

**National Institute of Standards and Technology**

**National Environmental Policy Act**

**Procedures**

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## **ACRONYMS AND ABBREVIATIONS**

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

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## 1. PURPOSE, SCOPE, AND POLICY

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

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

The National Environmental Policy Act of 1969 (NEPA) as amended, 42 U.S.C. § 4321 *et seq.*, requires Federal agencies to consider the environmental effects of their actions and inform and engage the public in the decision-making processes for those actions. Section 101(a) of NEPA sets forth a national policy to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. 42 U.S.C. § 4331(a). Section 102 of NEPA directs agencies to interpret and administer Federal policies, regulations, and laws consistent with NEPA's policies. 42 U.S.C. § 4332. NEPA also created the Council on Environmental Quality (CEQ), which has issued regulations implementing NEPA, 40 C.F.R. Parts 1500–1508 (the CEQ regulations). As explained below, NEPA applies to NIST's major Federal actions, which may include activities NIST conducts on its campuses in Gaithersburg, MD, and Boulder, CO, as well as activities for which NIST provides Federal financial assistance.

The purpose of these Procedures is to integrate NEPA into NIST's decision-making processes in order to help achieve the purposes of NEPA, as set forth in the statute and reflected in the CEQ regulations. *See* 42 U.S.C. § 4331; 40 C.F.R. § 1500.1. In particular, these Procedures are intended to make the NEPA process more useful to NIST decision makers and the public by helping NIST to: reduce paperwork and the accumulation of extraneous background data; emphasize important environmental issues and alternatives; prepare environmental documents that are concise, clear, and supported by evidence that agencies have conducted the necessary environmental analyses; and integrate the requirements of NEPA with other planning and environmental review processes. These Procedures also aim to encourage and facilitate public engagement, including meaningful engagement with communities such as those with environmental justice concerns. *See id.* § 1500.2. These Procedures also help ensure that NIST will use the NEPA process to identify and assess reasonable alternatives to its proposed actions that may avoid or minimize adverse environmental effects of those actions, such as alternatives that reduce climate-related effects or address

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disproportionate human health and environmental effects on communities with environmental justice concerns.

These Procedures serve as a repository for guidance and resources to aid NIST in implementing NEPA. Each operating unit (OU) within NIST has a subject matter expert, or “NEPA Coordinator,” who is assigned responsibility for that OU’s environmental compliance.<sup>1</sup> NEPA Coordinators are responsible for, among other things: assisting NIST in applying NEPA; developing or supervising the development of NEPA documents; and coordinating NEPA reporting and comments on NEPA documents prepared by NIST or other agencies. In addition to using these Procedures, NEPA Coordinators should consult the CEQ NEPA guidance available at [www.NEPA.gov](http://www.NEPA.gov). NEPA Coordinators should consult with the Department’s Office of General Counsel whenever there are questions regarding how these Procedures or other NEPA guidance should be applied.

## **2. DETERMINING WHEN NEPA APPLIES**

NEPA applies when an agency is considering a proposal to take a major Federal action. NEPA and the CEQ regulations define the term “major Federal action” to mean “an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.” 42 U.S.C. § 4336e(10)(A); 40 C.F.R. § 1508.1(w). Major Federal actions generally include: granting authorizations, including permits, licenses, rights-of-way, or other authorizations; adoption of official policy, such as rules and regulations; adoption of formal plans or programs; and carrying out specific projects. 40 C.F.R. § 1508.1(w)(1).

A proposal that involves providing more than a minimal amount of Federal financial assistance, including through grants, cooperative agreements, loans, loan guarantees, or other forms of financial assistance, also is a major Federal action where NIST has the authority to deny in whole or in part the assistance due to environmental effects, has authority to impose conditions on the receipt of the financial assistance to address environmental effects, or otherwise has sufficient control and responsibility over the subsequent use of the financial assistance or the effects of the activity for which it is providing the financial assistance. *See* 40 C.F.R. § 1508.1(w)(1)(vi). Other actions, even if they are not listed in the CEQ regulations, may also constitute major Federal actions if NIST determines that they are subject to substantial Federal control and responsibility. *See id.* When NIST considers a proposed action to issue Federal financial assistance, NEPA requires NIST to analyze the reasonably foreseeable environmental effects of the activities that NIST will be funding, rather than the effects of the administrative act of issuing financial assistance, and determine the appropriate level of NEPA analysis based on those effects as explained in Section 4, below.

Some types of NIST activities are not subject to NEPA because they do not meet the definition of a major Federal action:

1. Non-federal actions (i) with no or minimal Federal funding; or (ii) with no or minimal Federal involvement where NIST cannot control the outcome of the project;
2. Funding assistance solely in the form of general revenue sharing funds that do not provide NIST compliance or enforcement responsibility over the subsequent use of such funds;

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

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3. Loans, loan guarantees, or other forms of financial assistance where NIST does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effects of the action;
  4. Extraterritorial activities or decisions, which mean agency activities or decisions with effects located entirely outside of the jurisdiction of the United States;
  5. Activities or decisions that are non-discretionary and made in accordance with NIST's statutory authority; and
  6. Activities or decisions for projects approved by a Tribal Nation that occur on or involve land held in trust or restricted status by the United States for the benefit of that Tribal Nation or by the Tribal Nation when such activities or decisions involve no or minimal Federal funding or other Federal involvement.

40 C.F.R. § 1508.1(w)(2).

In addition, the provision of Federal financial assistance for certain semiconductor projects under the CHIPS Incentives Program, 15 U.S.C. § 4652, also does not meet the definition of a major Federal action (and therefore is not subject to NEPA) if:

- (A) The activity described in the application for that project has commenced not later than December 31, 2024;
- (B) The Federal financial assistance provided is in the form of a loan or loan guarantee; or
- (C) The Federal financial assistance provided, excluding any loan or loan guarantee, comprises not more than 10 percent of the total estimated cost of the project.

15 U.S.C. § 4652(h)(1). However, a semiconductor project being considered for CHIPS financial assistance may still require NEPA review if another agency has to take an action for the project. 15 U.S.C. § 4652(h)(2).

In addition to determining whether a proposed activity or decision is a major Federal action, NIST must evaluate a number of threshold considerations in determining whether NEPA applies to a proposed action: whether a proposed action is exempted from NEPA by law; whether compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of Federal law; whether the proposed activity is not a final agency action; and whether the proposed action is a non-discretionary action where NIST does not have authority to take environmental factors into consideration in determining whether to take the proposed action. *See* 42 U.S.C. § 4336; 40 C.F.R. § 1501.3(a). NIST must determine whether a proposed action is subject to NEPA at the earliest reasonable time in the planning process. 40 C.F.R. § 1501.2.

#### **A. COMPLYING WITH NEPA FOR ACTIONS DEVELOPED BY NON-FEDERAL ENTITIES**

Many NIST proposed actions are initially developed by applicants (e.g., entities that submit applications for Federal financial assistance) or other non-federal entities. Consistent with 40 C.F.R. § 1501.2(b)(4), NIST must coordinate with the non-federal entity at the earliest reasonable time in the planning process to inform the entity what information NIST might need to comply with NEPA and establish a schedule for completing steps in the NEPA review process, consistent with the deadlines and NEPA schedule requirements in § 1501.10. For applications to the agency requiring an EA or EIS, NIST must begin the NEPA process as soon as practicable after receiving the complete application. *See* 40 C.F.R. §§1501.5(d), 1502.5(b). In addition, an applicant or a contractor hired by the applicant may prepare an EA or EIS under NIST's supervision. NIST's procedures for applicant-prepared EAs and EISs are included in Section 10, below.

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## **B. LIMITATIONS ON ACTIONS DURING THE NEPA PROCESS**

The CEQ regulations provide that, while a NEPA review is ongoing, no action may be taken concerning a proposal that would: (1) have an adverse environmental effect; or (2) limit the choice of reasonable alternatives. 40 C.F.R. § 1506.1(a). If NIST is considering an application from a non-federal entity and becomes aware that the applicant is about to take an action within NIST’s jurisdiction that would meet either of these criteria, NIST will promptly notify the applicant that NIST will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. The notice to the applicant will include the following statement, as appropriate:

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

While a NEPA review is ongoing, NIST may authorize interim activities, including acquisition of interests in land (e.g., fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants. These Procedures do not preclude applicants from developing plans or designs or performing other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance—in short, activities that are not likely to have an adverse environmental effect or limit the choice of reasonable alternatives.

## **3. DETERMINING THE SCOPE OF THE PROPOSED ACTION**

If NIST determines that NEPA applies to a proposed activity or decision, the next step is to consider the scope of the proposed action and its potential effects in order to inform NIST’s determination of the appropriate level of NEPA review, and whether any aspects of the action are non-discretionary. 40 C.F.R. § 1501.3(b).

Defining the scope of a proposed action is a key step because NIST must evaluate in a single NEPA document or review proposed actions or parts of proposed actions that are closely related enough to be, in effect, a single course of action. NIST also must evaluate “connected actions” in a single document or review, which are closely related Federal activities or decisions (including closely related NIST activities) that should be considered in the same NEPA review because they: (i) automatically trigger other actions that may require NEPA review; (ii) cannot or will not proceed unless other actions are taken previously or simultaneously; or (iii) are interdependent parts of a larger action and depend on the larger action for their justification. 40 C.F.R. § 1501.3(b). NIST must determine the scope of a proposed action, including any connected actions, so that the full scope of NIST’s proposed action is analyzed in a single environmental review. NIST may consider separately actions that do not meet the above criteria for connected actions (e.g., actions with independent utility).



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## **4. DETERMINING THE APPROPRIATE LEVEL OF NEPA REVIEW**

If NEPA applies to the proposed action, NIST must determine the appropriate level of NEPA review—whether to apply a categorical exclusion (CE) or to prepare either an environmental assessment (EA) or an environmental impact statement (EIS). This Section provides criteria to assist NIST NEPA Coordinators in making this determination and gives examples of actions that normally require an EA or EIS. In making this determination, NIST may use any reliable data source and does not have to undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable. 40 C.F.R. § 1501.3(c).

### **A. DETERMINING WHETHER TO APPLY A CATEGORICAL EXCLUSION (CE)**

A CE is a category of actions that an agency has determined normally does not have a significant effect on the human environment, individually or in the aggregate, and therefore does not require preparation of an EA or EIS unless extraordinary circumstances exist that make application of the categorical exclusion inappropriate. 42 U.S.C. § 4336e(1); 40 C.F.R. § 1501.4(a). In other words, applying a CE is a form of NEPA review that does not require preparing an EA or EIS, but it is not an exemption from NEPA. The process of applying a CE and considering extraordinary circumstances is discussed in Section 5, below.

NIST has established CEs in these Procedures that are available for NIST to apply to its actions, including CEs that cover actions involving many of NIST's routine functions and activities (e.g., routine procurements, personnel actions, data collection, and minor facility upgrades). These CEs are listed in the Appendix. If NIST is considering a proposed action that a CE in the Appendix typically covers, it may be able to apply that CE to the action, provided it follows the process described in Section 5.

In addition, NIST may adopt and use CEs that are established by another Federal agency in that agency's NEPA procedures. The process for using adopted CEs is discussed in Section 5, below.

If NIST cannot apply a CE to a proposed action, it must prepare an EA or EIS.

### **B. DETERMINING WHETHER TO PREPARE AN ENVIRONMENTAL ASSESSMENT (EA)**

An EA is a concise public document that an agency prepares to evaluate a proposed action that is not likely to have a significant effect or for which the significance of the effects is unknown, unless the agency finds that the proposed action is excluded from having to prepare an EA or EIS by one of its CEs, a CE adopted from another agency, or another provision of law. *See* 42 U.S.C. § 4336(b)(2); 40 C.F.R. § 1508.1(j). The purpose of the EA is to set forth the basis for the agency's finding of no significant impact (FONSI) or determination that an EIS is necessary. *Id.*

In other words, NIST must consider whether an EA is the appropriate level of NEPA review when a proposed action is not covered by a CE or existing NEPA document, but is not normally subject to an EIS (see Section 4.C, below). NIST should use the EA to determine if its proposed action would have significant effects; if so, the action must be modified to avoid the significant effects, or an EIS must be prepared. If the EA demonstrates that the action would not have significant effects, NIST must prepare a FONSI. The process for NIST to prepare an EA is discussed in Section 7, below.

The following classes of actions normally require EAs, but not necessarily EISs:

1. Proposed actions that do not fall under a CE, without clear indication that significant effects will result.

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2. Proposed actions typically covered by a CE but that involve one or more extraordinary circumstances, where NIST cannot apply the CE notwithstanding the extraordinary circumstance consistent with 40 C.F.R. § 1501.4(b).
  3. Master planning initiatives for facilities or campuses aimed at strategic, long-term enhancements to accommodate current and projected NIST mission requirements that do not involve decisions to approve specific construction projects.
  4. Operation and decommissioning of treatment, storage, and disposal facilities for advanced manufacturing waste products.

### **C. DETERMINING WHETHER TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT (EIS)**

An EIS is the detailed written statement required by Section 102 of NEPA, 42 U.S.C. § 4332(C), that analyzes the reasonably foreseeable environmental effects of a proposed agency action. NEPA requires an EIS to analyze actions with effects that are expected to be significant. If some of the effects are analyzed in an existing EIS, and the remaining effects are not expected to be significant, NIST may be able to prepare a tiered EA (see Section 9A). An EIS must also be prepared if, after preparation of an EA, NIST determines that the effects of the proposed action would be significant and those effects cannot be mitigated to reduce them to below the level of significance. The process for NIST to prepare an EIS is discussed in Section 8, below.

The following classes of actions normally require an EIS:

1. Proposed actions for which an EA was initially prepared and which may result in significant effects that cannot be mitigated (i.e., where a FONSI is not appropriate).
2. Proposed actions that are known or anticipated to have significant and unmitigable effects on the environment.
3. Proposed actions whose effects on the human environment are unique or highly uncertain.
4. NIST proposals for legislation that could potentially have a significant environmental effect.

In order to determine whether an adverse effect of a proposed action is potentially significant, the NEPA Coordinator should also look to the context of the action and the intensity of the potential effects pursuant to the factors outlined in 40 C.F.R. § 1501.3(d) (see Section 6.E, below).

## **5. HOW TO APPLY CATEGORICAL EXCLUSIONS**

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

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

As discussed in Section 3, above, NIST must consider the scope of a proposed action and its potential effects before determining the appropriate level of NEPA review. NIST may only apply a CE if the entire action to be analyzed, including any connected actions, fits within the terms of the CE.

Some proposed actions may fit within more than one CE. In determining the appropriate CE to use, NIST should select the CE that most closely matches the objectives of the proposed action. When considering whether a proposed action to provide Federal financial assistance, or a proposed contract, collaborative research agreement, cooperative research and development agreement, or interagency agreement, can be

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categorically excluded, NIST should examine the underlying activity proposed in order to determine whether that activity falls within one or more of the established CEs.

## **B. CONSIDER EXTRAORDINARY CIRCUMSTANCES**

If NIST determines that the proposed action fits within the terms of a CE, NIST must also evaluate the proposed action for the presence of extraordinary circumstances, including the ones listed below. Extraordinary circumstances are factors or circumstances that indicate that a normally categorically excluded action may have a significant effect. *See* 40 C.F.R. §§ 1501.4(b), 1508.1(o).

The mere presence of one or more extraordinary circumstances does not preclude the use of a CE. If an extraordinary circumstance exists, NIST nevertheless may apply the CE if NIST conducts an analysis and determines that the proposed action does not in fact have the potential to result in significant effects notwithstanding the extraordinary circumstance, or NIST modifies the action to avoid the potential to result in significant effects. In these cases, NIST must document this determination and make it publicly available on the NIST website or by other means.

Before applying a CE, NIST must consider whether the proposed action involves one or more of the following extraordinary circumstances:

1. The action has the potential to adversely affect human health or safety.
2. The action is located in or may affect an area with unique environmental characteristics, such as: historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; or other ecologically significant or critical areas.
3. The action may adversely affect a threatened or endangered species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act (ESA).
4. The action has the potential to affect properties that are listed or eligible for listing on the National Register of Historic Places.
5. The action has the potential to affect lands owned by or held in trust for a federally recognized Tribe.
6. The action has the potential to restrict access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.
7. The action has the potential to have a disproportionate and adverse effect on communities with environmental justice concerns.
8. The action has the potential to violate a Federal, State, Tribal, or local law or requirement imposed for protection of the environment.
9. The action involves unresolved conflicts concerning alternative uses of available resources.
10. The action has highly uncertain and potentially significant environmental effects or involves unique or unknown environmental risks.
11. The action has the potential to establish a precedent for future action or represents a decision in principle about future actions with potentially significant environmental effects.
12. The action has the potential for significant cumulative effects when the proposed action is combined with other past, present, and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.

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For a CE that NIST has adopted from another Federal agency pursuant to Section 109 of NEPA, 42 U.S.C. § 4336c, and 40 C.F.R. § 1501.4(e), and where NIST has not independently substantiated that CE, NIST will consider extraordinary circumstances in the manner described in the Federal Register notice announcing the adoption of that CE. This process will typically require considering the extraordinary circumstances identified by the agency that originally established the CE in that agency's NEPA procedures, either alone or in conjunction with the NIST extraordinary circumstances identified above.

### **C. WHEN REQUIRED, DOCUMENT THE USE OF THE CE**

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

1. For any application of a CE designated by NIST as requiring documentation, as indicated by an asterisk in the Appendix;
2. For any application of a CE adopted from another Federal agency pursuant to Section 109 of NEPA, 42 U.S.C. § 4336c, and 40 C.F.R. § 1501.4(e); and
3. For any case in which NIST determines that applying a CE is appropriate notwithstanding the existence of an extraordinary circumstance, as described in Section 5.B.

The REC must include the following:

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

The REC may take the form of a memorandum, a completed form, or other similar document, so long as the above components are included. Before the action is implemented, the appropriate NIST official must sign and date the REC to attest that the use of the CE is appropriate. NIST must keep the original, signed document as part of the record for the action. A REC that documents the application of a CE adopted from another Federal agency pursuant to Section 109 of NEPA will be made publicly available on NIST's website. 40 C.F.R. § 1501.4(e)(5).

NIST may also adopt another agency's CE determination for a particular proposed action if the action covered by that determination is substantially the same as NIST's proposed action. NIST must document the adoption and will make it publicly available on NIST's website. 40 C.F.R. § 1506.3(d).

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## **D. MODIFYING, REMOVING, OR ADDING CEs**

NIST will review the list of CEs found in Appendix A at least once every ten years. NIST will stagger its review and will select at least half of its existing CEs to undergo review within five years of the date these procedures are finalized, and ensure all of its remaining CEs are reviewed within ten years.

The processes and guidelines for establishing CEs are laid out in 40 C.F.R. §§ 1501.4(c)-(e) and 1507.3(c)(8). Pursuant to 40 C.F.R. § 1507.3(b), Federal agencies must consult with the public and with CEQ whenever they amend their NEPA procedures, including when they establish new or revised categorical exclusions. NIST must also prepare a substantiation record when establishing a new CE. NIST will only establish new or revised CEs after the public has had notice and an opportunity to comment, and after CEQ has issued a determination that its revised procedures are in conformity with NEPA and the CEQ regulations.

## **6. PREPARING ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS**

Although the CEQ regulations prescribe specific steps for the preparation of an EIS, there are some common steps in developing a NEPA analysis that are applicable to preparation of both EAs and EISs. This section describes the general approach to preparing both EAs and EISs. Section 7 provides further instructions on the development of EAs, and Section 8 addresses EISs.

### **A. DEFINING THE PURPOSE AND NEED FOR THE PROPOSED ACTION**

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

As described in Section 3 (Determining the Scope of the Proposed Action), NIST must evaluate proposed actions or parts of proposed actions that are closely related enough to be, in effect, a single course of action in a single NEPA document or review, and must also evaluate connected actions in a single NEPA document or review. For EISs, NIST must also follow the scoping process set forth in § 1502.4, which includes public and governmental engagement, as described below in Section 8.B. NIST may also follow this scoping process for certain EAs, as explained in Section 7.B.

An EA or an EIS must clearly identify the purpose and need for the action. 40 C.F.R. § 1502.13. The “purpose” is the goal that NIST seeks to achieve through the proposed action (for example, to provide additional laboratory space for NIST employees, or to decide whether to fund a certain proposal from an outside applicant), whereas the “need” is the underlying problem that the proposed action would address (for example, to resolve overcrowding in a particular existing laboratory and enable the agency to carry out certain additional experiments, or to support certain third party activities in accordance with a congressional directive).

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

When more than one agency is involved in a NEPA review, the lead agency must determine the purpose and need (and alternatives) in consultation with any cooperating agency. 40 C.F.R. § 1501.7(h)(4). In

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

## **B. IDENTIFYING REASONABLE ALTERNATIVES**

When preparing an EA or EIS, NIST must consider and analyze the reasonably foreseeable effects of a reasonable range of alternatives to the proposed action that are technically and economically feasible and meet the purpose and need of the proposal. 40 C.F.R. § 1508.1(hh). An EA or EIS also must include and evaluate the effects of a “no action” alternative, including any adverse environmental effects that cannot be avoided should the proposal be implemented, regardless of whether the no action alternative would meet the purpose and need.

The broader the purpose and need statement, the broader the range of alternatives that must be analyzed. The range of alternatives that NIST should consider should be proportional to the potential for significant effects: an EIS will likely involve a wider range of alternatives and a larger number of alternatives within that range than an EA, which may in some instances include only the preferred and no action alternatives.

### ***Identifying the No Action Alternative***

NIST must consider a no action alternative as part of the alternatives analysis for an EIS. *See* 40 C.F.R. § 1502.14(c). The no action alternative can assist NIST by providing a baseline for a comparison of environmental effects. *See id.* § 1502.16(a)(1). NIST also should analyze a no action alternative as part of an EA. *See id.* § 1501.5(c)(2)(ii); CEQ Memorandum to Federal NEPA Contacts: Emergency Actions and NEPA (Sept. 8, 2005) (including guidance on evaluating a no action alternative in an EA). To aid in comparative analysis, NIST should include and evaluate the effects of a no action alternative even if such an alternative would not meet the purpose and need for the action.

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

Although NEPA does not require an agency to select any particular alternative, the alternatives analysis is a core part of the NEPA process. An EA or EIS should identify the reasonably foreseeable environmental effects of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment (*see* § 1502.15) and the environmental consequences (*see* § 1502.16). 40 C.F.R. § 1502.14. In the alternatives section of an EA or EIS, NIST also must identify and study the environmentally preferred alternative, which may be the proposed action, the no action alternative, or another reasonable alternative. *See id.* §§ 1502.14(f), 1505.2(b). The environmentally preferred alternative generally will be the alternative that best promotes the national environmental policy expressed in section 101 of NEPA by maximizing environmental benefits or causing the least damage to the biological and physical environment. *See id.*

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## **C. DESCRIBING THE AFFECTED ENVIRONMENT**

NIST must describe the environment of the area to be affected by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area. 40 C.F.R. § 1502.15(a). The affected environment encompasses all physical environmental conditions, including all natural resources, and cultural heritage or built resources, and the relationship of people with that environment. The description of the affected environment should be succinct, with the level of information provided commensurate with the importance of the potential effects, but should be robust enough and use high-quality information to facilitate an analysis of the effects of the alternatives under consideration. 40 C.F.R. § 1502.15. NIST should focus the description of the affected environment on those resources or components of the environment that are most important or most likely to be affected by the proposed action or the alternatives.

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

The environmental effects analysis must address the reasonably foreseeable direct, indirect, and cumulative environmental effects of the proposed action and the alternatives, including the no action alternative, in clear terms and with sufficient information to ensure the professional and scientific integrity of the discussion and analysis. 40 C.F.R. §§ 1502.16(a)(1), 1508.1(i). The analysis must address both adverse and beneficial effects and, in the case of the no action alternative, include any adverse environmental effects of not implementing the proposed action. *Id.* §§ 1508.1(i)(4), 1502.16(a)(2).

The amount of data and analysis included must be commensurate with the context and intensity of the effects, and must provide support for any conclusions drawn. NIST must use high quality information and analysis to present the environmental effects of the proposed action and alternatives in comparative form, providing a clear basis for choosing among the alternatives. *See id.* §§ 1502.14, 1502.16.

In considering effects, NIST must evaluate direct and indirect effects, as well as the cumulative effects of the proposed action and alternatives. Cumulative effects are the effects on the environment which result from the incremental effects of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes those actions. *Id.* § 1508.1(i)(3). Reasonably foreseeable future actions cannot be limited only to those that have been approved or funded, but NIST need not speculate about future actions that are not likely. An EIS must, and an EA should, include discussion of the following considerations:

1. Any adverse environmental effects that cannot be avoided should the proposal be implemented;
2. The effects of the no action alternative, including any adverse environmental effects;
3. The relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity;
4. Any irreversible or irretrievable commitments of Federal resources that would be involved in the proposal should it be implemented;
5. Where applicable, possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local plans, policies, and controls for the area concerned, including those addressing climate change;
6. Where applicable, climate change-related effects, including, where feasible, quantification of greenhouse gas emissions, from the proposed action and alternatives and the effects of climate change on the proposed action and alternatives;

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7. Where applicable, energy requirements and conservation potential of various alternatives and mitigation measures;
  8. Where applicable, natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;
  9. Where applicable, relevant risk reduction, resiliency, or adaptation measures incorporated into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions;
  10. Where applicable, urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;
  11. Means to mitigate adverse environmental effects (if not fully covered under 40 C.F.R. § 1502.14(e));
  12. Where applicable, economic and technical considerations, including the economic benefits of the proposed action; and
  13. Where applicable, disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

40 C.F.R. § 1502.16. To assist in identifying communities with environmental justice concerns, NIST may use available screening tools, such as the Climate and Economic Justice Screening Tool and the EJScreen Tool. 40 C.F.R. § 1508.1(f).

When NIST is evaluating reasonably foreseeable significant effects on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, NIST must make clear in the relevant NEPA document that such information is lacking. For an EIS, NIST must also explain the relevance of the incomplete or unavailable information to the analysis; summarize existing credible scientific evidence that is relevant to the analysis; and discuss its evaluation of such effects based upon theoretical approaches or research methods generally accepted in the scientific community. *See id.* § 1502.21(a), (c). If the incomplete information is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable, NIST must include the information in the EIS. *See id.* § 1502.21(b).

## **E. DETERMINING SIGNIFICANCE**

Many factors may contribute to whether an effect is considered significant. NIST must examine the context and intensity of the effects in considering whether the adverse effects of the proposed action are significant. In assessing the significance of an effect, NIST will consider the duration of an effect and whether it is adverse at some points in time and beneficial in others. For example, a proposed action may have an effect that is adverse to a particular species during construction but beneficial for that species once it is in operation. NIST will not balance an action's beneficial effects with its adverse effects to determine significance (for example, balancing an adverse effect on one species with a beneficial effect on another species). *See* 40 C.F.R. § 1501.3(d).

NIST must look to several contexts to analyze significance, including the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns, and potential global, national, regional, and local contexts, depending on the scope of the action, as well as the duration, including short- and long-term effects. *See id.* § 1501.3(d)(1).



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When analyzing the intensity of an effect, NIST must consider the following factors, as applicable to the proposed action and in relationship to one another:

- i. The degree to which the proposed action may adversely affect public health and safety.
- ii. The degree to which the proposed action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- iii. Whether the action may violate relevant Federal, State, Tribal, or local laws or other requirements or be inconsistent with Federal, State, Tribal, or local policies designed for the protection of the environment.
- iv. The degree to which the potential effects on the human environment are highly uncertain.
- v. The degree to which the action may adversely affect resources listed or eligible for listing in the National Register of Historic Places.
- vi. The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the ESA.
- vii. The degree to which the action may adversely affect communities with environmental justice concerns.
- viii. The degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders.

*See* 40 C.F.R. § 1501.3(d)(2).

## **F. CONSIDERATION OF GREENHOUSE GAS EMISSIONS AND THE EFFECTS OF CLIMATE CHANGE**

When performing environmental analyses under NEPA, NIST should consider the potential effects of proposed actions and their alternatives on climate change by assessing and (where feasible) quantifying the estimated direct and indirect greenhouse gas (GHG) emissions of the proposed action and alternatives. NIST should provide context for those GHG emissions to help NIST and the public understand the potential GHG emissions and climate change effects. In addition, NIST should consider the effects of climate change on the proposed action, and the ways in which climate change may alter its environmental effects (for example, if an increase in extreme weather events may increase the risk of pollution discharges). *See* 40 C.F.R. § 1502.16(a)(6).<sup>2</sup>

## **G. NEPA SCHEDULES AND DEADLINES**

EAs must be completed within 1 year and EISs within 2 years, unless the lead agency extends the deadline in writing and in consultation with any applicant, and establishes a new deadline that provides only so much additional time as is necessary to complete the NEPA document. 42 U.S.C. § 4336a(g); 40 C.F.R. § 1501.10(b). For EAs, the deadline is measured from the date on which NIST determines that an EA is the appropriate level of NEPA review for the proposed action. For an EIS, the deadline is measured from the date on which NIST determines that an EIS is the appropriate level of NEPA review for the proposed action

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<sup>2</sup> *See* National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196 (Jan. 9, 2023). NEPA Coordinators should consider this guidance when assessing and (where feasible) quantifying and contextualizing estimated direct and indirect GHG emissions in NEPA analyses.

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or issues a notice of intent (NOI) to prepare an EIS, whichever is sooner. 40 C.F.R. § 1501.10(b)(3). The FONSI for an EA and the final EIS mark the end points for these time limits, respectively. NIST must identify missed deadlines for EAs and EISs in its annual report to Congress as required by NEPA Section 107(h). 42 U.S.C. § 4336a(h); 40 C.F.R. § 1501.10(b)(5). Deadlines that are extended in accordance with 42 U.S.C. § 4336a(g) are not considered missed deadlines.

When NIST is the lead agency for a NEPA review, NIST must develop and set a schedule in consultation with, as applicable, any cooperating agency, applicant, and such other entities as NIST determines appropriate, for completing any environmental review, permit, or authorization required to carry out the proposed agency action. *See* 42 U.S.C. § 4336a(a)(2); 40 C.F.R. § 1501.10. In developing this schedule, NIST must set milestones for completing the NEPA review and any required permits or authorizations and should seek the concurrence of all joint lead, cooperating, and participating agencies with the schedule and milestones as soon as practicable. *See* 40 C.F.R. § 1501.10(c). NIST may consider several factors in developing the schedule and deadlines and must include certain milestones specific to EAs and EISs. *See id.* § 1501.10(d)-(f). NIST must make the schedule for completing an EIS publicly available. *See id.* § 1501.10(h).

## **H. PAGE LIMITS**

Not including citations or appendices, the text of an EA may not exceed 75 pages, and the text of an EIS may not exceed 150 pages, except for EISs for proposals of extraordinary complexity, which shall not exceed 300 pages. 42 U.S.C. § 4336a(e); 40 C.F.R. §§ 1501.5(g), 1502.7. “Page” means 500 words and does not include citations, explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information. 40 C.F.R. § 1508.1(bb). Details on the requirements of appendices are found in § 1502.19.

## **I. ENGAGING THE PUBLIC AND OTHER GOVERNMENTS**

Public engagement is an essential part of the NEPA process. When determining which methods would efficiently and effectively make environmental documents and information available for review by interested persons, NIST will consider the likely affected entities and persons; the scope, scale, and complexity of the proposed action and alternatives; the degree of public interest; and other relevant factors. *See* 40 C.F.R. § 1508.1(gg), 40 C.F.R. § 1501.9(c)(5). Additional requirements for engaging the public and other governments are set forth in 40 C.F.R. § 1501.9 and are described further in Sections 7 (for EAs) and 8 (for EISs), below.

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

## **J. NEPA COORDINATION WITHIN NIST**

NIST will ensure that the NEPA process begins at the earliest reasonable time. When considering applications for financial assistance, NIST will begin its NEPA review as soon as its proposed action is sufficiently defined to allow for a meaningful review. *See* 40 C.F.R. § 1508.1(ff) (defining “proposal”). NIST’s environmental review will be integrated into the decision-making process, and all relevant environmental review documents, comments, and responses will accompany proposed actions through the applicable NIST review and approval process. *See id.* § 1507.3(c).

When a proposed action requires preparation of an EIS or EA, NIST must keep the final EIS and ROD or Final EA and FONSI in the agency’s records for the action. If NIST is adopting another agency’s NEPA document (*see* subsection K, below), then an electronic copy of the other agency’s final EIS and signed

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ROD, or Final EA and the signed FONSI, must similarly be kept in NIST's records for the action. Operating units (OUs) within NIST may develop more specific procedures, roles, and responsibilities that can be included in a separate document.

## **K. COOPERATION WITH STATE, TRIBAL, AND LOCAL AGENCIES**

NIST will, to the fullest extent practicable unless specifically prohibited by law, cooperate with State, Tribal and local agencies to reduce duplication between NEPA and comparable environmental review requirements. This may include use of studies, analysis and decisions developed by State, Tribal or local agencies in the preparation of NIST's environmental documents. This may also include joint planning processes, joint environmental research and studies, joint public hearings, joint EAs, and joint EISs. 40 C.F.R. §§ 1500.4(m) & 1506.2.

## **7. PREPARING AN ENVIRONMENTAL ASSESSMENT**

### **A. CONTENTS OF AN EA**

An EA must contain a brief discussion of the purpose and need for the proposed action; alternatives as required by section 102(2)(H) of NEPA for a proposal that involves unresolved conflicts concerning alternative uses of available resources; an analysis of the environmental effects of the proposed action and alternatives; a listing of agencies, governments, and persons consulted; and a unique identification number for tracking purposes. 40 C.F.R. § 1501.5(c). EAs should be concise documents; to avoid undue length the EA may incorporate by reference background data to support its succinct discussion of the proposal and relevant issues.

### **B. PUBLIC AND GOVERNMENTAL ENGAGEMENT FOR AN EA**

NIST will involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable, in preparing EAs. *See* 40 C.F.R. § 1501.5(f). If NIST publishes a draft EA, it must invite public comment and consider those comments in preparing the final EA. *See id.* § 1501.5(e). Depending on the length and complexity of a draft EA, a reasonable comment period could range from 15-30 days. If NIST does not release a draft EA for public review and comment, the agency may use one or more alternative public engagement methods. Alternative methods for public engagement include:

1. Inviting public input through a scoping process (see Section 8.B) and an NOI briefly describing, among other things, the proposed action, its location, alternatives, anticipated environmental effects, and potential measures for mitigation and monitoring (and, in NIST's discretion, considering use of the scoping procedures for EISs found at 40 C.F.R. § 1502.4);
2. Making documents such as permit applications, requests for authorizations, scientific reports, or other relevant environmental information available for public review through any mechanism listed in 40 C.F.R. § 1501.9;
3. Holding public meetings or hearings to address the proposed action and solicit public input; and
4. Soliciting the views of Federal, State, and local agencies and Tribal governments with a potential interest in the proposed action or its environmental impacts through targeted scoping letters or other means.

To determine the appropriate type and level of public engagement, NIST should consider all relevant circumstances, including:

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1. The nature of the proposed action, including the magnitude of the proposed action, the potential for controversy, and the anticipated effects;
  2. Statutory and regulatory requirements, such as the need for environmental permits or authorizations that have public engagement requirements;
  3. Significant policy considerations;
  4. The needs of the relevant program; and
  5. The existence of an emergency situation or compelling need to act quickly.

If NIST receives public input prior to finalizing the EA, NIST must consider whether the EA should be modified to reflect any issues raised by that input. If changes are warranted, adjustments should be made to the EA and NIST must reconsider whether the effects of the action are significant. The resulting document is the final EA. The final EA should include a summary of any public engagement process.

The requirements discussed in this section relate only to NIST's public and governmental engagement obligations under NEPA. Other statutes, such as the Endangered Species Act or the National Historic Preservation Act, may impose additional and independent obligations on NIST. In addition, depending on the nature of the proposed action, NIST may be required to consult with Tribal Nations, as described in E.O. 13175. NIST should coordinate its engagement under NEPA with its other engagement or consultation obligations, but compliance with its obligations under NEPA does not by itself excuse NIST from complying with these other obligations.

### **C. DETERMINING IF THE EFFECTS OF AN ALTERNATIVE ARE SIGNIFICANT**

Determining whether an adverse effect is significant requires consideration of the effect's context and intensity. NIST will consider the duration of the effect and whether it is adverse at one point in time and beneficial at others, but will not offset an action's adverse effects with other beneficial effects in order to determine significance. 40 C.F.R. § 1501.3(d). NIST must refer to 40 C.F.R. § 1501.3(d)(1) to evaluate the context and 40 C.F.R. § 1501.3(d)(2) to evaluate the intensity of the proposed action's reasonably foreseeable effects. (See Section 5.E above).

If the selected alternative would have a significant effect on the human environment, NIST must prepare an EIS. If the selected alternative would not have a significant effect on the environment or significant effects can be reduced or avoided due to mitigation, NIST may finalize the EA and prepare a FONSI or mitigated FONSI, respectively. 40 C.F.R. § 1501.6(a).

### **D. DOCUMENTING THE FINDING OF NO SIGNIFICANT IMPACT**

The FONSI documents the reasons why NIST has determined that the selected alternative will not have a significant effect on the quality of the human environment, indicates that an EIS will not be prepared, and concludes the NEPA process for that action. NIST NEPA Coordinators should prepare a stand-alone document that incorporates the EA by reference. The FONSI must also identify any other environmental documents related to it. 40 C.F.R. § 1501.6(c).

In the case of a mitigated FONSI, where NIST has relied on implementing mitigation to support the finding no significant impacts from the proposed action, NIST must identify the enforceable mitigation requirements and NIST's authority to enforce them. NIST must ensure that it has the legal authority and resources to ensure the performance of these mitigation measures. NIST must also prepare a monitoring and compliance plan for any mitigation it relies on as a component of the proposed action (consistent with 40 C.F.R. § 1505.3(c)). 40 C.F.R. § 1501.6(c). A template compliance plan will be made available.

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## **E. NOTIFYING THE PUBLIC OF A FONSI**

Final EAs and signed FONSI must be made available to the public. NIST will generally notify the public by posting on a publicly available NIST website, such as <https://www.nist.gov/chips/national-environmental-policy-act-nepa> or <https://www.nist.gov/ofpm/nist-extramural-construction-projects/environmentalhistorical-review-documents>, but may also use one of the other methods identified at 40 C.F.R. § 1501.9(c)(5). If the EA is associated with a rulemaking, this notification may be combined with the Federal Register publication of the final rule. NIST must make the FONSI available for public review for 30 days before it makes its final decision or takes action, if the proposed action is or is closely similar to one that would normally require an EIS, or the nature of the proposed action lacks precedent. 40 C.F.R. § 1501.6(b)(2).

## **8. PREPARING AN ENVIRONMENTAL IMPACT STATEMENT**

The recommended format for an EIS is found in 40 C.F.R. § 1502.10 and NIST should follow this format unless it determines there is a more effective format for communication. NIST must prepare EISs in plain language, to the extent possible.

### **A. SCOPING REQUIREMENTS FOR AN EIS**

Scoping is an early and open process designed to determine the scope of issues to be addressed in depth in the analyses that will be included in the EIS. Scoping should begin as soon as practicable after the proposal for action is sufficiently developed for agency consideration. 40 C.F.R. § 1502.4(a).

The purpose of scoping is to:

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

Scoping for an EIS must be performed in accordance with 40 C.F.R. § 1502.4, and incorporate public and governmental engagement as described in 40 C.F.R. § 1501.9. NIST may hold scoping meetings, publish scoping information, or use other methods to communicate with persons or entities who may be interested in or affected by a proposed action. 40 C.F.R. § 1502.4(b). NIST must invite participation of likely affected Federal, State, Tribal, and local agencies and governments as cooperating or participating agencies, as appropriate; any applicant; and other likely affected or interested persons. 40 C.F.R. § 1502.4(c). As part of the scoping process, NIST must also:

1. Identify and eliminate from detailed study the issues that are not important or have been covered by prior environmental review(s) (40 C.F.R. §§ 1501.12 and 1506.3), narrowing the discussion of these issues in the environmental impact statement to a brief presentation of why they will not be important or providing a reference to their coverage elsewhere;

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2. Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement;
  3. Indicate any public environmental assessments and other environmental impact statements that are being or will be prepared and are related to but are not part of the scope of the environmental impact statement under consideration;
  4. Identify other environmental review, authorization, and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently and integrated with the environmental impact statement, as provided in 40 C.F.R. § 1502.24; and
  5. Indicate the relationship between the timing of the preparation of environmental analyses and the agencies' tentative planning and decision-making schedule. 40 C.F.R. § 1502.4(d).

A scoping public comment period of at least 30 days is recommended to provide an adequate opportunity for interested parties to comment. The draft EIS must include a summary of information submitted by commenters during the scoping process. 40 C.F.R. § 1502.17.

## **B. ISSUING A NOTICE OF INTENT TO PREPARE AN EIS**

NIST must publish an NOI to prepare an EIS in the Federal Register as soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an EIS. 40 C.F.R. § 1502.4(e). NIST is encouraged to consider additional methods to notify interested parties of the intent to prepare an EIS. NIST may also combine the NOI with similar notices required for preparation of other documents to reduce duplication and avoid delays. The NOI must include, as appropriate:

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

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## **C. DISTRIBUTION OF THE DRAFT EIS AND GATHERING PUBLIC INPUT**

To the fullest extent practicable, the draft EIS must meet the requirements established for final EISs in section 102(2)(C) of NEPA and in the regulations. 40 C.F.R. § 1502.9(b).

NIST must file the completed draft EIS with the EPA.<sup>3</sup> The procedures for filing the draft EIS with the EPA are available on the EPA website (<https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>). The EPA will then publish a Notice of Availability (NOA) for the draft EIS in the Federal Register.

Before the draft EIS is filed with the EPA, NIST must send copies (electronically, unless a paper copy is requested due to economic or other hardship) of the draft EIS to any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards; the applicant, if any; and persons, organizations, or any party requesting the EIS. 40 C.F.R. § 1502.20. NIST is required to obtain the comments of any agency with jurisdiction by law or special expertise, and must request comment from appropriate State, Tribal, or local agencies that are authorized to develop and enforce environmental standards; State, Tribal, or local governments that may be affected by the proposed action; any agency that has requested it receive statements on actions of the kind proposed; the applicant, if any; and the interested or affected public, affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action. 40 C.F.R. § 1503.1.

NOA publication begins a required minimum of a 45-calendar day public comment period. NIST may use other public notification methods in addition to the EPA NOA, as described in 40 C.F.R. § 1501.9. If public meetings or hearings are planned, additional notifications should be published to provide more detailed information to parties who may be interested or affected. These other notification methods should also describe how NIST will accept public comments.

Additional requirements for EISs are found in 40 C.F.R. § 1502.18 (list of preparers) and §1502.22 (cost-benefit analysis).

## **D. PREPARING THE FINAL EIS**

Once the comment period on the draft EIS closes, NIST must assess and consider substantive comments timely submitted during the comment period. The final EIS must include all individual substantive comments or summaries of substantive comments received during the comment period as well as agency responses to comments or groups of comments. NIST must also discuss any responsible opposing view that was not adequately discussed in the draft EIS and indicate NIST's response to the issues raised. 40 C.F.R. § 1502.9(c).

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<sup>3</sup> EPA is required by Section 309 of the Clean Air Act (42 U.S.C. § 7609) to review agency EISs to evaluate the adequacy of the analysis and the impact to the environment. EPA uses a rating system that summarizes its recommendations to the lead agency. If EPA determines that the action is environmentally unsatisfactory, it is required by law to refer the matter to CEQ.

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

1. Modify the alternatives, including the proposed action;
2. Develop and evaluate alternatives not previously given serious consideration by the agency;
3. Supplement, improve, or modify its analyses;
4. Make factual corrections; or
5. Explain why the comments do not warrant further agency response, and where possible, cite the sources, authorities, or reasons that support the agency's position. The agency is not required to respond to each comment. *See* 40 C.F.R. § 1503.4.

If, following public review of the draft EIS, the decision maker makes substantial changes to the proposed action relevant to environmental concerns, NIST should prepare a supplement to the draft EIS. 40 C.F.R. § 1502.9(d); *see also* Section 5.C, *supra*.

#### **E. FILING THE NOTICE OF AVAILABILITY (NOA) WITH THE EPA**

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

Before the final EIS is filed with the EPA, NIST must send copies of the final EIS to all the parties identified in 40 C.F.R. § 1502.20 as well as any person, organization, or agency that submitted substantive comments on the draft EIS.

#### **F. PREPARING THE RECORD OF DECISION**

After filing the NOA for the final EIS, NIST may prepare the ROD. The ROD concludes the NEPA process for an EIS. The NIST NEPA Coordinator should prepare a ROD that is a separate document from the final EIS.

The ROD must:

1. State the decision;
2. Identify alternatives considered by the agency in reaching its decision;
3. Identify the environmentally preferable alternative or alternatives, defined as the alternative from among the proposed action, the no action alternative, or another alternative analyzed in the final EIS that will best promote the national environmental policy expressed in section 101 of NEPA (40 C.F.R. § 1502.14(f));
4. Identify and discuss all factors that were balanced by the agency in making its decision, including any essential considerations of national policy, and state how any such considerations entered into its decision; and
5. State whether all practicable means to mitigate environmental harm from the selected alternative have been adopted and, if not, why not. A monitoring and enforcement program must be adopted and summarized where applicable for any mitigation, and the authority for enforceable mitigation must be identified. 40 C.F.R. §§ 1505.2, 1505.3. The contents of the monitoring and compliance plan should be consistent with 40 C.F.R. § 1505.3(c).



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Where mitigation has been committed to and must be implemented by the lead agency or other appropriate consenting agency, the lead agency must include appropriate conditions in grants, permits, or other approvals; and condition funding of actions on mitigation. The lead or cooperating agency should, where relevant and appropriate, incorporate mitigation measures that address or ameliorate significant adverse human health and environmental effects of proposed Federal actions that disproportionately and adversely affect communities with environmental justice concerns. 40 C.F.R. § 1505.3(a), (b).

NIST must make a notice of the ROD available to the public. Although not required, publication of the notice in the Federal Register is encouraged.

## **G.      SIGNING THE ROD**

The final decision on the action is made when NIST signs the ROD. Unless an emergency situation exists (see Section 11), NIST must wait until the later of the following dates before signing the ROD:

1. 90 days after publication of the NOA for the draft EIS; or
2. 30 days after publication of the NOA for the final EIS.

The EPA may, upon a showing by NIST of compelling reasons of national policy, reduce the prescribed time periods. 40 C.F.R. § 1506.10.

## **9.      EFFICIENCIES: USE OF PROGRAMMATIC NEPA DOCUMENTS AND EXISTING ENVIRONMENTAL ANALYSES**

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

### **A.      PROGRAMMATIC NEPA REVIEWS AND TIERING**

Programmatic reviews are broad or high-level NEPA reviews that assess the environmental effects of proposed policies, plans, programs, or projects. For subsequent actions with environmental effects that are fully considered in a programmatic EA or programmatic EIS, an additional NEPA review is not required. For actions with environmental effects that are partially considered in a programmatic EA or PEIS, NIST should complete additional NEPA reviews that are tiered to the programmatic EA or programmatic EIS (e.g., a site- or project-specific document). Programmatic NEPA reviews can provide the basis to approve broad or high-level decisions such as identifying geographically bounded areas within which future proposed activities may be taken or identifying broad mitigation and conservation measures that may be applied in subsequent tiered reviews. Other approaches include analyzing proposals thematically or by sector, such as actions that have common timing, impacts, alternatives, methods of implementation, or subject matter, or by stage of technological development. 40 C.F.R. § 1501.11(a).

Effective programmatic NEPA analyses should clearly set forth the specific types of proposed policies, plans, programs, or projects the programmatic NEPA document will evaluate and support, identify when NIST expects to complete additional tiered NEPA reviews for any subsequent actions, and indicate NIST's anticipated timing and sequence for making those decisions.

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

After completing a programmatic EA or programmatic EIS, NIST may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis<sup>40</sup> C.F.R. § 1501.11(c). After 5 years, NIST may rely on the document as long as NIST reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation (see Section D) and explains why the analysis remains valid considering any new and substantial information or circumstances. 40 C.F.R. § 1501.11(c).

Tiering is a process by which an agency uses existing analysis of general matters from broader or programmatic NEPA documents in subsequent narrower NEPA reviews. Tiering allows NIST to narrow the scope of the subsequent analysis and focus on issues that are ripe for decision-making, excluding those that are already decided; avoid repetitive discussion of the same issues; and focus on issues, effects, or alternatives not fully addressed in a programmatic document, EIS, or EA prepared at an earlier phase or stage. 40 C.F.R. § 1501.11(b).

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

When NIST prepares a subsequent statement or assessment that tiers to analysis from a programmatic review, NIST should first determine whether the existing analysis adequately covers the new proposed action. The tiered document must also discuss the relationship between the tiered document and the previous review; summarize and incorporate by reference the issues discussed in the broader document; concentrate on the issues specific to the subsequent action, analyzing site-, phase-, or stage-specific conditions and reasonably foreseeable effects; and identify where the earlier document is publicly available. NIST must provide for public engagement opportunities consistent with the type of environmental document prepared and appropriate for the location, phase, or stage of the proposal. 40 C.F.R. § 1501.11(b)(1).

## **B. ADOPTION**

NIST may adopt all or portions (e.g., specific analyses, appendices, or specific sections) of a draft or final EA or EIS prepared by another agency, regardless of cooperating agency status, if the action addressed in the adopted document (or portion) is substantially the same as that being considered or proposed by NIST and NIST determines that the document (or portion) meets all NEPA requirements. 40 C.F.R. § 1506.3(a), (b)(1), (c). When adopting another agency's document, NIST should determine whether the other agency's EA or EIS (or portion thereof) fully covers the scope of NIST's proposed action and alternatives and environmental effects. If the actions evaluated in the document are not substantially the same or NIST determines that the document requires supplementation, NIST must supplement or reevaluate the document as necessary, and either republish and file it, consistent with 40 C.F.R. § 1506.9 (EIS) or provide notice consistent with 40 C.F.R. § 1501.6 (EA)). In the case of an EIS, NIST will treat an adopted EIS that requires supplementation as a draft.

When participating as a cooperating agency, NIST may adopt an EA or EIS of the lead agency when, after an independent review of the document, NIST concludes that its comments and suggestions have been

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satisfied and that the analysis includes the appropriate scope and level of environmental effect evaluation for NIST's proposed action and alternatives. If NIST elects to adopt another agency's EA or EIS, and the other agency has already issued its FONSI or ROD, NIST must prepare and sign its own FONSI or ROD. If NIST participates as a cooperating agency on an EIS but does not issue a joint ROD, it may adopt the EIS and issue its own ROD without republishing the EIS. 40 C.F.R. § 1506.3(b)(2).

NIST must identify if any of the following circumstances are present: NIST is adopting an EA or EIS that is not final within the agency that prepared it, the action assessed in the EA or EIS is the subject of a referral under 40 C.F.R. § 1504, or the EA's or EIS's adequacy is the subject of a judicial action that is not final. 40 C.F.R. § 1506.3(e).

### **C. INCORPORATION BY REFERENCE**

NIST may incorporate material into a NEPA document by reference to reduce the length of the document, so long as doing so does not impede agency and public review of the proposed action. Scientific and technical publications, planning studies, analyses, prior environmental reviews, or other relevant information and documents may all be incorporated by reference. The incorporated material must be cited, the content briefly described, and the relevance to the environmental document briefly explained. The material incorporated by reference must be reasonably available for inspection by potentially interested parties within the time allowed for comment. NIST is encouraged to provide digital references to the incorporated material, and to cite relevant materials within the incorporated document with specificity, such as with a page number or page range. 40 C.F.R. § 1501.12.

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

### **D. REEVALUATION**

When reevaluating an existing NIST EIS or EA to determine whether supplementation is necessary, NIST must consider the following to determine whether those analyses adequately cover a new proposed action under consideration:

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

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4. Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

If the answers to all of these questions are yes, additional NEPA analyses may not be necessary. However, NIST must prepare a reevaluation document such as a Supplemental Information Report (SIR) to support its finding that the existing NEPA documents sufficiently cover the proposed action. See 40 C.F.R. § 1502.9(e). A SIR is a concise document that NIST uses to reevaluate an EIS or an EA (40 C.F.R. § 1502.9(e)). A SIR describes NIST's evaluation of new information, changed circumstances, or proposed changes to an action and assists NIST in determining and documenting whether a supplemental NEPA document is necessary. A SIR is a decision tool, not a NEPA document. Standing alone, a SIR cannot repair deficiencies in the original environmental analysis or documentation, nor can it change a decision to implement an action made pursuant to appropriate NEPA procedures. A SIR should be reviewed by the NIST NEPA Coordinator's supervisor, as well as the appropriate office within the Office of General Counsel. 40 C.F.R. § 1502.9(e).

In addition to reviewing these questions, NIST must evaluate whether the public engagement and interagency review associated with the existing EA or EIS is adequate for the new proposed action. NIST must evaluate whether the new proposed action has already been discussed during the public engagement process for the previous EA or EIS, and thus whether the public has received sufficient notice and opportunity to comment regarding the new proposed action. Furthermore, a new FONSI or ROD would need to be prepared and signed if the new proposed action is an alternative analyzed, but not selected, pursuant to the existing NIST NEPA document.

## **E. SUPPLEMENTING AN EIS/EA**

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

1. NIST makes substantial changes to the proposed action that are relevant to environmental concerns; or
2. There are substantial new circumstances or information about the significance of adverse effects that bear on the analysis. 40 C.F.R. § 1502.9(d).

In determining whether supplementation is necessary, the NIST NEPA Coordinator may choose to prepare a SIR, as described above. If only some of the effects of the proposed action are not fully discussed in the previous analysis, the additional NEPA analysis may be limited to those issues that are not adequately covered in the previous analysis. Supplemental EISs and EAs must reference the original analyses. NIST must complete the supplemental analysis with a new ROD or FONSI, as applicable.

## **10. NEPA AND COLLABORATION**

### **A. USING APPLICANT- AND CONTRACTOR-PREPARED NEPA DOCUMENTS**

In accordance with section 107(f) of NEPA, 42 U.S.C. § 4336a(f), NIST has established procedures allowing applicants, or contractors hired by applicants, to prepare EAs or EISs under NIST's supervision. 40 C.F.R. § 1506.5(b)(3). These procedures do not apply to use of agency-directed third-party contractors in accordance with 40 C.F.R. § 1506.5(c), as discussed below.

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NIST’s section 107(f) procedures are included below. For projects planned by private applicants and other non-federal entities, NIST will consult early with appropriate State, Tribal, and local governments and interested private persons and organizations when their involvement is reasonably foreseeable. 40 C.F.R. § 1501.2(a)(4). NIST will also commence its NEPA process at the earliest reasonable time. 40 C.F.R. §§ 1501.5(d), 1502.5(b).

### ***Section 107(f) Procedures***

Purpose and Authority: These procedures implement section 107(f) of NEPA and 40 C.F.R. §§ 1506.5 and 1507.3 by prescribing procedures for project sponsors or contractors operating under the direction of project sponsors (“sponsor-hired contractors”) to prepare an EA or an EIS (“environmental document”) under the supervision of NIST. These procedures do not apply to third-party contractors preparing an environmental document under the immediate direction of NIST, even if those third-party contractors are paid by project sponsors.

1. Authorization: Section 107(f) of NEPA, 42 U.S.C. § 4336a(f), requires NIST to “prescribe procedures to allow a project sponsor to prepare an environmental assessment or an environmental impact statement under the supervision of the agency.” In addition to facilitating compliance with NEPA, NIST may use the information provided by the project sponsor under this provision to inform consultations or other agency processes required under the National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and other statutes or executive orders that address the environment or cultural resources. Project sponsors may also use this information to support permit or other authorization applications that are within the project sponsor’s responsibilities, such as applications for permits under the Clean Water Act. Nothing in this document is intended to delegate, or authorize NIST to delegate, to a project sponsor or a sponsor-hired contractor any agency obligation apart from preparation of a draft environmental document, including any obligations to consult with other Federal, Tribal, or State entities under the NHPA or ESA or the obligation to engage in government-to-government consultation with Tribes.
2. Use of Experienced Contractors: If a project sponsor chooses to use a sponsor-hired contractor, it must select a contractor with corporate and staff experience in preparing complex environmental documents. The project sponsor should provide the credentials and experience of its proposed contractor to NIST, in order to demonstrate that the proposed contractor satisfies the requirements of this paragraph. All costs of using a contractor to prepare an environmental document will be borne by the project sponsor. NIST reserves the right to advise the project sponsor that a sponsor-hired contractor does not appear to be qualified for the designated task, which could put the NEPA review and issuance of an award at risk. NIST must ensure a disclosure statement is prepared for the contractor’s execution specifying that the contractor has no financial or other interest in the outcome of the action.
3. Responsibility: NIST is responsible for the accuracy, scope, and content of all environmental documents and supporting information, and will ensure that each environmental document is prepared with professional and scientific integrity using reliable data and resources. NIST will specifically review and approve the purpose and need and reasonable alternatives. NIST will independently evaluate the entire draft environmental document and supporting information submitted, determine whether the draft document meets all applicable standards under NEPA and CEQ’s implementing regulations for NEPA, and document its evaluation in the final environmental document. 42 U.S.C. § 4336a(f); 40 C.F.R. §§ 1506.5(a), 1507.3(c)(12)(ii). NIST may choose in its discretion to accept, edit, revise, or independently author sections of the document or the whole document. NIST must prepare any finding of no significant impact or record of decision and applicants are prohibited from preparing such documents. 40 C.F.R. § 1507.3(c)(12)(ii).

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4. Assistance: NIST will assist project sponsors and sponsor-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. NIST will also participate in and supervise the document's preparation. NIST will work with the project sponsor to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need. NIST must explicitly approve the purpose and need and reasonable alternatives to be considered. 40 C.F.R. § 1507.3(c)(12)(i). Additionally, NIST will collaborate with the project sponsor to ensure the analysis is focused on areas where there is a higher potential for significant effects.
  5. Preparers: To allow NIST to comply with its obligation to include in the environmental document the names and qualifications of the persons preparing environmental documents, the project sponsor shall include the names and qualifications of the persons who were primarily responsible for preparing the document or significant background papers.
  6. Schedule changes and updates: NIST will work with the project sponsor to develop a schedule for preparation of the draft environmental document. Major changes to the schedule or related matters will be documented through written correspondence.
  7. Communication: Communication with the project sponsor may be in an electronic format.
  8. Decision File: The project sponsor is responsible for ensuring that any factual, scientific, or technical information used, developed, or considered by the project sponsor or the sponsor-hired contractor in the course of preparing the draft environmental document, including any correspondence with NIST or with third parties, is preserved and included in a contemporaneously assembled decision file. This decision file must be transmitted to NIST within 30 days after the final environmental document is issued by NIST and at any other time as requested by NIST. The project sponsor should be prepared to discuss its strategy for ensuring compliance with this paragraph at any time requested by NIST. The project sponsor is advised that any materials included in the decision file may be subject to Freedom of Information Act requests or included in a subsequent administrative record. Any proprietary or other sensitive information, including sensitive cultural or natural resources information, should be clearly marked; segregated from other materials; and recorded in a contemporaneously prepared document log.

## **B. USE OF THIRD-PARTY CONTRACTORS**

NIST may also authorize a contractor to prepare an environmental document under the supervision and direction of the agency, in accordance with 40 C.F.R. § 1506.5(c); such a contractor may be paid for by NIST or the applicant. NIST will provide guidance to the contractor and participate in and supervise the preparation of the environmental document. NIST is responsible for the accuracy, scope, and content of all environmental documents and supporting information and will ensure that each environmental document is prepared with professional and scientific integrity using reliable data and resources. NIST will independently evaluate the draft environmental document and supporting information submitted and determine whether the document meets all applicable standards under NEPA and CEQ's implementing regulations for NEPA, and will document its evaluation in the environmental document. NIST will include in the environmental document the names and qualifications of preparers of the document, as well as those individuals who conducted review of the documents, and conducting the independent evaluation of any information submitted or environmental document prepared by the contractor, such as in the list of preparers for environmental impact statements. 40 C.F.R. § 1506.5(c)(3). NIST will also prepare a disclosure statement for the agency-directed contractor's execution specifying that the contractor has no financial or other interest in the outcome of the action. Such statement need not include privileged or confidential trade secrets or other confidential business information. 40 C.F.R. § 1506.5(c)(4).

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## **C. COOPERATING WITH OTHER AGENCIES**

The CEQ regulations encourage agency cooperation early in the NEPA process. A lead agency supervises the development of an EIS or EA if more than one Federal agency proposes or is involved in the same action or is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity. Federal, State, Tribal, or local agencies may serve as joint lead agencies. 40 C.F.R. § 1501.7(a), (b). The agencies must decide which agency or agencies will be the lead, and must document that decision. The lead agency determines which agencies will be cooperating agencies. 40 C.F.R. § 1501.7(c). Any disagreement among the agencies regarding who will be the lead agency is resolved by the factors listed in 40 C.F.R. § 1501.7(c).

To the extent practicable, if a proposal will require action by more than one Federal agency and the lead agency determines that it requires preparation of an EA or EIS, the lead and cooperating agencies must evaluate the proposal in a single environmental document and issue a joint decision document, except where inappropriate or inefficient with respect to a ROD. 40 C.F.R. § 1501.7(g).

Upon request of the lead agency, any other Federal agency which has jurisdiction by law must be a cooperating agency. 40 C.F.R. § 1501.8(a). An agency has jurisdiction by law when it “has authority to approve, veto, or finance all or part of the proposal.” 40 C.F.R. § 1508.1(t). In addition, any other Federal agency which has special expertise with respect to any environmental issue may be a cooperating agency upon request of the lead agency. 40 C.F.R. § 1501.8(a). “Special expertise” means “statutory responsibility, agency mission, or related program experience.” 40 C.F.R. § 1508.1(nn). CEQ provides a list of Federal and Federal-State agencies with jurisdiction by law or special expertise on environmental quality issues <https://NEPA.gov>. An agency may also request the lead agency to designate it a cooperating agency. A State, Tribal, or local agency of similar qualifications may become a cooperating agency by agreement with the lead agency. Relevant special expertise in the case of a Tribal agency may include Indigenous Knowledge. In establishing cooperating agency status, it is recommended that the cooperating agency’s roles and responsibilities be documented through a Memorandum of Understanding or similar document. In particular, it may be useful to document any agreed upon timeframes for completion of tasks. 40 C.F.R. § 1501.8(a).

### ***i. Determining When NIST Will Be the Lead Agency***

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

If a lead agency cannot be determined by considering the factors listed in 40 C.F.R. § 1501.7(c), NIST should file a request with CEQ to determine which agency will be the lead agency in accordance with 40 C.F.R. § 1501.7(e).

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

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

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1. Whether the potential cooperating agency has jurisdiction by law, including the authority to approve, finance, or issue permits for the proposed action;
  2. Whether the potential cooperating agency has special expertise related to the proposed action; and
  3. Whether the potential cooperating agency can provide personnel, expertise, funding, data, facilities, equipment, or other resources to support the NEPA process to proceed in a timely manner.

As a lead agency, NIST must:

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

40 C.F.R. § 1501.7(h).

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

### ***iii. Deciding If NIST Will Be a Cooperating Agency***

NIST should consider requesting cooperating agency status from the lead agency if NIST has jurisdiction by law or has special expertise, or if cooperation would otherwise further the NIST mission. If invited by the lead agency, NIST must agree to serve as a cooperating agency when NIST has jurisdiction by law. 40 C.F.R. § 1501.8(a). NIST has jurisdiction by law when it “has authority to approve, veto, or finance all or part of the proposal.” 40 C.F.R. § 1508.1(t). If a lead agency requests NIST be a cooperating agency for a NEPA document in which NIST has special expertise, but does not have jurisdiction by law, NIST may decline if program commitments preclude NIST from any involvement or the degree of involvement requested by the lead agency. In these cases, NIST must decline the request from the lead agency in writing. If NIST declines to cooperate on an EIS, the NIST NEPA Coordinator must send a copy of the written response declining cooperating status to CEQ and to the senior agency official of the lead agency.

As a cooperating agency, NIST will have several obligations: participate in the scoping process; if requested by the lead agency, assume responsibility for developing information and preparing environmental analyses, including portions of the EIS or EA concerning which NIST has special expertise, and make available staff support to enhance the lead's interdisciplinary capability; normally use its own funds; consult with the lead agency in developing the schedule, meet the schedule, and elevate to the senior agency official of the lead agency any issues relating to purpose and need, alternatives, or scheduling issues; meet the lead agency's schedule for providing comments; and jointly issue environmental documents with the lead agency, to the maximum extent practicable. 40 C.F.R. § 1501.8(b). NIST should consider these obligations of cooperating agencies in deciding whether or not to become a cooperating agency.

If NIST elects to become a cooperating agency but cannot meet a lead agency's request for assistance in preparing an environmental document, it may reply that other program commitments preclude all assistance



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or some assistance. NIST must then submit a copy of this reply to CEQ and the senior agency official of the lead agency. 40 C.F.R. § 1501.8(c).

## **11. COMMENTING ON ANOTHER AGENCY'S EIS**

NIST must comment on an EIS when NIST has jurisdiction by law or special expertise with respect to any environmental impact involved. When NIST is a cooperating agency or is authorized to develop and enforce an environmental standard, NIST must comment on an EIS within its jurisdiction, expertise, or authority within the time period specified for comment. NIST can reply that it has no comment. 40 C.F.R. § 1503.2. Requirements and guidance on commenting is found in 40 C.F.R. § 1503.3(a).

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

### ***Commenting Under Laws with Accelerated Project Delivery Requirements***

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

## **12. REFERRING MATTERS TO CEQ FOR ENVIRONMENTALLY UNSATISFACTORY EFFECTS**

The CEQ referral process is a formal, third-party dispute resolution process that permits Federal agencies to bring to CEQ interagency disagreements concerning proposed actions that might cause unsatisfactory environmental effects. CEQ referrals are made only after all other efforts to resolve the dispute have been exhausted. A referral initiated by NIST must be signed by the NIST Director. The applicable criteria and procedures can be found at 40 C.F.R. § 1504.3.

EPA may also refer NIST final EISs to CEQ if NIST does not make improvements recommended by EPA for documents rated as inadequate following their review of a final EIS. 42 U.S.C. § 7609; 40 C.F.R. § 1504.1(b).

## **13. INTEGRATING NEPA WITH OTHER ENVIRONMENTAL REQUIREMENTS**

The CEQ regulations require that, to the fullest extent possible, draft NEPA documents be prepared concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes, including the National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.*, and the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* 40 C.F.R. § 1502.24(a). Additionally, the CEQ regulations encourage agencies to combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. 40 C.F.R. § 1506.4. Thus, NIST may combine a NEPA document with related plans, rules, or amendments as a single consolidated document. The consolidated document must contain and clearly identify the required sections of the NEPA document and must stand

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on its own as an analytical document which fully informs NIST and the public of the environmental effects of the proposal and those of the reasonable alternatives.

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

Examples of consultation and permitting requirements that are commonly applicable to NIST actions include the following:

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

## **14. EMERGENCY SITUATIONS AND ALTERNATIVE ARRANGEMENTS**

CEQ has recognized the possibility that circumstances could arise that would make it impossible to comply with CEQ’s NEPA regulations. Actions in response to emergency situations are not exempt from NEPA review. However, when the need to respond to an emergency situation makes compliance with the CEQ regulations impracticable, “alternative arrangements” may be established for EISs. 40 C.F.R. § 1506.11.

If a proposed action to respond to an emergency situation is expected to have a significant effect on the human environment, NIST must immediately contact CEQ to consult regarding alternative arrangements for compliance with NEPA. Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance for responsive action with significant environmental impacts. 40 C.F.R. § 1506.11.

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

1. The nature and scope of the emergency;
2. Actions necessary to control the immediate impacts of the emergency;
3. Potential adverse effects of the proposed action;

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4. Components of the NEPA process that NIST can follow and provide value to decision making;
  5. Duration of the emergency; and
  6. Potential mitigation measures.

Alternative arrangements are available for those actions that are likely to result in significant environmental effects and would therefore require consideration in an EIS. If the emergency action is not likely to result in significant environmental effects, and is not an action that would be covered by one of NIST's CEs, NIST should prepare a concise and focused EA.<sup>4</sup>

## **15. TERMINATING THE NEPA PROCESS**

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

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

## **16. CLASSIFIED PROPOSALS**

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

NIST may safeguard and restrict from public dissemination NEPA and related environmental review documents, including EAs and EISs, or portions thereof, that address classified proposals. *See* 40 C.F.R. § 1507.3(d)(3). Classified proposals are proposed actions specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. *Id.*

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

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<sup>4</sup> *See* Emergencies and the National Environmental Policy Act Guidance, 89 Fed. Reg. 106448 (Dec. 30, 2024). NEPA Coordinators should consider this guidance in the event of preparing a concise EA for an emergency action.

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## Appendix – Categorical Exclusions

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

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

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

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

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

**NIST A-4.** Technical assistance to other Federal, Tribal, State, and local agencies or the public.

**NIST A-5.** Routine procurement, use, storage, transportation, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with Executive Orders and Federal procurement guidelines. Examples include office supplies and furniture; equipment; mobile assets (i.e., vehicles, vessels, aircraft); utility services; and deployable emergency response supplies and equipment.

**NIST A-6** Routine use of hazardous materials (including procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and requirements. Examples include use of chemicals for laboratory applications; refueling of storage tanks; temporary storage and disposal of solid waste; disposal of waste through manufacturer return and recycling programs; and hazardous waste minimization activities, including source reduction activities and recycling.

**NIST A-7.** Maintenance of facilities, equipment, and grounds that is limited to existing uses and facility conditions and would not expand the footprint of the facility. Examples include interior utility work, road maintenance, window washing, lawn mowing, landscaping, weed management/maintenance, trash collecting, facility cleaning, and snow removal.

**NIST A-8.** Internal modifications, renovations, or additions (e.g., computer facilities, relocating interior walls) to structures or buildings that do not result in a change in the functional use of the property.

**NIST A-9.\*** Exterior or interior renovation, addition, repair, alteration, safety and environmental improvements, and demolition projects affecting buildings, roads, grounds, equipment, and other

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facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials, lead, or asbestos. Hazardous materials must be disposed of at approved sites in accordance with all applicable laws, regulations, and requirements. These actions may require operations to be suspended and then resumed, but the actions must not result in a substantial change in the expected useful life, design, capacity, or function of the facility. The actions do not include rebuilding or modifying substantial portions of a facility (such as replacing a reactor vessel). Examples include the following:

- a) Painting, roofing, siding, or alterations to an existing building;
- b) Adding a small storage shed to an existing building;
- c) Retrofitting for energy and water conservation and efficiency, including weatherization (such as insulation and replacing windows and doors); installation of timers on hot water heaters; installation or replacement of energy efficient lighting, heating, ventilation, and air conditioning systems, and appliances; installation of low flow plumbing fixtures (such as faucets, toilets, and showerheads); programmed lowering of thermostat settings; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; and efficiency improvements for vehicles and transportation (such as fleet changeout);
- d) Closing and demolishing a building not eligible for listing under the National Register of Historic Places;
- e) Replacement or upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors;
- f) Addition of structural bracing to meet earthquake standards and/or sustain high wind loading;
- g) 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 C.F.R. Part 265, “Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities” and 40 C.F.R. Part 280, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks”);
- h) Installation of power storage (such as flywheels and batteries), less than 10-megawatt equivalent; or
- i) Installation of transportation management systems such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition.

**NIST A-10.\*** Minor improvements to existing steam plants and cooling water systems (including, but not limited to, modifications of existing cooling towers and ponds) that support building, commercial, laboratory, or industrial spaces, provided that the improvements would not:

- a) Create new sources of water or involve new receiving waters;
- b) Have the potential to significantly alter water withdrawal rates;
- c) Exceed the permitted temperature of discharged water; or
- d) Increase introductions of, or involve new introductions of, hazardous substances, pollutants, contaminants, or Comprehensive Environmental Response, Compensation, and Liability Act-excluded (CERCLA) petroleum and natural gas products.

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**NIST A-11.\*** Installation or relocation and operation of machinery and equipment (including, but not limited to, laboratory equipment, electronic hardware, manufacturing machinery, maintenance equipment, and health and safety equipment), provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure. Covered actions include modifications to an existing building, within or contiguous to a previously disturbed or developed area, that are necessary for equipment installation and relocation. Such modifications would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental effects.

**NIST A-12.\*** Acquisition or use of existing facilities or portions thereof by purchase, lease, or use agreement where use or operation will remain unchanged. Examples include acquiring office space through lease, purchase, or use agreement, and acquisition of laboratory space through lease, purchase, or use agreement.

**NIST A-13.\*** Decisions and actions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment, including office equipment, telecommunications equipment, and computer equipment, is not used to prevent or control environmental effects.

**NIST A-14.\*** Proposed new and recurring activities and operations conducted in laboratories and facilities where research practices and safeguards (including but not limited to environmental permits for operation) prevent environmental effects, would be consistent with previously established safety levels, and would not result in a change in use of the facility. Examples include types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing facilities designed to support research and development activities. Such facilities could be used for indoor small-scale research and development projects and small-scale pilot projects using nanoscale materials in accordance with applicable requirements (such as engineering, worker safety, procedural, and administrative regulations) necessary to ensure the containment of any hazardous materials. Not included in this category are demonstration actions, meaning actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment.

**NIST A-15.\*** Outdoor research activities conducted in compliance with all applicable laws, regulations, and requirements where no new ground disturbance occurs and no sensitive resources (e.g., threatened or endangered species, archaeological sites, Tribal resources, wetlands, and waterbodies) are present, such as radar testing, radio noise measurements, and public safety communications research.

**NIST A-16.\*** New construction or improvement of buildings or experimental equipment (e.g., trailers, prefabricated buildings, and test slabs) on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance in previously disturbed areas, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

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

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

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

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

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

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

**NIST B-5.** Safety and environmental improvements of a facility (including, but not limited to, replacement and upgrade of facility components) that do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed. Improvements include, but are not limited to, replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping, provided that there is no evidence of leakage, based on testing in accordance with applicable requirements (such as 40 CFR part 265, “Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities” and 40 CFR part 280, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks”). These actions do not include rebuilding or modifying substantial portions of a facility (such as replacing a reactor vessel).

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

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

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

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

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

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



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**C. Department of Commerce Categorical Exclusions Available for Use by NIST (74 Fed. Reg. 33,204 (July 10, 2009)) – Apply Extraordinary Circumstances as Described in Section 5 of the NIST NEPA Procedures**

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

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

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

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

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

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

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

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

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

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

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

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

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

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