

Dated: September 15, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Adoption of Department of Energy Categorical Exclusions Under the National Environmental Policy Act

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) has identified categorical exclusions (CEs) established by the Department of Energy (DOE) that cover categories of actions that NIST proposes to take. This notice identifies the DOE CEs and NIST's categories of proposed actions for which it intends to use DOE's CEs and describes the consultation between the agencies.

DATES: The CEs identified below are available for NIST to use for its proposed actions effective September 20, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer Nist, NIST, telephone number 202–302–9541, email jennifer.nist@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NEPA and CEs

Congress enacted the National Environmental Policy Act, 42 U.S.C. 4321–4347, (NEPA) in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA seeks to ensure that agencies consider the environmental effects of their proposed major actions in their decision-making processes and inform and involve the public in that process. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review of any major federal action—an environmental impact statement (EIS),

environmental assessment (EA), or categorical exclusion (CE). 40 CFR 1501.3. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 40 CFR part 1502, 1505.2. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an environmental assessment (EA), which involves a more concise analysis and process than an EIS. 40 CFR 1501.5. Following the EA, the agency may conclude that the action will have no significant effects and document that conclusion in a finding of no significant impact. 40 CFR 1501.6. If the analysis concludes that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If extraordinary circumstances are present, the agency nevertheless may still categorically exclude the proposed action if it determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to “adopt” another Federal agency's CEs for proposed actions. 42 U.S.C. 4336c. To use another agency's CEs under section 109, the borrowing agency must identify the relevant CEs listed in another agency's (“establishing agency”) NEPA procedures that covers the borrowing agency's category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE for a category of actions is appropriate; identify to the public the CE that the borrowing agency plans to use for its proposed actions; and document adoption of the CE. 42 U.S.C. 4336c. NIST has prepared this notice to meet these statutory requirements.

NIST's Programs

Founded in 1901, 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, for example, operation of the NIST Laboratories, conducting 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, the Congress passed the CHIPS 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. CHIPS for America encompasses two offices within NIST responsible for implementing the law: the CHIPS Research and Development Office is investing \$11 billion into developing a robust domestic R&D ecosystem, while the CHIPS Program Office is dedicating \$39 billion to provide incentives for investment in facilities and equipment in the United States. NIST is uniquely positioned to successfully administer the CHIPS for America program because of the bureau's strong relationships with U.S. industries, its deep understanding of the semiconductor ecosystem, and its reputation as fair and trusted.

II. DOE Categorical Exclusions

NIST has identified the following CEs listed in appendices A and B to subpart D of DOE's NEPA regulations, 10 CFR part 1021. Each of the DOE CEs includes conditions on the scope or application of the CE within the text of the numbered paragraphs listed below and within the integral elements in DOE's regulations (10 CFR part 1021, subpart D, appendix B (1)–(5)). Under each CE, NIST has described categories of proposed actions for which NIST may use the CE. The list of categories comprises the categories of actions for which NIST contemplates using the CE at this time; NIST may expand use of the CEs identified below to other activities where appropriate.

1. A9: Information Gathering, Analysis, and Dissemination

Potential application to NIST activities:

- Prize challenges under 15 U.S.C. 2719;
- NIST Technical Series Publications;
- Financial assistance that funds preparation of reports or analysis; and
- Other activities conducted under 15 U.S.C. 272, including hosting and support for scientific and technical workshops; dissemination of data; and development of computer standards and privacy measures.

2. A11: Technical Advice and Assistance to Organizations

Potential application to NIST activities:

- Activities conducted under 15 U.S.C. 272(b) & (c), including technical advice and planning assistance to international, national, state, and local organizations.

3. B1.5: Existing Steam Plants and Cooling Water Systems

Potential application to NIST activities:

- Financial assistance for extramural construction, including at semiconductor facilities; and
- Upgrades to steam plants and cooling water systems at NIST facilities.

4. B1.23: Demolition and Disposal of Buildings

Potential application to NIST activities:

- Financial assistance for extramural construction, including at semiconductor facilities; and
- Demolition and disposal of buildings at NIST facilities.

5. B1.24: Property Transfers

Potential application to NIST activities:

- Financial assistance for internal expansion, including at semiconductor facilities, where the change in use of space does not materially alter the footprint of a building or facility;
- Lease of temporary space;
- Changes to use of property at NIST facilities; and
- Disposition of personal property.

6. B1.31: Installation or Relocation of Machinery and Equipment

Potential application to NIST activities:

- Financial assistance for facility modernization and installation of equipment, including semiconductor facilities, that would not require increased emission limits or create new types of pollution discharges or releases; and

- Installation or relocation of machinery and equipment at NIST facilities.

7. B2.5: Facility Safety and Environmental Improvements

Potential application to NIST activities:

- Financial assistance for facility safety and environmental improvements, including at semiconductor facilities;
- Safety and environmental improvements at NIST facilities.

8. B3.1: Site Characterization and Environmental Monitoring

Potential application to NIST activities:

- Site characterization and environmental monitoring at NIST facilities or performed by NIST;
- Financial assistance for site characterization and environmental monitoring.

9. B3.6: Small-Scale Research and Development, Laboratory Operations, and Pilot Projects

Potential application to NIST activities:

- Small-scale research and development, laboratory operations, and pilot projects at NIST facilities; and
- Financial assistance for small-scale research and development, laboratory operations, and pilot projects, including semiconductor facilities.

10. B3.15: Small-Scale Indoor Research and Development Projects Using Nanoscale Materials

Potential application to NIST activities:

- Small-scale indoor research and development projects using nanoscale materials at NIST facilities; and
- Financial assistance for small-scale indoor research and development projects using nanoscale materials, including at semiconductor facilities.

11. B5.1: Actions To Conserve Energy or Water

Potential application to NIST activities:

- Actions to conserve energy or water at NIST facilities; and
- Financial assistance for actions to conserve energy or water, including at semiconductor facilities.

NIST will develop procedures regarding documentation of its use of these CEs.

III. Consideration of Extraordinary Circumstances

If an agency determines that a CE covers a proposed action, the agency

must evaluate the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). NIST does not currently have its own NEPA implementing procedures to guide its application of extraordinary circumstances. Until NIST establishes NEPA implementing procedures, for purposes of considering extraordinary circumstances in connection with the DOE CEs discussed in this notice, NIST will consider whether the proposed action has the potential to result in significant effects, including by considering the factors listed in DOE's definition of extraordinary circumstances, which include scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources. 10 CFR 1021.410(b)(2). NIST will then assess whether an extraordinary circumstance is present, and if so, whether there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects, consistent with 40 CFR 1501.4(b). If NIST cannot apply a CE to a particular proposed action due to extraordinary circumstances, NIST will prepare an EA or EIS, consistent with 40 CFR 1501.4(b)(2), or determine if the action is covered under an existing NEPA document.

IV. Consultation With DOE and Determination of Appropriateness

NIST worked with DOE to identify DOE CEs that could apply to NIST proposed actions and began consultation in June 2023. During this consultation, the agencies discussed whether the categories of NIST proposed actions would be appropriately covered by the DOE CEs; the extraordinary circumstances that NIST should consider before applying these CEs to NIST's proposed actions; the requirement to evaluate, before use of any DOE appendix B CE, the conditions listed as integral elements in DOE's regulations (10 CFR 1021, subpart D, appendix B (1)–(5)); and what documentation NIST should complete when applying these CEs. The agencies also considered DOE's past use of the CEs, including how often DOE has modified a proposed action or prepared an EA or EIS for a proposed action otherwise covered by the CEs.

At the conclusion of that process, the agencies determined that NIST's proposed use of the CEs as described in this notice would be appropriate because the categories of actions for

which NIST plans to use the CEs are covered by the DOE CEs.

V. Conclusion

This notice documents adoption of the DOE CEs listed above in accordance with 42 U.S.C. 4336c(4), and they are available for use by NIST, effective immediately.

Alicia Chambers,

NIST Executive Secretariat.

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Environmental Policy Act (NEPA) Disclosure Statement

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 20, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, at PRAcomments@doc.gov. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Cierra Bean, Business Operations Analyst, CHIPS Program Office, askchips@chips.gov or (202) 815-2677.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Environmental Policy Act (NEPA) requires Federal agencies to

interpret and administer Federal policies, regulations, and laws in accordance with NEPA's policies and to consider environmental values in their decision making, including through preparation of environmental review documents such as environmental impact statements and environmental assessments. On June 3, 2023, President Biden signed the Fiscal Responsibility Act of 2023 (FRA) into law, which included amendments to NEPA. Specifically, the FRA added section 107, which addresses, in part, timely preparation of environmental review documents. Section 107(f) of NEPA requires agencies to "prescribe procedures to allow a project sponsor to prepare an environmental assessment or an environmental impact statement under the supervision of the agency." 42 U.S.C. 4336a(f).

Additionally, the NEPA implementing regulations state, "Contractors or applicants preparing environmental assessments or environmental impact statements shall submit a disclosure statement to the lead agency that specifies any 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 CFR 1506.5. As part of its procedures, NIST has therefore developed a NEPA disclosure statement for project sponsors to use in conjunction with preparation of environmental review documents under the agency's supervision. This statement may be used by in a variety of contexts at NIST. NIST may request recipients of funds for extramural construction to prepare environmental review documents and to submit the NEPA disclosure statement.

This statement may also be used by the CHIPS Incentives Program. The CHIPS Incentives Program is authorized by Title XCIX—Creating Helpful Incentives to Produce Semiconductors for America of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283, referred to as the CHIPS Act or Act), as amended by the CHIPS Act of 2022 (Division A of Pub. L. 117-167). The CHIPS Incentives Program is administered by the CHIPS Program Office (CPO) within the National Institute of Standards and Technology (NIST) of the United States Department of Commerce (Department). CPO may request recipients of CHIPS incentives prepare environmental review documents and submit the NEPA disclosure statement.

II. Method of Collection

Information will be collected electronically.

III. Data

OMB Control Number: 0693-XXXX.

Form Number(s): None.

Type of Review: Regular submission—new information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 5 hours.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Mandatory to obtain benefits.

Legal Authority: 42 U.S.C. 4336a(f), 40 CFR 1506.5 and 1507.3.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

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