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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 205 and 1021

[DOE-HQ-2025-0026]

RIN 1990-AA52

Revision of National Environmental Policy Act Implementing Procedures

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule substantially revises Department of Energy’s (DOE) regulations containing its National Environmental Policy Act (NEPA) implementing procedures, which were promulgated to “supplement[]” now-rescinded Council on Environmental Quality regulations. Mindful that the Supreme Court recently clarified NEPA is a “purely procedural statute,” DOE will henceforth maintain the remainder of its procedures in a procedural guidance document separate from the Code of Federal Regulations (DOE NEPA implementing procedures). Thus, DOE is revising 10 CFR part 1021 to contain only administrative and routine actions excepted from NEPA review in appendix A, its existing categorical exclusions in appendix B, related requirements, and a provision for emergency circumstances. DOE is revising appendix A in 10 CFR part 1021 to align with DOE’s new NEPA implementing procedures that it is publishing separate from the Code of Federal Regulations. Appendix A in 10 CFR part 1021 (formerly categorical exclusions) are now administrative and routine actions that do not require NEPA review. DOE is also revising 10 CFR part 205, subpart W, to remove the NEPA procedures from its Presidential permit regulations.

DATES: This interim rule is effective immediately. Comments are due by **[INSERT DATE 30**

DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Documents relevant to this rulemaking are posted on the Federal eRulemaking Portal at <https://www.regulations.gov> (Docket: DOE-HQ-2025-0026). Documents posted to this docket include: this interim final rule; and two “redline/strikeout” (markup) files indicating the changes in this interim final rule for 10 CFR parts 205 and 1021.

Submit comments, labeled “Revision of DOE NEPA Implementing Regulations, RIN 1990-AA52,” using the *Federal eRulemaking Portal*: www.regulations.gov.

Instructions: All submissions must include the agency name, “Department of Energy,” and docket number, DOE–HQ–2025–0026, for this rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided. Do not submit any information you consider to be private, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Docket: For access to the docket to read comments received, go to www.regulations.gov.

DOE NEPA procedures: DOE’s new NEPA implementing procedures are available at <https://energy.gov/nepa>.

FOR FURTHER INFORMATION CONTACT:

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I. Introduction

The Department of Energy (DOE) is issuing this interim final rule to remove its existing implementing regulations for the National Environmental Policy Act of 1969, *et seq.*, as amended (NEPA). DOE’s existing NEPA implementing regulations were promulgated as a “supplement[] ... to be used in conjunction with,” 10 CFR 1021.100, the Council on Environmental Quality’s (CEQ’s) NEPA regulations. DOE also “adopt[ed]” the CEQ’s regulations by incorporation. 10 CFR 1021.103. But the CEQ’s regulations have been repealed, effective April 11. *See Removal of National Environmental Policy Act Implementing Regulations* (Feb. 25, 2025). Moreover, in Executive Order (E.O.) 14154, *Unleashing American Energy* (90 FR 8353; January 29, 2025), President Trump rescinded President Carter’s E.O., 11991, *Relating to Protection and Enhancement of Environmental Quality* (42 FR 26967; May 24, 1977), which was the basis CEQ had invoked for its authority to make rules to begin with. DOE’s regulations, which were a “supplement[] ... to be used in conjunction with” those CEQ regulations, thus stand in obvious

need of fundamental revision. President Trump in E.O. 14154 further directed agencies to revise their NEPA implementing procedures.

Not only that, but Congress recently amended NEPA in significant part in the Fiscal Responsibility Act of 2023 (FRA), in which Congress increased the length of Title I of NEPA by more than 300%, providing much detail on procedural issues, which CEQ and individual acting agencies had previously needed to address in their own procedures. With DOE's NEPA implementing procedures still unmodified more than two years after this significant legislative overhaul, it is exigent that DOE move quickly to conform its procedures to the statute as amended. Finally, the Supreme Court has recently issued its decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), in which it described the “transform[ation]” of NEPA “from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects.” *Id.* at 1507, 1513. The Supreme Court explained that part of that problem had been caused by decisions of lower courts, which it rejected, issuing a “course correction” mandating that courts give “substantial deference” to reasonable agency conclusions underlying its NEPA process. *Id.* at 1513-1514. But the Court also acknowledged, and through its course correction sought to address, the effect on “litigation-averse agencies” which, in light of judicial “micromanage[ment],” had been “tak[ing] ever more time and [] prepar[ing] ever longer EISs for future projects.” *Id.* at 1513. DOE, thus, is issuing this Interim Final Rule (IFR) to align its actions with the Supreme Court's decision and streamline its process of ensuring reasonable NEPA decisions. This revision has thus been called for, authorized, and directed by all three branches of government at the highest possible levels.

DOE's procedures for implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as amended, are contained principally in 10 CFR part 1021. Additional DOE NEPA procedures are contained in 10 CFR part 205, subpart W. These procedures in 10 CFR part 205, subpart W specifically relate to applications for a Presidential permit authorizing the construction, connection, operation, and maintenance of facilities for transmission of electric energy at international boundaries under E.O. 10485 (18 FR 5397; September 3, 1953), as amended by E.O. 12038 (43 FR 4957; February 3, 1978).

DOE is issuing this interim final rule to revise 10 CFR part 1021 so that it includes only DOE's existing categorical exclusions in appendix B, related requirements, and a provision for emergency circumstances; and to remove NEPA procedures from 10 CFR part 205, subpart W. Other than these few provisions, DOE's procedures will henceforth be contained in the *U.S. Department of Energy National Environmental Policy Act (NEPA) Implementing Procedures*, a copy of which is reprinted below for explanatory purposes only (and will not be codified in the CFR). The procedures are intended to be non-binding guidance.

The Supreme Court could not have been clearer in *Seven County* that NEPA is a procedural statute. *See Seven County*, 145 S. Ct. 1507 ("NEPA is a purely procedural statute."); *see id.* at 1510 ("NEPA is purely procedural.... NEPA does not mandate particular results, but simply prescribes the necessary process for an agency's environmental review of a project"); (internal quotation omitted); *id.* at 1511 (NEPA is a *purely procedural statute*"); *id.* at 1513 (NEPA is properly understood as "a modest procedural requirement"); *id.* at 1514 ("NEPA's status as a purely procedural statute"); *see also id.* at 1507 ("Simply stated, NEPA is a procedural cross-check, not a substantive roadblock."). The history of DOE's implementing regulations also reflects the understanding that they were understood as procedural rules, for they were uncodified for over a

decade before being codified “as a matter of good policy,” *id.* at 1517. This is, moreover, consistent with the approach that several other Federal agencies have used for decades.

Also, this action fulfills President Trump’s directive in E.O. 14154 for each agency to, in consultation with the CEQ, revise its agency-level NEPA implementing procedures in light of the Fiscal Responsibility Act. 90 FR 8355. Executive Order 14301, *Reforming Nuclear Reactor Testing at the Department of Energy*, (May 23, 2025) directed DOE in section 6(a) to “take action to reform the Department’s rules governing compliance with the National Environmental Policy Act (NEPA) no later than June 30, 2025, consistent with the policies articulated in sections 2 and 5 of Executive Order 14154 of January 20, 2025 (Unleashing American Energy), and with applicable law.” This interim final rule also fulfills that direction.

In addition, DOE is removing NEPA procedures from its Presidential permit regulations (10 CFR part 205, subpart W) to be consistent with the removal of most DOE NEPA procedures in 10 CFR part 1021 and to avoid confusion among potential applicants. DOE has previously stated that it issues Presidential permits pursuant to authority delegated by the President under E.O. 10485, as amended by E.O. 12038, which provides that “the proper conduct of foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas[.]”¹ The authority delegated to DOE by the E.O. does not derive from any act of Congress but arises “by virtue of the authority vested in [the President] as President of the United States and Commander in Chief of the armed forces of the United States[.]”² Thus, in issuing a Presidential permit, DOE does not act pursuant to its congressionally established authority as a Federal agency, but on behalf of the President pursuant to a delegation of the

¹ 18 FR 5397 (preamble).

² *Id.*

President’s authority under the United States Constitution. It is settled and established law that the President is not an “agency” within the meaning of the Administrative Procedure Act (APA) and that Presidential actions are not subject to NEPA review.³ Because NEPA review is not required for Presidential actions, DOE has further determined it appropriate to remove the NEPA procedures within its Presidential permit regulations at 10 CFR part 205, subpart W.

DOE is retaining its categorical exclusions in appendix B and related requirements in regulation to avoid any uncertainty about the continuation of its already-established categorical exclusions or the procedural mechanism through which DOE established them. The 2023 revisions to NEPA and the 2025 repeal of the Council on Environmental Quality’s (CEQ’s) NEPA procedures do not require reconsideration or repeal of DOE’s previous determinations as to which of its actions normally do not significantly affect the quality of the human environment, which is the basis for an agency’s establishment of a categorical exclusion, *see* NEPA § 111(1). DOE is retaining a provision for action in emergency situations to ensure that DOE can respond timely to any such event and to avoid any confusion regarding the continued validity of this already-established provision for action in emergency situations.

DOE has prepared new NEPA implementing procedures that are reprinted as part of this IFR for explanatory purposes only; they will not be codified in the CFR. These new DOE NEPA implementing procedures ensure compliance with NEPA, as amended. DOE’s new NEPA procedures are also available at <https://energy.gov/nepa>. DOE will begin implementing its new NEPA procedures immediately.

³ *Franklin v. Massachusetts*, 505 U.S. 788, 800 (1992) (holding the President is not subject to judicial review under the APA, given “the separation of powers and the unique constitutional position of the President); *see also Dalton v. Specter*, 511 U.S. 462, 469-471 (1994); *Portland Audubon Soc’y v. Endangered Species Committee*, 984 F.2d 1534, 1547 (9th Cir. 1993); and, *Greene County. Planning Bd. v. Fed. Power Comm’n*, 528 F.2d 38 (2d Cir. 1975) (holding that issuance of a Presidential permit by DOE’s predecessor agency was not subject to judicial review under the Federal Power Act because the issuance of such a permit is “a function rooted in the President’s power with respect to foreign relations if not as Commander in Chief of the Armed Forces”).

Prior to and separate from this interim final rule, DOE published a direct final rule on May 16, 2025, (90 FR 20753) that removes several sections of 10 CFR part 205 as part of a deregulatory action consistent with Executive Order 14192, *Unleashing Prosperity Through Deregulation* signed on January 31, 2025 (90 FR 9065). Some of the changes made in this interim final rule duplicate aspects of that prior direct final rule, with the same effect regarding removing the NEPA provisions from DOE’s Presidential permit regulations. There is, however, no substantive conflict between this interim final rule and the previously published direct final rule.

A. National Environmental Policy Act

Congress enacted NEPA to declare a national policy “to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and [to] fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. 4331(a).

NEPA, as amended by the Fiscal Responsibility Act of 2023 (FRA), Public Law 118–5, furthers this national policy by requiring Federal agencies to prepare an environmental impact statement (EIS)—“in essence, a report”—for proposed “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C); *Seven County*, 145 S. Ct. 1507. This statement must address: (1) The reasonably foreseeable environmental effects of the proposed agency action; (2) any reasonably foreseeable adverse environmental effects that cannot be avoided should the proposal be implemented; (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal; (4) the relationship

between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed action should it be implemented. 42 U.S.C. 4332(2)(C).

NEPA does not mandate particular results or substantive outcomes. *Seven County*, 145 S. Ct. at 1510-1512. Rather, NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of agencies' decision-making processes. As amended by the Fiscal Responsibility Act of 2023, NEPA provides requirements to facilitate timely and unified Federal reviews, including provisions clarifying lead, joint lead, and cooperating agency designations, generally requiring the development of a single environmental document, directing agencies to develop procedures for project sponsors to prepare environmental assessments and environmental impact statements, and prescribing page limits and deadlines. 42 U.S.C. 4336a. NEPA also sets forth the circumstances under which agencies may rely on programmatic environmental documents, 42 U.S.C. 4336b, and adopt and use another agency's categorical exclusions. 42 U.S.C. 4336c.

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

impact statement is a document analyzing a proposed agency action with significant impact, governed by the provisions of 42 U.S.C. 4332(2)(C), 4336(b)(1).

B. DOE NEPA Implementing Procedures and Regulations

In 1979, DOE established 10 CFR part 1021 through a rulemaking that adopted the CEQ NEPA implementing regulations (44 FR 45918). From 1979 to 1992, as a supplement to the CEQ NEPA implementing regulations, DOE issued its NEPA implementing procedures as “guidelines,” which also listed categories of actions that normally do not have potential to cause significant environmental impacts (categorical exclusions) (45 FR 20694; 45 FR 78756; 47 FR 7976; 48 FR 685; 52 FR 659; 52 FR 47662; 54 FR 12474; 55 FR 37174).

In 1992, after notice and comment, DOE replaced the NEPA guidelines with revised and expanded DOE NEPA regulations at 10 CFR part 1021 (57 FR 15122), including adoption of the CEQ NEPA implementing regulations. The proposed and final rulemakings were both explicit that DOE was “issuing its NEPA Guidelines as regulations that will be published in the *Code of Federal Regulations*” to “ensure that its NEPA procedures are more accessible to the public,” and not because the agency had changed its mind that the procedures were just that, procedural. 57 FR 15122; 55 FR 46444. Indeed, both emphasized that “[t]he rule amends and codifies already existing policies and procedures for compliance with NEPA,” and contained no substantive changes that would impose obligations on private citizens. 57 FR 15144; 55 FR 46448. In 1996, DOE made changes to the DOE NEPA regulations to improve efficiency by clarifying and streamlining certain DOE requirements, including those relating to power marketing activities (61 FR 36222; 61 FR 64603). In 2011, DOE amended the DOE NEPA regulations to modify and clarify existing provisions and to add 20 new categorical exclusions and make associated changes (76 FR 63764). In 2020, DOE updated the DOE NEPA regulations regarding authorizations under

section 3 of the Natural Gas Act, including revising a categorical exclusion for exporting natural gas (85 FR 78197). In 2024, DOE added a new categorical exclusion for certain energy storage systems and revised categorical exclusions for upgrading and rebuilding powerlines and for solar photovoltaic systems (89 FR 34074).

C. Changes Made in this Interim Final Rule

In 10 CFR part 205, subpart W, DOE is removing and reserving sections 321, 328, and 329 in their entirety. DOE also is removing paragraphs (c) and (d) in section 322 and re-lettering paragraph (e) to now be paragraph (c).

In 10 CFR part 1021, DOE is removing the reference to CEQ NEPA implementing regulations from section 100, Purpose, and is merging in section 102(a), Applicability, to more concisely state the purpose of these regulations. DOE is renumbering the Definitions from section 104 to be section 101 and removing definitions that are no longer relevant to this part. DOE is renumbering section 410, Application of categorical exclusions, to be section 102, is updating references to other sections of the revised part 1021, and is removing references to the CEQ NEPA implementing regulations. DOE is removing the reference to CEQ NEPA implementing regulations from section 343(a), Emergency actions, and renumbering that paragraph as section 103. DOE is moving appendices A and B to subpart D of part 1021 to be appendices A and B to part 1021 and is updating references to other sections of the revised part 1021 throughout those appendices. DOE is removing all other sections of 10 CFR part 1021.

In the relocated 10 CFR part 1021, appendix A, DOE is modifying the title from Categorical Exclusions Applicable to General Agency Actions to Administrative and Routine Actions Excepted from NEPA Review. The actions in this list were formerly identified as categorical exclusions for DOE. NEPA does not apply to actions that are solely administrative

and routine that are undertaken to support the normal conduct of DOE business. While such activities are Federal actions, they are not “major” and therefore not subject to NEPA. These can now be classified as actions where NEPA does not apply because they do not fall within the definition of “major Federal action” in Section 110(10) of NEPA, 42 U.S.C. 4336e(10). These actions have been retained as appendix A for ease of reference and to avoid confusion.

II. Basis for Revising DOE’s NEPA Implementing Regulations

As stated previously, DOE relied on CEQ’s NEPA implementing regulations in promulgating its NEPA implementing regulations. President Carter originally directed CEQ to implement NEPA regulations via E.O. 11991. However, President Trump rescinded that Executive Order in E.O. 14154.⁴ As CEQ explained in its interim final rule rescinding its NEPA implementing regulations, the President removed CEQ’s prior asserted basis for issuing and maintaining its NEPA implementing regulations, and directed CEQ to rescind those regulations. Accordingly, CEQ concluded those regulations cannot stand.⁵ CEQ has accordingly repealed its NEPA regulations. *See Removal of National Environmental Policy Act Implementing Regulations*, (Feb. 25, 2025). That rule became effective on April 11, 2025. *See id.*

As explained previously, DOE’s existing NEPA implementing regulations were promulgated as a “supplement[] ... to be used in conjunction with,” 10 CFR 1021.100, the Council on Environmental Quality’s (CEQ’s) NEPA regulations, and DOE also “adopt[ed]” the CEQ’s regulations by incorporation.⁶ Subsequent revisions to the DOE regulations added additional language to supplement the CEQ NEPA implementing regulations in certain sections, but in others retained the original language from the CEQ NEPA implementing regulations. Within part 1021

⁴ E.O. 14154 at sec. 5(a).

⁵ 90 FR 10610

⁶ See 10 CFR 1021.103.

there are numerous cross references to the CEQ NEPA implementing regulations. Because DOE's regulations expressly adopt and repeatedly reference CEQ's regulations, removal of the CEQ NEPA implementing regulations from the Code of Federal Regulations leaves DOE's existing regulations hanging in air. They are now a "supplement ... to be used in conjunction with" rules that no longer exist and that could not exist again under existing Executive Orders.

Moreover, under these circumstances, leaving DOE's existing regulations on the books would create grave uncertainty and confusion in the application of the DOE NEPA regulations, in conflict with a directive from the President. E.O. 14154 directs agencies to revise their NEPA implementing procedures to "prioritize efficiency and certainty." Leaving DOE's existing regulations on the books, "supplementing" CEQ's nonexistent regulations, would obviously create confusion. This directive also explains in pertinent part the major part of the existing regulation that has been retained: As explained in Section I, DOE has determined that retaining its categorical exclusions as appendix B in regulation will avoid any uncertainty regarding the continued validity of its already-established categorical exclusions or the procedural mechanism through which DOE established them.

Where such categorical-exclusion-specific concerns do not prevail, however, DOE has decided that the flexibility to respond to new developments in this fast-evolving area of law, afforded by using non-codified procedures, outweighs the appeal of codifying its regulations going forward. Notably, in 1992, when DOE codified its existing procedures to "ensure that [they] are more accessible to the public," 57 FR 15122; 55 FR 46444, the Internet was in its infancy. Now, DOE can—and will—ensure that accessibility to the public by posting these procedures online, which removes the upside of codification. By contrast, not codifying its procedures will enable it to rapidly update these procedures in response to future court decisions (such as *Seven County*) or

Presidential directives (such as E.O. 14301). The balance thus tips decisively toward using a non-regulatory, but publicly accessible, procedural document. Because rescinding DOE's existing regulations without simultaneously adopting a replacement would likely cause uncertainty among regulated parties, these new procedures that DOE adopts have informed its decision to rescind most of its prior regulations.

DOE's new NEPA implementing procedures are a more faithful implementation of the statute as amended in 2023 than its old procedures. They implement major structural features of the 2023 amendments, such as deadlines and page limits for environmental assessments and environmental impact statements, as directed at NEPA Section 107(g), and provide that DOE will complete preparation of these documents within the maximum length and on the timeline that Congress intends. They incorporate Congress's definition of "major Federal action" and the exclusions thereto, as codified at NEPA Section 111(10). They incorporate Congress's mandated procedure for determining the appropriate level of review under NEPA, as codified in NEPA Section 106. They incorporate Congress's direction with respect to establishment, adoption, and application of categorical exclusions, as codified at NEPA Section 111(10). They provide procedures governing project-sponsor-prepared environmental assessments and environmental impact statements, as directed at NEPA Section 107(f). And they incorporate Congress's revision to the requirements for what an agency must address in its environmental impact statements, as codified at NEPA Section 102(2)(C), and Congress's requirement that public notice and solicitation of comment be provided when issuing a notice of intent to prepare an environmental impact statement, as directed at NEPA Section 107(c). All of these are crucial features of Congress's policy design and its purpose in the 2023 amendments that NEPA review be more efficient and certain.

Moreover, all of these respond to the President’s directive in E.O. 14154; and all of these reflect the Supreme Court’s recent and unequivocal statement that NEPA is a purely procedural statute. DOE is conscious of the Supreme Court’s admonition that NEPA review has grown out of all proportion to its origins of a “modest procedural requirement,” creating, “under the guise of just a little more process,” “[d]elay upon delay, so much so that the process seems to ‘borde[r] on the Kafkaesque.’” *Seven County*, 145 S. Ct. at 1513 (internal quotation omitted). These procedures, therefore, attempt to align NEPA with its Congressionally mandated dimensions, reflecting the guidance given also by the President and the Supreme Court, and making review under it faster, more flexible, and more efficient.

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

Because reliance interests are inherently backward-looking, it is unclear how any party could assert reliance interests in *prospective* procedures. To the extent such interests exist, DOE holds that they are “outweigh[ed]” by “other interests and policy concerns.” *Id.* Namely, the complex web of regulations that preexisted the 2023 amendments to NEPA and these new procedures repeatedly “led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation,” which in turn has meant that “[f]ewer projects

make it to the finish line,” or even “to the starting line.” *Seven County*, 145 S. Ct. at 1513-1514. This has increased the cost of projects dramatically, “both for the agency preparing the EIS and for the builder of the project,” resulting in systemic harms to America’s infrastructure and economy. *Id.* at 1514. Correspondingly, the wholesale revision and simplification of this regime, effectuated by these Procedures, is necessary to ensure efficient and predictable reviews, with significant upsides for the economy and for projects of all sorts. This set of policy considerations drastically outweighs any claimed reliance interests in the preexisting procedures.

DOE has revised its NEPA implementing procedures to conform to the 2023 statutory amendments, to respond to President Trump’s direction in EO 14154 to, “[c]onsistent with applicable law, prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the policy goals set forth in section 2 of [that] order or that could otherwise add delays and ambiguity to the permitting process,” and to address the pathologies of the NEPA process and NEPA litigation as identified by the Supreme Court. Where DOE has retained an aspect of its preexisting NEPA implementing procedures, it is because that aspect is compatible with these guiding principles; where DOE has revised or removed an aspect, it is because that aspect is not so compatible.

III. Basis for Issuing an Interim Final Rule

A. Notice-and-Comment Rulemaking Is Not Required

DOE is repealing its prior procedures and practices for implementing NEPA, a “purely procedural statute” which “‘simply prescribes the necessary process’ for an agency’s environmental review of a project—a review that is, even in its most rigorous form, “only one input into an agency’s decision and does not itself require any particular substantive outcome.” *Seven County*, 145 S. Ct. at 1511. “NEPA imposes no *substantive* constraints on the agency’s

ultimate decision to build, fund, or approve a proposed project,” and “is relevant only to the question of whether an agency’s final decision . . . was reasonably explained.” *Id.* at 1511. As such, notice and comment procedures are not required because this revision falls within the APA exception for “rules of agency organization, procedure, or practice.” 5 U.S.C. 553(b)(A). DOE’s existing regulations do not dictate what outcomes such consideration must produce, nor do they impose binding legal obligations on private citizens. Rather, they prescribe how DOE will conduct its NEPA reviews: detailing the structure of environmental impact statements, specifying submission requirements, and directing the timing of public comment periods. These are procedural provisions, not substantive environmental ones. DOE recognized as much, indeed, even when codifying them: DOE was explicit that it was “issuing its NEPA Guidelines as regulations that will be published in the *Code of Federal Regulations*” to “ensure that its NEPA procedures are more accessible to the public,” and not because the agency had changed its mind that the procedures were just that, procedural. 57 FR 15122; 55 FR 46444. Indeed, both emphasized that “[t]he rule amends and codifies already existing policies and procedures for compliance with NEPA,” and contained no substantive changes that would impose obligations on private citizens. 57 FR 15144; 55 FR 46448. Thus, because procedural rules do not require notice and comment, they do not require notice and comment to be removed from the Code of Federal Regulations.

Just so, DOE’s new procedures will also be purely procedural, guiding the agency’s own compliance with NEPA. Indeed, it is hard to see how they could be otherwise, since the Supreme Court has recently repeatedly emphasized that “NEPA is a purely procedural statute.” *Seven County*, 145 S. Ct. at 1507, *see id.* at 1510 (“NEPA is purely procedural.... NEPA does not mandate particular results, but simply prescribes the necessary process for an agency’s environmental review of a project”) (internal quotation omitted); *id.* at 1511 (NEPA is a *purely*

procedural statute”); *id.* at 1513 (NEPA is properly understood as “a modest procedural requirement”); *id.* at 1514 (“NEPA’s status as a purely procedural statute”); *see also id.* at 1507 (“Simply stated, NEPA is a procedural cross-check, not a substantive roadblock.”). Procedures for implementing a purely procedural statute must be, by their nature, procedural rules.

Moreover, even if (and to the extent that) DOE’s regulations were not procedural rules, they may be characterized as interpretative rules or general statements of policy under 5 U.S.C. USC 553(b)(A). An interpretative rule provides an interpretation of a statute, rather than making discretionary policy choices that establish enforceable rights or obligations for regulated parties under delegated congressional authority. The definitions sections of both the old and new procedures, for instance, may be classified as such. General statements of policy provide notice of an agency’s intentions as to how it will enforce statutory requirements, again without creating enforceable rights or obligations for regulated parties under delegated congressional authority. The prefatory sections of both the old and new procedures, for instance, may be classified as general statements of policy. Both of these types of agency action are expressly exempted from notice and comment by statute.

B. DOE Has Good Cause for Proceeding with an Interim Final Rule.

Moreover, DOE also finds that, to the extent that prior notice and solicitation of public comment would otherwise be required or this action could not immediately take effect, the need to expeditiously replace its existing rules satisfies the APA’s “good cause” exceptions⁵ USC 553(b)(B), (d). The APA authorizes agencies to issue regulations without notice and public comment when an agency finds, for good cause, that notice and comment is “impracticable, unnecessary, or contrary to the public interest,” 5 U.S.C. USC 553(b)(B), and to make the rule effective immediately for good cause, 5 USC 553(d)(3). As discussed in Sections I and II,

previously, DOE's prior rules were promulgated as a "supplement[] ... to be used in conjunction with," 10 CFR 1021.100, CEQ's NEPA regulations, and DOE also "adopt[ed]" the CEQ's regulations by incorporation. As such, DOE's current rules are left hanging in air, supplementing a NEPA regime that no longer exists. DOE, thus far and as a temporary, emergency measure, has been continuing to operate under its prior procedures *as if* the CEQ NEPA regime still existed. This is not, however, tenable. As soon as proper procedures were available—*i.e.*, now—this makeshift regime needs to be rescinded immediately.

That being so, rescinding the old procedures immediately without replacing them would create a vacuum that would inflict immense uncertainty on agencies and regulated parties and potentially grind all projects under DOE's purview to a halt. So pairing the rescission with a new structure immediately is absolutely critical. Because of this need for speed and certainty, notice-and-comment is, to the extent it was required at all, impracticable and contrary to the public interest.

To the extent that public comment may inform DOE as to whether it has legal authority to make a different choice than the one it has taken in this interim final rule, DOE's solicitation of public comment for 30-days following the publication of the rule is intended to accommodate that possibility. But, to the extent that this interim final rule would otherwise require a proposal and solicitation of public comment, DOE's view is that the "good cause" exception (5 USC 553(b)(B)) pertains here. And though DOE seeks comments to obtain the public's views, such comments could not alter the legal realities—most notably the repeal of the CEQ's NEPA rules and the rescission of the E.O. that purported to authorize them—that create the swift *need* for such a change. DOE will consider comments submitted in response to this action and may address them when issuing a final rule, if warranted, after consideration of the comments received.

For the same reasons stated in the present section, above, DOE finds that “good cause” exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date that would otherwise be required. This IFR will accordingly be effective immediately.

C. DOE Solicits Comment.

As explained previously, DOE believes comment is not required because its NEPA procedures were and are procedural and because, even if comment were required under the APA, good cause exists to forego it. Nevertheless, DOE has elected voluntarily to solicit comment. DOE is soliciting comment on this interim final rule and the accompanying procedural document, and may make further revisions to this action, if DOE’s review of any comments submitted suggests that further revisions are warranted. Commenters have 30 days from the date of publication of this interim final rule to submit comments.

IV. Procedural Requirements

A. Executive Orders 12866 and 13563

E.O. 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011) requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance

objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this regulatory action does constitute a “significant regulatory action” under E.O. 12866, as supplemented by E.O. 13563, and has reviewed this action.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this interim final rule. See 5 U.S.C. 601(2), 603(a).

C. National Environmental Policy Act

NEPA does not require agencies to prepare a NEPA analysis before establishing or updating agency procedures for implementing NEPA. Agency NEPA implementing procedures

are not themselves subject to NEPA.⁷ DOE has determined that this rule will not have a significant effect on the environment because it will not authorize any specific agency activity or commit resources to a project that may affect the environment. Therefore, DOE does not intend to conduct a NEPA analysis of this interim final rule.

D. Executive Order 13132

E.O. 13132, “Federalism”, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined the interim final rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

E. Executive Order 13175

Under E.O. 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249 (Nov. 6, 2000), DOE may not issue a discretionary rule that has Tribal implications or that imposes substantial direct compliance costs on Indian Tribal governments. DOE has determined that this interim final rule will not have such effects and has concluded that E.O. 13175 does not apply to this interim final rule.

F. Executive Order 13211

⁷ *Heartwood v. U.S. Forest Serv.*, 230 F.3d 947, 954–955 (7th Cir. 2000) (finding that neither NEPA nor the CEQ NEPA implementing regulations required the Forest Service to conduct an environmental assessment or an environmental impact statement prior to the promulgation of its procedures creating a categorical exclusion).

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This interim final rule does not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

G. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and Tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include a regulation that would impose upon State, local, or Tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, in the aggregate, or the private sector, other than to the extent such actions merely incorporate requirements

specifically set forth in a statute. Section 202 of the title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or the private sector, of \$100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposed a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments. 2 U.S.C. 1534. This interim final rule does not result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Paperwork Reduction Act

This interim final rule does not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

I. Executive Orders 14154 and 14192

DOE has examined this interim final rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154 “Unleashing American Energy,” E.O. 14192, “Unleashing Prosperity Through Deregulation,” and Presidential Memorandum, “Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis.” This rule is an E.O. 14192 deregulatory action.

J. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this interim final rule prior to the effective date set forth at the outset of this interim

final rule. The report will state that it has been determined that this interim final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interim final rule; request for comments.

List of Subjects

10 CFR Part 205

Administrative practice and procedure; Classified information; Confidential business information; Environmental protection; Freedom of information; Hazardous waste; Nuclear energy; Nuclear materials; Nuclear power plants and reactors; Penalties; Reporting and recordkeeping requirements; Sex discrimination; Waste treatment and disposal.

List of Subjects

10 CFR Part 1021

Administrative practice and procedure; Environmental impact statements; Environmental protection; Natural resources.

Signing Authority

This document of the Department of Energy was signed on June 30, 2025, by Jeffrey Novak, Acting General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the

undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on June 30, 2025.

JEFFREY
NOVAK

Digitally signed by
JEFFREY NOVAK
Date: 2025.06.30
12:41:20 -04'00'

Jeffrey Novak,
Acting General Counsel

For the reasons stated in the preamble, DOE amends part 205 of chapter II and part 1021 of chapter X of title 10 of the Code of Federal Regulations as set forth below:

PART 205 — ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. The authority citation for part 205 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Federal Power Act, Pub. L. 66-280, 41 Stat. 1063 (16 U.S.C. 792 *et seq.*); E.O. 10485, 18 FR 5397, 3 CFR, 1949-1953, Comp., p. 970 as amended by E.O. 12038, 43 FR 4957, 3 CFR 1978 Comp., p. 136; E.O. 14154, 90 FR 8353.

§ 205.321 [Removed and Reserved]

2. Remove and reserve § 205.321.

§ 205.322 [Amended]

3. Amend § 205.322 by removing paragraphs (c) and (d) and redesignating paragraph (e) as paragraph (c).

§ 205.328 [Removed and Reserved]

4. Remove and reserve § 205.328.

§ 205.329 [Removed and Reserved]

5. Remove and reserve § 205.329.

6. Revise part 1021 to read as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Sec.

1021.100 Purpose.

1021.101 Definitions.

1021.102 Application of categorical exclusions (categories of actions that normally do not

require EAs or EISs).

1021.103 Emergency actions.

Appendix A to Part 1021

Administrative and Routine Actions Excepted from NEPA Review

Appendix B to Part 1021

Categorical Exclusions Applicable to Specific Agency Actions

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 4321 *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 1021.100 Purpose.

The purpose of this part is to establish certain procedures that the Department of Energy (DOE) shall use to comply with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)), as amended. This part applies to all Departmental Elements.

§ 1021.101 Definitions.

As used in these implementing procedures, terms have the meanings provided in NEPA § 111, 42 U.S.C. 4336e. In addition:

CERCLA-excluded petroleum and natural gas products means petroleum, including crude oil or any fraction thereof, that is not otherwise specifically listed or designated as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601.101(14)) and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or of pipeline quality (or mixtures of natural gas and such synthetic gas).

Contaminant means a substance identified within the definition of contaminant in section 101(33) of CERCLA (42 U.S.C. 9601.101(33)).

Hazardous substance means a substance identified within the definition of hazardous substances

in section 101(14) of CERCLA (42 U.S.C. 9601.101(14)). Radionuclides are hazardous substances through their listing under section 112 of the Clean Air Act (42 U.S.C. 7412) (40 CFR part 61, subpart H).

Pollutant means a substance identified within the definition of pollutant in section 101(33) of CERCLA (42 U.S.C. 9601.101(33)).

§ 1021.102 Application of categorical exclusions (categories of actions that normally do not require EAs or EISs).

(a) The actions listed in appendices A and B to this part are categories of actions that DOE has determined do not normally have a significant effect on the human environment (categorical exclusions).

(b) To find that a proposal is excluded pursuant to a categorical exclusion, DOE shall determine the following:

(1) The proposal fits within a category of actions that is listed in appendix B to this part;

(2) There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Extraordinary circumstances are unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources; and

(c) All categorical exclusions may be applied by any organizational element of the Department of Energy. The sectional divisions in appendix B to this part are solely for purposes of organization of that appendix and are not intended to be limiting.

(d) A category of actions includes activities foreseeably necessary to proposals encompassed within the category of actions (such as award of implementing grants and contracts, site

preparation, purchase and installation of equipment, and associated transportation activities).

(e) Categorical exclusion determinations for actions listed in appendix B shall be documented and made available to the public by posting online, generally within two weeks of the determination, unless additional time is needed in order to review and protect classified information, “confidential business information,” or other information that DOE would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Posted categorical exclusion determinations shall not disclose classified information, “confidential business information,” or other information that DOE would not disclose pursuant to FOIA.

(f) Proposed recurring activities to be undertaken during a specified time period, such as routine maintenance activities for a year, may be addressed in a single categorical exclusion determination after considering the potential aggregated impacts.

(g) The following clarifications are provided to assist in the appropriate application of categorical exclusions that employ the terms or phrases:

(1) “Previously disturbed or developed” refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.

(2) DOE considers terms such as “small” and “small-scale” in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the

proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, DOE would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action.

§ 1021.103 Emergency actions.

DOE may take an action without observing all provisions of DOE's NEPA implementing procedures in emergency situations that demand immediate action. DOE shall consult with CEQ as soon as possible regarding alternative arrangements for emergency actions having significant environmental impacts. DOE shall document, including publishing a notice in the *FEDERAL REGISTER*, emergency actions covered by this paragraph within 30-days after such action occurs; this documentation shall identify any adverse impacts from the actions taken, further mitigation necessary, and any NEPA documents that may be required.

Appendix A to Part 1021— Administrative and Routine Actions Excepted from NEPA Review

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A1 Routine DOE business actions

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A9 Information gathering, analysis, and dissemination

A10 Reports and recommendations on non-DOE legislation

A11 Technical advice and assistance to organizations

A12 Emergency preparedness planning

A13 Procedural documents

A14 Approval of technical exchange arrangements

A15 International agreements for energy research and development

A1 Routine DOE business actions

Routine actions necessary to support the normal conduct of DOE business limited to administrative, financial, and personnel actions.

A2 Clarifying or administrative contract actions

Contract interpretations, amendments, and modifications that are clarifying or administrative in nature.

A3 Certain actions by Office of Hearings and Appeals

Adjustments, exceptions, exemptions, appeals and stays, modifications, or rescissions of orders issued by the Office of Hearings and Appeals.

A4 Interpretations and rulings for existing regulations

Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

A5 Interpretive rulemakings with no change in environmental effect

Rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

A6 Procedural rulemakings

Rulemakings that are strictly procedural, including, but not limited to, rulemaking (under 48

CFR chapter 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.

A7 [Reserved]

A8 Awards of certain contracts

Awards of contracts for technical support services, management and operation of a government-owned facility, and personal services.

A9 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. (See also B3.1 of appendix B to this part.)

A10 Reports and recommendations on non-DOE legislation

Reports and recommendations on legislation or rulemaking that are not proposed by DOE.

A11 Technical advice and assistance to organizations

Technical advice and planning assistance to international, national, state, and local organizations.

A12 Emergency preparedness planning

Emergency preparedness planning activities, including, but not limited to, the designation of onsite evacuation routes.

A13 Procedural documents

Administrative, organizational, or procedural Policies, Orders, Notices, Manuals, and Guides.

A14 Approval of technical exchange arrangements

Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations (including, but not limited to, assistance in identifying and analyzing another country's energy resources, needs and options).

A15 International agreements for energy research and development

Approval of DOE participation in international “umbrella” agreements for cooperation in energy research and development activities that would not commit the U.S. to any specific projects or activities.

Appendix B to Part 1021—Categorical Exclusions Applicable to Specific Agency Actions

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B3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research

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B7.1 Emergency measures under the International Energy Program

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B. Conditions That Are Integral Elements of the Categories of Actions in Appendix B

The categories of actions listed below include the following conditions as integral elements of the categories of actions. To fit within the categories of actions listed below, a proposal must be one that would not:

- (1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders;
- (2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;
- (3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;
- (4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a Federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:
 - (i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, Federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;
 - (ii) Federally-listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened species or their habitat; Federally-protected marine

mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands (as defined in 10 CFR 1022.4, “Compliance with Floodplain and Wetland Environmental Review Requirements: Definitions,” or its successor);

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), “Farmland Protection Policy Act: Definitions,” or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

B1. Categorical Exclusions Applicable to Facility Operation

B1.1 Changing rates and prices

Changing rates for services or prices for products marketed by parts of DOE other than Power Marketing Administrations, and approval of rate or price changes for non-DOE entities, that are

consistent with the change in the implicit price deflator for the Gross Domestic Product published by the Department of Commerce, during the period since the last rate or price change.

B1.2 Training exercises and simulations

Training exercises and simulations (including, but not limited to, firing-range training, small-scale and short-duration force-on-force exercises, emergency response training, fire fighter and rescue training, and decontamination and spill cleanup training) conducted under appropriately controlled conditions and in accordance with applicable requirements.

B1.3 Routine maintenance

Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (including, but not limited to, pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed, provided that the activities would be conducted in a manner in accordance with applicable requirements. Custodial services are activities to preserve facility appearance, working conditions, and sanitation (such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal). Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Such maintenance may occur as a result of severe weather (such as hurricanes, floods, and tornados), wildfires, and other such events. Routine maintenance may result in replacement to the extent that replacement is in-kind and is not a substantial upgrade or improvement. In-kind replacement includes installation of new components to replace outmoded components, provided that the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a

major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life).

Routine maintenance activities include, but are not limited to:

- (a) Repair or replacement of facility equipment, such as lathes, mills, pumps, and presses;
- (b) Door and window repair or replacement;
- (c) Wall, ceiling, or floor repair or replacement;
- (d) Reroofing;
- (e) Plumbing, electrical utility, lighting, and telephone service repair or replacement;
- (f) Routine replacement of high-efficiency particulate air filters;
- (g) Inspection and/or treatment of currently installed utility poles;
- (h) Repair of road embankments;
- (i) Repair or replacement of fire protection sprinkler systems;
- (j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing, and scraping and grading of unpaved surfaces;
- (k) Erosion control and soil stabilization measures (such as reseeding, gabions, grading, and revegetation);
- (l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 435.1, “Radioactive Waste Management,” or its successor;
- (m) Repair and maintenance of transmission facilities, such as replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed powerlines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions) or its successor;

- (n) Routine testing and calibration of facility components, subsystems, or portable equipment (such as control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes);
- (o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), and removal of contaminated intact equipment and other material (not including spent nuclear fuel or special nuclear material in nuclear reactors); and
- (p) Removal of debris.

B1.4 Air conditioning systems for existing equipment

Installation or modification of air conditioning systems required for temperature control for operation of existing equipment.

B1.5 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.

B1.6 Tanks and equipment to control runoff and spills

Installation or modification of retention tanks or small (normally under one acre) basins and associated piping and pumps for existing operations to control runoff or spills (such as under 40 CFR part 112). Modifications include, but are not limited to, installing liners or covers. (See also B1.33 of this appendix.)

B1.7 Electronic equipment

Acquisition, installation, operation, modification, and removal of electricity transmission control and monitoring devices for grid demand and response, communication systems, data processing equipment, and similar electronic equipment.

B1.8 Screened water intake and outflow structures

Modifications to screened water intake and outflow structures such that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits.

B1.9 Airway safety markings and painting

Placement of airway safety markings on, painting of, and repair and in-kind replacement of lighting on powerlines and antenna structures, wind turbines, and similar structures in accordance with applicable requirements (such as Federal Aviation Administration standards).

B1.10 Onsite storage of activated material

Routine, onsite storage at an existing facility of activated equipment and material (including, but not limited to, lead) used at that facility, to allow reuse after decay of radioisotopes with short half-lives.

B1.11 Fencing

Installation of fencing, including, but not limited to border marking, that would not have the potential to significantly impede wildlife population movement (including migration) or surface water flow.

B1.12 Detonation or burning of explosives or propellants after testing

Outdoor detonation or burning of explosives or propellants that failed (duds), were damaged (such as by fracturing), or were otherwise not consumed in testing. Outdoor detonation or burning would be in areas designated and routinely used for those purposes under existing

applicable permits issued by Federal, state, and local authorities (such as a permit for a RCRA miscellaneous unit (40 CFR part 264, subpart X)).

B1.13 Pathways, short access roads, and rail lines

Construction, acquisition, and relocation, consistent with applicable right-of-way conditions and approved land use or transportation improvement plans, of pedestrian walkways and trails, bicycle paths, small outdoor fitness areas, and short access roads and rail lines (such as branch and spur lines).

B1.14 Refueling of nuclear reactors

Refueling of operating nuclear reactors, during which operations may be suspended and then resumed.

B1.15 Support buildings

Siting, construction or modification, and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated and modular buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include, but are not limited to, those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (such as security posts); fire protection; small-scale fabrication (such as machine shop activities), assembly, and testing of non- nuclear equipment or components; and similar support purposes, but exclude facilities for nuclear weapons activities and waste storage activities, such as activities covered in B1.10, B1.29, B1.35, B2.6, B6.2, B6.4, B6.5, B6.6, and B6.10 of this appendix.

B1.16 Asbestos removal

Removal of asbestos-containing materials from buildings in accordance with applicable requirements (such as 40 CFR part 61, “National Emission Standards for Hazardous Air Pollutants”; 40 CFR part 763, “Asbestos”; 29 CFR part 1910, subpart I, “Personal Protective Equipment”; and 29 CFR part 1926, “Safety and Health Regulations for Construction”; and appropriate state and local requirements, including certification of removal contractors and technicians).

B1.17 Polychlorinated biphenyl removal

Removal of polychlorinated biphenyl (PCB)-containing items (including, but not limited to, transformers and capacitors), PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB- containing spill materials from buildings or other aboveground locations in accordance with applicable requirements (such as 40 CFR part 761).

B1.18 Water supply wells

Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, provided that there would be no drawdown other than in the immediate vicinity of the pumping well, and the covered actions would not have the potential to cause significant long-term decline of the water table, and would not have the potential to cause significant degradation of the aquifer from the new or replacement well.

B1.19 Microwave, meteorological, and radio towers

Siting, construction, modification, operation, and removal of microwave, radio communication, and meteorological towers and associated facilities, provided that the towers and associated facilities would not be in a governmentally designated scenic area (see B(4)(iv) of this appendix)

unless otherwise authorized by the appropriate governmental entity.

B1.20 Protection of cultural resources, fish and wildlife habitat

Small-scale activities undertaken to protect cultural resources (such as fencing, labeling, and flagging) or to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders and minor diversion channels), or fisheries. Such activities would be conducted in accordance with an existing natural or cultural resource plan, if any.

B1.21 Noise abatement

Noise abatement measures (including, but not limited to, construction of noise barriers and installation of noise control materials).

B1.22 Relocation of buildings

Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area (where active utilities and currently used roads are readily accessible).

B1.23 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.

B1.24 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.

B1.25 Real property transfers for cultural resources protection, habitat preservation, and wildlife management

Transfer, lease, disposition, or acquisition of interests in land and associated buildings for cultural resources protection, habitat preservation, or fish and wildlife management, 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.

B1.26 Small water treatment facilities

Siting, construction, expansion, modification, replacement, operation, and decommissioning of small (total capacity less than approximately 250,000 gallons per day) wastewater and surface water treatment facilities whose liquid discharges are externally regulated, and small potable water and sewage treatment facilities.

B1.27 Disconnection of utilities

Activities that are required for the disconnection of utility services (including, but not limited to, water, steam, telecommunications, and electrical power) after it has been determined that the continued operation of these systems is not needed for safety.

B1.28 Placing a facility in an environmentally safe condition

Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste (such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste). These activities would not include conditioning, treatment, or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Disposal facilities for construction and demolition waste

Siting, construction, expansion, modification, operation, and decommissioning of small (less than approximately 10 acres) solid waste disposal facilities for construction and demolition waste, in accordance with applicable requirements (such as 40 CFR part 257, “Criteria for Classification of Solid Waste Disposal Facilities and Practices,” and 40 CFR part 61, “National Emission Standards for Hazardous Air Pollutants”) that would not release substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.30 Transfer actions

Transfer actions, in which the predominant activity is transportation, provided that (1) the receipt and storage capacity and management capability for the amount and type of materials, equipment, or waste to be moved already exists at the receiving site and (2) all necessary facilities and operations at the receiving site are already permitted, licensed, or approved, as appropriate. Such transfers are not regularly scheduled as part of ongoing routine operations.

B1.31 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.

B1.32 Traffic flow adjustments

Traffic flow adjustments to existing roads (including, but not limited to, stop sign or traffic light installation, adjusting direction of traffic flow, and adding turning lanes), and road adjustments (including, but not limited to, widening and realignment) that are within an existing right-of-way and consistent with approved land use or transportation improvement plans.

B1.33 Stormwater runoff control

Design, construction, and operation of control practices to reduce stormwater runoff and maintain natural hydrology. Activities include, but are not limited to, those that reduce impervious surfaces (such as vegetative practices and use of porous pavements), best management practices (such as silt fences, straw wattles, and fiber rolls), and use of green infrastructure or other low impact development practices (such as cisterns and green roofs).

B1.34 Lead-based paint containment, removal, and disposal

Containment, removal, and disposal of lead-based paint in accordance with applicable requirements (such as provisions relating to the certification of removal contractors and technicians at 40 CFR part 745, “Lead-Based Paint Poisoning Prevention In Certain Residential Structures”).

B1.35 Drop-off, collection, and transfer facilities for recyclable materials

Siting, construction, modification, and operation of recycling or compostable material drop-off, collection, and transfer stations on or contiguous to a previously disturbed or developed area and in an area where such a facility would be consistent with existing zoning requirements. The stations would have appropriate facilities and procedures established in accordance with applicable requirements for the handling of recyclable or compostable materials and household hazardous waste (such as paint and pesticides). Except as specified above, the collection of hazardous waste for disposal and the processing of recyclable or compostable materials are not

included in this category of actions.

B1.36 Determinations of excess real property

Determinations that real property is excess to the needs of DOE and, in the case of acquired real property, the subsequent reporting of such determinations to the General Services Administration or, in the case of lands withdrawn or otherwise reserved from the public domain, the subsequent filing of a notice of intent to relinquish with the Bureau of Land Management, Department of the Interior. Covered actions would not include disposal of real property.

B2. Categorical Exclusions Applicable to Safety and Health

B2.1 Workplace enhancements

Modifications within or contiguous to an existing structure, in a previously disturbed or developed area, to enhance workplace habitability (including, but not limited to, installation or improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation, and noise reduction).

B2.2 Building and equipment instrumentation

Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, remote control panels, remote monitoring capability, alarm and surveillance systems, control systems to provide automatic shutdown, fire detection and protection systems, water consumption monitors and flow control systems, announcement and emergency warning systems, criticality and radiation monitors and alarms, and safeguards and security equipment).

B2.3 Personnel safety and health equipment

Installation of, or improvements to, equipment for personnel safety and health (including, but not limited to, eye washes, safety showers, radiation monitoring devices, fumehoods, and associated collection and exhaust systems), provided that the covered actions would not have the potential

to cause a significant increase in emissions.

B2.4 Equipment qualification

Activities undertaken to (1) qualify equipment for use or improve systems reliability or (2) augment information on safety-related system components. These activities include, but are not limited to, transportation container qualification testing, crane and lift-gear certification or recertification testing, high efficiency particulate air filter testing and certification, stress tests (such as “burn-in” testing of electrical components and leak testing), and calibration of sensors or diagnostic equipment.

B2.5 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).

B2.6 Recovery of radioactive sealed sources

Recovery of radioactive sealed sources and sealed source-containing devices from domestic or foreign locations provided that (1) the recovered items are transported and stored in compliant containers, and (2) the receiving site has sufficient existing storage capacity and all required licenses, permits, and approvals.

B3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research

B3.1 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 category 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.

B3.2 Aviation activities

Aviation activities for survey, monitoring, or security purposes that comply with Federal Aviation Administration regulations.

B3.3 Research related to conservation of fish, wildlife, and cultural resources

Field and laboratory research, inventory, and information collection activities that are directly related to the conservation of fish and wildlife resources or to the protection of cultural resources, provided that such activities would not have the potential to cause significant impacts on fish and wildlife habitat or populations or to cultural resources.

B3.4 Transport packaging tests for radioactive or hazardous material

Drop, puncture, water-immersion, thermal, and fire tests of transport packaging for radioactive or hazardous materials to certify that designs meet the applicable requirements (such as 49 CFR

173.411 and 173.412 and 10 CFR 71.73).

B3.5 Tank car tests

Tank car tests under 49 CFR part 179 (including, but not limited to, tests of safety relief devices, pressure regulators, and thermal protection systems).

B3.6 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.

B3.7 New terrestrial infill exploratory and experimental wells

Siting, construction, and operation of new terrestrial infill exploratory and experimental (test) wells, for either extraction or injection use, in a locally characterized geological formation in a field that contains existing operating wells, properly abandoned wells, or unminable coal seams containing natural gas, provided that the site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with applicable best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include those for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Uses for carbon

sequestration wells include, but are not limited to, the study of saline formations, enhanced oil recovery, and enhanced coalbed methane extraction.

B3.8 Outdoor terrestrial ecological and environmental research

Outdoor terrestrial ecological and environmental research in a small area (generally less than 5 acres), including, but not limited to, siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for associated 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.

B3.9 Projects to reduce emissions and waste generation

Projects to reduce emissions and waste generation at existing fossil or alternative fuel combustion or utilization facilities, provided that these projects would not have the potential to cause a significant increase in the quantity or rate of air emissions. For this category of actions, “fuel” includes, but is not limited to, coal, oil, natural gas, hydrogen, syngas, and biomass; but “fuel” does not include nuclear fuel. Covered actions include, but are not limited to:

- (a) Test treatment of the throughput product (solid, liquid, or gas) generated at an existing and fully operational fuel combustion or utilization facility;
- (b) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that requires only minor modification to the existing structures at an existing fuel combustion or utilization facility, for which the existing use remains essentially unchanged;
- (c) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that involves no permanent change in the quantity or quality of fuel burned or used and involves no permanent change in the capacity factor of the

fuel combustion or utilization facility; and

(d) Addition or modification of equipment for capture and control of carbon dioxide or other regulated substances, provided that adequate infrastructure is in place to manage such substances.

B3.10 Particle accelerators

Siting, construction, modification, operation, and decommissioning of particle accelerators, including electron beam accelerators, with primary beam energy less than approximately 100 million electron volts (MeV) and average beam power less than approximately 250 kilowatts (kW), and associated beamlines, storage rings, colliders, and detectors, for research and medical purposes (such as proton therapy), and isotope production, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible), or internal modification of any accelerator facility regardless of energy, that does not increase primary beam energy or current. In cases where the beam energy exceeds 100 MeV, the average beam power must be less than 250 kW, so as not to exceed an average current of 2.5 milliamperes (mA).

B3.11 Outdoor tests and experiments on materials and equipment components

Outdoor tests and experiments for the development, quality assurance, or reliability of materials and equipment (including, but not limited to, weapon system components) under controlled conditions. Covered actions include, but are not limited to, burn tests (such as tests of electric cable fire resistance or the combustion characteristics of fuels), impact tests (such as pneumatic ejector tests using earthen embankments or concrete slabs designated and routinely used for that purpose), or drop, puncture, water-immersion, or thermal tests. Covered actions would not involve source, special nuclear, or byproduct materials, except encapsulated sources

manufactured to applicable standards that contain source, special nuclear, or byproduct materials may be used for nondestructive actions such as detector/sensor development and testing and first responder field training.

B3.12 Microbiological and biomedical facilities

Siting, construction, modification, operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4), in accordance with applicable requirements and best practices (such as Biosafety in Microbiological and Biomedical Laboratories, 5th Edition, Dec. 2009, U.S.

Department of Health and Human Services) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Operation may include the purchase, installation, and operation of biomedical equipment (such as commercially available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation).

B3.13 Magnetic fusion experiments

Performing magnetic fusion experiments that do not use tritium as fuel, within existing facilities (including, but not limited to, necessary modifications).

B3.14 Small-scale educational facilities

Siting, construction, modification, operation, and decommissioning of small-scale educational facilities (including, but not limited to, conventional teaching laboratories, libraries, classroom facilities, auditoriums, museums, visitor centers, exhibits, and associated offices) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Operation may include, but is not limited to, purchase, installation,

and operation of equipment (such as audio/visual and laboratory equipment) commensurate with the educational purpose of the facility.

B3.15 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).

B3.16 Research activities in aquatic environments

Small-scale, temporary surveying, site characterization, and research activities in aquatic environments, limited to:

- (a) Acquisition of rights-of-way, easements, and temporary use permits;
- (b) Installation, operation, and removal of passive scientific measurement devices, including, but not limited to, antennae, tide gauges, flow testing equipment for existing wells, weighted hydrophones, salinity measurement devices, and water quality measurement devices;
- (c) Natural resource inventories, data and sample collection, environmental monitoring, and basic and applied research, excluding
 - (1) large-scale vibratory coring techniques and
 - (2) seismic activities other than passive techniques; and
- (d) Surveying and mapping.

These activities would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan and would incorporate appropriate control technologies

and best management practices. None of the activities listed above would occur within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity, unless authorized by the agency responsible for such refuge, sanctuary, or area (or after consultation with the responsible agency, if no authorization is required). If the proposed activities would occur outside such refuge, sanctuary, or area and if the activities would have the potential to cause impacts within such refuge, sanctuary, or area, then the responsible agency shall be consulted in order to determine whether authorization is required and whether such activities would have the potential to cause significant impacts on such refuge, sanctuary, or area. Areas of high biological sensitivity include, but are not limited to, areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells.

B4. Categorical Exclusions Applicable to Electrical Power and Transmission

B4.1 Contracts, policies, and marketing and allocation plans for electric power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve only the use of the existing transmission system and existing generation resources operating within their normal operating limits.

B4.2 Export of electric energy

Export of electric energy as provided by Section 202(e) of the Federal Power Act over existing transmission systems or using transmission system changes that are themselves categorically

excluded.

B4.3 Electric power marketing rate changes

Rate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits.

B4.4 Power marketing services and activities

Power marketing services and power management activities (including, but not limited to, storage, load shaping and balancing, seasonal exchanges, and other similar activities), provided that the operations of generating projects would remain within normal operating limits. (See B4.14 of this appendix for energy storage systems.)

B4.5 Temporary adjustments to river operations

Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events, provided that the adjustments would occur within the existing operating constraints of the particular hydrosystem operation.

B4.6 Additions and modifications to transmission facilities

Additions or modifications to electric power transmission facilities within a previously disturbed or developed facility area. Covered activities include, but are not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, load shaping projects (such as reducing energy use during periods of peak demand), changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms. (See B4.14 of this appendix for energy storage systems.)

B4.7 Fiber optic cable

Adding fiber optic cables to transmission facilities or burying fiber optic cable in existing powerline or pipeline rights-of-way. Covered actions may include associated vaults and pulling and tensioning sites outside of rights-of-way in nearby previously disturbed or developed areas.

B4.8 Electricity transmission agreements

New electricity transmission agreements, and modifications to existing transmission arrangements, to use a transmission facility of one system to transfer power of and for another system, provided that no new generation projects would be involved and no physical changes in the transmission system would be made beyond the previously disturbed or developed facility area.

B4.9 Multiple use of powerline rights-of-way

Granting or denying requests for multiple uses of a transmission facility's rights-of-way (including, but not limited to, grazing permits and crossing agreements for electric lines, water lines, natural gas pipelines, communications cables, roads, and drainage culverts).

B4.10 Removal of electric transmission facilities

Deactivation, dismantling, and removal of electric transmission facilities (including, but not limited to, electric powerlines, substations, and switching stations) and abandonment and restoration of rights-of-way (including, but not limited to, associated access roads).

B4.11 Electric power substations and interconnection facilities

Construction or modification of electric power substations or interconnection facilities (including, but not limited to, switching stations and support facilities).

B4.12 Construction of powerlines

Construction of electric powerlines approximately 10 miles in length or less, or approximately 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-

way.

B4.13 Upgrading and rebuilding existing powerlines

Upgrading or rebuilding existing electric powerlines, which may involve relocations of small segments of the powerlines within an existing powerline right-of-way or within otherwise previously disturbed or developed lands (as discussed at 10 CFR 1021.102(g)(1)). Upgrading or rebuilding existing electric powerlines also may involve widening an existing powerline right-of-way to meet current electrical standards if the widening remains within previously disturbed or developed lands and only extends into a small area beyond such lands as needed to comply with applicable electrical standards. Covered actions would be in accordance with applicable requirements, including the integral elements listed at the start of appendix B of this part; and would incorporate appropriate design and construction standards, control technologies, and best management practices. This categorical exclusion does not apply to underwater powerlines. As used in this categorical exclusion, “small” has the meaning discussed at 10 CFR 1021.102(g)(2).

B4.14 Construction and operation of electrochemical-battery or flywheel energy storage systems

Construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small (as discussed at 10 CFR 1021.102(g)(2)) area contiguous to a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of this part, and would incorporate appropriate safety standards (including the current National Fire Protection Association 855, Standard for the Installation of Stationary Energy Storage Systems), design and construction standards, control technologies, and best

management practices.

B5. Categorical Exclusions Applicable to Conservation, Fossil, and Renewable Energy Activities

B5.1 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); 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.

B5.2 Modifications to pumps and piping

Modifications to existing pump and piping configurations (including, but not limited to, manifolds, metering systems, and other instrumentation on such configurations conveying materials such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water). Covered modifications would not have the potential to cause significant changes to design process flow rates or permitted air emissions.

B5.3 Modification or abandonment of wells

Modification (but not expansion) or plugging and abandonment of wells, provided that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include, but are not limited to, storage and injection wells for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Covered modifications would not

be part of site closure.

B5.4 Repair or replacement of pipelines

Repair, replacement, upgrading, rebuilding, or minor relocation of pipelines within existing rights-of-way, provided that the actions are in accordance with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Pipelines may convey materials including, but not limited to, air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water.

B5.5 Short pipeline segments

Construction and subsequent operation of short (generally less than 20 miles in length) pipeline segments conveying materials (such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water) between existing source facilities and existing receiving facilities (such as facilities for use, reuse, transportation, storage, and refining), provided that the pipeline segments are within previously disturbed or developed rights-of-way.

B5.6 Oil spill cleanup

Removal of oil and contaminated materials recovered in oil spill cleanup operations and disposal of these materials in accordance with applicable requirements (such as the National Oil and Hazardous Substances Pollution Contingency Plan).

B5.7 Export of natural gas and associated transportation by marine vessel

Approvals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the Natural Gas Act and any associated transportation of natural gas by marine vessel.

B5.8 [Reserved]

B5.9 Temporary exemptions for electric powerplants

Grants or denials of temporary exemptions under the Powerplant and Industrial Fuel Use Act of 1978, as amended, for electric powerplants.

B5.10 Certain permanent exemptions for existing electric powerplants

For existing electric powerplants, grants or denials of permanent exemptions under the Powerplant and Industrial Fuel Use Act of 1978, as amended, other than exemptions under section 312(c) relating to cogeneration and section 312(b) relating to certain state or local requirements.

B5.11 Permanent exemptions allowing mixed natural gas and petroleum

For new electric powerplants, grants or denials of permanent exemptions from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 Workover of existing wells

Workover (operations to restore production, such as deepening, plugging back, pulling and resetting lines, and squeeze cementing) of existing wells (including, but not limited to, activities associated with brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil) to restore functionality, provided that workover operations are restricted to the existing wellpad and do not involve any new site preparation or earthwork that would have the potential to cause significant impacts on nearby habitat; that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers; and the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials.

B5.13 Experimental wells for injection of small quantities of carbon dioxide

Siting, construction, operation, plugging, and abandonment of experimental wells for the injection of small quantities of carbon dioxide (and other incidentally co-captured gases) in locally characterized, geologically secure storage formations at or near existing carbon dioxide sources to determine the suitability of the formations for large-scale sequestration, provided that (1) The characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers; (2) the wells are otherwise in accordance with applicable requirements, best practices, and DOE protocols, including those that protect against uncontrolled releases of harmful materials; and (3) the wells and associated drilling activities are sufficiently remote so that they would not have the potential to cause significant impacts related to noise and other vibrations. Wells may be used for enhanced oil or natural gas recovery or for secure storage of carbon dioxide in saline formations or other secure formations. Over the duration of a project, the wells would be used to inject, in aggregate, less than 500,000 tons of carbon dioxide into the geologic formation. Covered actions exclude activities in aquatic environments. (See B3.16 of this appendix for activities in aquatic environments.)

B5.14 Combined heat and power or cogeneration systems

Conversion to, replacement of, or modification of combined heat and power or cogeneration systems (the sequential or simultaneous production of multiple forms of energy, such as thermal and electrical energy, in a single integrated system) at existing facilities, provided that the conversion, replacement, or modification would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources.

B5.15 Small-scale renewable energy research and development and pilot projects

Small-scale renewable energy research and development projects and small-scale pilot projects,

provided that the projects are located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.16 Solar photovoltaic systems

(a) The installation, modification, operation, or decommissioning of commercially available solar photovoltaic systems:

(1) Located on a building or other structure (such as rooftop, parking lot or facility, or mounted to signage, lighting, gates, or fences); or

(2) Located within a previously disturbed or developed area.

(b) Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of this part, and would be consistent with applicable plans for the management of wildlife and habitat, including plans to maintain habitat connectivity, and incorporate appropriate control technologies and best management practices.

B5.17 Solar thermal systems

The installation, modification, operation, and removal of commercially available small-scale solar thermal systems (including, but not limited to, solar hot water systems) located on or contiguous to a building, and if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.18 Wind turbines

The installation, modification, operation, and removal of a small number (generally not more than 2) of commercially available wind turbines, with a total height generally less than 200 feet (measured from the ground to the maximum height of blade rotation) that (1) Are located within a previously disturbed or developed area; (2) are located more than 10 nautical miles (about 11.5 miles) from an airport or aviation navigation aid; (3) are located more than 1.5 nautical miles (about 1.7 miles) from National Weather Service or Federal Aviation Administration Doppler weather radar; (4) would not have the potential to cause significant impacts on bird or bat populations; and (5) are sited or designed such that the project would not have the potential to cause significant impacts to persons (such as from shadow flicker and other visual effects, and noise). Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices. Covered actions include only those related to wind turbines to be installed on land.

B5.19 Ground source heat pumps

The installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex) (1) Only where (a) major associated activities (such as drilling and discharge) are regulated, and (b) appropriate leakage and contaminant control measures would be in place (including for cross- contamination between aquifers); (2) that would not have the potential to cause significant changes in subsurface temperature; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control

technologies and best management practices.

B5.20 Biomass power plants

The installation, modification, operation, and removal of small-scale biomass power plants (generally less than 10 megawatts), using commercially available technology (1) Intended primarily to support operations in single facilities (such as a school and community center) or contiguous facilities (such as an office complex); (2) that would not affect the air quality attainment status of the area and would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.21 Methane gas recovery and utilization systems

The installation, modification, operation, and removal of commercially available methane gas recovery and utilization systems installed within a previously disturbed or developed area on or contiguous to an existing landfill or wastewater treatment plant that would not have the potential to cause a significant increase in the quantity or rate of air emissions. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.22 Alternative fuel vehicle fueling stations

The installation, modification, operation, and removal of alternative fuel vehicle fueling stations (such as for compressed natural gas, hydrogen, ethanol and other commercially available

biofuels) on the site of a current or former fueling station, or within a previously disturbed or developed area within the boundaries of a facility managed by the owners of a vehicle fleet.

Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.23 Electric vehicle charging stations

The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.24 Drop-in hydroelectric systems

The installation, modification, operation, and removal of commercially available small-scale, drop-in, run-of-the-river hydroelectric systems that would (1) Involve no water storage or water diversion from the stream or river channel where the system is installed and (2) not have the potential to cause significant impacts on water quality, temperature, flow, or volume. Covered systems would be located up-gradient of an existing anadromous fish barrier that is not planned for removal and where fish passage retrofit is not planned and where there would not be the potential for significant impacts to threatened or endangered species or other species of concern (as identified in B(4)(ii) of this appendix). Covered actions would involve no major construction or modification of stream or river channels, and the hydroelectric systems would be placed and secured in the channel without the use of heavy equipment. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the

proposed project area and would incorporate appropriate control technologies and best management practices.

B5.25 Small-scale renewable energy research and development and pilot projects in aquatic environments

Small-scale renewable energy research and development projects and small-scale pilot projects located in aquatic environments. Activities would be in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and best management practices. Covered actions would not occur (1) Within areas of hazardous natural bottom conditions or (2) within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity, unless authorized by the agency responsible for such refuge, sanctuary, or area (or after consultation with the responsible agency, if no authorization is required). If the proposed activities would occur outside such refuge, sanctuary, or area and if the activities would have the potential to cause impacts within such refuge, sanctuary, or area, then the responsible agency shall be consulted in order to determine whether authorization is required and whether such activities would have the potential to cause significant impacts on such refuge, sanctuary, or area. Areas of high biological sensitivity include, but are not limited to, areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells, use of large-scale vibratory coring techniques, or seismic

activities other than passive techniques.

B6. Categorical Exclusions Applicable to Environmental Restoration and Waste

Management Activities

B6.1 Cleanup actions

Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, less than approximately 10 million dollars in cost (in 2011 dollars), to reduce risk to human health or the environment from the release or threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (such as incineration, encapsulation, physical or chemical separation, and compaction), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

- (a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, if surface water or groundwater would not collect and if such actions would reduce the spread of, or direct contact with, the contamination;
- (b) Removal of bulk containers (such as drums and barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261 or applicable state requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;
- (c) Removal of an underground storage tank including its associated piping and underlying containment systems in accordance with applicable requirements (such as RCRA, subtitle I; 40 CFR part 265, subpart J; and 40 CFR part 280, subparts F and G) if such action would reduce the

- likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;
- (d) Repair or replacement of leaking containers;
 - (e) Capping or other containment of contaminated soils or sludges if the capping or containment would not unduly limit future groundwater remediation and if needed to reduce migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products into soil, groundwater, surface water, or air;
 - (f) Drainage or closing of man-made surface impoundments if needed to maintain the integrity of the structures;
 - (g) Confinement or perimeter protection using dikes, trenches, ditches, or diversions, or installing underground barriers, if needed to reduce the spread of, or direct contact with, the contamination;
 - (h) Stabilization, but not expansion, of berms, dikes, impoundments, or caps if needed to maintain integrity of the structures;
 - (i) Drainage controls (such as run-off or run-on diversion) if needed to reduce offsite migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum or natural gas products or to prevent precipitation or run-off from other sources from entering the release area from other areas;
 - (j) Segregation of wastes that may react with one another or form a mixture that could result in adverse environmental impacts;
 - (k) Use of chemicals and other materials to neutralize the pH of wastes;
 - (l) Use of chemicals and other materials to retard the spread of the release or to mitigate its effects if the use of such chemicals would reduce the spread of, or direct contact with, the contamination;

- (m) Installation and operation of gas ventilation systems in soil to remove methane or petroleum vapors without any toxic or radioactive co-contaminants if appropriate filtration or gas treatment is in place;
- (n) Installation of fences, warning signs, or other security or site control precautions if humans or animals have access to the release; and
- (o) Provision of an alternative water supply that would not create new water sources if necessary immediately to reduce exposure to contaminated household or industrial use water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

B6.2 Waste collection, treatment, stabilization, and containment facilities

The siting, construction, and operation of temporary (generally less than 2 years) pilot-scale waste collection and treatment facilities, and pilot-scale (generally less than 1 acre) waste stabilization and containment facilities (including siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis), provided that the action (1) Supports remedial investigations/feasibility studies under CERCLA, or similar studies under RCRA (such as RCRA facility investigations/corrective measure studies) or other authorities and (2) would not unduly limit the choice of reasonable remedial alternatives (such as by permanently altering substantial site area or by committing large amounts of funds relative to the scope of the remedial alternatives).

B6.3 Improvements to environmental control systems

Improvements to environmental monitoring and control systems of an existing building or structure (such as changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems), provided that during subsequent operations (1) Any substance collected by the environmental control systems would be recycled,

released, or disposed of within existing permitted facilities and (2) there are applicable statutory or regulatory requirements or permit conditions for disposal, release, or recycling of any hazardous substance or CERCLA-excluded petroleum or natural gas products that are collected or released in increased quantity or that were not previously collected or released.

B6.4 Facilities for storing packaged hazardous waste for 90 days or less

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for storing packaged hazardous waste (as designated in 40 CFR part 261) for 90 days or less or for longer periods as provided in 40 CFR 262.34(d), (e), or (f) (such as accumulation or satellite areas).

B6.5 Facilities for characterizing and sorting packaged waste and overpacking waste

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, provided that operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10 of this appendix) or the handling of spent nuclear fuel.

B6.6 Modification of facilities for storing, packaging, and repacking waste

Modification (excluding increases in capacity) of an existing structure used for storing, packaging, or repacking waste other than high-level radioactive waste or spent nuclear fuel, to handle the same class of waste as currently handled at that structure.

B6.7 [Reserved]

B6.8 Modifications for waste minimization and reuse of materials

Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include, but are not limited to, adding filtration and recycle piping to

allow reuse of machining oil, setting up a sorting area to improve process efficiency, and segregating two waste streams previously mingled and assigning new identification codes to the two resulting wastes.

B6.9 Measures to reduce migration of contaminated groundwater

Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water, by mobile units or facilities that are built and then removed at the end of the action.

B6.10 Upgraded or replacement waste storage facilities

Siting, construction, modification, expansion, operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. (See also B6.4, B6.5, B6.6 of this appendix.)

B7. Categorical Exclusions Applicable to International Activities

B7.1 Emergency measures under the International Energy Program

Planning and implementation of emergency measures pursuant to the International Energy Program.

B7.2 Import and export of special nuclear or isotopic materials

Approval of import or export of small quantities of special nuclear materials or isotopic materials in accordance with applicable requirements (such as the Nuclear Non-Proliferation Act of 1978

and the “Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978” (43 FR 25326, June 9, 1978)).

NOTE: The following appendix will not appear in the Code of Federal Regulations

Appendix

U.S. Department of Energy

National Environmental Policy Act (NEPA)

Implementing Procedures

June 30, 2025

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1.0 Introduction

All offices¹ of the Department of Energy (DOE) will use the procedures included herein to comply with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4331, *et seq.*). These procedures are designed to inform agency decision makers during the decision making process. When DOE is considering a proposed action that is subject to NEPA, these procedures ensure that DOE decision makers are informed, in a timely manner, about the reasonably foreseeable environmental effects of the proposed actions and reasonable alternatives. These procedures recognize that NEPA is a purely procedural statute – it does not dictate DOE’s decision – and that DOE has discretion to determine the issues to be considered consistent with the statute.

These procedures describe the process by which DOE determines what actions are subject to NEPA’s procedural requirements and the level of required NEPA review; interpret certain key terms used in NEPA; ensure that relevant environmental information is identified and considered early in the process in order to inform decision-making; reduce unnecessary burdens and delays; and implement NEPA’s mandates regarding lead and cooperating agency roles, page and time limits, and applicant preparation of environmental documents.

DOE consulted with the Council on Environmental Quality (CEQ) in the development of these procedures for the implementation of NEPA in accord with 42 U.S.C. § 4332(B). DOE will in future consult with CEQ when revising these procedures.

This document provides guidance on DOE’s NEPA implementation. This document is not a regulation. Nothing contained in these procedures is intended or should be construed to limit DOE’s other authorities or legal responsibilities. These procedures do not, nor are they intended to, confer legal rights, impose legally binding requirements, or impose legal obligations upon DOE, States, federally recognized Indian Tribes, or any member of the public. The sections of these procedures are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is DOE’s intention that the validity of the remainder of these procedures will not be affected and will continue in effect, along with all applications thereof. DOE retains the discretion to adopt approaches on a case-by-case basis that differ from those described in these procedures where appropriate.

These procedures are consistent with the Supreme Court’s decision in *Seven County Infrastructure Coalition et al. v. Eagle County, Colorado*.² These procedures represent DOE’s understanding that DOE has broad discretion when conducting its reasonable decision making. At a high level, DOE understands that *Seven County* was about the separation of powers where agencies may weigh environmental consequences as they reasonably see fit under their governing statute. As made clear in *Seven County*, the central principle of judicial review in NEPA cases is substantial deference to agencies.³ In addition, NEPA imposes no substantive constraints on any agency’s ultimate decision to build, fund, or approve a proposed project. As the Court explained, brevity in a NEPA document should not be mistaken for a lack of detail. Put differently, length is not a prerequisite for a NEPA document to be “detailed” within the meaning of that term as used in the statute or to otherwise be in compliance with NEPA. As the Court

¹ As used in this document, “DOE offices” refers to all DOE Departmental Elements listed at https://www.directives.doe.gov/references/doe_departmental_elements.

² *Seven County Infrastructure Coalition v. Eagle Cnty., Colo.* (“*Seven County*”), 145 S. Ct. 1497 (2025).

³ *Id.* at 1511-12.

additionally explained, Congress in 2023 incorporated deadlines and page limits into the statute which now “strictly prohibit[.]” NEPA analysis “from going on endlessly.”⁴ The review of a NEPA document does not bind DOE’s ultimate determination concerning a proposed project. Instead, NEPA documents ensure that agency decision makers are fully informed as to the environmental effects of the proposed action. Ordinarily, DOE NEPA analysis should not consider environmental effects of separate projects, especially those over which DOE does not exercise regulatory authority.

These DOE NEPA implementing procedures, and related guidance and resources, are available on DOE’s website at energy.gov/nepa. Questions regarding these procedures and requests to revise these procedures, including to adopt categorical exclusions from another agency, should be addressed to the Office of the General Counsel.

⁴ *Id.* at 1512 n.3.

2.0 Planning and Decision Making

As soon as practical after DOE has identified that it has a proposal, DOE should determine whether compliance with NEPA is required and, if it is, the required level of NEPA review. DOE should integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to avoid delays later in the process, to head off potential conflicts, and to ensure that DOE considers environmental effects in its planning and decisions.

2.1 Determining whether NEPA applies

As an initial matter and serving as an overriding principle, NEPA does not require the agency to weigh environmental consequences in any particular way. The goal of NEPA is to inform an agency decision, not to paralyze it. *See Seven County, supra*.

(a) DOE will determine whether NEPA applies to a proposal in accordance with the procedures included in this section. DOE will make this determination on a case-by-case basis.

(b) In determining whether NEPA applies to a proposal, DOE will consider only the action or project at hand.

(c) DOE has determined that the following non-exhaustive list of activities are not subject to NEPA.

(1) NEPA does not apply to response actions taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*) because there is a functional equivalency between NEPA and CERCLA.

(2) NEPA does not apply to applications to authorize—

(i) The import of natural gas; or

(ii) The export of natural gas to countries with which the United States has a free trade agreement requiring national treatment for trade in natural gas.

For both types of applications, section 3(c) of the Natural Gas Act (15 U.S.C. 717b) leaves DOE with no discretion whether to approve the application.

(3) NEPA does not apply to applications for a Presidential permit authorizing the construction, connection, operation, or maintenance of facilities for transmission of electric energy between the United States and a foreign country under Executive Order (E.O.) 10485 (18 FR 5397; September 3, 1953), as amended by E.O. 12038 (43 FR 4957; February 7, 1978). DOE's issuance of a Presidential permit is not agency action, but rather delegated Presidential action. Presidential actions are not subject to NEPA or review under the Administrative Procedure Act.

(4) NEPA does not apply to hydroelectric incentive payments made to qualified hydroelectric facilities under section 242 of the Energy Policy Act of 2005 (42 U.S.C 15881). DOE has no discretion in whether to provide payments to a qualified hydroelectric facility, and the payments do not satisfy the definition of major Federal action.

(5) NEPA does not apply to actions that are solely administrative and routine that are undertaken to support the normal conduct of DOE business. While such activities are Federal actions, they are not

“major” and therefore not subject to NEPA. These actions were formerly identified as categorical exclusions in appendix A in DOE’s regulations. They now represent actions that are excepted from NEPA based on the definition of “major Federal action” in Section 110(10). They have been retained as appendix A for ease of reference and to avoid confusion.

- (6) NEPA does not apply to DOE’s issuance of emergency Orders pursuant to section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) because preparing an environmental document under NEPA’s generally applicable provisions would clearly and fundamentally conflict with the emergency provisions in the Federal Power Act. As stated at the beginning of this section, NEPA is to inform DOE’s decision-making, which is inconsistent with the language and intent of section 202(c), adding further conflict with the statute.
- (7) NEPA does not apply to funding DOE provides to local governments, states or Tribes under the Energy Efficiency and Conservation Block Grant Program (42 U.S.C. 17151-58), to funding DOE provides to states under the State Energy Conservation Plan Program (now known as the State Energy Program) (42 U.S.C. 6321-26), or to funding DOE provides to states under the Energy Efficiency Revolving Loan Fund Capitalization Grants Program (42 U.S.C. 18791-92). Under these programs, DOE does not exercise sufficient control and responsibility over the subsequent use of the financial assistance or the effect of the actions due to the statutory restrictions on the recipients’ use of DOE’s financial assistance. Therefore, DOE’s provision of financial assistance under these programs is not a major Federal action subject to NEPA.
- (8) NEPA does not apply to rulemaking actions proposed by the Secretary pursuant to section 403(a) of the DOE Act (42 U.S.C. 7173) because such proposals are not final agency action. Section 403(b) specifies that FERC takes “final action” on any rulemaking proposals initiated by the Secretary. NEPA only applies to final agency actions. See 42 U.S.C. 4336(a)(1).
- (d) In making a case-by-case determination whether NEPA applies to a program (e.g., implementation of a financial assistance program authorized by Congress) or a particular proposal (e.g., whether to provide financial assistance for a specific project), DOE shall follow criteria included in NEPA and listed below. NEPA does not apply if:
 - (1) The proposed agency action is not a final agency action within the meaning of such term in chapter 5 of title 5, United States Code (42 U.S.C. 4336(a)(1)) or other relevant statute that also includes a finality requirement. Also see 5 U.S.C. § 704;
 - (2) The proposed activity or decision is exempted from NEPA by law;
 - (3) Compliance with NEPA would conflict with the requirements of another provision of law (42 U.S.C. 4336(a)(3));
 - (4) When Congress has afforded the DOE no discretion over the proposed action.
 - (5) The proposed action is not a “major Federal action.” The terms “major” and “Federal action” each have independent force. NEPA applies only when both of these two criteria are met.
 - (i) NEPA does not apply to non-Federal actions (I) with no or minimal Federal funding, or (II) with

no or minimal Federal involvement where a Federal agency cannot control the outcome of the project (42 U.S.C. § 4336e(10)(B)(i)). In such circumstances, there is no legal requirement nor any practical reason for DOE to conduct a NEPA analysis because DOE could not influence the outcome of its action to address the environmental effects of the proposal. For example, this might include situations where Federal funding constitutes a small percentage of an infrastructure projects overall funding that is provided only to help design an infrastructure project that is otherwise funded from non-Federal sources, because in such situations DOE cannot control the environmental effects of the completed non-Federal action;⁵

- (ii) NEPA does not apply to funding assistance solely in the form of general revenue sharing funds which do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds (42 U.S.C. § 4336e(10)(B)(ii));
- (iii) NEPA does not apply to loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action (42 U.S.C. § 4336e(10)(B)(iii)). For example, financial assistance for non-Federal activities or projects where all physical work has been completed before the applicant seeks funds or reimbursement from DOE (e.g. incentive payments made by DOE to owners or operators of qualified hydroelectric facilities whose project was complete at the time of application to DOE under 42 U.S.C. §15883 (Section 247)) because DOE does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action;
- (iv) NEPA does not apply to business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) of the Small Business Act (15 U.S.C. 636(a), (b)), or title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 *et seq.*) (42 U.S.C. § 4336e(10)(B)(iv));
- (v) NEPA does not apply to bringing judicial or administrative civil or criminal enforcement actions (42 U.S.C. § 4336e(10)(B)(v)); or
- (vi) NEPA does not apply to extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States (42 U.S.C. § 4336e(10)(B)(vi)).

(6) The issuance or update of DOE's NEPA procedures is not subject to NEPA review.

2.2 Determining the required level of NEPA review

(a) If DOE determines, as described in section 2.1, that NEPA applies to a proposal, DOE will then determine the required level of NEPA review following the procedures described in this section. DOE will

⁵ "The touchstone of major [F]ederal activity constitutes a [F]ederal agency's authority to influence nonfederal activity. 'The [F]ederal agency must possess actual power to control the nonfederal activity.'" *United States v. S. Fla. Water Mgmt. Dist.*, 28 F.3d 1563, 1572 (11th Cir. 1994). A but-for causal relationship is insufficient to make an agency responsible for a particular action under NEPA. See *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004). For instance, minimal Federal funding or involvement, which may in a causal sense be a but-for cause of an action, does not by itself convert that action into a Federal action within the meaning of NEPA.

make this determination as soon as practicable after identifying that it has a proposal requiring NEPA review. At all steps in the following process, DOE will consider the proposed action or project at hand and *its* effects.

(b) If DOE has established a categorical exclusion (appendix B) or adopted under section 109 of NEPA another agency's categorical exclusion listed in the other agency's NEPA procedures (42 U.S.C. § 4336(c)) (appendix C), DOE will apply the categorical exclusion(s), following the procedures in chapter 5.

(1) If another agency has already established a categorical exclusion that would apply to the proposed action, DOE will consider whether to rely on that categorical exclusion pursuant to NEPA and the procedures described in section 5.5 so that it can be applied to the proposed action at issue, and to future proposals of that type.

(2) If no relevant categorical exclusion is otherwise available, DOE will consider whether to establish a new categorical exclusion, or revise an existing categorical exclusion, according to the procedures described in section 5.1. If DOE establishes or revises a categorical exclusion, DOE shall then apply the categorical exclusion to the proposed action according to the procedures described in section 5.4.

(c) If DOE cannot apply a categorical exclusion to the proposed action, DOE will evaluate significance of the proposed action's reasonably foreseeable effects consistent with section 3.2, and then will:

(1) If the proposed action is evaluated in a prior NEPA document prepared by DOE or another agency, DOE will consider relying on the existing document, or any pertinent part thereof, and supplementing that document as needed.

(2) If the proposed action is not likely to have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of the effects of the proposed action is unknown, DOE will prepare an environmental assessment, as described in chapter 6; or

(3) If the proposed action is likely to have a reasonably foreseeable significant effect on the quality of the human environment, DOE will prepare an environmental impact statement, as described in chapter 7.

(d) DOE may use an early scoping process to help determine the required level of NEPA review. In such a process, DOE should be driven by the need to begin the required NEPA review promptly and should avoid steps that do not demonstrably improve the efficiency of the process. DOE also should remain aware that the schedule for the environmental assessment or environmental impact statement begins once DOE has determined the required level of NEPA review (sections 6.4 and 7.7). DOE should engage any applicant and other parties, as will be beneficial, in the early scoping process. An early scoping process may include, as appropriate to the proposal, steps such as:

(1) Preliminarily identifying the Federal agencies and other parties that will be involved and that have decisions to make related to the proposal; the range of reasonable alternatives and rationale for excluding certain alternatives from detailed analysis; the scope of environmental effects to be analyzed and rationale for excluding certain environmental effects from analysis; and the schedule.

- (2) Requesting input from state and local agencies, Tribal governments, industry groups, and the public.

2.3 Applicant and contractor preparation of documents

DOE or an applicant may prepare an environmental assessment or environmental impact statement, including related supplements and supplement analyses, and either may engage a contractor to help prepare such document. An agency-directed contractor is a contractor whose work is supervised and directed by DOE. DOE either hires the agency-directed contractor directly or engages them as part of a third-party contracting arrangement. Under the third-party contracting arrangement, an applicant pays for the contractor but has no role in directing the work of the contractor. Rather, DOE supervises and directs the contractor's work throughout document preparation.

An applicant-directed contractor is hired and supervised directly by the applicant. DOE provides guidance and direction at particular points throughout document preparation.

2.3.1 DOE responsibilities

DOE is responsible for complying with NEPA and certain requirements in other statutes and regulations (e.g., Endangered Species Act). Certain decisions and actions involved in preparing a NEPA document cannot be delegated to an applicant or contractor. DOE will:

- (a) Determine the required level of NEPA review;
- (b) Ensure that the scope of analysis and procedural steps are compliant with NEPA and other applicable requirements;
- (c) Conduct any government-to-government consultation with Tribal governments and any required consultation with other Federal agencies;
- (d) Independently evaluate and take responsibility for the document's contents;
- (e) Ensure that the document satisfies all requirements of NEPA and these procedures, including those for page limits and schedule, and determine whether to issue the document, and include a statement in the document confirming that DOE has independently reviewed the document; and
- (f) Prepare and issue any finding of no significant impact, record of decision, determination whether additional NEPA review is required, or other decision.

2.3.2 Applicant responsibilities

The applicant for a proposal being analyzed in a NEPA review will:

- (a) Provide all information requested by DOE, necessary for the NEPA review, in a timely manner to support the schedule for completing the NEPA review;
- (b) Initiate any request to DOE to prepare the NEPA review (as provided by 42 U.S.C. § 4336a(f)) with the application or during the early scoping period prior to DOE's determination of the required level of NEPA

review;

(c) Include a statement in the document that it was prepared by the applicant or a contractor paid by the applicant.

(d) DOE may request from an applicant environmental information used to prepare or evaluate the environmental assessment or environmental impact statement. This may include any factual, scientific, or technical information used, developed, or considered by the applicant or applicant-hired contractor in the course of preparing the environmental assessment or environmental impact statement, including any correspondence with DOE or with other parties.

(e) If DOE determines that the applicant-prepared document is likely to be insufficient, DOE may request that the applicant replace its applicant-directed contractor or may take control of completion of the document.

(f) Develop a consolidated administrative record of the information assembled and used to prepare the NEPA document and provide that record to DOE within two weeks of DOE's request.

2.3.3 DOE and applicant coordination during NEPA review

(a) DOE will work with the applicant to define the purpose and need and identify alternatives for detailed analysis that meet the purpose and need.

(b) DOE also will work with the applicant to identify other Federal agencies, state agencies, and Tribes that may have an interest in the proposal and will work with the applicant to identify an appropriate list for notifications and distribution of the document.

(c) DOE will assist applicants and applicant-directed contractors by providing guidance and outlining the types of information required for the preparation of the environmental assessment or environmental impact statement. DOE also may assist in document preparation.

(d) DOE shall develop and modify, as appropriate, a schedule for preparation of the environmental assessment or environmental impact statement that meets the requirements in NEPA and these procedures. The schedule shall provide sufficient time for DOE to review the environmental assessment or environmental impact statement and determine its sufficiency. Major changes to the schedule or related matters will be documented through written correspondence.

2.4 NEPA and rulemaking

(a) Where the proposed action is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or Executive Order requirements may satisfy one or more requirements of these procedures. In such circumstances, DOE may substitute the procedures and documentation pursuant to other statutory or Executive Order requirements for the corresponding requirements in these DOE NEPA implementing procedures and need not carry out duplicative procedures or documentation. DOE will identify which corresponding requirements in these procedures are satisfied and consult with CEQ to confirm such determinations.

(b) Where DOE decides to issue a separate NEPA document in connection with a rulemaking, the NEPA document will normally accompany the proposed rule.

2.5 Lead and cooperating agencies

In many instances, a proposed activity or decision is undertaken in the context which entails activities or decisions undertaken by other Federal agencies (e.g., where multiple Federal authorizations are required with respect to a project sponsor's overall purpose and goal). In such instances, NEPA directs the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A). When serving as the lead agency, DOE is ultimately responsible for completing the NEPA process. When a joint lead relationship is established pursuant to NEPA § 107(a)(1)(B), 42 U.S.C. § 4336a(a)(1)(B), DOE and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

3.0 Implementing NEPA Efficiently

DOE will use all available means to improve the efficiency of its implementation of NEPA. DOE will make maximum use of existing analyses to avoid repeating work completed for previous environmental documents or other purposes. DOE also will coordinate with other agencies to make environmental reviews more efficient for all agencies with a decision to make or action to take regarding a proposal. Nothing in this section extends the statutory page limits (sections 6.3 and 7.6) or schedule deadlines (sections 6.4 and 7.7).

3.1 Identifying reasonably foreseeable environmental effects

DOE is responsible under NEPA for analyzing reasonably foreseeable environmental effects (42 U.S.C. 4332(C)(i)) of the proposed action and alternatives. DOE should consider the following factors and the definition of “effects” (chapter 8.0) when identifying reasonably foreseeable effects that require analysis:

- (a) DOE shall analyze only those reasonably foreseeable environmental effects that have a reasonably close causal relationship to the proposed agency action and alternatives.
- (b) “[W]hen the effects of an agency action arise from a separate project—for example, a possible future project or one that is geographically distinct from the project at hand—NEPA does not require the agency to evaluate the effects of that separate project.”⁶ In addition, an agency is not required to analyze the effects of projects over which it does not exercise regulatory authority.⁷

3.2 Evaluating significance

Determining whether an environmental effect is significant is a critical part of the NEPA process. Whether an impact rises to the level of “significant” is a matter of DOE’s expert judgment. DOE must determine whether environmental effects of a class of actions normally are significant when establishing or revising a categorical exclusion and, in the use of a categorical exclusion whether extraordinary circumstances create significant effects (chapter 5). When a categorical exclusion does not apply to a proposal, DOE considers whether environmental effects are likely to be significant as the central question in deciding whether to prepare an environmental assessment or environmental impact statement (section 2.2). DOE again considers the significance of environmental effects when evaluating

⁶*Seven County*, 145 S. Ct. at 1515. The Supreme Court provided the following explanation: “[I]f the project at issue might lead to the construction or increased use of a *separate project*—for example, a housing development that might someday be built near a highway—the agency need not consider the environmental effects of *that separate project*. . . . [T]he separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project.” *Id.* at 1515-16 (citing *Public Citizen v. Dep’t of Transp.*, 541 U. S. 752, 767 (2004) and *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U. S. 766, 774, n. 7 (1983)). “The effects from a separate project may be factually foreseeable, but that does not mean that those effects are relevant to the agency’s decisionmaking process or that it is reasonable to hold the agency responsible for those effects. . . . In those circumstances, ‘the causal chain is too attenuated.’” *Id.* at 1517 (citing, *inter alia*, *Public Citizen*, 541 U. S. at 766-767 and quoting *Metropolitan Edison*, 460 U. S. at 774). “In other words, there is no ‘reasonably close causal relationship’ between the project at hand and the environmental effects of those other projects.” *Id.* at 1516 (citing *Public Citizen*, 541 U. S. at 767).”

⁷ *Id.* at 1516.

changes to a proposed action or new information related to the environmental effects of a proposal (section 3.9). DOE also considers the significance of effects in determining the level of detail to include in an environmental assessment or environmental impact statement.

(a) The analysis of environmental effects should be tailored to the particular proposal including the location. In all cases, DOE's analysis should be "reasonable and reasonably explained,"⁸ and the analysis need not run longer than necessary to provide that reasoned explanation.⁹ The remainder of this section describes criteria that might factor into DOE's analysis of environmental effects.

(b) DOE may use any reliable data source, and DOE need not undertake new research unless it is essential to a reasoned choice among alternatives and the overall costs and time frame of preparing new information are not unreasonable. (42 U.S.C. 4336(b)(3)) When DOE is evaluating an action's reasonably foreseeable 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, DOE should make clear in the relevant environmental document that such information is lacking.

(c) The significance of effects is evaluated in the context of the affected environment (local, regional, or national) and its resources, as appropriate for the specific action and the mechanism or pathway by which the action can result in an environmental effect. Consequently, the environmental document needs a description of the affected environment that is sufficient to support a reasoned explanation of DOE's conclusion regarding the significance of effects. This may be in a standalone section or chapter on the affected environment or integrated into the discussion of environmental effects. In any case, the discussion of the affected environment should not be encyclopedic and need not extend beyond areas associated with reasonably foreseeable environmental effects that have a close causal relationship to the proposed action and alternatives.

(d) In considering whether effects are significant, DOE should consider the following, as appropriate to the specific resource area:

- (1) Both short- and long-term effects.
- (2) Both beneficial and adverse effects.
- (3) Effects on public health and safety.
- (4) Economic effects.
- (5) Effects on the quality of life of the American people.

(e) DOE should evaluate environmental effects in context. In considering short-term effects, for example, DOE should acknowledge that certain adverse effects that occur during construction may be reversible through revegetation or other actions that return the environment to its original condition or to a functioning ecosystem. Such effects are not significant over the long-term, though other effects of construction activities might be. For another example, DOE should acknowledge that facility

⁸*Id.* at 1511.

⁹ *Id.* at 1512 ("Brevity should not be mistaken for lack of detail. A relatively brief agency explanation can be reasoned and detailed; an EIS need not meander on for hundreds or thousands of pages.").

construction and operation will not be authorized without compliance with applicable laws and other requirements (e.g., DOE orders and technical standards).

3.3 Relying on existing environmental documents

(a) DOE may rely on an environmental assessment, environmental impact statement, or portion thereof, issued by any Federal agency that meets the standards under NEPA and these procedures. (The use of “rely on” is the same concept as “adopt” in prior NEPA practice for environmental assessments and environmental impact statements.) The nature of DOE’s reliance on an existing document depends on the relationship of the existing document to DOE’s NEPA review of a new or modified proposal.

- (1) If the actions analyzed in the original environmental assessment or environmental impact statement and DOE’s proposed action are substantially the same, and the analysis in the original document remains sufficient, DOE may republish the relied upon environmental assessment or environmental impact statement to satisfy its responsibilities under NEPA. DOE will add to the republished document a statement that it has confirmed that the original document satisfies DOE’s NEPA responsibilities for the new or modified proposal.
- (2) If the existing environmental assessment, environmental impact statement, or portion thereof, is only relevant to part of DOE’s proposed action, DOE should cite, briefly describe the content and relevance to the environmental document being prepared, and may supplement or make modifications that are necessary to render the relied-upon document, or portion thereof, fit for fulfilling NEPA’s analytic requirements for the action at hand.
- (3) There is no statutory requirement or otherwise to post a draft EIS for public comment.

3.4 Incorporation by reference

(a) DOE may incorporate material, such as planning studies, technical analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding DOE and public review of the environmental effects of the proposed action or alternatives. When incorporating material by reference, DOE will cite, briefly describe the content and relevance to the environmental document, and make the materials reasonably available by potentially interested parties. If DOE provides an opportunity for public review of the environmental document, DOE also will make any materials incorporated by reference publicly available at the same time. DOE will not use incorporation by reference as a means to evade the statutory page limits (sections 6.3 and 7.6).

(b) Although NEPA itself does not require cost-benefit analysis, DOE may prepare a cost-benefit analysis for a particular proposal. To the extent that this cost-benefit analysis is relevant to any alternatives analysis that DOE is conducting pursuant to NEPA, DOE will incorporate the cost-benefit analysis or append it to the statement to avoid duplication in evaluating the environmental effects. In such cases, the environmental document will discuss the relationship between that analysis and any analyses of unquantified environmental effects, values, and amenities.

3.5 Combining documents

DOE will combine, to the fullest extent practicable, any environmental document with any other agency

document to reduce duplication and paperwork. Combining documents does not extend page limits for environmental assessments and environmental impact statements unless another statute applies (sections 6.3 and 7.6).

3.6 Integrating NEPA with other environmental requirements

(a) To the fullest extent possible, DOE will prepare environmental documents concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes.

(b) DOE will combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, DOE may combine an environmental document with related plans, rules, or amendments as a single consolidated document.

(c) If comments on a notice of intent or other aspects of a scoping process identify consultations, permits, or licenses necessary under other environmental laws, the environmental document should contain a section or appendix briefly listing the applicable requirements and how DOE has or will meet them (e.g., permits applied for or received, consultations initiated or concluded).

3.7 Elimination of duplication with State, Tribal, and local procedures

(a) DOE will cooperate with State, Tribal, and local agencies that have a decision or action to make relevant to the environmental effects of the proposal, including laws comparable with NEPA.

(b) To the fullest extent practicable unless specifically prohibited by law, DOE will cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use by DOE of studies, analysis, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:

- (1) Joint planning processes;
- (2) Joint environmental research and studies;
- (3) Joint public meetings or hearings; and
- (4) Joint environmental documents.

3.8 Programmatic environmental documents and tiering

(a) DOE may prepare environmental documents for programmatic Federal actions, such as the adoption of new agency programs. DOE may evaluate the proposal(s) in one of the following ways:

- (1) Geographically, including actions occurring in the same general location, such as a DOE site, body of water, region, or metropolitan area.
- (2) Generically, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development.

(b) Consistent with NEPA § 108, 42 U.S.C. § 4336b, after completing a programmatic environmental assessment or environmental impact statement, DOE 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, as long as DOE 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, DOE may continue to rely on the document.

(c) DOE may, but is not required to, prepare a programmatic environmental document when it does not have a programmatic decision to make. When a programmatic environmental document is not required, DOE should consider whether a technical report or study would improve the efficiency of future NEPA reviews by providing information on a technology, region, or other subject that can be referenced in future environmental documents.

3.9 Supplements to environmental documents and supplement analyses

(a) DOE is required to prepare supplements to environmental documents only if a major Federal action remains to occur, and:

- (1) DOE makes substantial changes to the proposed action that are relevant to environmental concerns;
or
- (2) DOE decides, in its discretion, that there are substantial new circumstances or information about the significance of the adverse effects that bearing on the proposed action or its effects.

(b) When it is unclear whether or not a supplement to an environmental document is required, DOE may prepare a supplement analysis.

(1) The supplement analysis should discuss the circumstances that are pertinent to deciding whether to prepare a supplement to an environmental document.

(2) The supplement analysis should be brief and need only contain sufficient information for DOE to determine whether:

- (i) An existing environmental document should be supplemented;
- (ii) A new environmental document should be prepared; or
- (iii) No further NEPA documentation is required.

(3) DOE will make the determination and the related supplement analysis available to the public for information.

4.0 General

4.1 Classified, confidential, and otherwise exempt information

(a) Notwithstanding other sections of this part, DOE shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552) and DOE's regulations implementing the FOIA (10 CFR 1004.10(b)).

(b) To the fullest extent possible, DOE will segregate any information that is exempt from disclosure requirements into an appendix to allow public review of the remainder of the NEPA document.

(c) If exempt information cannot be segregated, or if segregation would leave essentially meaningless material, DOE will withhold the entire NEPA document from the public; however, DOE will prepare the NEPA document and use it in DOE decision-making.

4.2 Appendices

If DOE prepares an appendix, DOE will publish it with the NEPA document. Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

Materials may include:

(a) Material prepared in connection with the NEPA document (as distinct from material that is not so prepared and is incorporated by reference (section 3.4)).

(b) Data, brief descriptions of methodology, and other material substantiating any analysis fundamental to the NEPA document, but not analysis. Analysis of environmental effects will be included in the body of the NEPA document.

(c) Comments (or summaries thereof where the response has been exceptionally voluminous) received during the NEPA process and DOE's response to those comments.

4.3 Unique identification numbers

For all environmental documents, DOE will provide a unique identification number for tracking purposes, which DOE will reference on all associated environmental review documents prepared for the proposed agency action and in any database or tracking system for such documents. DOE will coordinate with the CEQ and other Federal agencies to ensure compatibility of such identification numbers across Federal agencies.

4.4 Emergencies

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures, DOE will consult with CEQ about alternative arrangements for compliance with NEPA. In other emergency circumstances, DOE will determine how best to comply with NEPA, including any necessary variance from these DOE NEPA implementing procedures, and notify CEQ about the emergency circumstances and DOE's plan for NEPA compliance.

5.0 Establishing, Adopting, and Applying Categorical Exclusions

Categorical exclusions provide a mechanism to identify types of Federal actions that normally do not have significant environmental effects and for which neither an environmental assessment nor environmental impact statement is normally required. This ensures that resources are not expended conducting environmental analysis of proposals that do not present potential for significant environmental impacts. Categorical exclusions established or adopted by DOE are listed in appendices B–C of these procedures.

- (a) All categorical exclusions may be applied by any DOE office. The sectional divisions in appendix B are solely for purposes of organization of that appendix and are not intended to be limiting.
- (b) A class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as award of implementing grants and contracts, site preparation, purchase and installation of equipment, and associated transportation activities).

5.1 Establishing and revising categorical exclusions

- (a) To establish or revise a categorical exclusion, DOE must determine that the category of actions normally does not significantly affect the quality of the human environment (42 U.S.C. § 4336e(1)). In making this determination, DOE shall:
 - (1) Develop a written record containing information to substantiate its determination;
 - (2) Consult with CEQ on its proposed new or revised categorical exclusion, including the written record, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (3); and
 - (3) Provide public notice in the *Federal Register* of DOE’s establishment or revision of any categorical exclusion, including the address of the website where the written record is available (energy.gov/nepa).
- (b) If DOE becomes aware of substantial new information about the environmental effects of actions included in an existing categorical exclusion, DOE will determine whether to retain, revise, or remove that categorical exclusion.
- (c) DOE will look for opportunities to forego a 30-day consultation process when, consistent with its statutory authority and because of the substantial deference courts give DOE under the *Seven County* decision when doing so is deemed a well-reasoned decision.

5.2 Adopting another agency’s categorical exclusion

- (a) Consistent with NEPA (42 U.S.C. § 4336c), DOE may adopt a categorical exclusion listed in another agency’s NEPA procedures. Once adopted, the categorical exclusion is available for use by all DOE offices. When adopting a categorical exclusion, DOE shall:
 - (1) Identify the categorical exclusion listed in another agency’s NEPA procedures that covers DOE’s

category of proposed or related actions;

- (2) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate;
 - (3) Provide public notification of the categorical exclusion that DOE is adopting, including a brief description of the proposed action or category of proposed actions to which DOE intends to apply the adopted categorical exclusion. DOE shall publish a notice of its adoption on DOE's website at energy.gov/nepa. This notice should explain how DOE intends to use the adopted categorical exclusion (e.g., types of projects, process for considering extraordinary circumstances, and public notice of categorical exclusion determinations), and a brief description of the agencies' consultation; and
 - (4) DOE will list adopted categorical exclusions in appendix C of these procedures.
- (b) If the establishing agency revises a categorical exclusion that DOE has adopted, DOE will determine whether to retain the categorical exclusion as adopted, or to remove the adopted categorical exclusion and adopt the revised categorical exclusion.
- (c) After adoption of another agency's categorical exclusion, DOE may decide to follow the process described in section 5.1 to establish it as a DOE categorical exclusion. This could allow, for example, DOE to modify the text of the categorical exclusion to better fit DOE's programs and activities. Otherwise, the categorical exclusion remains as written by the establishing agency.

5.3 Removing a categorical exclusion

- (a) To remove a categorical exclusion from DOE's NEPA procedures, DOE will:
- (1) Develop a written justification for the removal;
 - (2) Consult with CEQ on its proposed removal of the categorical exclusion, including the written justification for the removal, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (3); and
 - (3) Provide public notice of DOE's removal of the categorical exclusion in the *Federal Register* and include the written justification or a link to where that justification is available on DOE's website.

5.4 Applying one or more categorical exclusions to a proposal

- (a) Proposed recurring activities to be undertaken during a specified time period, such as routine maintenance activities for a year, may be addressed in a single categorical exclusion determination after considering the potential aggregated impacts.
- (b) The following clarifications are provided to assist in the appropriate application of categorical exclusions that employ these terms or phrases:
- (1) "Previously disturbed or developed" refers to land that has been changed such that its functioning

ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.

- (2) DOE considers terms such as “small” and “small-scale” in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, DOE would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action.
- (c) To find that a proposal is categorically excluded, DOE shall affirmatively determine the factors listed below. When applying more than one categorical exclusion to a proposal, DOE shall consider these factors for the full scope of the proposal and the collective scope of the categorical exclusions.
 - (1) The proposal fits within one or more classes of actions listed in appendices B–C of these procedures;
 - (2) The proposal has not been segmented to meet the definition of a categorical exclusion.

Segmentation can occur when a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. However, segmentation does not include proposals that are developed and potentially implemented over multiple phases where each phase results in a decision whether to proceed to the subsequent phase.
 - (3) There are no extraordinary circumstances related to the proposal that indicate a normally excluded agency action is likely to have a reasonably foreseeable significant adverse effect. It is not the presence of an extraordinary circumstance that precludes application of a categorical exclusion, but rather application of a categorical exclusion is not possible only when DOE concludes that the extraordinary circumstance is likely to cause a reasonably foreseeable significant adverse effect or that DOE does not know the environmental effect of the extraordinary circumstance. DOE or an applicant may modify the proposal to avoid reasonably foreseeable adverse significant effects such that the categorical exclusion would apply. Extraordinary circumstances are unique situations presented by specific proposals, including, but not limited to, uncertain effects or effects involving unique or unknown risks.
- (d) DOE will document its determination that one or more categorical exclusions applies to a proposed agency action for any application of a categorical exclusion included in appendices B or C of these procedures.
- (e) Categorical exclusion determinations for actions listed in appendix B shall be documented and made available to the public by posting online, generally within two weeks of the determination, unless additional time is needed in order to review and protect classified information, “confidential business information,” or other information that DOE would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Posted categorical exclusion determinations shall not disclose classified information, “confidential business information,” or other information that DOE

would not disclose pursuant to FOIA. (See also section 4.1)

- (f) If DOE determines that it cannot apply one or more categorical exclusions to the proposed action, DOE shall prepare an environmental assessment or environmental impact statement, as required (section 2.2(c)).

5.5 Relying on another agency's categorical exclusion determination

DOE may rely on another agency's determination that a categorical exclusion applies to a particular proposed agency action if the agency action covered by that determination and DOE's proposed action are substantially the same.

- (a) DOE will coordinate with the agency that made the categorical exclusion determination to ensure that the agency is aware of DOE's intended reliance on its categorical exclusion determination and has had an opportunity to provide input to DOE.
- (b) DOE should confirm that reliance on the categorical exclusion determination does not conflict with DOE's NEPA implementing procedures. This would entail consideration of DOE's extraordinary circumstances (section 5.4), integral elements (appendix B), and any relevant categorical exclusions listed in appendix B of these procedures.
- (c) DOE will document its reliance on another agency's categorical exclusion determination and post that documentation on DOE's website. That documentation should include the other agency's categorical exclusion determination and a brief explanation of how DOE's proposed action is substantially the same as that of the agency that made the categorical exclusion determination.

6.0 Preparing an Environmental Assessment

If an action is subject to NEPA (section 2.1) and an environmental assessment is the required level of NEPA review (section 2.2), DOE shall prepare an environmental assessment with respect to the proposed agency action following NEPA and the procedures described herein.

6.1 Public engagement in preparation of an environmental assessment

(a) DOE may publish a notice of intent to prepare an environmental assessment or other public notice to request scoping comments on the environmental assessment.

6.2 Contents of an environmental assessment

(a) The scope and level of detail shall be consistent with the narrow purpose of an environmental assessment, i.e., to determine whether any reasonably foreseeable effects of the proposal are likely to be significant and set forth the basis of DOE's finding of no significant impact or determination that an environmental impact statement is required. In preparing the environmental assessment, DOE will focus its analysis on whether the environmental effects of the action or project at hand are significant. As appropriate, DOE will document in the environmental assessment where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action. NEPA directs that environmental assessments are to be "concise" and conform to the page limits (42 U.S.C. § 4336(b)(2) and §4336a(e)(2)) and time limits (42 U.S.C. 4336a(g)) established in the law.

(b) DOE shall include in an environmental assessment a brief discussion of the following topics:

- (1) Purpose and need for the proposed action based on DOE's statutory authority. When the proposed action involves a response to an applicant's proposal, the purpose and need shall be informed by the goals of the applicant;
- (2) The proposed action, a reasonable number of alternatives to the extent required by NEPA (42 U.S.C. § 4332(2)(F) and 4332(2)(H)), and no action alternative (which may be encompassed within the discussion of the affected environment);
- (3) An explanation why particular environmental effects would not result in significant impact and, thus, are not further analyzed in the environmental assessment (section 3.2); and
- (4) The reasonably foreseeable effects of the proposed agency action and the alternatives evaluated sufficiently to determine whether any of the effects are likely to be significant and whether any significant effects can be made non-significant through mitigation.

6.3 Page limits

(a) DOE shall conform to page limits established in NEPA (42 U.S.C. § 4336(e)(2)) and as described in this section.

- (1) The text of an environmental assessment is strictly prohibited from exceeding 75 pages, not including citations or appendices. NEPA does not provide agencies with the authority or a

mechanism to exceed this page limit.

- (2) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.
- (3) Environmental assessments shall be formatted for an 8.5"x11" page with one-inch margins using a 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information. When an item of graphical material is larger than 8.5"x11", each such item shall count as one page.
- (4) Certification Related to Page Limits. The breadth and depth of analysis in an environmental assessment shall be tailored to ensure that the environmental analysis does not exceed this 75-page limit. As part of the finalization of the environmental assessment, a responsible official shall certify (and the certification shall be incorporated into the environmental assessment) that DOE has considered the factors mandated by NEPA; that the environmental assessment represents DOE'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 DOE's expert judgment; and that any considerations addressed briefly or left unaddressed were, in DOE's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision.
- (5) DOE recognizes that NEPA imposes no substantive environmental obligations or restrictions because it is a purely procedural statute that requires an agency to prepare a report, as stated in the *Seven County* decision, *supra*. DOE is encouraged to maximize its substantial discretion to not only stay within the page limits but also to limit lengthy appendices.

6.4 Deadlines

(a) As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason." Congress supplied the measure of that reason in the 2003 revision of NEPA by setting the deadlines in NEPA 107(g), 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.

To effectively support decision making for proposals initiated within DOE and for proposals brought to DOE by applicants for financial assistance or other authorization, NEPA must be implemented through predictable and reasonable timelines.¹⁰ Thus, NEPA directs that Federal agencies will complete each

¹⁰ "Time and resources are simply too limited for us to believe that Congress intended" consideration under NEPA to extend indefinitely. *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983) (citing *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978)).

environmental assessment not later than the date that is one year after the sooner of:

- (1) The date on which DOE determines that NEPA requires the preparation of an environmental assessment with respect to the proposal;
- (2) The date on which DOE notifies the applicant that the application to establish a right-of-way for the proposal is complete; and
- (3) The date on which DOE issues a notice of intent to prepare the environmental assessment for the proposal. (42 U.S.C. § 4336a(g)(1)(B))

(b) DOE should document the start date of each environmental assessment in writing and approved by the DOE official responsible for completing the environmental assessment on schedule. This documentation will assist DOE in tracking the schedule and preparing the report to congressional committees required by NEPA (42 U.S.C. 4336a(h)). The start date normally will be the date that DOE determines that preparation of an environmental assessment is required (option (a)(1) above). DOE does not receive applications to establish a right-of-way (though this option might be relevant in circumstances when DOE is participating with another Federal agency). If DOE were to issue a notice of intent to prepare an environmental assessment, that normally would follow DOE's determination that an environmental assessment is required.

(c) If DOE determines it is not able to meet the one-year deadline, it must consult with the applicant, if any (42 U.S.C. § 4336a(g)(2)). After such consultation, if needed, DOE may establish a new deadline that provides only so much additional time as is necessary to complete the environmental assessment. The deadline extension should be approved, in writing, by the DOE official responsible for completing the environmental assessment on schedule. This documentation will assist DOE in tracking the schedule and preparing the report to congressional committees required by NEPA (42 U.S.C. 4336a(h)).

Cause for setting a new deadline is only established if the EA is not sufficiently researched and written to support a FONSI or NOI to prepare an EIS. The announcement of the new deadline shall specify the reason why the environmental assessment was not able to be completed under the statutory deadline.

(d) DOE shall calculate environmental assessment schedules from the applicable start date to issuance of the environmental assessment.

(e) DOE should publish the environmental assessment, at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

(f) Certification Related to Deadline. When the environmental assessment is published, a responsible DOE official should certify (and the certification will be incorporated into the environmental assessment) that the resulting environmental assessment represents DOE's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in DOE's expert opinion, the analysis contained therein is adequate to inform and reasonably explain DOE's final decision regarding the proposed action.

6.5 Findings of no significant impact

(a) DOE shall prepare a finding of no significant impact if DOE determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action or project at hand will not have significant effects. The finding of no significant impact shall:

- (1) Include the environmental assessment or incorporate it by reference;
- (2) Document the reasons why DOE has determined that the selected alternative will not have a significant effect on the quality of the human environment;
- (3) State the authority for any mitigation that DOE has adopted and any applicable monitoring or enforcement provisions. If DOE finds no significant effects based on mitigation, the mitigated finding of no significant impact shall state any mitigation requirements enforceable by the agency (e.g., through conditions on awards or contractor requirements) or voluntary mitigation commitments that will be undertaken to avoid significant effects;
- (4) Identify any other documents related to the finding of no significant impact; and
- (5) State that an environmental impact statement will not be prepared, concluding the NEPA process for that action.

(b) DOE shall make each environmental assessment and finding of no significant impact available to the public by posting on its website.

7.0 Preparing an Environmental Impact Statement

If an action is subject to NEPA (section 2.1) and an environmental impact statement is the required level of NEPA review (section 2.2), DOE shall prepare an environmental impact statement with respect to the proposed agency action following NEPA and the procedures described herein.

7.1 Notice of intent and scoping

(a) As a preliminary step to determining whether, in connection with a proposal that is not excluded pursuant to a categorical exclusion, DOE will prepare an environmental assessment or an environmental impact, DOE will determine and document the scope of the project at hand.

(b) DOE should publish a concise notice of intent to prepare an environmental impact statement as soon as practicable after determining that an environmental impact statement is required for a proposed agency action. This is important to ensure timely decision making and because the two-year deadline for completing the environmental impact statement will typically be measured from the date that DOE determined that an environmental impact statement is required (section 7.7).

(c) The notice of intent shall include a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposed agency action (42 U.S.C. § 4336a(c)). The notice of intent also should include information to inform the public in preparing comments, such as:

- (1) The purpose and need for the proposed action (section 7.2);
- (2) A preliminary description of the proposed action and reasonable alternatives expected to be analyzed;
- (3) A brief summary of environmental effects that DOE expects to analyze and identification of those environmental effects that DOE anticipates are not likely to be significant and, therefore, not analyzed in detail;
- (4) Anticipated permits and other authorizations required for the proposed action and reasonable alternatives to proceed (e.g., connected actions);
- (5) A schedule for the decision-making process that is consistent with the deadlines for an environmental impact statement established in NEPA. There is no statutory requirement or otherwise to post a draft EIS for public comment;
- (6) A description of planned opportunities for engagement by Tribes, the public, and other parties, including any scoping meeting(s), the end date for the public comment period, and whether DOE anticipates releasing a draft environmental impact statement or related materials;
- (7) Identification of any cooperating and participating agencies, and any information that such agencies require in the notice to facilitate their decisions or authorizations; and
- (8) Contact information for a person within DOE who can answer questions about the proposed action

and the environmental impact statement.

7.2 Purpose and need

DOE shall include in the environmental impact statement a brief summary of the underlying of purpose and need for the proposed agency action based on DOE's statutory authority. (42 U.S.C. 4336(d)) When the proposed agency action concerns DOE's duty to act on an application for authorization of financial assistance or other purposes, the purpose and need for the proposed agency action should be informed by the goals of the applicant.

7.3 Alternatives in an environmental impact statement

(a) NEPA requires that an environmental impact statement include "a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal." (42 U.S.C. 4332(C)(iii))

Accordingly, in all environmental impact statements, DOE shall analyze:

- (1) the proposed action;
- (2) a reasonable range of technically and economically feasible alternatives that meet the purpose and need of the proposal and, where applicable, meet the goals of the applicant; and
- (3) no action, which may be limited to an analysis of negative environmental effects of not implementing the proposed action.

(b) DOE shall identify the reasonable range of alternatives on a project-by-project basis. To be included within the reasonable range of alternatives, the evaluation of that alternative should contribute to DOE's decision making.

(c) For any alternative that DOE considered but determined not to analyze in detail, DOE will provide a brief explanation of why the alternative was not included among the reasonable range of alternatives in the environmental impact statement. DOE should include this explanation in the environmental impact statement.

7.4 Contents of an environmental impact statement

(a) An environmental impact statement shall demonstrate DOE's consideration of:

- (1) reasonably foreseeable environmental effects of the proposed agency action;
- (2) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
- (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any adverse environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of

the proposal;

- (4) the relationship between local short-term impacts on the human environment and the maintenance and enhancement of long-term productivity;
- (5) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented; and
- (6) any means identified to mitigate adverse environmental effects of the proposed action. DOE is mindful that in this respect NEPA itself does not require or authorize DOE to impose any mitigation measures.

(b) In preparing the environmental impact statement, DOE will focus its analysis on whether the environmental effects of the action or project at hand are significant. DOE will document in the environmental impact statement where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

(c) Environmental impact statements should discuss effects in proportion to their significance. With respect to issues that are not substantive and do not meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, there should be no more than the briefest possible discussion to explain why those issues are not substantive and therefore not amenable to further analysis. Environmental impact statements should be analytic, concise, and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

7.5 Receipt of comments

During the process of preparing an environmental impact statement, DOE will seek the comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. As appropriate, DOE will seek the comments of State, Tribal, and local agencies that may be affected by the proposed action. In addition, DOE may seek comments if it believes such comments will aid in discharging its duties under NEPA.

7.6 Page limits

(a) The text of an environmental impact statement shall not exceed 150 pages, not including citations or appendices, unless the proposal is of extraordinary complexity, in which case the text is strictly prohibited from exceeding 300 pages, not including any citations or appendices (42 U.S.C. 4336(e)(1)). NEPA provides no method for an agency to extend the latter page limit.

(b) Environmental impact statements should 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 shall count as one page.

(c) Certification Related to Page Limits. The breadth and depth of analysis in an environmental impact statement shall be tailored to ensure that the environmental impact statement does not exceed these page limits. In this regard, as part of the finalization of the environmental impact statement, a responsible official should certify that DOE has considered the factors mandated by NEPA; that the environmental impact statement represents DOE'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 DOE's expert judgment; and that any considerations addressed briefly or left unaddressed were, in DOE's judgment, comparatively unimportant or frivolous.

7.7 Deadlines

(a) 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(6), 42 U.S.C. 4336a(g). These deadlines indicate Congress's determination that an agency, working within Congress's allocation of resources, 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.

To effectively support decision making for proposals initiated within DOE and for proposals brought to DOE by applicants for financial assistance or other authorization, NEPA must be implemented through a predictable and reasonable schedule.¹¹ Thus, NEPA directs that Federal agencies will complete each environmental impact statement not later than the date that is two years after the earlier of:

- (1) The date on which DOE determines that NEPA requires the preparation of an environmental impact statement with respect to the proposal;
- (2) The date on which DOE notifies the applicant that the application to establish a right-of-way for the proposal is complete; and
- (3) The date on which DOE issues a notice of intent to prepare the environmental impact statement for the proposal. (42 U.S.C. § 4336a(g)(1)(A))

(b) DOE should document the start date of each environmental impact statement in writing and approved by the DOE official responsible for completing the environmental impact statement on schedule. This documentation will assist DOE in tracking the schedule and preparing the report to congressional committees required by NEPA (42 U.S.C. 4336a(h)). The start date normally will be the date that DOE determines that preparation of an environmental impact statement is required (option (a)(1) above). DOE does not receive applications to establish a right-of-way (though this option might be relevant in circumstances when DOE is participating with another Federal agency). If DOE were to issue a notice of intent to prepare an environmental impact statement, that normally would follow DOE's determination that an environmental impact statement is required.

(c) DOE shall calculate environmental impact statement schedules from the applicable start date to the date of publication by the U.S. Environmental Protection Agency in the *Federal Register* of a notice of

¹¹ "Time and resources are simply too limited for us to believe that Congress intended" consideration under NEPA to extend indefinitely. *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983) (citing *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978)).

availability of the environmental impact statement as the end date. Where DOE has prepared an environmental assessment that results in a decision to prepare an EIS, DOE will use the start date for the environmental assessment as the start date for the EIS unless it exercises its discretion to determine otherwise by direction of DOE leadership.

(d) DOE will strive to publish the EIS, complete, as soon as possible. DOE should publish the environmental impact statement, at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

(e) If DOE determines it is not able to meet the two-year deadline, it must consult with the applicant, if any (42 U.S.C. § 4336a(g)(2)). After such consultation, if needed, DOE may establish a new deadline that provides only so much additional time as is necessary to complete the environmental impact statement. The deadline extension should be approved, in writing, by the DOE official responsible for completing the environmental impact statement on schedule. This documentation will assist DOE in tracking the schedule and preparing the report to congressional committees required by NEPA (42 U.S.C. 4336a(h)).

Cause for setting a new deadline is only established if the environmental impact statement is not sufficiently developed to support a Record of Decision. The announcement of the new deadline shall specify the reason why the environmental impact statement was not able to be completed under the statutory deadline.

(f) Certification Related to Deadlines. When the environmental impact statement is published, a responsible DOE official should certify (and the certification will be incorporated into the environmental impact statement) that the resulting environmental impact statement represents DOE's good faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in DOE's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that in DOE's judgement the analysis contained therein is adequate to inform and reasonably explain DOE's final decision regarding the proposed Federal action.

7.8 Publication of an environmental impact statement

It is the policy of DOE to undertake no obligation beyond those required by NEPA. in the creation and publication of an EIS. NEPA should not unnecessarily obstruct projects, create inefficiencies, or add costs that are not mandated by statute.

(a) DOE shall file each environmental impact statement together with comments and responses it solicited with the U.S. Environmental Protection Agency (EPA), Office of Federal Activities, following EPA's filing guidance (<https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>). EPA will include the EIS in its weekly notice of availability published in the *Federal Register*.

(b) DOE shall publish the entire environmental impact statement, including any appendices, and DOE's decision by posting it on DOE's website consistent with NEPA (42 U.S.C. 4332(c)). During the process of preparing the environmental impact statement, DOE also may publish on its website or a website developed by a contractor such draft materials as in DOE's judgment may assist in fulfilling its responsibilities under NEPA and these procedures.

7.9 Decision

(a) DOE's decision shall come from analyzed alternatives.

(b) DOE's decision may be described in a record of decision or incorporated into a separate decision document (e.g., a DOE order).

(c) DOE's decision may be made concurrently with or at any time after the environmental impact statement is made publicly available.

8.0 Definitions

As used in these implementing procedures, terms have the meanings provided in NEPA § 111, 42 U.S.C. § 4336e. In addition:

Appendix means additional matter placed at the end of a NEPA document or in a separate volume that provides support for analysis in the NEPA document but does not include analysis of environmental effects.

Applicant means a non-Federal entity requesting financial assistance or other authorization from DOE. This has the same meaning as “project sponsor” as used in NEPA.

Authorization means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.

CEQ means the Council on Environmental Quality.

CERCLA-excluded petroleum and natural gas products means petroleum, including crude oil or any fraction thereof, that is not otherwise specifically listed or designated as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601.101(14)) and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or of pipeline quality (or mixtures of natural gas and such synthetic gas).

Connected action means a separate Federal action within the authority of DOE that is closely related to the proposed agency action and should be addressed in a single environmental document because the proposed agency action::

- (i) Automatically triggers the separate Federal action, which independently would require the preparation of additional environmental documents;
- (ii) Cannot proceed unless the separate Federal action is taken previously or simultaneously; or
- (iii) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for their justification.

Contaminant means a substance identified within the definition of contaminant in section 101(33) of CERCLA (42 U.S.C. 9601.101(33)).

Day means a calendar day.

DOE means the U.S. Department of Energy.

Early scoping means the period after identifying that a proposal requires NEPA review (section 2.1) and prior to DOE determining the required level of NEPA review (section 2.2). DOE may conduct this process internally and may involve external parties at its discretion.

Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives. The terms *effects* and *impacts* are used interchangeably.

- (1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.
- (2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party.

Hazardous substance means a substance identified within the definition of hazardous substances in section 101(14) of CERCLA (42 U.S.C. 9601.101(14)). Radionuclides are hazardous substances through their listing under section 112 of the Clean Air Act (42 U.S.C. 7412) (40 CFR part 61, subpart H).

Human environment means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment.

Interim action means an action concerning a proposal that is the subject of an ongoing NEPA review and that DOE proposes to take before that NEPA review is complete, and that is permissible under NEPA.

Jurisdiction by law means agency authority to approve, veto, or finance all or part of the proposal.

Mitigation means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. NEPA does not mandate the form or adoption of any mitigation. Mitigation includes:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (2) Minimizing effects by limiting the degree or magnitude of the action and its implementation.
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (5) Compensating for the impact by replacing or providing substitute resources or environments.

NEPA means the National Environmental Policy Act, as amended (42 U.S.C. § 4321, *et seq.*).

NEPA document means a DOE notice of intent (NOI), environmental impact statement (EIS), record of decision (ROD), environmental assessment (EA), finding of no significant impact (FONSI), supplement

analysis (SA), categorical exclusion (CX) determination, or any other document prepared pursuant to a requirement of NEPA or these procedures.

NEPA process or *NEPA review* means all measures necessary for compliance with the requirements of NEPA.

Notice of Availability means a formal notice, published by EPA in the *Federal Register*, that announces the issuance and public availability of a draft or final EIS. A DOE Notice of Availability is an optional notice used to provide information to the public that may be published in the *Federal Register* or otherwise made publicly available.

Notice of early scoping means an optional public notice that DOE has identified a proposed action and is soliciting input to help DOE determine the scope of analysis and appropriate type of NEPA review.

Notice of intent means a public notice that an agency will prepare and consider an environmental document.

Pollutant means a substance identified within the definition of pollutant in section 101(33) of CERCLA (42 U.S.C.9601.101(33)).

Program means a sequence of connected or related DOE actions or projects.

Project means a specific DOE undertaking including actions approved by permit or other regulatory decision as well as Federal and federally assisted activities, which may include design, construction, and operation of an individual facility; research, development, demonstration, and testing for a process or product; financial assistance or funding for a facility, process, or product; or similar activities.

Proposed agency action or *proposed action* means the decision to be made by DOE or another Federal agency. For example, in common usage, an applicant's proposal might be to construct and operate a facility, and DOE's proposed action might be to provide financial assistance to the applicant for that proposal.

Publish and *publication* mean methods used by DOE to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.

Reasonable alternatives means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

Reasonably foreseeable means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

Related action means an action undertaken by an agency, *e.g.*, a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, *e.g.*, that a set of related actions are all related to one overarching project.

ROD means a Record of Decision.

Scope consists of the range of actions, alternatives, and effects to be considered in an environmental document. The scope of an individual statement may depend on its relationships to other statements.

Scoping means the process, whether internal or public, to identify the scope of the NEPA review.

Site-wide NEPA document means a broad-scope environmental impact statement or environmental assessment that identifies and assesses the impacts of ongoing and reasonably foreseeable future actions at a DOE site; it may also refer to an associated NEPA document, such as a notice of intent, record of decision, or finding of no significant impact.

Special expertise means statutory responsibility, agency mission, or related program experience. (42 U.S.C. § 4336e(13))

Substantially the same means that DOE and another agency are proposing actions related to the same project. For example, one agency has permitting authority and the other agency proposes to provide financial support for the same project. For another example, an agency has requested DOE assistance to work on a site, facility, or land managed by or under the jurisdiction of the requesting agency.

Supplement Analysis means a DOE document used to determine whether a supplemental EIS should be prepared (section 3.9), or to support a decision to prepare a new EIS.

Supplemental EIS means an EIS prepared to supplement a prior EIS (section 3.9).

The Secretary means the Secretary of Energy.

Tiering refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

Appendix A: Administrative and Routine Actions Excepted from NEPA Review

[These actions were formerly identified as categorical exclusions in appendix A of subpart D in DOE's regulations. They now represent actions that are excepted from NEPA based on the definition of "major Federal action" in Section 110(10). They have been retained as appendix A for ease of reference and to avoid confusion.]

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A1 Routine DOE business actions

Routine actions necessary to support the normal conduct of DOE business limited to administrative, financial, and personnel actions.

A2 Clarifying or administrative contract actions

Contract interpretations, amendments, and modifications that are clarifying or administrative in nature.

A3 Certain actions by Office of Hearings and Appeals

Adjustments, exceptions, exemptions, appeals and stays, modifications, or rescissions of orders issued by the Office of Hearings and Appeals.

A4 Interpretations and rulings for existing regulations

Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

A5 Interpretive rulemakings with no change in environmental effect

Rulemakings interpreting or amending an existing rule or regulation that does not change the

environmental effect of the rule or regulation being amended.

A6 Procedural rulemakings

Rulemakings that are strictly procedural, including, but not limited to, rulemaking (under 48 CFR chapter 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.

A7 [Reserved]

A8 Awards of certain contracts

Awards of contracts for technical support services, management and operation of a government-owned facility, and personal services.

A9 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. (See also B3.1 of appendix B to these procedures.)

A10 Reports and recommendations on non-DOE legislation

Reports and recommendations on legislation or rulemaking that are not proposed by DOE.

A11 Technical advice and assistance to organizations

Technical advice and planning assistance to international, national, state, and local organizations.

A12 Emergency preparedness planning

Emergency preparedness planning activities, including, but not limited to, the designation of onsite evacuation routes.

A13 Procedural documents

Administrative, organizational, or procedural Policies, Orders, Notices, Manuals, and Guides.

A14 Approval of technical exchange arrangements

Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations (including, but not limited to, assistance in identifying and analyzing

another country's energy resources, needs and options).

A15 International agreements for energy research and development

Approval of DOE participation in international “umbrella” agreements for cooperation in energy research and development activities that would not commit the U.S. to any specific projects or activities.

Appendix B: Categorical Exclusions Applicable to Specific Agency Actions

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B. Conditions That Are Integral Elements of the Classes of Actions in Appendix B

The classes of actions listed below include the following conditions as integral elements of the classes of

actions. To fit within the classes of actions listed below, a proposal must be one that would not:

- (1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders;
- (2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;
- (3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;
- (4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a Federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:
 - (i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, Federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;
 - (ii) Federally-listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened species or their habitat; Federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);
 - (iii) Floodplains and wetlands (as defined in 10 CFR 1022.4, "Compliance with Floodplain and Wetland Environmental Review Requirements: Definitions," or its successor);
 - (iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;
 - (v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions," or its successor;
 - (vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

B1. Categorical Exclusions Applicable to Facility Operation

B1.1 Changing rates and prices

Changing rates for services or prices for products marketed by parts of DOE other than Power Marketing Administrations, and approval of rate or price changes for non-DOE entities, that are consistent with the change in the implicit price deflator for the Gross Domestic Product published by the Department of Commerce, during the period since the last rate or price change.

B1.2 Training exercises and simulations

Training exercises and simulations (including, but not limited to, firing-range training, small-scale and short-duration force-on-force exercises, emergency response training, fire fighter and rescue training, and decontamination and spill cleanup training) conducted under appropriately controlled conditions and in accordance with applicable requirements.

B1.3 Routine maintenance

Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (including, but not limited to, pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed, provided that the activities would be conducted in a manner in accordance with applicable requirements. Custodial services are activities to preserve facility appearance, working conditions, and sanitation (such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal). Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Such maintenance may occur as a result of severe weather (such as hurricanes, floods, and tornados), wildfires, and other such events. Routine maintenance may result in replacement to the extent that replacement is in-kind and is not a substantial upgrade or improvement. In-kind replacement includes installation of new components to replace outmoded components, provided that the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

- (a) Repair or replacement of facility equipment, such as lathes, mills, pumps, and presses;
- (b) Door and window repair or replacement;

- (c) Wall, ceiling, or floor repair or replacement;
- (d) Reroofing;
- (e) Plumbing, electrical utility, lighting, and telephone service repair or replacement;
- (f) Routine replacement of high-efficiency particulate air filters;
- (g) Inspection and/or treatment of currently installed utility poles;
- (h) Repair of road embankments;
- (i) Repair or replacement of fire protection sprinkler systems;
- (j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing, and scraping and grading of unpaved surfaces;
- (k) Erosion control and soil stabilization measures (such as reseeding, gabions, grading, and revegetation);
- (l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 435.1, "Radioactive Waste Management," or its successor;
- (m) Repair and maintenance of transmission facilities, such as replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed powerlines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions) or its successor;
- (n) Routine testing and calibration of facility components, subsystems, or portable equipment (such as control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes);
- (o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), and removal of contaminated intact equipment and other material (not including spent nuclear fuel or special nuclear material in nuclear reactors); and
- (p) Removal of debris.

B1.4 Air conditioning systems for existing equipment

Installation or modification of air conditioning systems required for temperature control for operation of existing equipment.

B1.5 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.

B1.6 Tanks and equipment to control runoff and spills

Installation or modification of retention tanks or small (normally under one acre) basins and associated piping and pumps for existing operations to control runoff or spills (such as under 40 CFR part 112). Modifications include, but are not limited to, installing liners or covers. (See also B1.33 of this appendix.)

B1.7 Electronic equipment

Acquisition, installation, operation, modification, and removal of electricity transmission control and monitoring devices for grid demand and response, communication systems, data processing equipment, and similar electronic equipment.

B1.8 Screened water intake and outflow structures

Modifications to screened water intake and outflow structures such that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits.

B1.9 Airway safety markings and painting

Placement of airway safety markings on, painting of, and repair and in-kind replacement of lighting on powerlines and antenna structures, wind turbines, and similar structures in accordance with applicable requirements (such as Federal Aviation Administration standards).

B1.10 Onsite storage of activated material

Routine, onsite storage at an existing facility of activated equipment and material (including, but not limited to, lead) used at that facility, to allow reuse after decay of radioisotopes with short half-lives.

B1.11 Fencing

Installation of fencing, including, but not limited to border marking, that would not have the potential to significantly impede wildlife population movement (including migration) or surface water flow.

B1.12 Detonation or burning of explosives or propellants after testing

Outdoor detonation or burning of explosives or propellants that failed (duds), were damaged (such as by fracturing), or were otherwise not consumed in testing. Outdoor detonation or burning would be in areas designated and routinely used for those purposes under existing applicable permits issued by Federal, state, and local authorities (such as a permit for a RCRA miscellaneous unit (40 CFR part 264, subpart X)).

B1.13 Pathways, short access roads, and rail lines

Construction, acquisition, and relocation, consistent with applicable right-of-way conditions and approved land use or transportation improvement plans, of pedestrian walkways and trails, bicycle paths, small outdoor fitness areas, and short access roads and rail lines (such as branch and spur lines).

B1.14 Refueling of nuclear reactors

Refueling of operating nuclear reactors, during which operations may be suspended and then resumed.

B1.15 Support buildings

Siting, construction or modification, and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated and modular buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include, but are not limited to, those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (such as security posts); fire protection; small-scale fabrication (such as machine shop activities), assembly, and testing of non-nuclear equipment or components; and similar support purposes, but exclude facilities for nuclear weapons activities and waste storage activities, such as activities covered in B1.10, B1.29, B1.35, B2.6, B6.2, B6.4, B6.5, B6.6, and B6.10 of this appendix.

B1.16 Asbestos removal

Removal of asbestos-containing materials from buildings in accordance with applicable requirements (such as 40 CFR part 61, "National Emission Standards for Hazardous Air Pollutants"; 40 CFR part 763, "Asbestos"; 29 CFR part 1910, subpart I, "Personal Protective Equipment"; and 29 CFR part 1926, "Safety and Health Regulations for Construction"; and appropriate state and local requirements, including certification of removal contractors and technicians).

B1.17 Polychlorinated biphenyl removal

Removal of polychlorinated biphenyl (PCB)-containing items (including, but not limited to, transformers and capacitors), PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other aboveground locations in accordance with applicable requirements (such as 40 CFR part 761).

B1.18 Water supply wells

Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, provided that there would be no drawdown other than in the immediate vicinity of the pumping well, and the covered actions would not have the potential to cause significant long-term decline of the water table, and would not have the potential to cause significant degradation of the aquifer from the new or replacement well.

B1.19 Microwave, meteorological, and radio towers

Siting, construction, modification, operation, and removal of microwave, radio communication, and meteorological towers and associated facilities, provided that the towers and associated facilities would not be in a governmentally designated scenic area (see B(4)(iv) of this appendix) unless otherwise authorized by the appropriate governmental entity.

B1.20 Protection of cultural resources, fish and wildlife habitat

Small-scale activities undertaken to protect cultural resources (such as fencing, labeling, and flagging) or to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders and minor diversion channels), or fisheries. Such activities would be conducted in accordance with an existing natural or cultural resource plan, if any.

B1.21 Noise abatement

Noise abatement measures (including, but not limited to, construction of noise barriers and installation of noise control materials).

B1.22 Relocation of buildings

Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area (where active utilities and currently used roads are readily accessible).

B1.23 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.

B1.24 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.

B1.25 Real property transfers for cultural resources protection, habitat preservation, and wildlife management

Transfer, lease, disposition, or acquisition of interests in land and associated buildings for cultural resources protection, habitat preservation, or fish and wildlife management, 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.

B1.26 Small water treatment facilities

Siting, construction, expansion, modification, replacement, operation, and decommissioning of small (total capacity less than approximately 250,000 gallons per day) wastewater and surface water treatment facilities whose liquid discharges are externally regulated, and small potable water and sewage treatment facilities.

B1.27 Disconnection of utilities

Activities that are required for the disconnection of utility services (including, but not limited to, water, steam, telecommunications, and electrical power) after it has been determined that the continued operation of these systems is not needed for safety.

B1.28 Placing a facility in an environmentally safe condition

Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste (such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste). These activities would not include conditioning, treatment, or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Disposal facilities for construction and demolition waste

Siting, construction, expansion, modification, operation, and decommissioning of small (less than approximately 10 acres) solid waste disposal facilities for construction and demolition waste, in accordance with applicable requirements (such as 40 CFR part 257, "Criteria for Classification of Solid Waste Disposal Facilities and Practices," and 40 CFR part 61, "National Emission Standards for Hazardous Air Pollutants") that would not release substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.30 Transfer actions

Transfer actions, in which the predominant activity is transportation, provided that (1) the receipt and storage capacity and management capability for the amount and type of materials, equipment, or waste to be moved already exists at the receiving site and (2) all necessary facilities and operations at the receiving site are already permitted, licensed, or approved, as appropriate. Such transfers are not regularly scheduled as part of ongoing routine operations.

B1.31 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.

B1.32 Traffic flow adjustments

Traffic flow adjustments to existing roads (including, but not limited to, stop sign or traffic light installation, adjusting direction of traffic flow, and adding turning lanes), and road adjustments (including, but not limited to, widening and realignment) that are within an existing right-of-way and consistent with approved land use or transportation improvement plans.

B1.33 Stormwater runoff control

Design, construction, and operation of control practices to reduce stormwater runoff and maintain natural hydrology. Activities include, but are not limited to, those that reduce impervious surfaces (such as vegetative practices and use of porous pavements), best management practices (such as silt fences, straw wattles, and fiber rolls), and use of green infrastructure or other low impact development practices (such as cisterns and green roofs).

B1.34 Lead-based paint containment, removal, and disposal

Containment, removal, and disposal of lead-based paint in accordance with applicable requirements (such as provisions relating to the certification of removal contractors and technicians at 40 CFR part 745, “Lead-Based Paint Poisoning Prevention In Certain Residential Structures”).

B1.35 Drop-off, collection, and transfer facilities for recyclable materials

Siting, construction, modification, and operation of recycling or compostable material drop-off, collection, and transfer stations on or contiguous to a previously disturbed or developed area and in an area where such a facility would be consistent with existing zoning requirements. The stations would have appropriate facilities and procedures established in accordance with applicable requirements for the handling of recyclable or compostable materials and household hazardous waste (such as paint and pesticides). Except as specified above, the collection of hazardous waste for disposal and the processing of recyclable or compostable materials are not included in this class of actions.

B1.36 Determinations of excess real property

Determinations that real property is excess to the needs of DOE and, in the case of acquired real property, the subsequent reporting of such determinations to the General Services Administration or, in the case of lands withdrawn or otherwise reserved from the public domain, the subsequent filing of a notice of intent to relinquish with the Bureau of Land Management, Department of the Interior. Covered actions would not include disposal of real property.

B2. Categorical Exclusions Applicable to Safety and Health

B2.1 Workplace enhancements

Modifications within or contiguous to an existing structure, in a previously disturbed or developed area,

to enhance workplace habitability (including, but not limited to, installation or improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation, and noise reduction).

B2.2 Building and equipment instrumentation

Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, remote control panels, remote monitoring capability, alarm and surveillance systems, control systems to provide automatic shutdown, fire detection and protection systems, water consumption monitors and flow control systems, announcement and emergency warning systems, criticality and radiation monitors and alarms, and safeguards and security equipment).

B2.3 Personnel safety and health equipment

Installation of, or improvements to, equipment for personnel safety and health (including, but not limited to, eye washes, safety showers, radiation monitoring devices, fumehoods, and associated collection and exhaust systems), provided that the covered actions would not have the potential to cause a significant increase in emissions.

B2.4 Equipment qualification

Activities undertaken to (1) qualify equipment for use or improve systems reliability or (2) augment information on safety-related system components. These activities include, but are not limited to, transportation container qualification testing, crane and lift-gear certification or recertification testing, high efficiency particulate air filter testing and certification, stress tests (such as “burn-in” testing of electrical components and leak testing), and calibration of sensors or diagnostic equipment.

B2.5 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).

B2.6 Recovery of radioactive sealed sources

Recovery of radioactive sealed sources and sealed source-containing devices from domestic or foreign locations provided that (1) the recovered items are transported and stored in compliant containers, and (2) the receiving site has sufficient existing storage capacity and all required licenses, permits, and approvals.

B3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research

B3.1 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.

B3.2 Aviation activities

Aviation activities for survey, monitoring, or security purposes that comply with Federal Aviation Administration regulations.

B3.3 Research related to conservation of fish, wildlife, and cultural resources

Field and laboratory research, inventory, and information collection activities that are directly related to the conservation of fish and wildlife resources or to the protection of cultural resources, provided that such activities would not have the potential to cause significant impacts on fish and wildlife habitat or populations or to cultural resources.

B3.4 Transport packaging tests for radioactive or hazardous material

Drop, puncture, water-immersion, thermal, and fire tests of transport packaging for radioactive or hazardous materials to certify that designs meet the applicable requirements (such as 49 CFR 173.411 and 173.412 and 10 CFR 71.73).

B3.5 Tank car tests

Tank car tests under 49 CFR part 179 (including, but not limited to, tests of safety relief devices, pressure regulators, and thermal protection systems).

B3.6 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.

B3.7 New terrestrial infill exploratory and experimental wells

Siting, construction, and operation of new terrestrial infill exploratory and experimental (test) wells, for either extraction or injection use, in a locally characterized geological formation in a field that contains existing operating wells, properly abandoned wells, or unminable coal seams containing natural gas, provided that the site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with applicable best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include those for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Uses for carbon sequestration wells include, but are not limited to, the study of saline formations, enhanced oil recovery, and enhanced coalbed methane extraction.

B3.8 Outdoor terrestrial ecological and environmental research

Outdoor terrestrial ecological and environmental research in a small area (generally less than 5 acres), including, but not limited to, siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for associated 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.

B3.9 Projects to reduce emissions and waste generation

Projects to reduce emissions and waste generation at existing fossil or alternative fuel combustion or utilization facilities, provided that these projects would not have the potential to cause a significant increase in the quantity or rate of air emissions. For this category of actions, “fuel” includes, but is not limited to, coal, oil, natural gas, hydrogen, syngas, and biomass; but “fuel” does not include nuclear fuel. Covered actions include, but are not limited to:

- (a) Test treatment of the throughput product (solid, liquid, or gas) generated at an existing and fully operational fuel combustion or utilization facility;
- (b) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that requires only minor modification to the existing structures at an existing fuel combustion or utilization facility, for which the existing use remains essentially unchanged;
- (c) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that involves no permanent change in the quantity or quality of fuel burned or used and involves no permanent change in the capacity factor of the fuel combustion or utilization facility; and
- (d) Addition or modification of equipment for capture and control of carbon dioxide or other regulated substances, provided that adequate infrastructure is in place to manage such substances.

B3.10 Particle accelerators

Siting, construction, modification, operation, and decommissioning of particle accelerators, including electron beam accelerators, with primary beam energy less than approximately 100 million electron volts (MeV) and average beam power less than approximately 250 kilowatts (kW), and associated beamlines, storage rings, colliders, and detectors, for research and medical purposes (such as proton therapy), and isotope production, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible), or internal modification of any accelerator facility regardless of energy, that does not increase primary beam energy or current. In cases where the beam energy exceeds 100 MeV, the average beam power must be less than 250 kW, so as not to exceed an average current of 2.5 milliamperes (mA).

B3.11 Outdoor tests and experiments on materials and equipment components

Outdoor tests and experiments for the development, quality assurance, or reliability of materials and equipment (including, but not limited to, weapon system components) under controlled conditions. Covered actions include, but are not limited to, burn tests (such as tests of electric cable fire resistance or the combustion characteristics of fuels), impact tests (such as pneumatic ejector tests using earthen embankments or concrete slabs designated and routinely used for that purpose), or drop, puncture, water-immersion, or thermal tests. Covered actions would not involve source, special nuclear, or byproduct materials, except encapsulated sources manufactured to applicable standards that contain source, special nuclear, or byproduct materials may be used for nondestructive actions such as detector/sensor development and testing and first responder field training.

B3.12 Microbiological and biomedical facilities

Siting, construction, modification, operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4), in accordance with applicable requirements and best practices (such as Biosafety in Microbiological and Biomedical Laboratories, 5th Edition, Dec. 2009, U.S. Department of Health and Human Services) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Operation may include the purchase, installation, and operation of biomedical equipment (such as commercially available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation).

B3.13 Magnetic fusion experiments

Performing magnetic fusion experiments that do not use tritium as fuel, within existing facilities (including, but not limited to, necessary modifications).

B3.14 Small-scale educational facilities

Siting, construction, modification, operation, and decommissioning of small-scale educational facilities (including, but not limited to, conventional teaching laboratories, libraries, classroom facilities, auditoriums, museums, visitor centers, exhibits, and associated offices) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Operation may include, but is not limited to, purchase, installation, and operation of equipment (such as audio/visual and laboratory equipment) commensurate with the educational purpose of the facility.

B3.15 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).

B3.16 Research activities in aquatic environments

Small-scale, temporary surveying, site characterization, and research activities in aquatic environments, limited to:

(a) Acquisition of rights-of-way, easements, and temporary use permits;

(b) Installation, operation, and removal of passive scientific measurement devices, including, but not limited to, antennae, tide gauges, flow testing equipment for existing wells, weighted hydrophones, salinity measurement devices, and water quality measurement devices;

(c) Natural resource inventories, data and sample collection, environmental monitoring, and basic and applied research, excluding

(1) large-scale vibratory coring techniques and

(2) seismic activities other than passive techniques; and

(d) Surveying and mapping.

These activities would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan and would incorporate appropriate control technologies and best management practices. None of the activities listed above would occur within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity, unless authorized by the agency responsible for such refuge, sanctuary, or area (or after consultation with the responsible agency, if no authorization is required). If the proposed activities would occur outside such refuge, sanctuary, or area and if the activities would have the potential to cause impacts within such refuge, sanctuary, or area, then the responsible agency shall be consulted in order to determine whether authorization is required and whether such activities would have the potential to cause significant impacts on such refuge, sanctuary, or area. Areas of high biological sensitivity include, but are not limited to, areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells.

B4. Categorical Exclusions Applicable to Electrical Power and Transmission

B4.1 Contracts, policies, and marketing and allocation plans for electric power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve only the use of the existing transmission system and existing generation resources operating within their normal operating limits.

B4.2 Export of electric energy

Export of electric energy as provided by Section 202(e) of the Federal Power Act over existing transmission systems or using transmission system changes that are themselves categorically excluded.

B4.3 Electric power marketing rate changes

Rate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits.

B4.4 Power marketing services and activities

Power marketing services and power management activities (including, but not limited to, storage, load shaping and balancing, seasonal exchanges, and other similar activities), provided that the operations of generating projects would remain within normal operating limits. (See B4.14 of this appendix for energy storage systems.)

B4.5 Temporary adjustments to river operations

Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events, provided that the adjustments would occur within the existing operating constraints of the particular hydrosystem operation.

B4.6 Additions and modifications to transmission facilities

Additions or modifications to electric power transmission facilities within a previously disturbed or developed facility area. Covered activities include, but are not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, load shaping projects (such as reducing energy use during periods of peak demand), changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms. (See B4.14 of this appendix for energy storage systems.)

B4.7 Fiber optic cable

Adding fiber optic cables to transmission facilities or burying fiber optic cable in existing powerline or pipeline rights-of-way. Covered actions may include associated vaults and pulling and tensioning sites outside of rights-of-way in nearby previously disturbed or developed areas.

B4.8 Electricity transmission agreements

New electricity transmission agreements, and modifications to existing transmission arrangements, to use a transmission facility of one system to transfer power of and for another system, provided that no new generation projects would be involved and no physical changes in the transmission system would be made beyond the previously disturbed or developed facility area.

B4.9 Multiple use of powerline rights-of-way

Granting or denying requests for multiple uses of a transmission facility's rights-of-way (including, but not limited to, grazing permits and crossing agreements for electric lines, water lines, natural gas pipelines, communications cables, roads, and drainage culverts).

B4.10 Removal of electric transmission facilities

Deactivation, dismantling, and removal of electric transmission facilities (including, but not limited to, electric powerlines, substations, and switching stations) and abandonment and restoration of rights-of-way (including, but not limited to, associated access roads).

B4.11 Electric power substations and interconnection facilities

Construction or modification of electric power substations or interconnection facilities (including, but not limited to, switching stations and support facilities).

B4.12 Construction of powerlines

Construction of electric powerlines approximately 10 miles in length or less, or approximately 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-way.

B4.13 Upgrading and rebuilding existing powerlines

Upgrading or rebuilding existing electric powerlines, which may involve relocations of small segments of the powerlines within an existing powerline right-of-way or within otherwise previously disturbed or developed lands (as discussed at section 5.4(b)(1)). Upgrading or rebuilding existing electric powerlines also may involve widening an existing powerline right-of-way to meet current electrical standards if the widening remains within previously disturbed or developed lands and only extends into a small area beyond such lands as needed to comply with applicable electrical standards. Covered actions would be in accordance with applicable requirements, including the integral elements listed at the start of this appendix; and would incorporate appropriate design and construction standards, control technologies, and best management practices. This categorical exclusion does not apply to underwater powerlines. As used in this categorical exclusion, “small” has the meaning discussed at section 5.4(b)(2)).

B4.14 Construction and operation of electrochemical-battery or flywheel energy storage systems

Construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small (as discussed at section 5.4(b)(2)) area contiguous to a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of this appendix, and would incorporate appropriate safety standards (including the current National Fire Protection Association 855, Standard for the Installation of Stationary Energy Storage Systems), design and construction standards, control technologies, and best management practices.

B5. Categorical Exclusions Applicable to Conservation, Fossil, and Renewable Energy Activities

B5.1 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); 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.

B5.2 Modifications to pumps and piping

Modifications to existing pump and piping configurations (including, but not limited to, manifolds, metering systems, and other instrumentation on such configurations conveying materials such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water). Covered modifications would not have the potential to cause significant changes to design process flow rates or permitted air emissions.

B5.3 Modification or abandonment of wells

Modification (but not expansion) or plugging and abandonment of wells, provided that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include, but are not limited to, storage and injection wells for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Covered modifications would not be part of site closure.

B5.4 Repair or replacement of pipelines

Repair, replacement, upgrading, rebuilding, or minor relocation of pipelines within existing rights-of-way, provided that the actions are in accordance with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Pipelines may convey materials including, but not limited to, air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water.

B5.5 Short pipeline segments

Construction and subsequent operation of short (generally less than 20 miles in length) pipeline segments conveying materials (such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water) between existing source facilities and existing receiving facilities (such as facilities for use, reuse, transportation, storage, and refining), provided that the pipeline segments are within previously disturbed or developed rights-of-way.

B5.6 Oil spill cleanup

Removal of oil and contaminated materials recovered in oil spill cleanup operations and disposal of these materials in accordance with applicable requirements (such as the National Oil and Hazardous Substances Pollution Contingency Plan).

B5.7 Export of natural gas and associated transportation by marine vessel

Approvals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the Natural Gas Act and any associated transportation of natural gas by marine vessel.

B5.8 [Reserved]

B5.9 Temporary exemptions for electric powerplants

Grants or denials of temporary exemptions under the Powerplant and Industrial Fuel Use Act of 1978, as amended, for electric powerplants.

B5.10 Certain permanent exemptions for existing electric powerplants

For existing electric powerplants, grants or denials of permanent exemptions under the Powerplant and Industrial Fuel Use Act of 1978, as amended, other than exemptions under section 312(c) relating to cogeneration and section 312(b) relating to certain state or local requirements.

B5.11 Permanent exemptions allowing mixed natural gas and petroleum

For new electric powerplants, grants or denials of permanent exemptions from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 Workover of existing wells

Workover (operations to restore production, such as deepening, plugging back, pulling and resetting lines, and squeeze cementing) of existing wells (including, but not limited to, activities associated with brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil) to restore functionality, provided that workover operations are restricted to the existing wellpad and do not involve any new site preparation or earthwork that would have the potential to cause significant impacts on nearby habitat; that site characterization has verified a low potential for seismicity,

subsidence, and contamination of freshwater aquifers; and the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials.

B5.13 Experimental wells for injection of small quantities of carbon dioxide

Siting, construction, operation, plugging, and abandonment of experimental wells for the injection of small quantities of carbon dioxide (and other incidentally co-captured gases) in locally characterized, geologically secure storage formations at or near existing carbon dioxide sources to determine the suitability of the formations for large-scale sequestration, provided that (1) The characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers; (2) the wells are otherwise in accordance with applicable requirements, best practices, and DOE protocols, including those that protect against uncontrolled releases of harmful materials; and (3) the wells and associated drilling activities are sufficiently remote so that they would not have the potential to cause significant impacts related to noise and other vibrations. Wells may be used for enhanced oil or natural gas recovery or for secure storage of carbon dioxide in saline formations or other secure formations. Over the duration of a project, the wells would be used to inject, in aggregate, less than 500,000 tons of carbon dioxide into the geologic formation. Covered actions exclude activities in aquatic environments. (See B3.16 of this appendix for activities in aquatic environments.)

B5.14 Combined heat and power or cogeneration systems

Conversion to, replacement of, or modification of combined heat and power or cogeneration systems (the sequential or simultaneous production of multiple forms of energy, such as thermal and electrical energy, in a single integrated system) at existing facilities, provided that the conversion, replacement, or modification would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources.

B5.15 Small-scale renewable energy research and development and pilot projects

Small-scale renewable energy research and development projects and small-scale pilot projects, provided that the projects are located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.16 Solar photovoltaic systems

(a) The installation, modification, operation, or decommissioning of commercially available solar photovoltaic systems:

(1) Located on a building or other structure (such as rooftop, parking lot or facility, or mounted to signage, lighting, gates, or fences); or

(2) Located within a previously disturbed or developed area.

(b) Covered actions would be in accordance with applicable requirements (such as land use and zoning

requirements) in the proposed project area and the integral elements listed at the start of this appendix, and would be consistent with applicable plans for the management of wildlife and habitat, including plans to maintain habitat connectivity, and incorporate appropriate control technologies and best management practices.

B5.17 Solar thermal systems

The installation, modification, operation, and removal of commercially available small-scale solar thermal systems (including, but not limited to, solar hot water systems) located on or contiguous to a building, and if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.18 Wind turbines

The installation, modification, operation, and removal of a small number (generally not more than 2) of commercially available wind turbines, with a total height generally less than 200 feet (measured from the ground to the maximum height of blade rotation) that (1) Are located within a previously disturbed or developed area; (2) are located more than 10 nautical miles (about 11.5 miles) from an airport or aviation navigation aid; (3) are located more than 1.5 nautical miles (about 1.7 miles) from National Weather Service or Federal Aviation Administration Doppler weather radar; (4) would not have the potential to cause significant impacts on bird or bat populations; and (5) are sited or designed such that the project would not have the potential to cause significant impacts to persons (such as from shadow flicker and other visual effects, and noise). Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices. Covered actions include only those related to wind turbines to be installed on land.

B5.19 Ground source heat pumps

The installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex) (1) Only where (a) major associated activities (such as drilling and discharge) are regulated, and (b) appropriate leakage and contaminant control measures would be in place (including for cross-contamination between aquifers); (2) that would not have the potential to cause significant changes in subsurface temperature; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.20 Biomass power plants

The installation, modification, operation, and removal of small-scale biomass power plants (generally less than 10 megawatts), using commercially available technology (1) Intended primarily to support operations in single facilities (such as a school and community center) or contiguous facilities (such as an office complex); (2) that would not affect the air quality attainment status of the area and would not

have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.21 Methane gas recovery and utilization systems

The installation, modification, operation, and removal of commercially available methane gas recovery and utilization systems installed within a previously disturbed or developed area on or contiguous to an existing landfill or wastewater treatment plant that would not have the potential to cause a significant increase in the quantity or rate of air emissions. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.22 Alternative fuel vehicle fueling stations

The installation, modification, operation, and removal of alternative fuel vehicle fueling stations (such as for compressed natural gas, hydrogen, ethanol and other commercially available biofuels) on the site of a current or former fueling station, or within a previously disturbed or developed area within the boundaries of a facility managed by the owners of a vehicle fleet. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.23 Electric vehicle charging stations

The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.24 Drop-in hydroelectric systems

The installation, modification, operation, and removal of commercially available small-scale, drop-in, run-of-the-river hydroelectric systems that would (1) involve no water storage or water diversion from the stream or river channel where the system is installed and (2) not have the potential to cause significant impacts on water quality, temperature, flow, or volume. Covered systems would be located up-gradient of an existing anadromous fish barrier that is not planned for removal and where fish passage retrofit is not planned and where there would not be the potential for significant impacts to threatened or endangered species or other species of concern (as identified in B(4)(ii) of this appendix). Covered actions would involve no major construction or modification of stream or river channels, and the hydroelectric systems would be placed and secured in the channel without the use of heavy equipment. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.25 Small-scale renewable energy research and development and pilot projects in aquatic environments

Small-scale renewable energy research and development projects and small-scale pilot projects located in aquatic environments. Activities would be in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and best management practices. Covered actions would not occur (1) Within areas of hazardous natural bottom conditions or (2) within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity, unless authorized by the agency responsible for such refuge, sanctuary, or area (or after consultation with the responsible agency, if no authorization is required). If the proposed activities would occur outside such refuge, sanctuary, or area and if the activities would have the potential to cause impacts within such refuge, sanctuary, or area, then the responsible agency shall be consulted in order to determine whether authorization is required and whether such activities would have the potential to cause significant impacts on such refuge, sanctuary, or area. Areas of high biological sensitivity include, but are not limited to, areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells, use of large-scale vibratory coring techniques, or seismic activities other than passive techniques.

B6. Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities

B6.1 Cleanup actions

Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, less than approximately 10 million dollars in cost (in 2011 dollars), to reduce risk to human health or the environment from the release or threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (such as incineration, encapsulation, physical or chemical separation, and compaction), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

- (a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, if surface water or groundwater would not collect and if such actions would reduce the spread of, or direct contact with, the contamination;
- (b) Removal of bulk containers (such as drums and barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261 or applicable state requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;
- (c) Removal of an underground storage tank including its associated piping and underlying containment

systems in accordance with applicable requirements (such as RCRA, subtitle I; 40 CFR part 265, subpart J; and 40 CFR part 280, subparts F and G) if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(d) Repair or replacement of leaking containers;

(e) Capping or other containment of contaminated soils or sludges if the capping or containment would not unduly limit future groundwater remediation and if needed to reduce migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products into soil, groundwater, surface water, or air;

(f) Drainage or closing of man-made surface impoundments if needed to maintain the integrity of the structures;

(g) Confinement or perimeter protection using dikes, trenches, ditches, or diversions, or installing underground barriers, if needed to reduce the spread of, or direct contact with, the contamination;

(h) Stabilization, but not expansion, of berms, dikes, impoundments, or caps if needed to maintain integrity of the structures;

(i) Drainage controls (such as run-off or run-on diversion) if needed to reduce offsite migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum or natural gas products or to prevent precipitation or run-off from other sources from entering the release area from other areas;

(j) Segregation of wastes that may react with one another or form a mixture that could result in adverse environmental impacts;

(k) Use of chemicals and other materials to neutralize the pH of wastes;

(l) Use of chemicals and other materials to retard the spread of the release or to mitigate its effects if the use of such chemicals would reduce the spread of, or direct contact with, the contamination;

(m) Installation and operation of gas ventilation systems in soil to remove methane or petroleum vapors without any toxic or radioactive co-contaminants if appropriate filtration or gas treatment is in place;

(n) Installation of fences, warning signs, or other security or site control precautions if humans or animals have access to the release; and

(o) Provision of an alternative water supply that would not create new water sources if necessary immediately to reduce exposure to contaminated household or industrial use water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

B6.2 Waste collection, treatment, stabilization, and containment facilities

The siting, construction, and operation of temporary (generally less than 2 years) pilot-scale waste collection and treatment facilities, and pilot-scale (generally less than 1 acre) waste stabilization and

containment facilities (including siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis), provided that the action (1) Supports remedial investigations/feasibility studies under CERCLA, or similar studies under RCRA (such as RCRA facility investigations/corrective measure studies) or other authorities and (2) would not unduly limit the choice of reasonable remedial alternatives (such as by permanently altering substantial site area or by committing large amounts of funds relative to the scope of the remedial alternatives).

B6.3 Improvements to environmental control systems

Improvements to environmental monitoring and control systems of an existing building or structure (such as changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems), provided that during subsequent operations (1) Any substance collected by the environmental control systems would be recycled, released, or disposed of within existing permitted facilities and (2) there are applicable statutory or regulatory requirements or permit conditions for disposal, release, or recycling of any hazardous substance or CERCLA-excluded petroleum or natural gas products that are collected or released in increased quantity or that were not previously collected or released.

B6.4 Facilities for storing packaged hazardous waste for 90 days or less

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for storing packaged hazardous waste (as designated in 40 CFR part 261) for 90 days or less or for longer periods as provided in 40 CFR 262.34(d), (e), or (f) (such as accumulation or satellite areas).

B6.5 Facilities for characterizing and sorting packaged waste and overpacking waste

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, provided that operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10 of this appendix) or the handling of spent nuclear fuel.

B6.6 Modification of facilities for storing, packaging, and repacking waste

Modification (excluding increases in capacity) of an existing structure used for storing, packaging, or repacking waste other than high-level radioactive waste or spent nuclear fuel, to handle the same class of waste as currently handled at that structure.

B6.7 [Reserved]

B6.8 Modifications for waste minimization and reuse of materials

Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include, but are not limited to, adding filtration and recycle piping to allow reuse of machining oil, setting up a sorting area to improve process efficiency, and segregating two waste streams previously mingled and assigning new identification codes to the two resulting wastes.

B6.9 Measures to reduce migration of contaminated groundwater

Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water, by mobile units or facilities that are built and then removed at the end of the action.

B6.10 Upgraded or replacement waste storage facilities

Siting, construction, modification, expansion, operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. (See also B6.4, B6.5, B6.6 of this appendix.)

B7. Categorical Exclusions Applicable to International Activities

B7.1 Emergency measures under the International Energy Program

Planning and implementation of emergency measures pursuant to the International Energy Program.

B7.2 Import and export of special nuclear or isotopic materials

Approval of import or export of small quantities of special nuclear materials or isotopic materials in accordance with applicable requirements (such as the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (43 FR 25326, June 9, 1978)).

Appendix C: Categorical Exclusions Adopted Pursuant to NEPA Section 109

DOE has adopted the categorical exclusions listed below from other Federal agencies pursuant to section 109 of NEPA (42 U.S.C. 4336(c)). These categorical exclusions are available for use by all DOE offices pursuant to procedures contained in section 5.2. DOE's notice of adoption, cited below, may contain additional information relevant to the adoption and use of particular categorical exclusions.

U.S. Forest Service (USFS) Categorical Exclusions

USFS (e)(11): Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

- (i) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;
- (ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and
- (iii) Shall be completed within 3 years following a wildland fire.

DOE announced adoption of this categorical exclusion on July 23, 2024 (89 FR 59726).

USFS (e)(12): Harvest of live trees not to exceed 70 acres, requiring no more than 2 mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

- (i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and
- (ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

DOE announced adoption of this categorical exclusion on July 23, 2024 (89 FR 59726).

USFS (e)(13): Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

- (i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, and
- (ii) Harvest of fire-damaged trees.

DOE announced adoption of this categorical exclusion on July 23, 2024 (89 FR 59726).

USFS (e)(14): Commercial and noncommercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 2 mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

- (i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and
- (ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

DOE announced adoption of this categorical exclusion on July 23, 2024 (89 FR 59726).

USFS (e)(18): Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled. Examples include but are not limited to:

- (i) Repairing an existing water control structure that is no longer functioning properly with minimal dredging, excavation, or placement of fill, and does not involve releasing hazardous substances;
- (ii) Installing a newly-designed structure that replaces an existing culvert to improve aquatic organism passage and prevent resource and property damage where the road or trail maintenance level does not change;
- (iii) Removing a culvert and installing a bridge to improve aquatic and/or terrestrial organism passage or prevent resource or property damage where the road or trail maintenance level does not change; and
- (iv) Removing a small earthen and rock fill dam with a low hazard potential classification that is no longer needed.

DOE announced adoption of this categorical exclusion on July 23, 2024 (89 FR 59726).

USFS (e)(19): Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes. Examples include but are not limited to:

- (i) Removing an unstable debris jam on a river following a flood event and relocating it back in the floodplain and stream channel to restore water flow and local bank stability;
- (ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete,

culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and

- (iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geotextiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

DOE announced adoption of this categorical exclusion on July 23, 2024 (89 FR 59726).

USFS (e)(20): Activities that restore, rehabilitate, or stabilize lands occupied by roads and trails, including unauthorized roads and trails and National Forest System roads and National Forest System trails, to a more natural condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainage-ways, or other activities that would restore site productivity and reduce environmental impacts. Examples include but are not limited to:

- (i) Decommissioning a road to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and culverts to reestablish natural drainage patterns;
- (ii) Restoring a trail to a natural state by reestablishing natural drainage patterns, stabilizing slopes, reestablishing vegetation, and installing water bars; and
- (iii) Installing boulders, logs, and berms on a road segment to promote naturally regenerated grass, shrub, and tree growth.

DOE announced adoption of this categorical exclusion on July 23, 2024 (89 FR 59726).