

CHAPTER 2.3 MINOR CONSTRUCTION

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I. INTRODUCTION

I.A. Purpose

This chapter provides the Department's policy on budgetary notifications for minor construction projects.

I.B. Applicability

This policy applies to all Departmental elements and contractors, including the National Nuclear Security Administration (NNSA).ⁱ The policy applies to all Department of Energy (DOE) minor construction projects, including those funded by both defense and non-defense authorized funds.

The application of minor construction limitations to non-defense authorized funding is consistent with the direction contained in the FY 2023 Joint Explanatory Statement of the House and Senate appropriations committees.ⁱⁱ It also helps ensure compliance with separate notification requirements contained in 42 USC 5821(b)(2), which requires notification for research facilities constructed not at a DOE facility utilizing appropriations subject to an annual authorization act.ⁱⁱⁱ

I.C. Exclusions

This policy does not apply to leases of property; land-only acquisitions; purchases of capital assets; or construction performed by DOE and DOE contractors that is wholly funded by sponsors of Strategic Partnership Projects (SPP)^{iv}.

The budgetary notification requirements in this chapter do not apply to the acquisition of existing real property. Approval to acquire existing real property must follow the requirements set forth in DOE Order 430.1C, *Real Property Asset Management*.

I.D. Compliance

Noncompliance with legal requirements referenced in this policy could result in violations of the Anti-Deficiency Act (31 USC §§ 1341(a)(1)(A), 1341(a)(1)(B); and 1342, 1517(a)).^v

II. POLICY AND REQUIREMENTS

II.A. General Requirements

II.A.1. Minor Construction Project Definition

As defined in 50 USC 2743, a minor construction project means any plant project not specifically authorized by law for which the total estimated cost does not exceed the minor construction threshold (see II.A.3 of this chapter). This policy adopts the

definition contained in 50 USC 2743 for all Departmental elements.

Minor construction projects include all projects referred to as General Plant Projects (GPPs); Institutional General Plant Projects (IGPPs); and Accelerator Improvement Projects (AIPs) in other DOE policies, in statute, or in Congressional report language.

II.A.2. Cost Limitations

A minor construction project's total estimated cost (TEC) must not exceed the minor construction threshold. Construction projects with a TEC greater than the minor construction threshold are considered line-item projects. Funding for line-item projects must be requested in the President's Budget Request to Congress as visible and uniquely numbered line-items.

A minor construction project must have a clear project definition, be complete, and fulfill the intended need without additional expenditures. Minor construction projects must not be incremental segments of larger projects or other minor construction projects.

II.A.3. Minor Construction Threshold

The minor construction threshold in effect as of February 9, 2024, is \$34 million.

The threshold applicable to a specific project is the threshold in effect as of the date of the most recent Congressional notification. An increased threshold can be applied to a minor construction project with appropriate Congressional notification or reporting (see scenario 2 in II.C of this chapter).

The table below shows the minor construction threshold in effect for the current and historical time periods:

Threshold Amount	Effective Dates	Source
\$5 million	December 2, 2002, to October 27, 2009	<i>FY 2003 NDAA</i> (P.L. 107-314)
\$10 million	October 28, 2009, to September 29, 2010	<i>FY 2010 NDAA</i> (P.L. 111-84)
\$5 million	September 30, 2010, to January 6, 2011	<i>FY 2010 NDAA</i> (P.L. 111-84)
\$10 million	January 7, 2011, to December 11, 2017	<i>FY 2011 NDAA</i> (P.L. 111-383)

Threshold Amount	Effective Dates	Source
\$20 million	December 12, 2017, to December 26, 2021	<i>FY 2018 NDAA</i> (P.L. 115-91)
\$25 million	December 27, 2021, to December 22, 2022	<i>FY 2022 NDAA</i> (P.L. 117-81)
\$30 million	December 23, 2022, to February 9, 2024	<i>FY 2023 NDAA</i> (P.L. 117-263)
\$34 million	February 9, 2024, to Current	89 FR 9141 [under the authority of 50 USC 2741(2)(B)]

The National Defense Authorization Act (NDAA) for Fiscal Year 2024 (P.L. 118-31) provided permanent authority to the Administrator of the NNSA (Administrator) to establish an increased minor construction threshold as necessary to account for inflation.^{vi}

This policy adopts the minor construction threshold established by the Administrator for all DOE departmental elements. Office of the Chief Financial Officer (OCFO) will administratively update the policy as needed to reflect the current minor construction threshold established by the Administrator.

II.A.4. Construction Design Limitation

The construction design (including architectural and engineering services) in connection with any proposed minor construction project must not exceed \$5 million unless specifically authorized by law^{vii}.

II.B. Congressional Notification Requirements

II.B.1. General Notification Requirement

DOE must notify Congress of a minor construction project with a TEC greater than \$5 million and wait 15 calendar days (30 days for a project constructed at a non-DOE installation^{viii}) before approval to start the project (i.e., before initiating activities that fall into those that are part of the TEC)^{ix}.

See Section II.B.2. for additional specific requirements for in-cycle notifications (through the annual budget request) and Section II.B.3. for additional requirements for out-of-cycle notifications.

II.B.2. In-Cycle Notification

Congressional notification for planned minor construction projects must be provided in-cycle through the Congressional budget request. This process satisfies statutory notification requirements of 50 USC 2743(d) and the separate requirement for an annual report required by 50 USC 2743(b).

The Congressional budget request provides notification for both current and future-year planned minor construction projects.

II.B.3. Out-of-Cycle Notification

II.B.3.i. Requirements

Out-of-cycle notification is required when a project with a TEC in excess of \$5 million must begin prior to the next Congressional budget request.

II.B.3.ii. Process

Out-of-cycle notifications must be provided through the OCFO Office of Budget. OCFO Office of Budget will review the out-of-cycle notification and provide applicable follow-up questions within five (5) business days of receipt. The OCFO Office of Budget will provide the notice to Office of Management and Budget (OMB) and Congress after Departmental review and approval^x.

Out-of-cycle notices must be provided to the Appropriations Committees in all cases, and the Defense Committees for Departmental Elements receiving appropriations authorized by the NDAA (050 appropriations accounts)^{xi}.

II.C. Cost Growth Notification and Reporting Requirements

Scenario	Required Notification or Reporting	Congressional Notification or Reporting Mechanism (In-cycle vs. Out-of-cycle)
1. Revised TEC is: (1) More than \$5 million AND (2) Original TEC is \$5 million or less AND (3) The project was not included in a previous Congressional budget request	Congressional notification is required for all minor construction projects with a TEC above \$5 million.	Out-of-cycle notification required when construction is ongoing or must begin prior to the next Congressional budget request. Follow the process outlined in II.B.3.ii of this policy. There is no requirement to stop work pending issuance of the out-of-cycle notice. If construction will not begin before the next Congressional budget request, provide in-cycle notification.
2. Revised TEC is: (1) More than the Minor Construction Threshold in effect when the most recent Congressional notification was made AND (2) Less than the Current Minor Construction Threshold	Cost growth reporting required.	Reporting in-cycle through the next Congressional budget request
3. Revised TEC is more than the current Minor Construction Threshold	Notification to OCFO Office of Budget must be provided within 10 business days of developing the revised TEC. The notification must include an explanation of the reasons for the cost growth. OCFO Office of Budget will coordinate provision of the cost variation report required by 50 USC 2743.	Cost variation report provided by the Secretary as required by 50 USC 2743. Follow normal process for Congressional report clearance.

II.D. Full Funding Principle

- II.D.1 Consistent with the full funding principle of budgeting for capital asset acquisitions contained in OMB Circular A-11 *Supplement Capital Programming Guide*, and OMB Circular A-11 *Preparation, Submission, and Execution of the Budget* Section 31.4 *Full Funding*, Departmental Elements should request budget authority sufficient to complete a useful segment of a project (or the entire project, if it is not divisible into useful segments)^{xii}. Planning segments should be financed separately from the procurement of a useful asset.^{xiii} Exceptions to the full funding principle must be approved by OMB in coordination with the OCFO Office of Budget. Exceptions will be granted to offices consistent with transition plans developed by the OCFO Office of Budget in coordination with OMB.
- II.D.2. If the minor construction project will not be funded by one DOE appropriation but will be allocated to multiple funding sources, the notification or report (either in-cycle or out-of-cycle, as appropriate) should clearly indicate that the project is institutional, thus indicating that the costs will be allocated to multiple funding sources.

When the allocation of costs will occur over multiple fiscal years, the notice should disclose the anticipated allocation over multiple fiscal years, which may constitute an exception to the full funding principle. OMB approval of the notice, either in-cycle or out-of-cycle, represents appropriate OMB approval of the planned multi-year funding.

II.E. Other Requirements Applicable to Minor Construction Projects

II.E.1. Cost Accounting Requirements

Minor construction projects that benefit multiple separately funded activities may be allocated to multiple funding sources in a manner compliant with applicable cost accounting requirements.

Minor construction projects at a contractor-operated DOE laboratory, site, or facility, the applicable standards are contractor Cost Accounting Standards (CAS), as codified in 48 Code of Federal Regulations (CFR) Chapter 99. Allocations must also be consistent with the contractor's disclosed practices and DOE implementing policy relating to contractor CAS, including DOE Financial Management Handbook (FMH) Chapter 15.1, *DOE Application of Contractor Cost Accounting Standards*.

II.E.2. Financial Accounting Requirements

The DOE FMH Chapter 10.1, *Accounting for Property, Plant, and Equipment*, provides the accounting requirements for real property. Minor construction projects shall be accounted for in a manner

consistent with other real property and shall follow current accounting policy for capital assets.

II.E.3. Property Accountability Requirements

Real Property Management requirements are in DOE Order 430.1C, *Real Property Asset Management*. DOE Order 430.1C, Section 4.b.(1)(b) requires DOE elements to record all planned real property acquisitions in real property planning documentation and in the Facilities Information Management System (FIMS) Anticipated Asset Information Module (AAIM), regardless of acquisition method or funding source.

II.E.4. Project Management Requirements

Project Management requirements are in DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets*. As specified in Section 3.a. of DOE Order 413.3B, the project management principles outlined in Appendix C of DOE Order 413.3B apply to minor construction projects.

III. DEFINITIONS

III.A. Total Estimated Cost

This policy adopts the definition of TEC contained in DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets*.

As defined by DOE Order 413.3B, the TEC is all engineering design costs (after conceptual design); facility construction costs; and other costs specifically related to those construction efforts.

TEC includes, but is not limited to project, design, and construction management; contract modifications (to include equitable adjustments) resulting in changes to these costs; design; construction; contingency; contractor support directly related to design and construction; and equipment rental and refurbishment.

Additionally, for assets constructed by DOE contractors, the TEC must be determined in a manner consistent with CAS as described in Section II.E.1. of this chapter.

III.B. Line-Item Construction

Line-item construction projects are those with a TEC greater than the minor construction threshold. Funding for line-item projects must be included in the Congressional budget request as visible and uniquely numbered line-items.

III.C. In-Cycle Notifications

Notifications made through the annual Congressional budget justification.

III.D. Out-of-Cycle Notifications

Notifications made out-of-cycle with the Congressional budget justification (ad hoc notices).

IV. REFERENCES

- IV.A.** 42 USC 7252, 7257, Sections 642 and 647 of the *DOE Organization Act*, which authorizes the Secretary to delegate authorities to others and authorizes the Secretary to acquire facilities and personal property.
- IV.B.** 50 USC 2741, *Title 50 War and National Defense, Definitions*, defines the current statutory minor construction threshold applicable to funds authorized by a DOE national security authorization.
- IV.C.** Statutory Changes to the Minor Construction Threshold
 - IV.C.1.** P.L. 107-314, Section 3620 of the *FY 2003 National Defense Authorization Act*, set the minor construction threshold at \$5 million.
 - IV.C.2.** P.L. 111-84, Section 3118 of the *FY 2010 National Defense Authorization Act*, set the minor construction threshold at \$10 million with a sunset date of September 29, 2010.
 - IV.C.3.** P.L. 111-383, Section 3121 of the *FY 2011 National Defense Authorization Act*, set the minor construction threshold at \$10 million and repealed the sunset provision in 50 USC 2741
 - IV.C.4.** P.L. 115-91, Section 3119 of the *FY 2018 National Defense Authorization Act*, set the minor construction threshold at \$20 million.
 - IV.C.5.** P.L. 117-81, Section 3115 of the *FY 2022 National Defense Authorization Act*, set the minor construction threshold at \$25 million.
 - IV.C.6.** P.L. 117-263, Section 3113 of the *FY 2023 National Defense Authorization Act*, set the minor construction threshold at \$30 million, and authorizes the Administrator of NNSA to set the minor construction threshold.
 - IV.C.7.** P.L. 118-31, Section 3120 of the *FY 2024 National Defense Authorization Act*, which repealed the sunset date that authorized the Administrator of NNSA to set the minor construction threshold.

- IV.D.** 42 USC 5821(b)(2), *Annual Authorization Acts*, requires a 30-day advance notification to Congress prior to the use of funds for a facility constructed not on DOE facility with an estimated cost exceeding \$5 million.
- IV.E.** 89 FR 9141 sets the minor construction threshold at \$34 million authorized by 50 USC 2741(2)(B).
- IV.F.** FY 2023 Joint Explanatory Statement, which contains Congressional agreement with applying Defense notification requirements to other DOE offices.
- IV.G.** DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets*
- IV.H.** DOE Order 430.1C, *Real Property Asset Management*.
- IV.I.** DOE Order 481.E, *Strategic Partnership Projects*
- IV.J.** DOE Order 520.1B, *Financial Management and Chief Financial Officer Responsibilities*
- IV.K.** DOE FMH Chapter 2, *Administrative Control of Funds*
- IV.L.** DOE FMH Chapter 10.1, *Accounting for Property, Plant, and Equipment*
- IV.M.** DOE FMH Chapter 15.1, *DOE Application of Contractor Cost Accounting Standards*

Additional references are cited in this chapter as appropriate.

V. ACRONYMS

AAIM	Anticipated Asset Information Module
AIPs	Accelerator Improvement Projects
CAS	Cost Accounting Standards
CFR	Code of Federal Regulations
DOE	Department of Energy
EHSS	Office of Environment, Health, Safety and Security
EM	Office of Environmental Management
FIMS	Facilities Information Management System
FMH	Financial Management Handbook
FY	Fiscal Year
GPPs	General Plant Projects
IGPPs	Institutional General Plant Projects
NDAA	National Defense Authorization Act
NNSA	National Nuclear Security Administration
OCFO	Office of the Chief Financial Officer
OMB	Office of Management and Budget
P.L.	Public Law
SPP	Strategic Partnership Projects
TEC	Total Estimated Cost

USC United States Code

- i DOE Order 520.1B, *Financial Management and Chief Financial Officer Responsibilities*
- ii The relevant language is “General Plant Projects—In alignment with the requirements of section 3118(c) of the *National Defense Authorization Act for FY 2010*, the Department is directed to notify the Committee at least 15 days prior to starting any General Plant Project unless the project is directed by this recommendation or explicitly included in the fiscal year 2023 budget request.” Similar language is included in both the House and Senate Appropriations committee reports for FY 2024.
- iii Annual authorization acts applicable to DOE are the *National Defense Authorization Act* (NDAA) and the *Intelligence Authorization Act*. Office receiving funding under annual authorization acts include the National Nuclear Security Administration (NNSA); the Office of Environmental Management; the Office of Nuclear Energy; the Office of Environment, Health, Safety, and Security; the Office of Legacy Management; and the Office of Intelligence and Counterintelligence.
- iv DOE Order 481.1E, *Strategic Partnership Projects*, Section 4.g.(3).
- v Additional information and reporting requirements of the Anti-Deficiency Act are in the DOE FMH Chapter 2, *Administrative Control of Funds*; OMB Circular A-11, Section 150, *Administrative Control of Funds*; and OMB Circular A-123, *Management’s Responsibility for Enterprise Risk Management and Internal Control*.
- vi The threshold may be increased when (1) the Administrator provides the Congressional defense committees with a report on the method used to calculate the adjustment; (2) a period of 30 days elapses following the date of such notification, and (3) the Administrator publishes the amount in the Federal Register.
- vii 50 USC 2746(b), Title 50 *War and National Defense, Conceptual and construction design*
- viii 42 USC 5821
- ix The content of the notification shall satisfy the statutory notification requirements contained in 50 USC 2743(d) (which applies to Defense facilities), and 42 USC 5821(b)(2) (which applies to research facilities constructed not on a DOE facility). Both requirements may apply to a specific project. Notifications must contain the TEC of the facility and describe the nature and purpose of the facility. Although Congress does not require notification of non-defense minor construction projects on a DOE installation, DOE applies the \$5 million threshold for all minor construction projects.
- x P.L. 111-84, div. C, Section 3118(c) and 42 USC 5821
- xi Offices include NNSA; EM Defense Environmental Cleanup; NE Idaho Safeguards and Security; Office of Environment, Health, Safety, and Security; Office of Hearings and Appeals; Office of Legacy Management; and the Office of Enterprise Assessments.
- xii See Principle 1 under the *Principles of Financing*, Section I.7.2.2 of the *Capital Programming Guide*. Note that the total of all segments of a minor construction project must not exceed the minor construction threshold.
- xiii See Principle 3 under the *Principles of Financing*, Section I.7.2.2 of the *Capital Programming Guide*.