

EXHIBIT 31

U.S. Department of Energy
National Environmental Policy Act (NEPA)
Implementing Procedures
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Table of Contents

1.0 Introduction

2.0 Planning and Decision Making

3.0 Implementing NEPA Efficiently

4.0 General

5.0 Establishing, Adopting, and Applying Categorical Exclusions

6.0 Preparing an Environmental Assessment

7.0 Preparing an Environmental Impact Statement

8.0 Definitions

Appendix A: Administrative and Routine Actions Excepted from NEPA Review

Appendix B: Categorical Exclusions Applicable to Specific Agency Actions

Appendix C: Categorical Exclusions Adopted Pursuant to NEPA Section 109

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

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).

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 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.

³ *Id.* at 1511-12.

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

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.

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 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 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

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.

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 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.

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.").

(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 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 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

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)).

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 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

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)).

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.]

Table of Contents

- A1 Routine DOE business actions
- A2 Clarifying or administrative contract actions
- A3 Certain actions by Office of Hearings and Appeals
- A4 Interpretations and rulings for existing regulations
- A5 Interpretive rulemakings with no change in environmental effect
- A6 Procedural rulemakings
- A7 [Reserved]
- A8 Awards of certain contracts
- 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 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

[These categorical exclusions are copied from DOE's existing regulations.]

Table of Contents

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

B1. Categorical Exclusions Applicable to Facility Operation

- B1.1 Changing rates and prices
- B1.2 Training exercises and simulations
- B1.3 Routine maintenance
- B1.4 Air conditioning systems for existing equipment
- B1.5 Existing steam plants and cooling water systems
- B1.6 Tanks and equipment to control runoff and spills
- B1.7 Electronic equipment
- B1.8 Screened water intake and outflow structures
- B1.9 Airway safety markings and painting
- B1.10 Onsite storage of activated material
- B1.11 Fencing
- B1.12 Detonation or burning of explosives or propellants after testing
- B1.13 Pathways, short access roads, and rail lines
- B1.14 Refueling of nuclear reactors
- B1.15 Support buildings
- B1.16 Asbestos removal
- B1.17 Polychlorinated biphenyl removal
- B1.18 Water supply wells
- B1.19 Microwave, meteorological, and radio towers
- B1.20 Protection of cultural resources, fish and wildlife habitat
- B1.21 Noise abatement
- B1.22 Relocation of buildings
- B1.23 Demolition and disposal of buildings
- B1.24 Property transfers
- B1.25 Real property transfers for cultural resources protection, habitat preservation, and wildlife management
- B1.26 Small water treatment facilities
- B1.27 Disconnection of utilities
- B1.28 Placing a facility in an environmentally safe condition
- B1.29 Disposal facilities for construction and demolition waste
- B1.30 Transfer actions
- B1.31 Installation or relocation of machinery and equipment
- B1.32 Traffic flow adjustments
- B1.33 Stormwater runoff control

- B1.34 Lead-based paint containment, removal, and disposal
- B1.35 Drop-off, collection, and transfer facilities for recyclable materials
- B1.36 Determinations of excess real property

B2. Categorical Exclusions Applicable to Safety and Health

- B2.1 Workplace enhancements
- B2.2 Building and equipment instrumentation
- B2.3 Personnel safety and health equipment
- B2.4 Equipment qualification
- B2.5 Facility safety and environmental improvements
- B2.6 Recovery of radioactive sealed sources

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

- B3.1 Site characterization and environmental monitoring
- B3.2 Aviation activities
- B3.3 Research related to conservation of fish, wildlife, and cultural resources
- B3.4 Transport packaging tests for radioactive or hazardous material
- B3.5 Tank car tests
- B3.6 Small-scale research and development, laboratory operations, and pilot projects
- B3.7 New terrestrial infill exploratory and experimental wells
- B3.8 Outdoor terrestrial ecological and environmental research
- B3.9 Projects to reduce emissions and waste generation
- B3.10 Particle accelerators
- B3.11 Outdoor tests and experiments on materials and equipment components
- B3.12 Microbiological and biomedical facilities
- B3.13 Magnetic fusion experiments
- B3.14 Small-scale educational facilities
- B3.15 Small-scale indoor research and development projects using nanoscale materials
- B3.16 Research activities in aquatic environments

B4. Categorical Exclusions Applicable to Electric Power and Transmission

- B4.1 Contracts, policies, and marketing and allocation plans for electric power
- B4.2 Export of electric energy
- B4.3 Electric power marketing rate changes
- B4.4 Power marketing services and activities
- B4.5 Temporary adjustments to river operations
- B4.6 Additions and modifications to transmission facilities
- B4.7 Fiber optic cable
- B4.8 Electricity transmission agreements
- B4.9 Multiple use of powerline rights-of-way

- B4.10 Removal of electric transmission facilities
- B4.11 Electric power substations and interconnection facilities
- B4.12 Construction of powerlines
- B4.13 Upgrading and rebuilding existing powerlines
- B4.14 Construction and operation of electrochemical-battery or flywheel energy storage systems

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

- B5.1 Actions to conserve energy or water
- B5.2 Modifications to pumps and piping
- B5.3 Modification or abandonment of wells
- B5.4 Repair or replacement of pipelines
- B5.5 Short pipeline segments
- B5.6 Oil spill cleanup
- B5.7 Export of natural gas and associated transportation by marine vessel
- B5.8 [Reserved]
- B5.9 Temporary exemptions for electric powerplants
- B5.10 Certain permanent exemptions for existing electric powerplants
- B5.11 Permanent exemptions allowing mixed natural gas and petroleum
- B5.12 Workover of existing wells
- B5.13 Experimental wells for injection of small quantities of carbon dioxide
- B5.14 Combined heat and power or cogeneration systems
- B5.15 Small-scale renewable energy research and development and pilot projects
- B5.16 Solar photovoltaic systems
- B5.17 Solar thermal systems
- B5.18 Wind turbines
- B5.19 Ground source heat pumps
- B5.20 Biomass power plants
- B5.21 Methane gas recovery and utilization systems
- B5.22 Alternative fuel vehicle fueling stations
- B5.23 Electric vehicle charging stations
- B5.24 Drop-in hydroelectric systems
- B5.25 Small-scale renewable energy research and development and pilot projects in aquatic environments
- B5.26 Advanced nuclear reactors

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

- B6.1 Cleanup actions
- B6.2 Waste collection, treatment, stabilization, and containment facilities
- B6.3 Improvements to environmental control systems

- B6.4 Facilities for storing packaged hazardous waste for 90 days or less
- B6.5 Facilities for characterizing and sorting packaged waste and overpacking waste
- B6.6 Modification of facilities for storing, packaging, and repacking waste
- B6.7 [Reserved]
- B6.8 Modifications for waste minimization and reuse of materials
- B6.9 Measures to reduce migration of contaminated groundwater
- B6.10 Upgraded or replacement waste storage facilities

B7. Categorical Exclusions Applicable to International Activities

- B7.1 Emergency measures under the International Energy Program
- B7.2 Import and export of special nuclear or isotopic materials

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.

B5.26 Advanced nuclear reactors

Authorization, siting, construction, operation, reauthorization, and decommissioning of advanced nuclear reactors, provided DOE determines that:

(1) the project's attributes, including potential fission product inventory, fuel type, reactor design, and operational plans, reduce sufficiently the risk of adverse offsite consequences from the release of radioactive or hazardous materials, and

(2) the project demonstrates that any hazardous waste, radioactive waste, or spent nuclear fuel generated by the project can be managed in accordance with applicable

requirements.

For the purposes of this category, a project may include multiple reactors within a nuclear facility.

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, geo-textiles, 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).