



## **NORTHERN BORDER REGIONAL COMMISSION**

### **Integrate the National Environmental Policy Act into the Northern Border Regional Commission's (NBRC) decision-making processes.**

**AGENCY:** Northern Border Regional Commission

**ACTION:** Notice of adoption of NEPA procedures.

**SUMMARY:** The Northern Border Regional Commission (NBRC) is integrating the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321-4347), as amended, into the Northern Border Regional Commission's (NBRC) decision-making processes. This notice identifies proposed actions for which it intends to use the adopted procedures.

**DATES:** The procedures identified below are available for the NBRC to use for its proposed actions effective upon publication.

**FOR FURTHER CONTACT INFORMATION:** Sarah Waring, NBRC Executive Director, telephone number: 603-369-3001, email: [swaring@nbrc.gov](mailto:swaring@nbrc.gov)

### **SUPPLEMENTARY INFORMATION:**

## **SECTION 1: GENERAL INFORMATION**

### **1.1 Purpose**

The purpose of these procedures is to integrate the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321-4347), as amended, into the Northern Border Regional Commission's (NBRC) decision-making processes.

### **1.2 Environmental Policy**

It is the policy of NBRC to:

- (a) Ensure that NBRC actions are in compliance with NEPA prior to the irreversible and irretrievable commitment of resources.
- (b) Integrate NEPA requirements with other planning and environmental review and

consultation requirements at the earliest reasonable time.

(c) Use the NEPA process to achieve a balance between economic development and the preservation and enhancement of the environment.

(d) Use the NEPA process, to the maximum extent possible, to identify a reasonable range of alternatives to proposed actions to avoid or minimize adverse environmental effects.

(e) Use the NEPA process to inform decisions for all NBRC funding programs and policies.

(f) Review closely related and federally funded connected actions in the same NEPA analysis using the best available data.

### **1.3 Applicability and Scope**

These procedures apply to the grant programs, projects, and activities administered, implemented, and funded by NBRC. NEPA does not apply to a proposed action that or for which:

- (a) Does not result in final agency action under the Administrative Procedure Act, *see* 5 U.S.C. § 704;
- (b) Is exempted from NEPA by law;
- (c) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;
- (d) Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that NBRC retains no residual discretion to alter its action based on the consideration of environmental factors, such that NBRC's function is nondiscretionary within the meaning of NEPA § 106(a)(4) and/or § 111(10)(B)(vii) (42 U.S.C. § 4336(a)(4) and § 4336e(10)(B)(vii), respectively);
- (e) The proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act;

- (f) Do not meet the definition of a major Federal action under NEPA (42 U.S.C. § 4336e(10)). Actions that do not meet the definition of major Federal action include routine administrative activities that support NBRC operations (including, but not limited to, budgeting, program management, record keeping, and grant monitoring activities).

In determining whether NEPA applies to a proposed NBRC action, NBRC will consider only the action or project at hand.

These procedures also have information relevant to third parties who participate in or otherwise assist NBRC in the NEPA process, including, but not limited to, states, tribes, units of local government, and other applicants for NBRC assistance.

#### **1.4 Definitions, Terms, and Abbreviations**

(a) All definitions of words and phrases used in these procedures are consistent with the National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321–4347).

(b) The following terms are used throughout these procedures:

(1) Sponsor: A non-federal entity applying for financial assistance from NBRC.

Applicants include the state governments of Maine, New Hampshire, Vermont, and New York; local governments (e.g. village, town, city, and county); other political subdivisions of states (e.g. regional planning commissions, authorities of the state); Indian tribes (as defined in 25 U.S.C. § 4103(13)(B), or “federally recognized Indian tribe”); and non-profit entities.

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

(3) Connected Actions: a separate Federal action that is closely related to the proposed NBRC action and should be addressed in a single environmental document because the proposed NBRC action:

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

(4) Effects or impacts: changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

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

(5) Emergency circumstances: Those situations for which there is a disaster or

imminent threat to life, property, or important natural, cultural, or historical resources. Extraordinary Circumstances: Factors or conditions that suggest a normally categorically excluded action may result in significant environmental effects.

- (6) Finding of No Significant Impact (FONSI): A FONSI is a brief written determination by NBRC that a proposed action will not result in significant environmental effects and therefore does not require the preparation of an Environmental Impact Statement, as defined at 42 U.S.C. § 4336e(7). A FONSI should include or summarize the findings of the Environmental Assessment and shall identify any mitigation measures. NBRC is mindful that in this respect NEPA itself does not require or authorize NBRC to impose any mitigation measures.
- (7) Human environment: comprehensively the natural and physical environment and the relationship of Americans with that environment. (*See also* the definition of “effects” in paragraph 4 of this section.)
- (8) Jurisdiction by law: agency authority to approve, veto, or finance all or part of the proposal.
- (9) Mitigation: Measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:
- i. Avoiding the impact altogether by not taking a certain action or parts of an action.
  - ii. Minimizing effects by limiting the degree or magnitude of the action and its implementation.

- iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  - iv. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  - v. Compensating for the impact by replacing or providing substitute resources or environments.
- (10) NEPA decision document: Record of environmental consideration, Finding of No Significant Impact, or record of decision for a proposed action.
- (11) NEPA process: all measures necessary for compliance with the requirements of section 2 and title I of NEPA § 102(2), 42 U.S.C. § 4332(2).
- (12) Notice of intent: a public notice that NBRC will prepare and consider an environmental document.
- (13) Participating agency: a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.
- (14) Publish and publication: methods found by NBRC to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.
- (15) Related action: an action undertaken by an agency, *e.g.*, a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, *e.g.*, that a set of related actions are all related to one overarching project.
- (16) Reasonable alternatives: a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

- (17) Reasonably foreseeable: sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.
- (18) Scope: consists of the range of actions, alternatives, and effects to be considered in an environmental document. The scope of an individual statement may depend on its relationship with other statements.
- (19) Tiering: refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

(c) The following abbreviations are used throughout these procedures:

- (1) CATEX — Categorical Exclusion
- (2) EA — Environmental Assessment
- (3) EIS — Environmental Impact Statement
- (4) FONSI — Finding of No Significant Impact
- (5) MOA — Memorandum of Agreement
- (6) NBRC — Northern Border Regional Commission
- (7) NEPA — National Environmental Policy Act
- (8) NOA — Notice of Availability
- (9) NOI — Notice of Intent
- (10) ROD — Record of Decision
- (11) REC — Record of Environmental Consideration

### **1.5 Determining the Appropriate Level of NEPA Review**

- a) If NBRC determines that NEPA applies to a proposed action or decision, NBRC will then determine the appropriate level of NEPA review in the following sequence and manner. At

all steps in the following process, NBRC will consider the proposed action or project at hand and its effects.

1. If NBRC has established, or adopted pursuant to NEPA § 109, a categorical exclusion that covers the proposed action, NBRC will analyze whether to apply the categorical exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to Section 3.
2. If another agency has already established a categorical exclusion that covers the proposed action, NBRC will consider whether to adopt that exclusion pursuant to Section 3 so that it can be applied to the proposed action at issue, and to future actions or decisions of that type.
3. If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, NBRC will consider whether to establish or revise, and then apply the categorical exclusion to the proposed action.
4. If NBRC cannot apply a categorical exclusion to the proposed action NBRC will consider the proposed action's reasonably foreseeable effects and then will:
  - i. If the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, develop an environmental assessment
  - ii. if the proposed action is likely to have reasonably foreseeable significant effects, develop an environmental impact statement.
5. When considering whether the reasonably foreseeable effects of the proposed action are significant, NBRC will analyze the potentially affected environment and degree of the effects of the action. NBRC may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.
  - i. In considering the potentially affected environment, NBRC may consider, as

appropriate to the specific action, the affected area (national, regional, or local) and its resources.

ii. In considering the degree of the effects, NBRC may consider the following, as appropriate to the specific action:

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

## **SECTION 2: ROLES AND RESPONSIBILITIES**

### **2.1 Federal and Intergovernmental Relationships**

NBRC is a partnership between the federal government and the states of Maine, New Hampshire, New York, and Vermont with a mission to fund economic development and infrastructure projects throughout designated counties in the four states. The federal government provides all funding for NBRC grants. NBRC will work as either a lead, joint lead, or cooperating agency and may invite other agencies to serve as the lead agency, a joint lead agency, or a cooperating agency. (See Also Section 8: Lead and Cooperating Agencies)

### **2.2 NBRC Responsibilities**

(a) Federal Co-Chair: The Federal Co-Chair serves as the senior federal representative within NBRC. The Federal Co-Chair has the authority and responsibility to:

- (1) Provide strategic direction and ensure that the requirements of these procedures are fully integrated into the planning and decision making for all policies, programs, activities, and operations of NBRC.

(2) Delegate the authority to the Executive Director to implement the requirements of these procedures.

(3) Collaborate with State Co-Chairs to coordinate activities and serve as the official responsible for making decisions in accordance with the requirements of these procedures.

(b) NBRC Executive Director: NBRC's Executive Director serves as NBRC's NEPA decision maker, as delegated by the Commission, and has overall responsibility for NBRC's NEPA compliance and implementation. The Executive Director has the authority and responsibility to:

(1) Provide written approval to establish a schedule of longer than one year for an EA when NBRC is acting as the lead or joint lead agency.

(2) Provide written approval to establish a schedule or deadline of longer than two years for an EIS when NBRC is acting as the lead or joint lead agency.

- (3) Sign or delegate signature authority for all CATEXs, FONSIIs, and RODs.
- (4) Review and approve requests for NBRC to serve as the lead agency for joint federal actions, where NBRC and one or more federal agencies are cooperating on a project.
- (5) Consult with the Council on Environmental Quality (CEQ) to discuss whether alternative arrangements for NEPA compliance are needed when emergency circumstances require action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures.

(c) NBRC Grant Attorney: The NBRC Grant Attorney will serve as the Chief Public Engagement Officer responsible for facilitating community engagement, to the extent appropriate, in NBRC's NEPA process. The NBRC Grant Attorney, in this role, has the authority and responsibility to:

- (1) Oversee and coordinate community involvement in environmental reviews across NBRC to the extent appropriate.
- (2) Provide technical assistance to communities to enhance their understanding and participation in the NEPA process.

(d) NBRC Program Staff: NBRC Program Staff (including, but not limited to, NBRC's Director of Programs and Partnerships, Program Attorney and Program Managers) oversee and support the NEPA process by:

- (1) Informing applicants of the requirement to comply with NEPA at the time of application and upon award.
- (2) Approving applicant-selected contractors obtained for preparing NEPA documents for which NBRC is the lead or sole federal agency. The following criteria must be considered when approving a contractor:

- (1) The capability and capacity of the contractor to

complete the scope of work.

- (2) The contractor performing the scope of work does not have a conflict of interest. A conflict of interest would exist if the contractor selected to prepare NEPA documentation has a financial or other interest in the project's outcome.
- (3) Providing the status of NEPA analyses to applicants and interested parties in a timely manner.
- (4) Developing a schedule for the completion of EISs and EAs, including creating milestones for all environmental reviews, permits, and authorizations required for the implementation of the action and consultation with applicants regarding deadlines, when necessary, consistent with NEPA 42 U.S.C. § 4336a(a)(2)(D).
- (5) Providing direction and guidance to applicants on NEPA-related matters.
- (6) Ensuring sufficient EAs, EISs, and public notices are prepared for NBRC proposed actions.
- (7) Independently reviewing EAs, EISs, supporting environmental documentation, and public notices prepared and submitted by applicants to ensure sufficiency. This responsibility includes a review of the purpose and need and reasonable range of alternatives.
- (8) Preparing NEPA decision documents for all NBRC proposed actions and ensuring they include applicable mitigation measures.
- (9) Ensuring that REC documentation is maintained for all proposed

actions that qualify as a CATEX.

- (10) Creating and maintaining the administrative record for all NEPA-related decisions, ensuring that it includes all relevant documents, correspondence, and materials that support the decision-making process.
- (11) Publishing the documentation of the application of any CATEXs, EAs, or EISs or the use of mitigated FONSIIs on NBRC's website.
- (12) NBRC Program Staff may utilize contractors to support responsibilities 3–11 listed above.

## **2.3 Applicant Preparation of NEPA Documents (NEPA § 107(f))**

(a) Applicants must work under NBRC direction and assist NBRC in fulfilling its NEPA obligations by preparing NEPA analyses and documents that comply with the provisions of NEPA and the requirements set forth in these procedures.

Applicant responsibilities related to preparing NEPA analyses and documents may include, but are not limited to, the following:

- (1) Preparing EAs, EISs, and supporting environmental documentation.
- (2) Submitting all NEPA and supporting environmental documents created pursuant to these procedures to NBRC for review and approval before public distribution.
- (3) Creating and distributing public notices when appropriate.
- (4) Coordinating public hearings and meetings as required.
- (5) For proposed actions for which NBRC is the lead or sole federal agency, consult and receive approval from NBRC prior to obtaining a contractor for preparing an EA or EIS document.
- (6) Informing NBRC promptly of any difficulties encountered in meeting the established schedule and milestones and recommending adjustments as needed to ensure compliance.

## **2.4 Timing of NEPA Process**

(a) As the Supreme Court has repeatedly held, NEPA is governed by a “rule of reason.” Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA § 107(g), 42 U.S.C. § 4336a(g). These deadlines indicate Congress’s determination that an agency, working within Congress’s allocation of resources, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is *necessary* to

complete the analysis. NEPA should begin at the earliest practicable time. For NBRC, this is generally during the application process or after the notification of award. To ensure timely decision making, and consistent with NEPA (42 U.S.C. § 4336a(g)(1)), NBRC shall complete the following:

(1) EAs not later than 1 year after the sooner of:

- (1) The environmental assessment will publish (unless the deadline is extended pursuant to the provision below), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.
- (2) *Start date.* The applicable start date will be the day NBRC decides, through consultation with the sponsor, that an EA is required.
- (3) *End date.* The applicable end date will be one year from the start date.
- (4) *Deadline extensions.* If NBRC determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(B), 42 U.S.C. § 4336a(g)(1)(B), it must consult with the applicant, if any, pursuant to NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. Cause for establishing a new deadline is only established if the environmental assessment is so incomplete, at the time at which NBRC determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (x) above would, in NBRC's view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such environmental assessment. The announcement of the new deadline will specify the reason why the environmental assessment was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline

(5) *Certification Related to Deadline.* When the environmental assessment is published, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that the resulting environmental assessment represents NBRC's good-faith effort to fulfill NEPA's requirements within the congressional timeline; that such effort is substantially complete; that, in NBRC's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in NBRC's judgment, the analysis contained therein is adequate to inform and reasonably explain NBRC's final decision regarding the proposed federal action.

(2) EISs not later than 2 years after the sooner of:

(1) The EIS will publish (unless the deadline is extended pursuant to the provision below), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

(2) *Start date.* The applicable start date will be the day NBRC issues a Notice of Intent (NOI) to prepare an EIS.

(3) *End date.* The applicable end date will be two years from the start date.

(4) *Deadline extensions.* If NBRC determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(B), 42 U.S.C. § 4336a(g)(1)(B), it must consult with the applicant, if any, pursuant to NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. Cause for establishing a new deadline is only established if the EIS is so incomplete, at the time at which NBRC determines it is not able to meet the statutory deadline, that issuance would, in NBRC's view,

result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such EIS. The announcement of the new deadline will specify the reason why the EIS was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(5) *Certification Related to Deadline.* When the EIS is published, a responsible official will certify (and the certification will be incorporated into the EIS) that the resulting EIS represents NBRC's good-faith effort to fulfill NEPA's requirements within the congressional timeline; that such effort is substantially complete; that, in NBRC's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in NBRC's judgment, the analysis contained therein is adequate to inform and reasonably explain NBRC's final decision regarding the proposed federal action.

(b) The following actions cannot occur until the NEPA process is complete:

(1) An irretrievable commitment of (federal or non-federal) funds for the proposed action, including a commitment of funds that may result in an adverse environmental effect or limit the choice of reasonable alternatives for a proposed action.

(2) Issuance of a full notice to proceed for a proposed action.

(3) NBRC may allow applicants to take preliminary actions necessary to support an application (e.g., planning, design, or early acquisitions) only if those actions do not prejudice the NEPA review or limit the choice of a reasonable range of alternatives. NBRC retains full discretion to select any alternative or the no action alternative regardless of such early actions.

### **SECTION 3: Categorical Exclusions**

### **3.1 CATEX Overview**

A CATEX is a category of actions that normally does not significantly affect the quality of the human environment within the meaning of section 102(2)(C) of NEPA and, therefore, does not require the preparation of an EA or EIS to comply with NEPA.

(a) To qualify for a CATEX, an action must meet the following criteria:

(1) The proposed action fits entirely within one of NBRC's CATEXs (listed in Section 3.2 of these procedures).

(2) The proposed action has not been segmented or mischaracterized (e.g., as temporary) in order to meet the requirement for the CATEX and does not have any connected actions, as defined in Section 1.4 of these procedures, or other closely related actions that are likely to result in significant effects.

(3) Extraordinary circumstances are not present, unless:

- NBRC determines that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant effects; or
- NBRC or the applicant modifies the proposed action to avoid those effects.

Extraordinary circumstances that must be considered are listed in Section 3.3 of these procedures.

(b) Proposed actions that qualify as a CATEX are still subject to compliance with other applicable federal, state, tribal, and local environmental and historic preservation requirements.

### **3.2 NBRC List of Categorical Exclusions**

The following text contains NBRC's categorical exclusions list. NBRC will review this list on a case-by-case basis to determine whether changes or additions are needed. The written record for adopting NBRC's categorical exclusions can be found on NBRC's website.

### **3.2.1 CATEX 1 — Formulating Comprehensive Economic Development and Infrastructure Plans:**

The formulation of and/or updates to comprehensive economic development and infrastructure plans at the site, local, or regional level. To qualify for this CATEX, the following conditions must be met:

(a) Scope of Activity:

(1) Limited to the creation and drafting of comprehensive economic development and infrastructure plans.

(b) Implementation Limitations:

(1) Limited to the development of plans without permitting any on-the-ground execution or implementation.

Given these limitations no significant environmental effects are expected.

### **3.2.2 CATEX 2 — Workforce Development, Education, and Training Programs:**

Workforce development, education, and training programs, including but not limited to support for workforce initiatives, afterschool partnerships, leadership programs, nursing residency expansions, and job training programs. To qualify for this CATEX, the following conditions must be met:

(a) Implementation Limitations:

(1) Does not include any construction or renovation of facilities (*i.e.*, no ground-disturbing activities) to support such initiatives.

### **3.2.3 CATEX 3 — Equipment Acquisition, Installation, and Maintenance:**

Purchase, repair, upgrade, replacement, removal, or installation of new equipment (e.g., machinery, tools, devices, instruments) and associated sitework (e.g., preparing equipment

foundations, installing support structures, and making adjustments to existing infrastructure to accommodate the new equipment). To qualify for this CATEX, the following conditions must be met:

(a) Capacity Consideration:

(1) The future use of the equipment will not result in an increase in demand that exceeds the capacity of the existing infrastructure and resources, including sewer, water, energy, roads, and parking.

(b) Equipment Restrictions:

(1) This CATEX would not apply to projects involving substantial construction, renovation, or expansion. “Substantial” in this context refers to modifications that change the size, scope, or function of the existing infrastructure beyond minor adjustments or enhancements.

(2) 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) can qualify for this CATEX provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure.

**3.2.4 CATEX 4 — Modifications to Existing Facilities:**

Renovation, repair, remodeling, demolition, or expansion of existing facilities and associated sitework (e.g., parking lot construction, installation of outdoor features such as playgrounds and storage sheds, and stormwater management infrastructure). Facilities include buildings intended for commercial, community, or healthcare purposes, as well as buildings associated with transportation infrastructure like airports, railways, and bus stations. Examples include airport hangars, barns, hospitals, visitor centers, libraries, and

train stations. To qualify for this CATEX, the following conditions must be met:

(a) Capacity Consideration:

(1) The future use of the facility will not result in an increase in occupancy that exceeds the capacity of the existing surrounding infrastructure and resources, including sewer, water, energy, roads, and parking.

(b) Urbanized or Previously Developed Land:

(1) The existing facilities and associated sitework must be either located in designated "urbanized areas," as defined by the Census Bureau, or on land that has been previously developed. Previously developed areas are those where historical grading or landscaping has been undertaken.

### **3.2.5 CATEX 5 — New Facilities:**

Construction of new facilities and associated sitework (e.g., parking lot construction, installation of outdoor features such as playgrounds and storage sheds, and stormwater management infrastructure). Facilities include buildings intended for commercial, community, or healthcare purposes, as well as buildings associated with transportation infrastructure like airports, railways, and bus stations. Examples include airport hangars, barns, hospitals, visitor centers, libraries, and train stations. To qualify for this CATEX, the following conditions must be met:

(a) Facility Size:

(1) The facility must have a footprint of less than 20,000 square feet when completed, and the project area must be less than two acres of surface land area.

(b) Capacity Consideration:

(1) The new facility will not exceed the capacity of the existing surrounding infrastructure and resources, including sewer, water, energy, roads, and

parking.

(c) Urbanized or Previously Developed Land:

(1) The new facility and associated sitework must be located in designated "urbanized areas," as defined by the Census Bureau, or on land that has been previously developed. Previously developed areas are those where historical grading or landscaping has been undertaken.

**3.2.6 CATEX 6 — Modifications to Existing Utility Infrastructure:**

Repair, reconstruction, rehabilitation, replacement, additions to, or removal of existing utility infrastructure and associated sitework (e.g., valve and meter installation, manhole construction, and stormwater management installation). Utility infrastructure includes but is not limited to water supply systems (including wells), sewage systems (including wastewater treatment plants and septic tanks), gas pipelines, and electrical systems. To qualify for this CATEX, the following conditions must be met:

(a) Limitations on wells:

(1) New wells must connect to an existing water system. The installation of new wells is not permitted in areas with existing or reasonably foreseeable water shortages.

(b) Capacity Consideration:

(1) The future use of the utility infrastructure will not result in an increase in capacity that exceeds the ability of the existing surrounding infrastructure and resources that support it. This includes considerations for water supply, sewage treatment, gas distribution, and electrical grids.

(c) Urbanized or Previously Developed Areas:

(1) The utility infrastructure and associated sitework must either be located in designated "urbanized areas," as defined by the Census Bureau, or on land that has been previously developed. Previously developed areas are

those where historical grading or landscaping has been undertaken.

### **3.2.7 CATEX 7 — Modifications to Existing Telecommunications Infrastructure**

Repair, reconstruction, rehabilitation, replacement, addition to, or removal of existing telecommunications infrastructure and associated sitework (e.g., trenching and conduit installation, tower foundation construction, and equipment shelter installation).

Telecommunications infrastructure includes but is not limited to communication lines, cellular towers, fiber-optic cables, and related equipment (e.g., antennas and transceivers, amplifiers and repeaters, and power supply units). To qualify for this CATEX, the following conditions must be met:

(a) **Urbanized or Previously Developed Areas:**

(1) The telecommunications infrastructure and associated sitework must either be located in designated "urbanized areas," as defined by the Census Bureau, or be on land that has been previously developed. Previously developed areas are those where historical grading, landscaping, or existing infrastructure has been established.

(b) Tower Height:

- (1) For projects involving towers, the total height must not exceed 200 feet.

**3.2.8 CATEX 8 — Modifications to Existing Transportation Infrastructure:**

Repair, reconstruction, rehabilitation, demolition, addition to, or improvement of existing transportation infrastructure and associated sitework (e.g., traffic signs and parking infrastructure, stormwater management, and trailhead amenities). Transportation infrastructure includes but is not limited to parking areas/infrastructure, roads, railways, bridges, sidewalks, and trails. To qualify for this CATEX, the following conditions must be met:

(a) Integration with Existing Transportation Infrastructure:

- (1) The additions to transportation infrastructure must integrate with the existing transportation network.

(b) Capacity Consideration:

- (1) The future use of the transportation infrastructure will not result in an increase in capacity that exceeds the capability of the existing surrounding infrastructure and resources that support it, including sewer, water, energy, and parking.

(c) Urbanized or Previously Developed Areas:

- (1) The transportation infrastructure and associated sitework must either be located in designated "urbanized areas," as defined by the Census Bureau,

or on land that has been previously developed. Previously developed areas are those where historical grading or landscaping has been undertaken.

(d) Exclusions:

(1) Prohibits projects resulting in a change to the mode of transportation e.g., a bike path that is expanded to ATV use. Excludes water-related infrastructure projects, including ports, harbors, docks, and related facilities.

### **3.3 Extraordinary Circumstances**

NBRC will review each proposed action that is covered by a CATEX listed in Section 3.2 of these procedures to determine whether extraordinary circumstances specific to the project exist, due to its location, activities, or other relevant factors. NBRC will review each of the following extraordinary circumstances in this section to determine whether they apply to the proposed action prior to making a final CATEX determination. If an extraordinary circumstance is present, NBRC will determine whether, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant effects, or if the proposed action can be modified to avoid those effects. If NBRC determines that it cannot apply the categorical exclusion to the proposed action, NBRC will prepare an environmental assessment or EIS, as appropriate. The following text contains NBRC's extraordinary circumstances list.

- (a) Health and Safety: The action has the potential to significantly adversely affect public health and safety.
- (b) Hazardous Materials: The action involves the use, transportation, distribution, storage, or disposal of hazardous substances, pollutants, contaminants, or petroleum and natural gas products in a manner that may result in significant environmental

effects.

- (c) Noise: The action has the potential to generate excessive or prolonged noise levels that may adversely impact sensitive noise receptors and disrupt quiet environments, such as natural habitats or recreational areas, leading to disturbances in wildlife behavior or recreational activities.
- (d) Regulatory Compliance: The action has the potential to violate federal, state, Tribal, or local laws or other requirements, or be inconsistent with federal, state, Tribal, or local policies for the human environment.
- (e) Historic and Cultural Resources: The action has the potential to significantly adversely affect historic or cultural properties, sites, or resources, including those listed on national or state registers, or those eligible for such designation.
- (f) Environmental Resources: The action has the potential to significantly adversely affect environmental resources, including, but not limited to, species listed or proposed to be listed under the Endangered Species Act, designated critical habitat, wetlands, floodplains, federally protected waters, and prime or unique farmland.
- (g) Unique Risk/Uncertainty: The action involves uncertain risks, impacts, or scientifically controversial factors that may affect the human environment.
- (h) Precedent Setting: The action establishes a precedent for future actions with the potential for significant environmental effects.
- (i) Scientific Controversy: The action has the potential to generate scientific controversy related to the environmental effects of the proposed action.
- (j) Scope and Size: The circumstances may arise in which usually categorically excluded actions may have a significant environmental impact and, therefore, may generate a requirement for further environmental analysis. Examples of situations where such unique circumstances may be present include actions of greater scope or size than generally experienced for a particular category of action.

### **3.4 CATEX Decision Making**

(a) A record of environmental consideration (REC) must be completed for all proposed actions that qualify as a CATEX within the meaning of these procedures.

REC documentation must include the following:

- (1) A description of the proposed action.
- (2) Identification of the applicable CATEX for the proposed action.
- (3) Documentation demonstrates that extraordinary circumstances were considered and none were identified, or that the presence of extraordinary circumstances will be sufficiently mitigated.
- (4) The signature of an NBRC employee with authority to sign NEPA documentation.

(b) If NBRC identifies mitigation measures that are necessary to mitigate extraordinary circumstances for an individual action, NBRC will:

- (1) Document the determination that the proposed action, with the identified mitigation measures, does not have the potential to result in significant effects despite the presence of extraordinary circumstances.
- (2) Issue a public notification stating NBRC's intention to apply the CATEX with the identified mitigation measures to the proposed action and publish the determination on the NBRC website.
- (3) Inform the applicant that mitigation measures are required.
- (4) Enforce compliance with the agreed-upon mitigation measures to ensure that the action does not result in significant environmental effects.

(c) NBRC will apply NBRC-established CATEXes (Section 3.2), not the adopted CATEXes (Section 3.5), in situations where the proposed action could qualify for

either NBRC-established CATEXes or adopted CATEXes.

### **3.5 Application of CATEXs Adopted from Another Agency's NEPA Procedures**

Section 109 of NEPA (42 U.S.C. § 4336c) allows agencies to adopt and apply another

agency's CATEX to their proposed actions. When NBRC has identified a CATEX from

another agency's (hereinafter the "issuing agency") NEPA procedures that it would like to

apply to NBRC actions, NBRC must complete the following:

(a) Consultation with the issuing agency: Through consultation with the issuing agency, NBRC must document the following:

(1) The issuing agency's applicable CATEX.

(2) A description of the types of NBRC proposed action(s) that the CATEX would be applied to.

(3) The determination that the application of the issuing agency's CATEX to the NBRC action type is appropriate.

(4) The extraordinary circumstances defined by the issuing agency that must be considered when applying the CATEX.

(5) The extraordinary circumstances defined by NBRC that must be considered when applying the CATEX.

(b) Consult with the agency that established the CATEX to ensure that the proposed adoption of the CATEX to a category of actions is appropriate.

(c) Public notification: NBRC must issue a public notification stating the intention of NBRC to apply the issuing agency's CATEX to NBRC proposed actions.

(d) Documentation of the adoption: NBRC will document the adoption by listing the CATEX or CATEXs that have been adopted on the agency's website.

(e) Implementation: When implementing NEPA for a proposed action by applying the CATEX from another agency's NEPA procedures (for which consultation with the issuing agency and public notification have already been completed), NBRC

must do the following for each individual proposed action:

- (1) Confirm the proposed action meets the definition of the action type identified in the MOA.
- (2) Review the proposed action against the extraordinary circumstances identified in the MOA.
- (3) Document the use of another agency's CATEX for the NBRC proposed action it applies to. Documentation must list the CATEX NBRC is applying and include the REC documentation requirements listed in Section 3.4.

### **3.6 Public Involvement for NBRC CATEXs**

(a) NBRC will require public notification of the use of a CATEX in the following situations:

- (1) When modifications are necessary to address extraordinary circumstances for a proposed action, as detailed in Section 3.4(b).
- (2) When applying a CATEX from another agency's NEPA procedures to a specific NBRC project, as detailed in Section 3.5.

(b) Public notifications, when required, will be issued to inform the public of NBRC's intention to apply the CATEX, and documentation will be published on the NBRC website.

(c)

## **SECTION 4: ENVIRONMENTAL ASSESSMENTS**

### **4.1 EA Overview (42 U.S.C. § 4336(b)(2))**

An EA is a brief analysis used when a proposed action's effect is unknown or unlikely to be significant. In preparing (or supervising the preparation of), an EA NBRC will focus the analysis on whether the environmental effects of the action or project at hand are significant. Similarly, NBRC will ensure the EA documents where and how NBRC drew a reasonable and

manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

#### **4.2 EA Requirements**

- (a) Purpose and need: The EA must define the reasons why action by NBRC and the applicant is needed. This should be stated in the EA as the underlying purpose and need for the proposed action.
- (b) Proposed Action: The EA must clearly describe the proposed action, including but not limited to its timing, scale, scope, and other relevant details necessary to understand the activity.
- (c) Alternatives: The following categories of alternatives may be included in an EA:

(1) Reasonable Range of Alternatives: Reasonable range of alternatives to the proposed action must be identified in the EA, including an analysis of any adverse environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are, in NBRC's expert judgment, technically and economically feasible, and meet the purpose and need of the proposal.

(2) Alternatives Considered but Dismissed: Alternatives that were considered, but eliminated from detailed study due to affordability, practicality, or readiness may also be included in the EA. For these alternatives, a high-level description of the alternative and why it was dismissed from further analysis should be included in the EA.

(d) Affected environment:

(1) The environmental trends, resources, and existing environmental conditions in the project area should be described using the best available data.

(e) Environmental consequences:

(1) The EA must discuss the environmental consequences that would result from the implementation of the reasonable range of alternatives. The length and detail of the effects analysis for each resource area in the EA should be proportionate to the potential effects of the action and alternatives.

(2) NBRC will determine the resources, ecosystems, and human communities that could be impacted by environmental effects, evaluate the significance of environmental effects, and, when warranted, subsequently modify the proposed action to avoid, minimize, or mitigate significant environmental effects.

(1) Page limits:

The text of an environmental assessment is strictly prohibited from exceeding 75 pages, not including citations or appendices.

- (i) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.
- (ii) Environmental assessments will be formatted for an 8.5"x11" page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.
- (iii) *Certification Related to Page Limits.* The breadth and depth of analysis in an environmental assessment will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the environmental assessment, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that NBRC has considered the factors mandated by NEPA; that the environmental assessment represents NBRC's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects NBRC's expert judgment; and that any considerations addressed briefly or left unaddressed were, in NBRC's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed..

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

#### **4.3 Classes of Actions Normally Requiring an EA**

NBRC actions for which the preparation of an EA is normally required include, but are not limited to, the following:

- (a) Repair, reconstruction, rehabilitation, addition to, or improvement of existing facilities when the future use of the facility would exceed the capacity of the existing surrounding infrastructure and resources or occur in an undeveloped area.
- (b) New construction of water, wastewater, gas, and electrical utility infrastructure.
- (c) Repair, reconstruction, rehabilitation, addition to, or improvement of existing water, wastewater, gas, and electrical utility infrastructure when the future use of the utility infrastructure would exceed the capacity of the existing surrounding infrastructure and resources or occur in an undeveloped area.
- (d) New construction of transportation infrastructure (such as roads, railways, and trails).
- (e) Repair, reconstruction, rehabilitation, addition to, or improvement of existing transportation infrastructure when the future use of the transportation infrastructure would exceed the capacity of the existing surrounding infrastructure and resources or occur in an undeveloped area.
- (f) New construction of telecommunications infrastructure.
- (g) Repair, reconstruction, rehabilitation, addition to, or improvement of existing telecommunications infrastructure when the infrastructure would be installed in an

undeveloped area.

(h) Siting, construction, and operation of solar farms for the purpose of serving multiple properties.

#### **4.4 EA Decision Making**

After an EA is completed, NBRC may make one of the following three determinations:

(1) Prepare a FONSI (42 U.S.C. § 4336(b)(2)): NBRC retains the responsibility to prepare its own FONSI and shall not delegate this responsibility to applicants. A FONSI determination is appropriate under the following circumstances and shall be signed by NBRC's Executive Director or their designee:

- (i) Effects identified in the EA are below the level of significance.
- (ii) Significant effects identified in the EA can be mitigated below the level of significance. If mitigation is required to reduce effects below the level of significance, the FONSI shall identify the mitigation and describe applicable monitoring and enforcement measures intended to ensure the implementation of the mitigation measures.

(2) Prepare an EIS (42 U.S.C. § 4336(b)(1)): If an EA process results in a finding that a proposed action would have reasonably foreseeable significant effects, and those effects cannot be mitigated below the level of significance, NBRC must prepare an EIS.

(3) Reject the proposed action: NBRC may elect to reject a proposed action from moving forward.

## **SECTION 5: ENVIRONMENTAL IMPACT STATEMENTS**

### **5.1 EIS Overview (42 U.S.C. § 4336(b)(1))**

An EIS is an in-depth analysis of resource issues for a proposed action that is likely to have significant effects. In preparing (or supervising the preparation of) an EIS, NBRC will focus the analysis on whether the environmental effects of the action or project at hand are significant. Similarly, NBRC will ensure the EIS documents where and how NBRC drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

## **5.2 EIS Requirements**

(a) Scoping: Scoping will identify important issues that should be addressed and eliminate non-important issues from further study. It is intended to help determine the scope of the analysis, identify relevant environmental concerns, and ensure that significant issues are appropriately considered. The scoping process will begin as soon as practicable after a proposed action is sufficiently developed for agency consideration. For NBRC-funded grants, scoping will begin after NBRC has identified a need to complete an EIS for the applicant's proposed action.

(b) Purpose and need: The EIS must define the reasons why action by NBRC and the applicant is needed. This should be stated in the EIS as the underlying purpose and need for the proposed action.

(c) Alternatives (42 U.S.C. § 4332(2)(C)(iii)): There are the following four categories of alternatives that should be included in an EIS:

(1) Reasonable range of alternatives to the proposed action must be identified in the EIS, including an analysis of any adverse environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are, in NBRC's expert judgment, technically and economically feasible, and meet the purpose and need of the proposal.

(2) Alternatives that were considered but eliminated from further study due to affordability, feasibility, or readiness may also be included in the EIS. For these alternatives, a high-level description of the alternative and why it was dismissed from further analysis should be included in the EIS.

(d) Environmental consequences (42 U.S.C. § 4332(2)(C)(i)–(ii)):

(1) The EIS must discuss the environmental consequences that would result from implementation of the proposed action, no action, and reasonable alternatives. The length and detail of the effects analysis for each resource area in the EIS should be proportionate to the potential effects of the action and alternatives.

(2) NBRC will determine the resources, ecosystems, and human communities that could be impacted by environmental effects, evaluate the significance of environmental effects, and subsequently modify the proposed action to avoid, minimize, or mitigate significant environmental effects.

(e) After an EIS has been prepared, NBRC shall file the EIS with the

Environmental Protection Agency (EPA), consistent with 42 U.S.C. § 7609.

(f) Page limit: Except as provided in paragraph (g) the text of an EIS will not exceed 150 pages, not including citations or appendices.

(g) An EIS for a proposed agency action of extraordinary complexity is strictly prohibited from exceeding 300 pages, not including any citations or appendices.

NBRC will determine at the earliest possible stage of preparation of an EIS whether the conditions for exceeding the page limit in paragraph (a) are present.

(h) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used

to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

- (i) EISs will be prepared on 8.5"x11" paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.
- (j) *Certification Related to Page Limits.* The breadth and depth of analysis in an EIS will be tailored to ensure that the EIS does not exceed these page limits. In this regard, as part of the finalization of the EIS, a responsible official will certify that NBRC has considered the factors mandated by NEPA; that the EIS represents NBRC's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects NBRC's expert judgment; and that any considerations addressed briefly or left unaddressed were, in NBRC's judgment, comparatively unimportant or frivolous.
- (k) For all environmental documents, NBRC will provide a unique identification number for tracking purposes, which NBRC will reference on all associated environmental review documents prepared for the proposed agency action and in any database or tracking system for such documents. NBRC will coordinate with the CEQ and other federal agencies to ensure uniformity of such identification numbers across federal agencies.

### **5.3 Classes of Actions Normally Requiring an EIS**

- (a) NBRC actions for which an EIS is required include but are not limited to

the following:

- (1) Proposed actions for which an EA was initially prepared that concluded that the proposed action would generate significant effects.
- (2) Infrastructure, transportation, or telecommunication projects that are greater in scope or size and that are likely to significantly affect the quality of the human environment.
- (3) New electrical transmission facilities.
- (4) New construction of facilities or structures (such as commercial facilities, business incubators, community facilities, health care facilities, airports, railway and bus stations) that are likely to significantly affect the quality of the human environment.

#### **5.4 Interagency and public Involvement for EISs**

(a) During the process of preparing an EIS, NBRC:

- (1) Will obtain the comments of:
- (2) any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact of the action or project at hand or is authorized to develop and enforce environmental standards that govern the action or project at hand.
- (3) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.

(b) May request the comments of:

- (1) State, Tribal, or local governments that may be affected by the proposed action;
- (2) Any agency that has requested it receive statements on actions of the kind proposed;

(3) The applicant, if any; and

(4) The public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(c) This process of obtaining and requesting comments pursuant to (c) above may be undertaken at any time that is reasonable in the process of preparing the EIS. NBRC will ensure that the process of obtaining and requesting comments pursuant to (c) above, and NBRC's analysis of and response to those comments, does not cause NBRC to violate the congressionally mandated deadline for completion of an EIS.

(d) Addressing comments contained in EISs. NBRC will address any substantive comments received consistent with paragraph (c) of this section in the EIS. In those instances in which NBRC solicits comments from the public, the request for comments will provide clear instructions on how comments should be submitted, including electronic submission, and the dates during which comments will be accepted. The solicitation of comments should include requests for comments on specific questions or issues or for information that would be helpful in informing the decision. NBRC may respond to substantive comments by:

(1) Modifying alternatives, including the proposed action.

(2) Developing and evaluating alternatives not previously given serious consideration.

(3) Supplementing, improving, or modifying analyses, to include consideration of science or literature not previously considered.

(4) Making factual corrections.

(5) Stating no action is needed. NBRC may provide brief rationale for taking no action, such as:

(i) The comment is outside the scope of what is being proposed;

- (ii) There is an insufficient causal relationship between the actions NBRC is proposing and the issue raised and/or recommendation made;
- (iii) The commenter misinterpreted the information provided; or
- (iv) The recommendation made does not comply with applicable laws or regulations and/or are not feasible to implement (technically or economically), etc.

## **5.5 EIS Decision Making**

(a) Concurrently with the preparation of the EIS, NBRC shall prepare a ROD.

NBRC will publish the ROD in the Federal Register to give the public notice of NBRC's decision for the proposed action. NBRC shall not delegate the responsibility for preparation or publication of the ROD to applicants.

(b) If the ROD incorporates mitigation and the analysis of the reasonably foreseeable effects of the proposed action is based on the implementation of that mitigation.

## **SECTION 6: INTEGRATION OF NEPA IN NBRC DECISION MAKING**

### **6.1 Decision-Making Process**

(a) NBRC shall:

(1) Include relevant environmental documents, comments, and responses regarding the proposed action throughout the NBRC review and grant decision-making processes, so decision makers have the best available information to make informed decisions.

(2) Ensure NBRC's Executive Director has considered all alternatives discussed in environmental documents prior to making a decision on a proposed action.

(3) Develop an administrative record during preparation of a NEPA analysis to inform decision making. NBRC will include any document prepared, referenced, or used to complete the analysis and inform the decision in the administrative record.

(b) Interested parties can get information on elements of NBRC's NEPA process on NBRC's NEPA webpage, available on the NBRC website.

### **6.2 Grants**

- (a) NBRC staff will work with applicants to integrate NEPA considerations and NEPA review timelines into project planning, include NEPA analysis costs in project budgets, and consider project alternatives to avoid, minimize, or compensate for adverse environmental effects based on the scope of work.
- (b) NBRC may revoke a grant award if an applicant fails to provide information for a NEPA review.
- (c) Actions initiated and/or completed by applicants before fulfilling NEPA requirements may not be considered for funding.

## **SECTION 7: EFFICIENT NEPA REVIEWS**

Wherever practicable, NBRC will utilize the following efficiency methods to reduce or eliminate duplication, allow for efficient timelines for the NEPA process, and prepare streamlined and effective NEPA documents.

### **7.1 Reliance on existing environmental documents**

- (a) NBRC may rely on a CATEX determination, final EA, or final EIS prepared by another agency in whole or in part provided that:

- (1) The action covered by the original CATEX determination, EA, or EIS and the NBRC proposed action are substantially the same; and
- (2) The original CATEX determination, EA, or EIS meets NBRC standards for an adequate CATEX, EA, or EIS.

NBRC must make its own evaluation of the environmental issues and take responsibility for the scope and content of the CATEX determination, EA, or EIS, and confirm, after independent review, the analysis meets the requirements for an adequate NEPA document consistent with these procedures and the CEQ regulations. Reliance on these documents is subject to the following publication requirements:

- (a) NBRC must file the EIS as a final statement consistent with 42

U.S.C. § 7609.

(b) NBRC must prepare its own FONSI for the action and provide public notice of the finding.

(c) NBRC must document its reliance on another agency's CATEX determination, including a determination that no extraordinary circumstances are present and that NBRC's action is substantially the same as the action covered by the CATEX determination it is choosing to rely upon. Additionally, NBRC must publish the CATEX determination on the NBRC website.

## **7.2 Supplemental NEPA Analyses and Re-evaluation**

(a) Consistent with NEPA § 108 and 42 U.S.C. § 4336b, after completing a programmatic environmental assessment or environmental impact statement, NBRC may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After 5 years, as long as NBRC reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any new and substantial information or circumstances, NBRC may continue to rely on the document.

(b) A supplemental NEPA analysis shall be prepared only if a major Federal action remains to occur and:

- (1) Substantial changes have been made 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.

(c) NBRC may conduct a re-evaluation of the existing EA or EIS and reach a determination that a supplemental analysis is not required when:

- (1) The proposed action has been fully completed.
- (2) The changes to the proposed action are found not to be relevant to environmental concerns; or
- (3) The new circumstances or information are determined not to be relevant to the significance of adverse effects in the original analysis.

When a re-evaluation is completed, NBRC must document the determination reached in the re-evaluation in the project file.

(d) A supplemental NEPA analysis only revisits and updates the information and analysis that is relevant to the new circumstances and avoids the need for an entirely new EA or EIS to be prepared.

(e) When preparing a supplemental NEPA analysis, the analysis must be incorporated into the administrative record of the original EA or EIS. Supplemental EAs and EISs may be prepared by either tracking changes in the original EA or EIS or by preparing a separate document that only discusses the changes in the project scope and/or new information and the associated changes with regard to effects.

- (1) A supplemental EA process concludes with a decision regarding whether to issue a revised FONSI or a decision to prepare an EIS.
- (2) A supplemental EIS process concludes with a decision regarding whether to issue a revised ROD.

### **7.3 Eliminating Duplication**

NBRC may cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents.

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

Joint planning processes;

Joint environmental research and studies;

Joint public hearings (except where otherwise provided by statute); or  
Joint environmental documents.

#### **7.4 Integrating Other Analyses with NEPA**

(a) To the fullest extent practicable, unless specifically prohibited by law, NBRC should integrate other environmental requirements applicable to the proposed action into the NEPA process. Analyses, consultation, and public notice periods for other environmental requirements should be aligned with the NEPA process to occur concurrently.

(b) Typical federal environmental requirements that may apply include various statutes, executive orders, and regulations related, but not limited to, environmental protection, historic preservation, floodplain management, wetlands, endangered species, clean water, and clean air.

(c) NEPA documents should include a comprehensive list of all necessary environmental permits, licenses, and authorizations required before implementing the proposed action.

#### **7.5 Incorporation by Reference**

*Incorporation.* NBRC may incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding NBRC and public review of the action. When incorporating material by reference, NBRC will cite, briefly describe the content and relevance to the environmental document, and make the materials reasonably available for review by potentially interested parties. NBRC will not use incorporation as a means to evade the statutory page limits.

## **SECTION 8: LEAD AND COOPERATING AGENCIES**

## **8.1 Lead and Cooperating Agencies Overview**

In many instances, a proposed activity or decision is undertaken in the context which entails activities or decisions undertaken by other federal agencies (*e.g.*, where multiple federal authorizations or analyses are required with respect to a project sponsor's overall purpose and goal). These activities and decisions are "related actions," in that they are each the responsibility of a particular agency but they are all related in a matter relevant to NEPA, *e.g.*, by their relationship with one overarching project. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A). When serving as the lead agency, NBRC is ultimately responsible for completing the NEPA process; when serving as the lead agency, NBRC will also determine and document the scope of the project at hand. When a joint lead relationship is established pursuant to NEPA § 107(a)(1)(B), 42 U.S.C. § 4336a(a)(1)(B), NBRC and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

## **8.2 Lead Agency**

(a) A lead agency is defined as the agency preparing or having primary responsibility over preparing an EA or EIS. A joint lead agency is when two agencies share lead agency responsibility.

(b) The following factors shall help determine when NBRC acts as the lead agency:

- (1) Timing and sequence of NBRC funding relative to other federal funders.
- (2) Which agency or agencies have project approval or disapproval authority.
- (3) Duration of NBRC's involvement in the project relative to the overall project timeline or plan.
- (4) Whether NBRC has special expertise relative to the project or its potential

environmental effects.

(5) The magnitude of NBRC's involvement in the project.

(c) As lead agency, NBRC shall:

(1) Develop a schedule and set milestones for all environmental reviews, permits, and authorizations required for the implementation of the action, in consultation with the applicant and any joint lead, cooperating, and participating agencies, as soon as possible.

(2) Determine the purpose and need, scope of the proposed action and alternatives in consultation with the applicant and any joint lead, cooperating, and participating agencies, as soon as possible.

(3) Submit required reports to CEQ on any missed deadlines to enable submission of this information to Congress in accordance with 42 U.S.C. § 4336a(h).

(d) For actions in which NBRC acts as a lead agency, NBRC will work with the cooperating agency or agencies to evaluate a proposed action in a single EA or EIS and issue a joint FONSI or ROD.

(e) For proposed actions where NBRC shares lead agency responsibility with another agency, it will share all lead agency requirements outlined in 42 U.S.C. § 4336(a)(1)–(2).

### **8.3 Cooperating Agency**

(a) A cooperating agency is defined as any federal agency (or state, tribal, or local agency by agreement with the lead agency) other than the lead agency that has jurisdiction by law or special expertise with respect to any environmental issue.

(b) NBRC may allow other agencies to participate as a cooperating agency for a NBRC EA or EIS in the following situations:

- (1) When another federal agency has jurisdiction by law over a portion of the proposed action.
- (2) When another federal agency has special expertise with respect to an environmental issue because of its statutory responsibilities, agency mission, or related program experience.
- (c) When multiple federal agencies are involved in the same proposed action, NBRC may defer the lead agency role to other federal agencies.
- (d) NBRC may be asked to serve as a cooperating agency in another agency's NEPA analysis. As a cooperating agency, NBRC will participate in the NEPA process at the earliest practicable time and will assist in the development of environmental analysis at the request of the lead agency.

## **SECTION 9: Emergency Circumstances**

### **9.1 Emergency Circumstances**

- (a) In the event of an emergency circumstance, NBRC may implement alternative arrangements for actions that would normally require an EA, and will implement alternative arrangements for action that would normally require an EIS, pursuant to the following course of action:
  - (1) Before any emergency action is taken that has the potential for reasonably foreseeable significant environmental effects, NBRC must consult with the CEQ to discuss and establish alternative arrangements for NEPA compliance. This consultation ensures that NBRC considers environmental factors while responding to the emergency. NBRC may consult with CEQ on emergency actions not expected to have significant effects.
  - (2) Following applicable consultation with CEQ, NBRC may implement alternative arrangements for NEPA compliance for actions tailored to control

the immediate impacts of the emergency. These arrangements will be limited to actions necessary to address the emergency situation and do not constitute a waiver of NEPA requirements.

(3) NBRC will thoroughly document the emergency circumstance, including the nature of the emergency, any consultations with the CEQ, any alternative arrangements made, and the steps taken to address the situation.

This

documentation will be maintained to ensure transparency and accountability throughout the process.

### **SECTION 10: Conclusion**

This notice documents procedures is to integrate the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321-4347), as amended, into the Northern Border Regional Commission's (NBRC) decision-making processes, effective immediately.

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