) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area,
- (d) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings, and,
- (e) The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.).

This Categorical Exclusion does not apply where the project must be submitted to the National Capital Planning Commission (NCPC) for review and NCPC determines that it does not have an applicable categorical exclusion.

DOC A-3. Software development, data analysis, or testing, including but not limited to computer modeling in existing facilities.

DOC A-4. Siting/construction/operation of microwave/radio communication towers less than 200 feet in height without guy wires on previously disturbed ground.

DOC A-5. Retrofit/upgrade existing microwave/radio communication towers that do not require ground disturbance.

DOC A-6. Adding fiber optic cable to transmission structures or burying fiber optic cable in existing transmission line rights-of-way.

DOC A-7. Acquisition, installation, operation, and removal of communications systems, data processing equipment, and similar electronic equipment.

DOC A-8. Planning activities and classroom-based training and classroom-based exercises using existing conference rooms and training facilities.

DOC A-9. Purchase of mobile and portable equipment and infrastructure which is stored in previously existing structures or facilities.

DOC A-10. Siting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). This Categorical Exclusion does not apply where the project must be submitted to the National Capital Planning Commission (NCPC) for review and NCPC determines that it does not have an applicable categorical exclusion.

DOC A-11. Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel.