DOE's NEPA and Floodplain/Wetlands Procedures: Federal Register Notices, 1978–2024

10 CFR Part 1021: NEPA Implementing Procedures

1. February 21, 1978, 43 FR 7232. 10 CFR Parts 208, 721, 1021; Compliance with the National Environmental Policy Act; Proposed Rulemaking; Public Hearing
2. July 18, 1979, 44 FR 42136. Proposed Guidelines for Compliance with the National Environmental Policy Act
3. August 6, 1979, 44 FR 45918. 10 CFR Parts 208, 711, 1021; Compliance with the National Environmental Policy Act; Notice of Final Rulemaking
4. March 28, 1980, 45 FR 20694. Compliance with the National Environmental Policy Act; Final Guidelines
5. August 11, 1980, 45 FR 53199. Compliance with the National Environmental Policy Act; Amendment to Guidelines
6. November 26, 1980, 45 FR 78756. Compliance with the National Environmental Policy Act; Final Guidelines
7. December 17, 1980, 45 FR 82987. Compliance with the National Environmental Policy Act; Amendment to Guidelines
8. July 16, 1981, 46 FR 36884. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines
9. February 23, 1982, 47 FR 7976. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines
10. November 22, 1982, 47 FR 52499. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines
11. January 6, 1983, 48 FR 685. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines
12. February 25, 1985, 50 FR 7629. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines
13. May 22, 1986, 51 FR 18867. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines
14. January 7, 1987; 52 FR 659. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines
15. December 15, 1987, 52 FR 47662. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines; Notice
16. August 9, 1988, 53 FR 29934. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines
17. March 27, 1989, 54 FR 12474. Compliance with the National Environmental Policy Act; Amendments to the Guidelines
18. April 6, 1990, 55 FR 13064. Compliance with National Environmental Policy Act; Amendments to Guidelines; Notice

19. September 7, 1990, 55 FR 37174. Compliance with the National Environmental Policy Act; Amendments to DOE Guidelines

20. November 2, 1990, 55 FR 46444. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Proposed Rule

21. April 24, 1992, 57 FR 15122. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures and Guidelines Revocation; Final Rule and Notice

22. February 20, 1996, 61 FR 6414. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Proposed Rule

23. July 9, 1996, 61 FR 36222. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Final Rule

24. July 9, 1996, 61 FR 35990. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Proposed Rule; Limited Reopening of the Comment Period

25. December 6, 1996, 61 FR 64603. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedure; Final Rule

26. November 18, 2002, 67 FR 69480. 10 CFR Parts 1021 and 1022. Compliance with Floodplain and Wetland Environmental Review Requirements; Proposed Rule

27. August 27, 2003, 68 FR 51429. 10 CFR Parts 1021 and 1022. Compliance with Floodplain and Wetland Environmental Review Requirements; Final Rule

28. November 28, 2006, 71 FR 68727. 10 CFR Parts . . . 1021……Technical Amendments: Transfer of Office Functions and Removal of Obsolete Regulations

29. January 3, 2011, 76 FR 214. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Notice of proposed rulemaking and public hearing

30. October 13, 2011, 76 FR 63764. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Final Rule

31. May 1, 2020, 85 FR 25340. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Notice of proposed rulemaking and request for comment

32. December 4, 2020, 85 FR 78197. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Final rule

33. November 16, 2023, 88 FR 78681. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Notice of proposed rulemaking and request for comment

34. April 30, 2024, 89 FR 34074. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Final rule

10 CFR Part 1022: Compliance with Floodplain and Wetland Environmental Review Requirements

1. July 19, 1978, 43 FR 31108. 10 CFR Part 1022. Compliance with Floodplain/Wetland Environmental Review Requirements; Proposed Rule
2. March 7, 1979, 44 FR 12594. 10 CFR Part 1022. Compliance with Floodplain/Wetland Environmental Review Requirements; Final Rule
3. November 18, 2002, 67 FR 69480. 10 CFR Parts 1021 and 1022. Compliance with Floodplain and Wetland Environmental Review Requirements; Proposed Rule
4. August 27, 2003, 68 FR 51429. 10 CFR Parts 1021 and 1022. Compliance with Floodplain and Wetland Environmental Review Requirements; Final Rule

DOE's NEPA and Floodplain/Wetlands Procedures: Chronology of *Federal*

***Register* Notices, with brief descriptions**

10 CFR Part 1021 – NEPA Implementing Procedures

1. February 21, 1978, 43 FR 7232. 10 CFR Parts 208, 721, 1021; Compliance with the National Environmental Policy Act; Proposed Rulemaking; Public Hearing

   Proposed establishing Part 1021 of Chapter X of Title 10 of the CFR.

2. July 18, 1979, 44 FR 42136. Proposed Guidelines for Compliance with the National Environmental Policy Act

   Proposed DOE NEPA Guidelines.

3. August 6, 1979, 44 FR 45918. 10 CFR Parts 208, 711, 1021; Compliance with the National Environmental Policy Act; Notice of Final Rulemaking

   Established Part 1021 of Chapter X of Title 10 of the CFR. The rulemaking provided for DOE adoption of the CEQ regulations and revocation of the NEPA regulations of predecessor agencies. (Effective July 30, 1979)

4. March 28, 1980, 45 FR 20694. Compliance with the National Environmental Policy Act; Final Guidelines

   Issued final DOE NEPA Guidelines for implementing the procedural provisions of NEPA as required by CEQ.

5. August 11, 1980, 45 FR 53199. Compliance with the National Environmental Policy Act; Amendment to Guidelines

   Proposed 5 CXs for actions under Title II and Title III of the Powerplant and Industrial Fuel Use Act of 1978.

6. November 26, 1980, 45 FR 78756. Compliance with the National Environmental Policy Act; Final Guidelines

   Adopted procedures for major system acquisition projects involving competitive procurement.

7. December 17, 1980, 45 FR 82987. Compliance with the National Environmental Policy Act; Amendment to Guidelines

   Proposed adding a CX for actions involving petroleum substitutes.

8. July 16, 1981, 46 FR 36884. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines

   Proposed adding 11 categorical exclusions and modifying 3 existing EA classes of action.

9. February 23, 1982, 47 FR 7976. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines

   Adopted amendments (adding 16 new CXs and modifying 3 existing EA or EIS classes of actions) proposed on August 11, 1980 and July 16, 1981. Withdrew the CX regarding petroleum substitutes proposed on December 17, 1980.

10. November 22, 1982, 47 FR 52499. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines

    Proposed adding 8 new CXs applicable to Power Marketing Administrations.

11. January 6, 1983, 48 FR 685. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines

    Amended DOE NEPA Guidelines to add 8 new CXs applicable to Power Marketing Administrations (proposed on November 22, 1982).

12. February 25, 1985, 50 FR 7629. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines

    Proposed adding 8 new classes of actions (including 7 new CXs, 1 for EAs), modifying 4 existing classes of action, and removing 1 EA class of actions from the DOE NEPA Guidelines.

13. May 22, 1986, 51 FR 18867. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines

    Proposed adding the permanent cogeneration exemption authorized under Title II of the Powerplant and Industrial Fuel Use Act of 1978 to the list of CXs in the DOE NEPA Guidelines.

14. January 7, 1987; 52 FR 659. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines

    Amended the DOE NEPA Guidelines by adding the permanent cogeneration exemption CX proposed on May 22, 1986.

15. December 15, 1987, 52 FR 47662. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines; Notice

    Amended the DOE NEPA Guidelines to reflect the classes of action proposed on February 25, 1985, and republished the DOE NEPA Guidelines (Sections A-C, amended Section D in their entirety).

16. August 9, 1988, 53 FR 29934. Compliance with the National Environmental Policy Act; Amendments to the DOE NEPA Guidelines

    Proposed to amend the DOE NEPA Guidelines by adding a CX involving the approval or disapproval for an import/export authorization for natural gas under Section 3 of the Natural Gas Act, in cases not involving new construction. Also proposed to change the status of one class of actions from requiring an EIS to requiring an EA.

17. March 27, 1989, 54 FR 12474. Compliance with the National Environmental Policy Act; Amendments to the Guidelines

    Amended the DOE NEPA Guidelines to reflect the new CX and change of status of an existing class of action from requiring an EIS to requiring an EA, as proposed on August 9, 1988.

18. April 6, 1990, 55 FR 13064. Compliance with National Environmental Policy Act; Amendments to Guidelines; Notice

    Proposed to amend the DOE NEPA Guidelines by adding three new CXs that concern: removal actions under CERCLA, improvements to environmental control systems, and site characterization and environmental monitoring under CERCLA and RCRA.

19. September 7, 1990, 55 FR 37174. Compliance with the National Environmental Policy Act; Amendments to DOE Guidelines

    Amended the DOE NEPA Guidelines to add the three new CXs (with changes) proposed on April 6, 1990.

20. November 2, 1990, 55 FR 46444. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Proposed Rule

    Proposed a rule that would revise 10 CFR Part 1021, revoke the DOE NEPA Guidelines, and adopt the CEQ regulations implementing NEPA.

21. April 24, 1992, 57 FR 15122. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures and Guidelines Revocation; Final Rule and Notice

    Adopted the revisions proposed on November 2, 1990, with certain changes, codifying them at 10 CFR Part 1021.

22. February 20, 1996, 61 FR 6414. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Proposed Rule

    Proposed revisions to the lists of typical classes of actions in Subpart D and other proposed changes that pertained to the DOE requirement for an implementation plan for each EIS and DOE's required content for FONSIs. Also, DOE proposed to clarify its public notification requirements for RODs.

23. July 9, 1996, 61 FR 36222. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Final Rule

    Amended the DOE NEPA regulations to reflect proposed revisions and additions outlined on February 20, 1996. However, DOE deferred consideration of proposed amendments to Subpart D that related to power marketing administrations. [see FR notice below which reopened the comment period.]

24. July 9, 1996, 61 FR 35990. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Proposed Rule; Limited Reopening of the Comment Period.

    Reopened the comment period for certain categories of actions primarily related to DOE's power marketing activities.

25. December 6, 1996, 61 FR 64603. 10 CFR 1021. National Environmental Policy Act Implementing Procedure; Final Rule

    Amended the DOE NEPA regulations to incorporate changes primarily related to DOE's power marketing activities by expanding or clarifying existing classes of actions.

26. November 18, 2002, 67 FR 69480. 10 CFR Parts 1021 and 1022. Compliance with Floodplain and Wetland Environmental Review Requirements; Proposed Rule

    Proposal to amend the DOE floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens.

27. August 27, 2003, 68 FR 51429. 10 CFR Parts 1021 and 1022. Compliance with Floodplain and Wetland Environmental Review Requirements; Final Rule

    Revised the DOE floodplain and wetland environmental review requirements to simplify DOE public notification procedures for proposed floodplain and wetland actions, exempting additional actions from the floodplain and wetland assessment provisions of these regulations, providing for immediate action in an emergency, etc.

28. November 28, 2006, 71 FR 68727. 10 CFR Part 1021. Technical Amendments: Transfer of Office Functions and Removal of Obsolete Regulations

    Technical amendment that transferred certain functions related to DOE's responsibilities under NEPA to the Office of the General Counsel.

29. January 3, 2011, 76 FR 214. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Notice of proposed rulemaking and public hearing

    Proposal to amend the DOE NEPA regulations by adding 20 new CXs and removing two CXs, one EA category, and two EIS categories.

30. October 13, 2011, 76 FR 63764. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Final Rule

    Amended the DOE NEPA regulations by adding 20 new CXs and removing two CXs, one EA category, and three EIS categories.

31. May 1, 2020, 85 FR 25340. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Notice of proposed rulemaking and request for comment

    Proposed amending one CX, and removing one CX, one EA, and two EIS classes of actions relating to authorizations under the Natural Gas Act.

32. December 4, 2020, 85 FR 78197. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Final rule

    Amended the DOE NEPA regulations by amending one CX, and removing one CX, one EA, and two EIS classes of actions relating to authorizations under the Natural Gas Act, as proposed on May 1, 2020.

33. November 16, 2023, 88 FR 78681. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Notice of proposed rulemaking and request for comment

    Proposal to amend the DOE NEPA regulations by adding one CX and revising two CXs as well as making conforming changes to related sections of DOE's NEPA regulations.

34. April 30, 2024, 89 FR 34074. 10 CFR Part 1021. National Environmental Policy Act Implementing Procedures; Final rule

    Amended the DOE NEPA regulations by adding one CX and revising two CXs as well as making conforming changes to related sections of DOE's NEPA regulations.

10 CFR Part 1022 – Floodplains and Wetlands

1. July 19, 1978, 43 FR 31108. 10 CFR Part 1022. Compliance with Floodplain/Wetland Environmental Review Requirements; Proposed Rule

    Proposal to establish DOE floodplain and wetland environmental review requirements to implement Executive Orders 11988 and 11990.

2. March 7, 1979, 44 FR 12594. 10 CFR Part 1022. Compliance with Floodplain/Wetland Environmental Review Requirements; Final Rule

    Establishment of DOE floodplain and wetland environmental review requirements to implement Executive Orders 11988 and 11990.

3. November 18, 2002, 67 FR 69480. 10 CFR Parts 1021 and 1022. Compliance with Floodplain and Wetland Environmental Review Requirements; Proposed Rule

    Proposal to amend the DOE floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens.

4. August 27, 2003, 68 FR 51429. 10 CFR Parts 1021 and 1022. Compliance with Floodplain and Wetland Environmental Review Requirements; Final Rule

    Revised the DOE floodplain and wetland environmental review requirements to simplify DOE public notification procedures for proposed floodplain and wetland actions, exempting additional actions from the floodplain and wetland assessment provisions of these regulations, providing for immediate action in an emergency, etc.

culls shall be determined on the basis of such definition and in accordance with such classification.

* * * * *

14. Section 932.52 is revised to read:

§ 932.52 Outgoing regulations.

(a) *Minimum standards for packaged olives.* No handler shall use processed olives in the production of packaged olives or ship such packaged olives unless they have first been inspected as required pursuant to § 932.53 and meet each of the following applicable requirements:

(1) Canned ripe olives, other than those of the "tree-ripened" type, shall grade at least U.S. Grade C, as such grade is defined in the then current U.S. Standards for Grades of Canned Ripe Olives or as modified by the committee, with the approval of the Secretary for purposes of this part.

(2) Canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the size designations set forth in the then current U.S. Standards for Grades of Canned Ripe Olives, or such other sizes by variety or variety group as may be recommended by the committee and approved by the Secretary.

(3) Subject to the provisions set forth in subparagraph (4) of this paragraph, processed olives to be used in the production of canned pitted ripe olives, other than those of the "tree-ripened" type, shall meet the same size requirements as prescribed pursuant to subparagraph (2) of this paragraph. Olives smaller than those so prescribed, as recommended by the committee and approved by the Secretary, may be authorized, including authorization by variety or variety groups, for limited use. Each such minimum size may also include a size tolerance (specified as a percent) as recommended by the committee and approved by the Secretary.

(4) The Secretary may, upon recommendation of the committee, restrict the total quantity of limited use size olives for limited use during any crop year. Such restricted quantity shall be apportioned among the handlers by applying a percentage established annually by the Secretary upon recommendation by the committee, to each handler's total receipts of limited use olives during such crop year.

(5) Canned ripe olives of the "tree-ripened" type and green olives shall meet such grade, size, and pack requirements as may be established by the Secretary based upon the recommendation of the committee or other available information.

(6) The size designations used in this section mean the size designations described in paragraph (a)(1)(ii) of § 932.51.

(7) For the purposes of this part the committee may, with the approval of the Secretary, specify the styles of olives, including the requirements with respect thereto, for limited use.

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[FR Doc. 78-4512 Filed 2-17-78; 8:45 am]

[3410-37]

Food Safety and Quality Service

[7 CFR Part 2858]

U.S. STANDARDS FOR GRADES OF ICE CREAM

Study Draft

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Poultry and Dairy Quality Division of the Food Safety and Quality Service, U.S. Department of Agriculture, has study drafts available for review and comments in its consideration of proposed U.S. Standards for Grades of Ice Cream.

DATE: Comments must be received by April 15, 1978.

ADDRESS: Send requests for study drafts and comments to: Richard W. Webber, Assistant Chief, Dairy Section, Standardization Branch, Poultry and Dairy Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Richard W. Webber, 202-447-7473.

SUPPLEMENTARY INFORMATION: The preliminary proposal for grades for ice cream was developed following USDA's request for public comments on the feasibility of setting up a grading system for ice cream (42 FR 56717, October 28, 1977). Of the 396 comments received, 240 expressed interest in having grade standards for ice cream, 23 were opposed, and the rest expressed no opinion.

Official voluntary U.S. grade standards for ice cream would provide a uniform and nationally recognized system for identifying the quality of the product to consumers. If quality grade standards are established, manufacturers that are interested may identify consumer packages of their ice cream with the appropriate U.S. grade to inform consumers of the quality of ice cream they are buying.

In the development of this draft standard, the Department conferred with various recognized experts in the manufacturing of ice cream to obtain technical advice. This information, together with technical data, knowledge, and experience within the Department, forms a basis for establishing this draft standard. The concepts and basis for the grading procedure have been used for many years by colleges, universities, and the ice cream industry to evaluate the quality of ice cream.

The standard would be implemented on a voluntary basis and a charge made for the Department's services. When ice cream is officially graded, the regulations governing the inspection and grading services of manufactured or processed dairy products would be in effect. These regulations require all dairy ingredients and the finished product to be produced in a USDA-approved plant. The regulations also provide for the use of official identification to indicate the U.S. grade on consumer packages. The U.S. grade would be determined on the finished ice cream in consumer packages.

This advance notice of proposed rulemaking is issued under the authority of the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621).

Done at Washington, D.C., this 15th day of February 1978.

ROBERT ANGELOTTI,
Administrator.

[FR Doc. 78-4684 Filed 2-17-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

[10 CFR Parts 208, 711, and 1021]

COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Proposed Rulemaking; Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) hereby gives notice of a proposal to establish Part 1021 of Chapter X of Title 10 of the Code of Federal Regulations, providing for compliance with the National Environmental Policy Act (NEPA). Written comments will be received and a public hearing will be held with respect to this proposal.

The proposed regulations are based primarily on policies and procedures which governed compliance with NEPA in the Federal Energy Administration (FEA), the Energy Research and Development Administration (ERDA), and the Federal Power Commission (FPC), the three major constituent agencies whose functions were transferred to DOE. In addition, certain initiatives, designed to meet the emerging NEPA responsibilities of DOE, have been incorporated. These regulations will be applicable to all oranizational units of DOE, except the

Federal Energy Regulatory Commission (FERC), which has indicated its intention to issue NEPA regulations generally consistent with those proposed herein.

DATES: Comments must be received on or before April 10, 1978; request to speak by March 10, 1978; hearing testimony by March 24, 1978; hearing date: March 30, 1978.

ADDRESSES: Comments and requests to speak to Box RY, Department of Energy, Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Hearing location: Room 3000A, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Robert J. Stern, Office of the Assistant Secretary for Environment, Room 7121, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9760.

SUPPLEMENTARY INFORMATION:

I. Background

A. National Environmental Policy Act

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., requires that Federal agencies give appropriate weight to factors affecting the human environment during all stages of their decisionmaking process. In this connection, NEPA requires Federal agencies to prepare detailed statements on proposals for major Federal actions significantly affecting the quality of the human environment.

B. Department of Energy

The Department of Energy Organization Act (the Act), 42 U.S.C. 7101 et seq., transferred to DOE the functions of ERDA, FEA and FPC as well as energy-related functions of various other Federal agencies and departments. As provided in section 705 of the Act, the regulations in effect on October 1, 1977, for the various agencies whose functions were transferred to DOE continue in effect with respect to those functions until superseded, modified or revoked by regulations promulgated by the Secretary of DOE or by FERC for functions under their respective jurisdictions.

When promulgated, these regulations will be applicable to all functions transferred to DOE (except those functions transferred to FERC) and will supersede and effect a revocation of the NEPA regulations promulgated by ERDA (10 CFR Part 711) and FEA (10 CFR Part 208). NEPA regulations relating to other functions transferred to the Secretary of DOE will be superseded to the extent that they affect functions transferred to the Secretary of DOE. The NEPA regulations relating to functions transferred to FERC will remain applicable to FERC actions until superseded, modified, or revoked by FERC. FERC has indicated its intention to issue, in a timely manner, NEPA regulations generally consistent with those proposed herein.

The proposed regulations establish general policies and procedures for compliance with NEPA by all units of DOE other than FERC. Pending adoption of final regulations, DOE will, to the extent feasible, carry out its NEPA responsibilities pursuant to the regulations now in effect, and will interpret such regulations in a manner consistent with the policies and procedures proposed today.

II. The Proposed Regulations

In establishing policies and procedures for DOE compliance with NEPA, the regulations attempt to assure that environmental factors are considered by DOE in its planning and decisionmaking. To the extent practicable, coordination of other Federal environmental review and consultation requirements shall also be carried out through the NEPA process.

A. Applicability

The regulations will apply to all organizational units of DOE except FERC and will affect new and continuing DOE projects and programs. The regulations also will apply to the establishment or modification by DOE (excluding FERC) of other regulations and policies.

The proposed regulations specify certain classes of actions that have been determined not to be major Federal actions significantly affecting the quality of the human environment and that, therefore, are not subject to the requirements of the regulations. The regulations further specify other classes of actions that, except in unusual circumstances, will not require the preparation of an environmental assessment (EA) or an environmental impact statement (EIS).

B. Environmental Assessments

Subpart B of Part 1021 establishes procedures governing preparation and review of EA's, which are required for proposed DOE actions when it is unclear whether an EIS is required. EA's shall include, as appropriate, a brief description of the proposed action and its reasonable alternatives, and an analysis of their probable environmental impacts. EA's shall be reviewed against the criteria set forth in Subpart C to determine whether an EIS is required for a proposed action. When an EA has been prepared and a determination made not to prepare an EIS on a proposed action, a negative determination (ND) that briefly describes the proposed action, and the reasons for not preparing an EIS, will be prepared.

C. Environmental Impact Statements

Requirements associated with preparation and circulation of EIS's are contained in Subpart C.

1. *Need for an EIS.* In determining whether an EIS is required, DOE shall consider: (a) The magnitude of the action in terms of the extent of DOE control and the size of the commitment of resources involved; and (b) the significance of the environmental impacts in terms of the cumulative impact of the proposed action and related Federal actions; the potential for environmental degradation and curtailment of the range of beneficial uses of the environment; the effects on important, scarce, or nonrenewable resources; the presence of responsible opposing views concerning the environmental impacts; and the unique characteristics of the environment to be affected.

2. *Content and Circulation of EIS's.* General guidance for the content of EIS's is contained in Subpart D. Procedures for prepearation and circulation of draft and final EIS's are set out in Subpart C.

3. *Public Participation.* In order to further public participation in the NEPA process, DOE will publish in the Federal Register a Notice of Intent to prepare an EIS, except as provided in § 1021.25. The Notice will describe the proposed action and invite comments from interested persons. To the extent practicable, DOE shall endeavor to provide for additional public notification through press releases and other forms of announcements, as appropriate. DOE will also maintain lists of persons and groups known to be interested in the environmental impacts of specific DOE actions, and will notify such persons and groups of proposed DOE actions judged to be of interest to them.

Except where there are emergency circumstances, statutory deadlines, or overriding considerations of expense or effectiveness, as provided in § 1021.31, DOE will allow a minimum 45-day comment period on draft EIS's, and may, upon request, extend that period.

A public hearing on an EIS may be held if DOE determines, in accordance with criteria set forth in § 1021.28, that it would be appropriate.

4. *Post-EIS Responsibilities.* Following completion of a final EIS and DOE decisionmaking with respect to a proposed action, DOE shall verify that the implementation of the selected alternative, particularly with regard to

any mitigating measures included in the action, is proceeding as described in the EIS.

D. COORDINATION OF OTHER FEDERAL ENVIRONMENTAL CONSULTATION REQUIREMENTS

Subpart E of the proposed regulations requires, to the extent practicable, coordination of various Federal environmental review and consultation requirements, through the NEPA process. This is intended to improve and expedite the DOE decisionmaking process.

E. APPLICANT PROCEDURES

Applicants for a DOE permit, certificate, license, financial assistance, contract award, or similar action may be required to submit an environmental report (ER) containing information to be specified by DOE in the context of specific programs. Such information will, to the extent feasible and appropriate, be independently verified by DOE prior to its use by DOE in the preparation of an EA or EIS.

To permit appropriate coordination of required Federal environmental review, DOE applicants shall identify all other Federal actions required for completion of the undertaking. Applicants should submit applications for Federal approvals early in their planning process, and should take no steps that may cause a significant environmental impact or foreclose DOE alternatives prior to completion of the EA/EIS process.

III. COMMENT PROCEDURES

A. WRITTEN COMMENTS

Interested persons are invited to submit written comments with respect to the proposed regulations to Box RY, Public Hearing Management, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Compliance with the National Environmental Policy Act." Fifteen (15) copies should be submitted. All comments and related information should be received by DOE by April 10, 1978, in order to ensure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. PUBLIC HEARING

1. *Participation procedures.* A public hearing on the proposed regulations will be held at 9:30 a.m., on March 30, 1978, in Room 3000A, 12th and Pennsylvania Avenue NW., Washington, D.C., to receive oral presentations from interested persons.

Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in them may make a written request for an opportunity to make oral presentation. Such a request should be directed to the Public Hearing Management, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. The person making the request should describe his or her interest in the proceeding and provide a concise summary of the proposed oral presentation and a phone number where he or she may be reached. Each person who in DOE's judgment proposes to present relevant, and material information shall be selected to be heard, shall be notified by DOE of his participation before 4:30 p.m., March 17, 1978, and shall submit 15 copies of his or her proposed statement to the Public Hearing Management, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461, on or before March 24, 1978.

2. *Conduct of Hearings.* DOE reserves the right to arrange the schedule of presentations to be heard, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated as presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

NOTE—DOE has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

In consideration of the foregoing, it is proposed that Chapters II, III, and X of Title 10 of the Code of Federal Regulations be amended as provided below.

Issued in Washington, D.C., February 14, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration.

1. Part 208 of Chapter II and Part 711 of Chapter III, Title 10 of the Code of Federal Regulations are revoked.

PART 208—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT [Revoked]

PART 711—GUIDELINES FOR ENVIRONMENTAL REVIEW [Revoked]

2. Part 1021 is added to Title 10, Chapter X, of the Code of Federal Regulations to read as follows:

PART 1021—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General

Sec.
1021.1 Background.
1021.2 Purpose and scope.
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Subpart B—Environmental Assessments

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Subpart C—Environmental Impact Statements

1021.21 Need for environmental impact statements.
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1021.23 Scope of environmental impact statements.
1021.24 Timing of environmental impact statement preparation.
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1021.30 Post-EIS responsibilities.
1021.31 Timing of DOE actions.
1021.32 Contractor services.
1021.33 Review of environmental impact statements prepared by other agencies.

Subpart D—General Guidance for Content of Environmental Impact Statements

1021.41 Body of statement.

AUTHORITY: Department of Energy Organization Act of 1977, Pub. L. 95-91; National Environmental Policy Act of 1969, Pub. L. 91-190, as amended, Pub. L. 94-83; E.O. 11514, 35 FR 4247, as amended.

Subpart A—General

§ 1021.1 Background.

(a) Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), as implemented by Executive Order 11514 of March 5, 1970, as amended, and the Guidelines of the Council on Environmental Quality (CEQ) of August 1, 1973 (40 CFR Part 1500), requires all agencies of the Federal Government to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. NEPA further requires Federal agencies to give appropriate consideration to the environmental effects of proposed actions in their decisionmaking.

(b) Other environmental legislation pertaining to historic sites, wild and scenic rivers, endangered species, fish and wildlife, coastal zones and other resources requires consultation with designated agencies and review of impacts in environmentally sensitive areas in conjunction with Federal decisionmaking.

§ 1021.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities with respect to NEPA, including:

(1) DOE procedures for the implementation of Section 102(2)(C) of NEPA, with provisions for early identification of those DOE actions which require environmental assessments (EA's) and environmental impact statements (EIS's); preparation and processing of EA's and EIS's; participation by the public and other Federal agencies, States, and local governmental units in the environmental review process; and consideration of environmental factors in DOE planning and decisionmaking; and

(2) DOE policy with respect to the appropriate balancing of national environmental goals, energy requirements, and other essential considerations of national policy.

(b) This part also establishes DOE policy for the coordination of other Federal environmental review and consultation requirements in conjunction with the procedures of Section 102(2)(C) of NEPA.

§ 1021.3 Policy.

DOE shall:

(a) To the maximum extent practicable, conduct its activities in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations, consistent with DOE's nondiscretionary statutory responsibilities and other essential considerations of national policy;

(b) Assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and advance goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety, in accordance with Section 102(13) of the Department of Energy Organization Act (42 U.S.C. 7112); and

(c) Incorporate into its planning, regulatory, and decisionmaking processes a careful consideration of the potential environmental consequences of its proposed actions by:

(1) Evaluating the long- and short-range impacts, both direct and indirect, of such actions on man, including his physical and social surroundings, and on the natural environment;

(2) Exploring, developing, analyzing, and implementing, as appropriate, alternative actions which may mitigate adverse environmental impacts; and

(3) Providing for public disclosure of and comment on the impacts of all its major actions significantly affecting the quality of the human environment.

§ 1021.4 Definitions.

For purposes of this part—

(a) "Action" means a DOE activity which may be major and may significantly affect the quality of the human environment.

(b) "Administrative action" means a major DOE activity, other than a legislative action as defined herein, significantly affecting the quality of the human environment.

(c) "Legislative action" means a DOE recommendation or report on DOE proposals for legislation significantly affecting the quality of the human environment.

(d) "DOE" means all organizational units of the Department of Energy, except the Federal Energy Regulatory Commission.

(e) "Environmental report" (ER) means a document submitted to DOE by an applicant in support of an undertaking which identifies the environmental impacts of the proposed undertaking and its alternatives.

(f) "Environmental assessment" (EA) means a document prepared by DOE which assesses whether a proposed DOE action would be "major" and would "significantly affect" the quality of the human environment, and which serves as the basis for a determination as to whether an environmental impact statement (EIS) is required.

(g) "Environmental impact statement" (EIS) means a document prepared in accordance with the requirements of Section 102(2)(C) of NEPA.

(h) "Negative determination" (ND) means a document prepared to certify a decision that an EIS will not be prepared for a proposed DOE action.

(i) "Project" means an individual, unitary DOE action.

(j) "Program" means an aggregate of projects which share a common objective or purpose and are so interrelated that planning or decisionmaking with respect to any one component is likely to significantly affect planning or decisionmaking with respect to any other component.

(k) "Undertaking" means a proposed initiative of a private person or non-Federal governmental entity which may result in an action.

§ 1021.5 Applicability.

(a) This Part shall apply to all organizational units of DOE, except that it shall not apply to the Federal Energy Regulatory Commission (FERC).

(b) This part covers proposed DOE actions, including those actions sponsored jointly with other agencies, and uncompleted and continuing actions when modifications of or alternatives to the DOE action are still available.

(c) DOE shall conduct a review of proposed actions, in accordance with § 1021.21, to ascertain the applicability of Section 102(2)(C) of NEPA. Proposed actions subject to such review include but are not limited to the following:

(1) A new or continuing project or program, or expansion or revision of a continuing project or program which is directly undertaken by DOE; supported in whole or in part through DOE contracts, grants, loans, guarantees, subsidies, or other forms of financial assistance; or involves a DOE lease, permit, license, certificate, or similar action.

(2) The establishment or modification by DOE of rules, regulations, or policies.

(d) There are classes of DOE activities which are exempt from the requirements of this part, since they have been determined not to be major Federal actions significantly affecting the quality of the human environment. Such classes of activities in-

clude, but are not necessarily limited to, the following:

(1) Administrative procurement (e.g., general supplies);

(2) Contracts for personal services;

(3) Personnel actions;

(4) Reports or recommendations on legislation which was not initiated by DOE;

(5) Compliance actions, including investigations, conferences, hearings, notices of probable violation, and remedial orders;

(6) Interpretations and rulings, or modifications or rescissions thereof;

(7) Promulgation of rules and regulations which are clarifying, corrective, or procedural in nature, or which do not substantially change the effect of the regulations being amended;

(8) Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program;

(9) Information gathering, analysis, and dissemination;

(10) Issuance of prohibition orders and construction orders pursuant to the Energy Supply and Environmental Coordination Act of 1974;

(11) Actions in the nature of conceptual design or feasibility studies.

(e) The following actions ordinarily are not considered to be major Federal actions significantly affecting the quality of the human environment and generally are exempt from the requirements of this part: (1) Adjustments, assignments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued pursuant to the Emergency Petroleum Allocation Act, as amended; and (2) the establishment or modification of prices charged by DOE for DOE goods and services. However, where unusual circumstances exist, DOE shall consider the need for an EA or EIS on these types of actions.

Subpart B—Environmental Assessments

§ 1021.11 Need for Environmental Assessments.

DOE shall prepare an EA when it is unclear whether an EIS is required. An EA is not required when it is clear that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Where it is clear that an EIS is required, preparation of the EIS shall begin as soon as practicable, without preparation of an EA. An EA shall not ordinarily be prepared with respect to a proposed DOE action for which an EA or EIS has been formerly prepared, by DOE or another Federal agency: *Provided*, That such EA or EIS affords a currently valid evaluation of the environmental impacts of the proposed action. The relevant EA or EIS shall accompany the proposal throught the DOE review and decisionmaking process.

§ 1021.12 Content of Environmental Assessments.

The EA shall be a brief, factual document that analyzes and evaluates the environmental consequences of a proposed action in sufficient detail to permit DOE to determine whether an EIS is required. An EA should be structured in the manner that is most useful for planning and decisionmaking, and shall, as appropriate, contain the following information: A clear and concise description of the proposed action, including drawings, maps, and charts, if directly pertinent to analyzing the environmental consequences of the proposed action; a description of the existing environment affected by the proposed action only in sufficient detail to permit a meaningful evaluation of the potential environmental consequences of the proposed action; an assessment of the probable impacts of the proposed action, including direct and indirect effects and those adverse impacts which cannot be avoided should the proposal be implemented; an evaluation of the probable cumulative and long-term environmental effects, including any beneficial impacts; an assessment of the risk of credible accidents; a discussion of the relationship of the proposed action to any applicable Federal, State, regional, or local land use plans and policies likely to be affected; and a brief description of all reasonable alternatives to the proposed action and their environmental effects.

§ 1021.13 Review of Environmental Assessments.

(a) Based upon its review of an EA, DOE shall determine whether, in accordance with § 1021.21, the proposed action requires the preparation of an EIS.

(b) If it is determined that an EIS is required, DOE shall, whenever practicable, publish a Notice of Intent in the FEDERAL REGISTER, in accordance with § 1021.25. If DOE determines that an EIS is not required, a Negative Determination shall be published in the FEDERAL REGISTER, in accordance with § 1021.14. DOE may consult with CEQ in determining whether a specific action requires an EIS.

§ 1021.14 Negative Determinations.

DOE shall prepare a negative determination (ND) to certify a decision that an EIS is not required with respect to an action for which an EA has been prepared. The ND shall briefly describe the proposed action and the reasons for not preparing an EIS. For administrative actions and legislative actions not related to the President's budget, the ND shall be published in the FEDERAL REGISTER, with an announcement that the EA may be obtained from DOE on request. DOE shall take no action related to the subject of the ND sooner than 15 days following publication in the FEDERAL REGISTER, except as provided under § 1021.31, and shall consider any comments received during that period. A list of ND's for legislative actions related to the President's budget shall be furnished in the FEDERAL REGISTER as soon as practicable after the President's budget is transmitted to Congress, with an announcement that the EA's may be obtained from DOE on request.

Subpart C—Environmental Impact Statements

§ 1021.21 Need for Environmental Impact Statements

(a) An environmental impact statement (EIS) shall be prepared for a proposed action which DOE determines to be a major Federal action significantly affecting the quality of the human environment. In making that determination, DOE shall consider:

(1) The magnitude of the action in terms of the extent of control, by virtue of DOE funds or discretionary approval/disapproval authority, to influence the course of the action, and the size of the commitment of resources involved; and

(2) The significance of the environmental impacts in terms of the overall cumulative impact of the proposed action and related Federal actions; the potential for degradation of the quality of the human environment, including direct and indirect impacts on the natural, physical, and social environment, and the curtailment of the range of beneficial uses of the environment; effects on management, allocation or consumption of important, scarce, or nonrenewable resources; the presence of responsible opposing views concerning the environmental impacts; and the unique characteristics of the environment to be affected.

§ 1021.22 Selection of a Lead Agency and Consultation Among Participating Agencies.

(a) When DOE and one or more other Federal agencies are directly involved in a project or program or in a group of projects directly related to each other, DOE shall consult with such other agencies to determine if an EIS is required; to identify the appropriate lead agency or joint-agency responsibilities for EIS preparation; and to establish procedures for interagency coordination during the environmental review process.

(b) If an EIS is required, DOE shall take no action with respect to the proposed project that would significantly affect the quality of the human environment or curtail the range of alternatives under consideration until completion of the EIS process, whether or not DOE is the designated lead agency.

(c) Where DOE is frequently associated with another agency or agencies in the preparation of EIS's for similar projects, DOE shall attempt to negotiate memoranda of understanding specifying generic lead agency responsibilities for EIS preparation.

(d) If an interagency dispute arises concerning the need for an EIS, designation of the lead agency, or appropriate divisions of responsibility for EIS preparation, and the affected agencies are unable to resolve the dispute, DOE shall refer the issue to CEQ for its recommendation.

§ 1021.23 Scope of Environmental Impact Statements.

(a) A draft EIS shall contain, to the fullest extent possible, the information required by Subpart D of this part, and shall include a summary sheet, as described in Appendix A of this part.

(d) A final EIS shall consist of an appropriately revised draft EIS, the comments (or summaries thereof) received on the draft EIS and appropriate responses to those comments.

(c) (1) DOE shall identify the related actions most appropriately serving as the subject of a program EIS. Broad program EIS's may be required to assess the environmental effects of multiple actions within specific geographical areas, or environmental impacts that are generic to a series of DOE actions. Subsequent project EIS's applicable to components of the program may be necessary where such individual actions have significant environmental impacts not adequately evaluated in the program EIS.

(2) Program EIS's shall assess, as appropriate: The probable environmental consequences generic to component projects and actions; the cumulative effects of such related activities; and in the case of EIS's covering research, development, demonstration, or commercialization programs, the anticipated impacts of commercial deployment of such technology, including any major uncertainties with respect to the environmental effects of such deployment.

(d) Project EIS's shall assess the localized or regional environmental impacts of a specific proposed project.

(e) EIS's covering a site under DOE jurisdiction (such as major research laboratories or production facilities) shall assess the individual and cumulative environmental consequences of a number of continuing and/or proposed actions at the given site.

§ 1021.24 Timing of Environmental Impact Statement Preparation.

(a) An EIS shall be prepared as early as practicable in the planning and decisionmaking process of a proposed action. EIS preparation shall begin early enough to provide a useful contribution to decisionmaking, but late enough in the formulation of the proposed project or program to permit analysis of the potential environmental impacts of the proposal and its alternatives. The EIS shall be prepared before major resources are irreversibly committed or alternatives foreclosed, and prior to taking any action with respect to the proposed project which may cause significant environmental impact, except as provided in § 1021.31.

(b) In determining the appropriate timing of an EIS for research, development, or demonstration programs, DOE shall consider the magnitude of the Federal investment in the program; the likelihood and proximity of widespread application of the technology; the pace at which the program is moving from basic research toward demonstration of a viable technology; the extent to which continued investment in the new technology is likely to foreclose or restrict future alternatives; and the degree of environmental impacts of the program, individually and cumulatively, which are likely to occur in the event the technology is widely applied.

(c) To the extent practicable, DOE shall prepare a final EIS on a legislative proposal prior to submission of the proposal to Congress. In cases where this is not practicable or where the scheduling of Congressional hearings on such actions does not allow adequate time for completion of a final EIS, a draft EIS shall be furnished to Congress, with any comments transmitted as received. DOE may, in consultation with CEQ, forego the preparation of a final EIS on legislative actions.

§ 1021.25 Notice of Intent.

As soon as possible after a decision has been made to prepare an EIS, DOE shall publish a Notice of Intent regarding the forthcoming EIS in the FEDERAL REGISTER, with a brief description of the proposed action, and alternatives to be analyzed. The Notice of Intent shall announce the availability of the EA, if one has been prepared, and shall invite comments and suggestions for DOE consideration in the preparation of the EIS. To the extent practicable, DOE shall transmit copies of such Notices to appropriate Federal, State, and local agencies and to persons or groups known to be interested in the environmental implications of the proposed action. DOE shall also endeavor to provide for public notification through press releases and other forms of announcement, as appropriate. DOE may waive or delay the Notice of Intent in those instances where overriding considerations of policy or program effectiveness so warrant.

§ 1021.26 Interest Lists.

(a) DOE shall prepare and maintain lists of persons or groups known to be interested in the environmental impacts of DOE actions. Such lists shall be compiled from those individuals or groups who have requested copies of draft EIS's; commented on a previous draft EIS; participated in a public hearing on an EIS; or been identified by the responsible supervisory official as having an interest in the environmental impacts of a proposed DOE action. Such interest lists shall be maintained in accordance with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(b) Individuals or organizations desiring to be placed on specific interest lists or to request copies of EIS's and related notices should address their requests to:

Assistant Secretary for Environment, Department of Energy, Washington, D.C. 20461.

§ 1021.27 Publication of Draft Environmental Impact Statements.

(a) Upon completion of a draft EIS, DOE shall provide copies to and invite comments from: (1) The Environmental Protection Agency (EPA) and other Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved; (2) State and local agencies and members of the public and private organizations which in DOE's judgment have special expertise of a particular interest with respect to any environmental impact involved, and (3) any other persons who have requested a copy of the draft EIS.

(b) DOE shall publish a Notice of Availability of the draft EIS in the FEDERAL REGISTER, which specifies the period for review, the instructions for obtaining a copy of the EIS, and the procedures for submitting comments. To the extent practicable, DOE shall endeavor to provide for public notification through press releases and other forms of announcement, as appropriate.

(c) Comments on the draft EIS shall be considered in conection with the preparation of the final EIS, if received by DOE within the specified comment period. Unless otherwise specified (§ 1021.31), DOE shall allow 45 calendar days from publication of the appropriate Notice of Availability for comments to be received.

(d) DOE will consider requests for extensions of time if such requests are received during the comment period. In determining the appropriate period for comment or in acting upon an extension request, DOE shall consider the complexity of the issues addressed in the EIS, the extent of public interest in the proposed action, and the need for expeditious decisionmaking on the proposed action.

(e) Where no comments are received within the designated comment period, DOE shall assume that no comment is to be made.

§ 1021.28 Public Hearings.

(a) In determining whether to provide a public hearing with respect to an EIS, DOE shall consider the magnitude of the proposed action in terms of economic costs, the geographic area involved, and the uniqueness or size of the commitment of the resources involved; the degree of interest in the proposed action, as evidenced by requests from the public and from Federal, State, and local authorities that a hearing be held; the complexity of the issues and the likelihood that additional information generated by the hearing will assist DOE in fulfilling its responsibilities under NEPA; the extent to which public involvement already has been achieved through other means, such as earlier public herings, meetings with citizen representatives and/or written comments on the proposed action; and the need for expeditious decisionmaking on the proposed action.

(b) If a hearing is to be held, DOE shall publish a notice in the FEDERAL REGISTER and make the EIS available to the public at least 20 calendar days prior to the scheduled date of such hearing. To the extent practicable, DOE shall endeavor to provide for public notification through press releases and other forms of announcement, as appropriate.

(c) Public hearings under this section may be combined with other DOE hearings, or hearings of other agencies, as appropriate. Public hearings under this section that are not so combined shall be legislative rather than adjudicatory in nature, with no right to formal discovery, subpoena of witnesses, cross-examination of participants, testimony under oath, or other similar formalities more appropriate to an adjudicatory procedure. Where a hearing under this section is combined with another hearing, the applicable procedures shall be determined with reference to considerations relevant to all of the affected hearings.

§ 1021.29 Preparation and Publication of Final Environmental Impact Statements.

(a) DOE shall consider the comments received on the draft EIS and at the public hearing, if held, and prepare a final EIS, except as provided in § 1021.24. In addition to the information required by Subpart D of this part, the final EIS shall contain all substantive comments received on the draft EIS (or summaries thereof) together with DOE's response to those comments, and changes in the statement, as appropriate.

(b) Upon approval of the final EIS, DOE shall publish a notice in the FEDERAL REGISTER announcing the availability of the final EIS and distribute copies of the statement to EPA, and Federal, State, and local agencies, and others who submitted comments on the draft EIS, participated in the public hearing on the draft EIS, or requested a copy of the final EIS. Final EIS's on legislative actions shall be submitted to Congress and the Office of Management and Budget.

§ 1021.30 Post-EIS Responsibilities.

(a) Following completion of the final EIS and DOE decisionmaking with respect to a proposed action, DOE shall verify that the implementation of the selected alternative, particularly with regard to any mitigating measures included in the action, is proceeding as described in the EIS. Upon identification of any significant modifications of the plans as described in the EIS, DOE shall determine appropriate steps to be taken.

(b) DOE shall identify and consider, to the maximum possible extent, the full range of environmental impacts at the time of EIS preparation. However, additional review may be necessary as the action evolves. Whenever substantial new information pertinent to an existing EIS becomes available, or whenever a modification of an action covered by an EIS is proposed that may be environmentally significant, DOE shall consider the need for a supplement to the EIS. Based on the significance of the modification and environmental impacts involved, relative to the impacts originally discussed, DOE shall determine whether to prepared a supplement to the EIS and, if so, whether it shall be a draft (related to either a draft or final EIS) or a final (related to a final EIS only) supplement. Draft supplements will be subject to the review procedures for draft EIS's specified in this subpart. When a final supplement is prepared, DOE shall publish a notice of availability in the FEDERAL REGISTER and distribute copies to EPA, and Federal, State, and local agencies and others who have expressed interest in the proposed action. DOE shall take no action with respect to the subject of the final supplement until 15 days after publication of the notice of availability and shall consider any comments received during that period.

§ 1021.31 Timing of DOE Actions.

(a) To the maximum extent practicable:

(1) No proposed administrative action for which an EIS is prepared shall be taken sooner than 90 calendar days after a draft EIS has been issued; or sooner than 30 calendar days after the final EIS has been issued. The 90-day and 30-day periods may run concurrently.

(2) No proposed action for which an ND has been prepared shall be taken prior to 15 calendar days after the ND and notice of availability of the EA are published in the FEDERAL REGISTER.

(b) Where emergency circumstances, statutory deadlines, or overriding considerations of expense or effectiveness of the relevant action make it necessary to take an administrative or legislative action without observing the minimum time periods required by this part, or before the preparation of an EA or draft or final EIS, or supplement thereto, DOE shall, at the earliest possible time, consult with CEQ concerning appropriate alternative arrangements for full compliance with NEPA requirements. Where only overriding considerations of expense or effectiveness are involved, such consultation shall occur before taking the proposed action.

(c) In computing a period of time prescribed or allowed by this part, the earlier date of publication by DOE or EPA of any relevant notice published in the FEDERAL REGISTER shall be the date from which such period is calculated.

§ 1021.32 Contractor Services.

DOE may use contractor services to gather information, perform studies and provide for other assistance needed for DOE to prepare an EA, an EIS, or comments on an EIS prepared by another Federal Agency. DOE shall independently review all work performed by contractors and shall maintain full control over and responsibility for the content of such NEPA-related documents.

§ 1021.33 Review of Environmental Impact Statements Prepared by Other Agencies.

(a) DOE shall review and comment on EIS's prepared by other Federal agencies if requested, and if determined appropriate by DOE, whenever DOE has jurisdiction by law or special expertise. DOE comments shall be specific, substantive, and factual and may recommend modifications to the proposal and/or new alternatives. DOE shall give particular consideration to legislative or administrative proposals which might cause a change in the production, importation, transportation, use, availability, or storage of petroleum, other fuels, or sources of energy, or which deal with other matters related to DOE's statutory responsibilities. In reviewing EIS's prepared by other agencies, DOE shall: Identify proposals which are unsatisfactory from the standpoint of environmental quality or which conflict with known current or future policies and programs within the jurisdiction of DOE; indicate areas of research which are underway or planned by DOE which may suggest new alternatives, ways to mitigate effects, or fill gaps in the state of relevant knowledge; and offer other appropriate comments in areas in which DOE has jurisdiction by law or special expertise.

(b) To the extent that its resources permit, DOE may review environmental documents prepared by State or local agencies under authority of State or local laws similar to NEPA.

Subpart D—General Guidance for Content of Environmental Impact Statements

§ 1021.41 Body of Statement.

(a) The EIS shall be a concise, factual and objective evaluation of the environmental effects of a proposed action and its reasonable alternatives, and shall include or reference relevant data, information, and analyses only to the extent necessary to permit independent evaluation and comparative appraisal of the environmental effects of the proposed action and its reasonable alternatives. EIS's shall not be drafted in a style which requires extensive scientific or technical expertise to comprehend and shall focus on the major environmental issues relevant to the proposed action. Underlying studies, reports and other information used in preparing the EIS shall be identified. Highly technical and specialized analyses and data should be avoided in the text, but should be attached as appendices or referenced with footnotes. Where documents not easily accessible are referenced, such as internal studies or reports, the EIS shall summarize the relevant information and indicate how the document may be obtained.

(b) The EIS shall discuss or refer to responsible opinions regarding the environmental impacts of the proposed action. Substantive suggestions and comments made by other Federal, State, and local agencies and by private organizations and individuals prior to preparation of the environmental impact statement (draft or final) shall be identified and analyzed in appropriate sections of the statement.

(c) EIS's shall contain, to the extent appropriate, the following information in a format most useful to planning and decisionmaking:

(1) *Summary.* The salient information and factual conclusions of the EIS shall be summarized at the beginning of the document. The summary shall include any unresolved environmental issues and factual conclusions concerning the significance of the impacts associated with the proposed action, and the relative merits of alternatives.

(2) *Description of proposed action.* The proposed action and the objectives sought to be realized by its implementation shall be briefly described. Among factors to be considered are the location and duration of the proposed action; historical information necessary to place the proposed action in proper perspective; its relationship to other projects or programs of the Federal Government; and the overall physical description, if appropriate. The environmental controls and other mitigating measures, including plans for site restoration, that are designed into the proposed action shall also be described.

(3) *A characterization of the existing environment likely to be affected by the proposed action.* A brief overview of the environment likely to be affected by the proposed action, including natural, physical, and socioeconomic features, shall be provided as a baseline for analysis of environmental impacts. Detailed descriptions of the existing environment should either be included in an appendix to the statement or referenced in the text, when necessary for a thorough understanding of the environmental impacts of a proposed action.

(4) *Environmental impacts of the proposed action.* The probable environmental impacts of the proposed action, including the effects of proposed mitigating measures, shall be analyzed. The analysis shall describe those effects on the natural, physical, and socioeconomic environment, beneficial as well as adverse, which could be caused by the proposed action, evaluate the magnitude and importance of each such effect, and identify the time periods in which these effects are anticipated. Any unknown factors concerning the probable environmental impacts shall be identified. The probable primary (direct) as well as secondary (indirect) environmental consequences shall be assessed. For purposes of this subparagraph, "secondary" consequences refer to associated investments and changed patterns of social and economic activities likely to be induced by the proposed action. The extent to which the proposal will conform to or conflict with any Federal, State, or local statutes, regulations, standards, limitations, and policies respecting environmental quality (air and water quality, wastes, pesticides, land use, etc.) shall be discussed. The risks of environmental degradation attributable to accidental as well as normal operations associated with the proposed action shall be assessed, to the extent practicable, in terms of probability of occurrence and magnitude of consequences.

(5) *Unavoidable adverse environmental effects.* Adverse environmental effects that cannot be avoided should the proposed action be implemented, and the magnitude and importance of such effects, shall be discussed.

(6) *Irreversible and irretrievable commitment of resources.* The extent to which the proposed action would consume, destroy, or transform limited or nonrenewable resources, thus curtailing the diversity and range of potential uses of the environment, shall be discussed.

(7) *The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity.* The extent to which the proposed action would constrain the diversity and range of potential uses of the environment shall be discussed. The cumulative and long-term environmental effects of the proposed action shall be assessed from the perspective that each generation is trustee of the environment for succeeding generations. This involves consideration of the present condition and use of the site of the proposed action, its use if the proposed action is implemented, and the long-term prospects for other uses. An assessment should be made of the extent to which the proposed action involves trade-offs between short-term gains and long-term losses, or the reverse, and the extent to which the proposed action and its alternatives foreclose future options.

(8) *Alternatives.* A rigorous exploration and factual evaluation of the environmental impacts of the full range of reasonable alternatives to the proposed action shall be presented. In particular, reasonable alternatives to the proposed action that might be formulated to enhance environmental quality or to avoid or mitigate adverse environmental effects shall be discussed. The specific alternative of taking no action shall always be evaluated. Examples of other potential alternatives include: postponing action pending further study; actions of a significantly different nature which would provide similar benefits with different environmental impacts; and different designs or details of the proposed action which would have different environmental impacts. A comparative evaluation of the environmental impacts of the proposed action and each reasonable alternative shall be included. Where an existing EIS already contains an analysis of an alternative(s), its treatment of the alternative(s) may be summarized and incorporated by reference: *Provided,* That such treatment is current and relevant to the precise objective of the proposed action. The range of alternatives discussed in an EIS shall not be limited to measures which DOE has authority to implement. However, the level of discussion for an alternative the implementation of which lies wholly within the private sphere, or State or local units of government, and which is expected to remain within the jurisdiction of those entities, shall be at DOE's discretion. A more detailed analysis may be made of the environmental impact of alternatives that can be implemented within the same time period as the proposed action than for those alternatives which require longer periods of time for completion.

Subpart E—Coordination of Other Federal Environmental Consultation Requirements

§ 1021.51 Additional Federal Environmental Review Requirements.

In order to expedite and improve the Federal decisionmaking process, DOE shall, to the extent practicable coordinate other requisite Federal environmental reviews in conjunction with the NEPA procedures set forth in this part. DOE shall establish procedures, where appropriate, to accomplish these reviews pursuant to: Section 13 of the Federal Nonnuclear Research and Development Act of 1974, 42 U.S.C. 5901; the National Historic Preservation Act of 1966, 16 U.S.C. 470; the Endangered Species Act of 1973, 16 U.S.C. 1531; the Wild and Scenic Rivers Act or 1972, 16 U.S.C. 1271; the Coastal Zone Management Act of 1972, 16 U.S.C. 1451; the Fish and Wildlife Coordination Act, 16 U.S.C. 661; the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431, 33 U.S.C. 1401; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901; and other Acts as deemed appropriate. Requests for consultation and results of such consultation shall be documented in writing and shall, where practicable, be incorporated in the draft or final EIS. In all cases where consultation has occurred, the agencies consulted shall receive copies of either the Notice of Intent and EIS or Negative Determination and EA prepared on the proposed action.

Subpart F—Applicant Procedures

§ 1021.61 Applicant Responsibilities.

(a) With respect to major categories of actions involving applicants for a DOE permit, certificate, license, financial assistance, contract award, or similar action, DOE may require the applicant to submit an environmental report (ER) on the proposed undertaking. Prior to the preparation of an ER, the applicant should consult with DOE to determine the appropriate information to be included in the ER. In general, an ER shall contain the types of information required for an EA or EIS, as specified in § 1021.12 and § 1021.41, respectively. The level of detail of the ER shall be commensurate with the complexity and expected significance of the environmental impacts of the proposed undertaking. An ER shall be accurate and complete, although DOE may request additional data and analyses whenever these are necessary to comply with the requirements of this part.

(b) In carrying out their environmental responsibilities, DOE expects applicants to: (1) Conduct any studies which are deemed necessary and appropriate by DOE to determine the impact of the proposed action on the human environment; (2) consult with appropriate Federal, regional, State and local agencies during the preliminary planning stages of the proposed undertaking to assure that all environmental factors are identified; (3) submit applications for all Federal approvals as early as possible in their planning process; (4) notify DOE of all other Federal actions required for project completion in order that DOE may coordinate the Federal environmental review, if appropriate; and (5) take no steps in furtherance of an undertaking for which they are seeking DOE approval which may cause significant environmental impacts, or which may foreclose the alternative actions available to DOE, prior to completion of the EA/EIS process.

§ 1021.62 DOE Responsibilities.

(a) DOE shall provide either generic or case-by-case guidance to applicants regarding the need for and the appropriate scope and depth of analysis of an ER, commensurate with the anticipated EA and EIS requirements.

(b) Notwithstanding the applicant's responsibilities under § 1021.61, DOE shall independently verify, to the extent feasible and appropriate, any information or analysis in the ER which is used or relied upon in an EA or EIS prepared with respect to the proposed action. DOE shall review the methodologies employed in the ER and shall independently evaluate the environmental impacts of the proposed action and all reasonable alternatives. Utilizing the ER and other pertinent data and analyses, DOE shall independently determine, in accordance with § 1021.11 and § 1021.21, whether the proposed action requires the prepartation of an EA or an EIS. If required, DOE shall independently prepare the EA or EIS in accordance with this part, utilizing the ER and other information developed by DOE, as appropriate. DOE may incorporate all or part of an ER into its EA or EIS.

§ 1021.63 Content of Environmental Reports.

(a) For all functions transferred to DOE under the Natural Gas Act, an ER prepared in support of the preparation of an EIS shall contain the information specified in Appendix B of this part. An ER prepared in support of the preparation of an EA shall contain, in abbreviated form, the information specified in Paragraphs 1, 2, 3, 4, 8 and 9 of Appendix B.

(b) This subpart may be amended to provide further guidance for specific DOE programs.

Appendix A—Summary Sheet for Draft and Final Statements

(check one) ( ) Draft. ( ) Final Environmental Statement.

Name of responsible Federal agency (with name of operating division where appropriate). Name, address and telephone number of individual at the agency who can be contacted for additional information about the proposed action or the statement.

1. Brief description of proposed action, its type (administrative or legislative) and its purpose. Indicate what States (and counties) particularly affected, and what other proposed Federal actions in the area, if any, are discussed in the statement.

2. Summary of environmental impacts and adverse environmental effects.

3. Summary of major alternatives considered.

4. (For draft statements) List all Federal, State, and local agencies and other parties from which comments have been requested. (For final statements) List all Federal, State, and local agencies and other parties from which written comments have been received.

5. Date draft statement (and final environmental statement, if one has been issued) made available to EPA and the public.

Appendix B—Contents of Environmental Reports Prepared for Applications Under the Natural Gas Act

1. *Description of proposed undertaking.* Provide as an introductory paragraph, a brief discription of the undertaking under application. Then describe fully its:

1.1 *Purpose.* Describe the primary purpose of the proposed facilities (onshore/offshore pipelines, LNG, gas storage fields, SNG, and others) and how the proposed undertaking fits into Federal, regional, State, and local energy demand and supply requirements.

1.2 *Location.* Identify site(s) including all existing natural gas and other power and product pipelines in the general vicinity of the proposed undertaking; locate with respect to State boundaries, counties and major cities; and illustrate with a suitable general location map(s).

1.3 *Land requirements.* Indicate the length and width and location of all existing, joint, or new right-of-way required by the proposed undertaking; identify the size of each proposed plant and/or operational site; designate what portion of the land at the operation site which will remain unaffected by construction and operation; and identify auxiliary construction activities on adjacent land.

1.4 *Proposed facilities.*

1.4.1 *Plant/operational facilities.* Identify all plant and/or operation units to be constructed, such as compressors, unloading and storage facilities, liquefaction/gasification facilities. Provide plan, elevation, and perspective views of all plant facilities.

1.4.2 *Pipeline facilities.* Describe the length and size of all transmission, lateral, looping, and gathering pipelines to be constructed.

1.5 *Construction procedures.* Describe procedures to be taken prior to or during construction of the proposed undertaking such as the relocation of homes and commercial or industrial facilities, clearing, surveying, land acquisition, and environmental planning. Discuss the methods of pipeline construction which would be used (such as the push method, flotation method, lay method, and barge laying method). Provide a schedule of construction of major facilities and how this will meet future energy needs and avoid such limiting factors as floods, ground slides, or severe climatic conditions. Include schedules for needed reloca-

tions or development of transportation and other public use facilities and methods of maintaining service during these activities. Indicate the source of the work forces, numbers involved, and their housing needs in the area.

1.6 *Operational and maintenance procedures.* Describe fully the technical and operational considerations of the proposed undertaking, including details of the process, catalyst involved, design, mass, heat and energy balances, flow diagrams, water purification treatment and facilities, waste product disposal facilities, and days and hours of operation. Describe maintenance under normal conditions; include types of expected maintenance, anticipated maintenance problems, and how system or area needs will be met during shutdown for maintenance. Describe capacity of proposed action to withstand both usual and unusual but possible natural phenomena and accidents (e.g., floods, hurricanes or tornadoes, slides, etc.).

1.7 *Future plans.* Describe plans or potential for future expansion of facilities including land use and the compatibility of these plans with the proposed undertaking.

2. *Description of the existing environment.* Provide an overall description of existing conditions or resources which might be affected directly and indirectly by the proposed undertaking; include a discussion of such pertinent topics as:

2.1 *Land features and uses.* Identify present uses and describe the characteristics of the land area.

2.1.1 *Land uses.* Describe the extent of present uses, as in agriculture, business, industry, recreation, residence, wildlife, and other uses, including the potential for development; locate major nearby transportation corridors, including roads, highways, ship channels, and aviation traffic patterns; locate transmission facilities on or near the lands affected by the proposed undertaking and their placement (underground, surface, or overhead).

2.1.2 *Topography, physiography, and geology.* Provide a detailed description of the topographic, physiographic, and geologic features within the area of the proposed undertaking. Include U.S. Geological Survey Topographic Maps, aerial photographs, and other such graphic material.

2.1.3 *Soils.* Describe the physical and chemical characteristics of the soils. Sufficient detail should be given to allow interpretation of the nature of and fertility of the soil and stability of slopes.

2.1.4 *Geological hazards.* Indicate the probability of occurrence of geological hazards in the area, such as earthquakes, slumping, landslides, subsidence, permafrost, and erosion.

2.2 *Species and ecosystems.* Identify those species and ecosystems that will be affected by the proposed undertaking.

2.2.1 *Species.* List in general categories by common and scientific names, the plant and wildlife species found in the area of the proposed undertaking and indicate those having commercial and recreational importance.

2.2.2 *Communities and associations.* Describe the dominant plant and wildlife communities and associations located within the area of the proposed undertaking. Provide an estimate of the population densities of major species. If data are not available for the immediate area of the proposed undertaking, data from comparable areas may be used.

2.2.3 *Unique and other biotic resources.* Describe unique ecosystems or communities, rare or endangered species, and other biotic resources that may have special importance in the area of the proposed undertaking. Describe any areas of critical environmental concern, e.g., wetlands and estuaries. Summarize findings of any studies conducted thereon.

2.3 *Socioeconomic considerations.* If the undertaking could have a significant socioeconomic effect on the local area, discuss the socioeconomic future, including population and industrial growth, of the area without the implementation of the proposed undertaking; describe the economic development in the vicinity of the proposed undertaking, particularly the local tax base and per capita income; and identify trends in economic development and/or land use of the area, both from a historical and prospective viewpoint. Describe the population densities of both the immediate and generalized area. Include distances from the site of the proposed undertaking to nearby residences, cities, and urban areas and list their populations. Indicate the number and type of residences, farms, businesses, and industries that will be directly affected and those requiring relocation if the proposed undertaking occurs.

2.4 *Air and water environments.* Describe the prevailing climate and the quality of the air (including noise) and water environments of the area. Estimate the quality and availability of surface water resources in the proposed undertaking area.

2.4.1 *Climate.* Describe the historic climatic conditions that prevail in the vicinity of the proposed undertaking; extremes and means of monthly temperatures, precipitation, and wind speed and direction. In addition, indicate the frequency of temperature inversions, fog, smog, icing, and destructive storms such as hurricanes and tornadoes.

2.4.2 *Hydrology and hydrography.* Describe surface waters, fresh, brackish, or saline, in the vicinity of the proposed undertaking and discuss drainage basins, physical and chemical characteristics, water-use, water supplies, and circulation. Describe the groundwater situation, water uses and sources, aquifer systems, and flow characteristics.

2.4.3 *Air, noise, and water quality monitoring.* Provide data on the existing quality of the air and water, indicate the distance(s) from the proposed undertaking site to monitoring stations and the mean and maximum audible noise and radio interference levels at the site boundaries.

2.5 *Unique features.* Describe unique or unusual features of the area, including historical, archeological, and scenic sites and values.

3. *Environmental impact of the proposed undertaking.* Describe all known or expected environmental effects and changes, both beneficial and adverse, which will take place should the undertaking be carried out. Include the impacts caused by (a) construction, (b) operation, including maintenance, breakdown, and malfunctions, and (c) termination of activities, including abandonment. Include both direct, and primary indirect changes in the existing environment in the immediate area and throughout the sphere of influence of the proposed undertaking.[1]

3.1 *Construction.*

3.1.1 *Land features and uses.* Assess the impact on present or future land use, including commercial use, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any temporary restriction on land use due to construction activities. State the effect of construction-related activities upon local traffic patterns, including roads, highways, ship channels, and aviation patterns.

3.1.2 *Species and ecosystems.* Assess the impact of construction on the terrestrial and aquatic species and habitats in the area, including clearing, excavation, and impoundment. Discuss the possibility of a major alteration to the ecosystem and any potential loss of an endangered species.

3.1.3 *Socioeconomic considerations.* Discuss the effect on local socioeconomic development in relation to labor, housing, local industry, and public services. Discuss the need for relocations of families and businesses. Describe the beneficial effects, both direct and indirect, of the undertaking on the human environment, such as benefits resulting from the services and products, and other results of the undertaking (include tax benefits to local and State governments, growth in local tax base from new business and housing development and payrolls). Describe the impact on human elements, including the need for increased public services (schools, health facilities, police and fire protection, housing, waste disposal, markets, transportation, communication, energy supplies and recreational facilities).

3.1.4 *Air, noise and water environment.* Estimate the qualitative and quantitative effects on air, noise, and water quality, including sedimentation, and whether regulatory standards in effect for the area will be complied with.

3.1.5 *Waste disposal.* Discuss the impact of disposal of all waste material such as spoils, vegetation, construction materials, and hydrostatic test water.

3.2 *Operation and maintenance.*

3.2.1 *Land features and uses.* Outline restrictions on existing and potential land use in the vicinity of the proposed undertaking, including mineral and water resources. State the effect of operation-related activities upon local traffic patterns including roads, highways, ship channels, and aviation patterns, and the possible need for new facilities.

3.2.2 *Species and ecosystems.* Assess the impact of operation upon terrestrial and aquatic species and habitats, including the importance of plant and animal species having economic or esthetic value to man that would be affected by the undertaking; provide pertinent information on animal migrations, foods, and reproduction in relation to the impacts; and describe any ecosystem imbalances that would be caused by the undertaking and the possibility of major alteration to an ecosystem or the loss of an endangered species. Assess any effects of this undertaking which would be cumulative to those of other similar undertakings or actions.

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[1] *Changes in the environment throughout the sphere of influence of proposed undertaking.* Direct and indirect effects are those effects which can be discerned as occurring primarily because the proposed undertaking would occur. For example: (1) The impact of a borrow pit would be evaluated to the extent that it would be developed or expanded but the manufacture of conventional trucks to work the pit would not; (2) The impact of construction workers moving into the area would be evaluated but not the impact of their leaving present homes. However, the impact of their subsequent departure must be considered.

3.2.3 *Socioeconomic considerations.* Discuss the effect on the local socioeconomic development in relation to labor, housing, and population growth trends, relocation, local industry and industrial growth, and public service. Describe the beneficial effects, both direct and indirect, of the undertaking on the human environment such as economic benefits resulting from the services and products, energy, and other results of the undertaking (include tax benefits to local and State governments, growth in local tax base from new business and housing development, and payrolls). Describe impacts on human elements, including any need for increased public service (schools, police and fire protection, housing, waste disposal, markets, transportation, communication, and recreational facilities). Indicate the extent to which maintenance of the area is dependent upon new sources of energy or the use of such vital resources as water.

3.2.4 *Air, noise, and water environment.* Assess the impact on present air quality due to process discharge quantities, and other discharging operational units. Assess the impact on present noise levels due to noises related to the undertaking. Assess the impact on present water quality, including sedimentation, due to cooling or heating system discharges, process effluents, sanitary and waste effluents, water use for hydrostatic testing, and water use for other operational units.

3.2.5 *Solid wastes.* Describe any impacts from accumulation of solid wastes and by-products that will be produced.

3.2.6 *Use of resources.* Quantify the resources necessary for operational processes; that is, water (human needs and processes); energy requirements, raw products, and specialized needs. Assess the impact of obtaining and using these resources.

3.2.7 *Maintenance.* Discuss the impact of maintenance programs, such as subsequent clearing or treatment of rights-of-way and hydrostatic testing and shutdowns. Discuss the potential impact of major breakdowns and shutdowns of the facilities and how service will be maintained during shutdowns.

3.2.8 *Accidents and catastrophes.* Describe any impacts resulting from accidents, natural catastrophes, and acts of sabotage which might occur, and provide an analysis of the capability of the area to absorb predicted impacts.

3.3 *Termination and abandonment.* Discuss the impact on land use and aesthetics of the termination and/or abandonment of facilities resulting from the proposed undertaking.

4. *Measures to enhance the environment or to avoid or mitigate adverse environmental effects.* Identify all measures which can reasonably be undertaken to enhance the environment or eliminate, avoid, mitigate, protect, or compensate for adverse and detrimental aspects of the proposed undertaking, as described under Section 3, above, including engineering planning and design, design criteria, contract specifications, selection of materials, construction techniques, monitoring programs during construction and operation, environmental tradeoffs, research and development, and restoration measures which will be taken routinely or as the need arises.

4.1 *Preventative measures and monitoring.* Discuss provisions for pre- and post-operation monitoring of environmental impacts of the proposed undertaking. Include programs for monitoring changes in operational phases. Describe proposed measures for detecting and modifying noise levels, monitoring air and water quality, inventorying key species in food chains, and detecting induced changes in the weather. Describe measures, including equipment, training procedures, and vector[2] control measures, that can reasonably be taken for protecting the health and welfare of workers and the public at the undertaking site during construction, operation, and maintenance, including structures to exclude people from hazardous areas or to protect them during changes in operations; include sanitary and solid and liquid waste disposal facilities for workers and the public during construction and operation. Discuss measures that can reasonably be undertaken to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence). Identify standard procedures for protecting services and environmental values during maintenance and breakdowns. Discuss proposed and alternative construction timetables to prevent environmental impacts and plans for implementation of changes whenever necessary to reduce environmental impact.

4.2 *Environmental restoration and enhancement.* Discuss all measures that can reasonably be taken to restore and enhance the environment including measures for restoration, replacement, or protection of flora and fauna and of scenic, historic, archeological, and other natural values; describe measures to facilitiate animal migrations and movements and to protect their life processes; describe programs for landscaping and horticultural practices; discuss programs to assist displaced families and businesses in their relocations; and describe provisions for public access to, and use of, lands and waters in the area of the proposed action.

5. *Unavoidable adverse environmental effects.* Discuss all adverse environmental effects which cannot be avoided by measures outlined in section 4 above.

5.1 *Human resources impacted.* Indicate those human resources and values which will sustain unavoidable adverse effects and discuss whether the impact will be transitory, a one-time but lasting effect, repetitive, continual, incremental, or synergistic to other effects and whether secondary adverse consequences will follow. Focus on the displacement of people by the proposed undertaking and its local, economic, and aesthetic implications; on human health and safety; and on aesthetic and cultural values and standards of living which will be sacrificed or endangered. Where possible, provide quantitative evaluations of these effects.

5.2 *Uses preempted and unavoidable changes.* Discuss all unavoidable environmental impacts on the land and its present use caused by inundation, clearing, excavation and fills; losses to wildlife habitat, forests, unique ecosystems, minerals, and farmlands; effects on fish habitat and migrations; on relocation of populations and man-made facilities, such as homes, roads, highways, and trails; on historical, recreational, archeological, and aesthetic values or scenic areas.

5.3 *Loss of environmental quality.* Discuss any unavoidable adverse changes in the air, including dust and emissions to the air, and noise levels; impacts resulting from solid wastes and their disposal; effects on the water resources of the area.

6. *Relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.* Compare the benefits to be derived from the immediate or short-term use of the environment, with and without the proposed undertaking, and the long-term consequences of the proposed undertaking.[1] Actions which diminish the diversity of beneficial uses of the environment or preempt the options for future uses or needs require detailed analysis to assure that shortsighted decisions are not made which may commit future generations to undesirable courses of actions.

6.1 *Short-term uses.* Assess the local short-term uses of man's environment in terms of the proposed undertaking benefit to man, land use, alterations to the ecosystems, use of resources, and public health and safety.

6.2 *Long-term productivity.* Discuss any cumulative long-term effects which may be caused by the proposed undertaking in terms of land use, alterations to the ecosystem, use of resources, and public health and safety.

7. *Irreversible and irretrievable commitments of resources.* Discuss, and quantify when possible, any irrevocable commitments of resources which would be involved in the implementation of the proposed undertaking.

7.1 *Land features and uses.* Discuss any permanent changes in land features and/or land use.

7.2 *Endangered species and ecosystems.* Assess the possibility of eliminating any endangered species or the loss or alteration of an ecosystem.

7.3 *Socioeconomic considerations.* Discuss probable indirect actions or undertakings (e.g., new highway systems or wastewater treatment facilities, housing developments, etc.) made economically feasible by the implementation of the proposed undertaking that would likely be triggered and would irrevocably commit other resources. Identify the destruction of any historical, archeological, or scenic areas.

7.4 *Resources lost or uses preempted.* Analyze the extent to which the proposed undertaking would curtail the range of beneficial uses of the environment. Determine whether, considering presently known technology, the proposed use of resources or any resource extraction method would contaminate other associated resources or foreclose their usage.

7.5 *Finite resources.* Indicate the irreversible and/or irretrievable resources that would be committed as a result of the proposed undertaking, such as fossil fuels and construction materials.

8. *Alternatives to the proposed undertaking.* Discuss the range of alternative sites, facility designs, processes and/or operations that were considered in arriving at the proposed undertaking and the environmental impacts of each such alternative.

9. *Permits and compliance with other regulations and codes.*

[2] Carriers (e.g., ticks, mosquitoes, and rodents) of diseases.

[1] Duration of impacts: Short-term impacts and benefits generally are those which occur during the development and operation of an undertaking. Long-term productivity relates to an effect that remains many years (sometimes permanently), after the cause. As examples, strip mining without restoration and land inundation by reservoirs have obvious long-term effects.

9.1 *Permits.* Identify all necessary Federal, regional, State and local permits, licenses and certificates needed before the proposed undertaking can be completed, such as permits needed from State and local agencies for construction and waste discharges. Describe steps which have been taken to secure these permits and any additional efforts still required.

9.1.1 *Authorities consulted.* List all authorities consulted for obtaining permits, licenses, and certificates, including zoning approvals needed to comply with applicable statutes and regulations.

9.1.2 *Dates of approval.* Give dates of consultations and of any approvals received.

9.2 *Compliance with health and safety regulations and codes.* Identify all Federal, regional, State, and local safety and health regulations and codes which must be complied with in the construction, maintenance, and operation of the proposed undertaking. Also identify other health and safety standards and codes that will be complied with, such as underwriter codes and voluntary industry codes.

9.2.1 *Authorities consulted.* List all authorities and professional organizations consulted in identifying pertinent regulations and codes.

9.2.2 *Procedures to be followed.* Describe any specific procedures to steps that will be taken to assure compliance with each such regulation and code.

9.3 *Compliance with other regulations and codes.* Identify all other Federal, regional, State and local regulations and codes which must be complied with in the construction, maintenance, and operation of the proposed undertaking.

9.3.1 *Authorities consulted.* List all authorities and professional organizations consulted in identifying pertinent regulations and codes.

9.3.2 *Procedures to be followed.* Explain the specific procedures or steps that will be taken to assure compliance with each such regulation and code.

9.4 *Special cases.*

9.4.1 *Liquefied natural gas facilities.* Provide detailed design specifications for all facilities to be used for the liquefaction, transport, storage, and regasification of liquefied natural gas. Provide information on the flammability and flame resistance of all tank lining and insulation materials. Describe all construction, maintenance, and operational procedures with particular emphasis on procedures to protect public and worker safety and health. Identify and describe all pertinent safety regulations and codes and any revisions thereto including the Department of Transportation regulations issued by the Office of Pipeline Safety as amendment 192-10 (liquified natural gas systems) to Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards" and by the U.S. Coast Guard as 33 CFR 6.14-1 (safety measures for waterfront facilities and vessels in port), 33 CFR 124.14 (notice in advance of arrival of a vessel laden with a dangerous cargo), 33 CFR Part 126 (permits for handling of dangerous cargoes within or contiguous to waterfront facilities), and 46 CFR Subchapter D (regulations governing tank vessels). Describe detailed procedures that will be used to comply with these safety regulations and codes. Identify all Federal, regional, State, and local government agencies that have responsibilities for assuring compliance with these construction, maintenance, and operation regulations and codes. Describe safety reporting procedures, schedules, and recipients.

9.4.2 *Ancillary facilities.* Provide detailed design specifications for all ancillary facilities, owned and operated either by the applicant or other parties, which will be constructed or operated in relation to the proposed undertaking, such as processing plants and docking facilities. Describe all construction, maintenance, and operational procedures with particular emphasis on procedures to protect public and worker safety and health. Identify and describe all pertinent safety regulations and codes and describe detailed procedures that will be used to comply with these safety regulations and codes. Identify all Federal, regional, State, and local government agencies that have responsibilities for assuring compliance with these construction, maintenance, and operation regulations and codes. Describe safety reporting procedures, schedules, and recipients.

10. *Source of information.*

10.1 *Public hearings.* Describe any public hearings or meetings held, summarize the general tenor of public comments with the proportions of proponents to those in dissent, and include any public records resulting from these meetings. Include a description of the manner in which the public was informed of the time and place of the hearings. Fully discuss efforts made for seeking constructive inputs from affected people and how their concerns were accommodated.

10.2 *Other sources.* Identify all other sources of information utilized in the preparation of the environmental report, including:

10.2.1 *Meetings with governmental and other entities.* List meetings held with Federal, regional, State, and local planning, commerce, regulatory, environmental and conservation entities, the subjects discussed (e.g., recreation, fish, wildlife, aesthetics, other natural resources, and values of the area, and economic development), and any environmental conclusions reached as a result of the meetings.

10.2.2 *Studies conducted.* Identify the studies conducted, including those by consultants, the general nature and major findings of those studies, and the title and availability of any reports thereon.

10.2.3 *Consultants.* Give the names, addresses, and professional vitae of all consultants who contributed to the environmental report.

10.2.4 *Bibliography.* Provide a bibliography of the books, other publications, reports, documents, maps, and aerial photographs consulted for background information, including county land use and other planning reports. Indicate by some method, as by asterisks or numbers, those bibliographic references specifically cited in the environmental report.

10.3 *Provide copies of supportive reports.* Supply at least a single copy of all technical reports prepared in conjunction with the preparation of the environmental report, such as model, heat budget, plankton, fish, and benthic sampling studies.

[FR Doc. 78-4524 Filed 2-17-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

[12 CFR Chapter II]

COMPTROLLER OF THE CURRENCY

[12 CFR Chapter I]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Chapter III]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Chapter V]

[FRB Docket No. R-0139]

COMMUNITY REINVESTMENT ACT OF 1977

Regional Hearings

AGENCY: Federal Reserve Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Federal Home Loan Bank Board.

ACTION: Notice of regional hearings.

SUMMARY: The Community Reinvestment Act of 1977 (the "CRA") requires each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions. The financial supervisory agencies announced, in a notice published in the FEDERAL REGISTER on January 25, 1978, a joint hearing to be held in Washington on March 15 and 16, 1978, to aid the agencies in the preparation of regulations prescribed by the CRA. This document announces the dates and addresses of additional regional hearings for the same purpose.

DATES AND ADDRESSES:

Hearing: March 20, 1978, 10 a.m.: Auditorium, Federal Reserve Bank of Boston, Boston, Mass.: Federal Deposit Insurance Corporation presiding.

Hearing: March 23, 1978, 10 a.m.: American Room, Peachtree Plaza Hotel, Atlanta, Ga.: Federal Reserve System presiding.

Hearing: March 27, 1978, 10 a.m.: Conference Room C, Fifth Floor, Federal Reserve Bank of Dallas, Dallas, Tex.: Federal Deposit Insurance Corporation presiding.

Hearing: April 5 and 6, 1978, 10 a.m.: Conference Room, Fifth Floor, Federal Reserve Bank of Chicago, Chicago, Ill. Comptroller of the Currency presiding.

Hearing: April 12 and 13, 1978, 10 a.m.: Ceremonial Courtroom, Federal Building, 450 Golden Gate Avenue, San Francisco, Calif.: Federal Home Loan Bank Board presiding.

Comments: Due on or before March 8, 1978: Send to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act; Proposed Guidelines

AGENCY: Department of Energy.

ACTION: Proposed guidelines for compliance with the National Environmental Policy Act.

SUMMARY: The proposed guidelines provide the supplemental agency procedures required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

The guidelines will be applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC), which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

The CEQ regulations, which were published in the Federal Register on November 29, 1978, become binding on Federal agencies as of July 30, 1979. Accordingly, DOE, at that time, will revoke the NEPA regulations of the predecessor agencies of DOE and adopt the proposed DOE guidelines on an interim basis pending publication in final form.

Written comments are requested with respect to the proposed DOE guidelines.

DATES: Comments must be received no later than August 20, 1979.

ADDRESSES: Send comments to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G–064, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G–064, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–252–6400. Stephen H. Greenleigh, Esq., Acting Assistant, General Counsel for Environment, Room 6G–087, Forrestal Building, Washington, D.C. 20586, 202–252–6947.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

A. *National Environmental Policy Act.*—The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies give appropriate weight to factors affecting the human environment during all stages of their decisionmaking process. In this connection, NEPA requires Federal agencies to prepare detailed statements on proposals for major Federal actions significantly affecting the quality of the human environment.

B. *Council on Environmental Quality NEPA Regulations.*—Executive Order 11991 (May 24, 1977) directed CEQ to issue regulations implementing the procedural provisions of NEPA. Accordingly, CEQ published final NEPA regulations on November 29, 1978, which become binding on all Federal agencies on July 30, 1979. The CEQ regulations (40 CFR Parts 1500–1508) require agencies to adopt implementing procedures, no later than July 30, 1979, to supplement the uniform procedures established by CEQ.

C. *Department of Energy NEPA Procedures.*—The guidelines proposed in this notice provide the supplemental implementing procedures required by 40 CFR 1507.3.

The guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. They are not intended, however, to create or enlarge any procedural or substantive rights against DOE. Any deviations from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

At the time the CEQ regulations become effective, July 30, 1979, DOE will revoke the NEPA regulations previously promulgated by the Energy Research and Development Administration (10 CFR Part 711) and the Federal Energy Administration (10 CFR Part 208) as well as the NEPA regulations of other predecessor agencies of DOE to the extent they had applied to functions transferred to DOE pursuant to the DOE Organization Act, and will adopt the proposed DOE guidelines on an iterim basis pending publication in final form.

D. *Consultation with CEQ.*—In accordance with 40 CFR 1507.3, DOE has consulted with CEQ in developing the proposed DOE guidelines.

II. THE PROPOSED GUIDELINES

A. *General.*—The implementing procedures proposed herein do not reiterate or paraphrase the CEQ provisions, in accordance with 40 CFR 1507.3, and, therefore, must be read and interpreted in conjuction with 40 CFR Parts 1500–1508.

The proposed guidelines will be applicable to all organizational elements of DOE, except FERC, an independent regulatory body within DOE.

B. *NEPA and Agency Planning.*—Section A of the guidelines generally parallels the structure of 40 CFR 1501 with respect to the integration of the NEPA process with other planning at the earliest possible time and the early identification of significant environmental issues.

In order to assure that the DOE NEPA process begins at the earlies possible time in applicant proceedings, paragraph A.1 provides procedures for the early submission of environmental information by applicants and early coordination and consultation with other governmental agencies and potentially interested parties.

Paragraph A.2 sets forth the process for determining if an environmental assessment (EA) or an environmental impact statement (EIS) is required to support a proposed DOE action. Typical classes of DOE actions which normally require an EIS, normally do not require either an EIS or an EA, and which normally require EA's but not necessarily EIS's are presented in Section D.

The DOE scoping process, which includes requirements for a Notice of Intent to prepare an EIS and an EIS implementation plan, among other things, is explained in paragraph A.3.

C. *NEPA and Agency Decisionmaking.*—Section B of the guidelines provides DOE procedures to implement the CEQ requirements with respect to agency decisionmaking (40 CFR Part 1505) to ensure that DOE decisions are made in accordance with the policies and purposes of NEPA. To comply with 40 CFR 1505.1(b), DOE has designated the major decisionmaking processes for its principal programs likely to have a significant effect on the human environment and included provisions to assure that the NEPA process corresponds with such decisionmaking processes.

Relevant environmental factors and alternatives to proposed DOE actions will be considered at the earliest possible time in the decisionmaking process. Where an EIS is prepared, the record of decision (40 CFR 1505.2) will be published in the Federal Register and made available upon request, except as provided in paragraph C.1 with respect to confidential or classified information.

D. *Other Requirements of NEPA.*—The CEQ regulations allow an agency to develop criteria for limiting public

access to NEPA documents which involve classified information. Paragraph C.1 provides DOE policy for addressing classified information as well as policy for addressing confidential information.

Procedures regarding DOE Modifications of the time periods specified in the CEQ regulations in certain limited circumstances are provided in paragraph C.2.

Paragraph C.3 identifies the NEPA Affairs Division within the Office of Environment as the point of contact for public inquiries regarding the DOE NEPA process. The Assistant Secretary for Environment, or his/her designee, shall be responsible for overall review of DOE NEPA compliance (paragraph C.4).

Paragraph C.5 provides that any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

E. *Terminology.*—The terminology established in the CEQ regulations (40 *CFR 1500.1) will be applied consistently* throughout the guidelines.

III. COMMENT PROCEDURES

Interested persons are invited to submit written comments with respect to the proposed guidelines to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G-064, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Compliance with the National Environmental Policy Act." Five (5) copies should be submitted. All comments and related information should be received by DOE August 20, 1979, in order to insure consideration.

Note.—In respect to Executive Order 12044, "Improving Government Regulations," DOE has determined that the proposed guidelines are "significant" but not "major" because the anticipated effects of the proposal if made final, would be primarily to provide internal guidance for the implementation of the Council of Environmental Quality (CEQ) regulations. They do not, therefore, require a regulatory analysis.

Issued in Washington, D.C., July 13, 1979.

Ruth C. Clusen,

Assistant Secretary for Environment.

DOE NEPA GUIDELINES

DOE NEPA GUIDELINES

Purpose

The purpose of these guidelines is to provide procedures which the Department of Energy (DOE) will apply to implement the Council on Environmental Quality (CEQ) regulations for compliance with the National Environmental Policy Act (NEPA). The CEQ regulations are codified at 40 CFR Parts 1500–1508. The guidelines are issued pursuant to and are to be used only in conjunction with the CEQ regulations.

The guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. They are not intended, however, to create or enlarge any procedural or substantive rights against DOE. Any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

DOE will, in accordance with 40 CFR 1507.3, review these guidelines on a continuing basis and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA. Substantive changes will be published in the Federal Register.

Section A—NEPA and Agency Planning

1. *Apply NEPA Early in the Process*

The CEQ regulations (40 CFR 1501.2) require that:

"Agencies shall integrate the NEPA process with other planning at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."

Specifically with respect to applicant processes, agencies are required to develop procedures that:

"(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

"(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

"(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

"(3) The Federal agency commences its NEPA process at the earliest possible time.

To implement these requirements:

(a) DOE will review preliminary internal program planning documents, regulatory agenda, draft legislation, budgetary materials and other developing DOE proposals, to ensure the proper integration of the NEPA process and will:

(1) Incorporate into its early planning processes a careful consideration of: (i) the potential environmental consequences of its proposed actions, and (ii) appropriate alternative courses of action;

(2) At the earliest possible time, in accordance with paragraph A.2 herein, determine whether an environmental assessment (EA) or an environmental impact statement (EIS) is required.

(b) Applicants for a DOE lease, permit, license, certificate, financial assistance, allocation, exemption or similar action should consult with DOE as early as possible in their planning processes to obtain guidance with respect to the appropriate level and scope of any studies or environmental information which DOE may require to be submitted as part or in support of their application.

(c) DOE expects applicants to: (1) Conduct studies which are deemed necessary and appropriate by DOE to determine the impact of the proposed action on the human environment;

(2) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during the preliminary planning stages of the proposed action to ensure that environmental factors including permitting requirements are identified;

(3) Submit applications for all required Federal, regional, State and local permits or approvals as early as possible;

(4) Notify DOE as early as possible of other Federal, regional, State, local and Indian tribe actions required for project completion in order that DOE may coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2, regarding elimination of

duplication with State and local procedures, as appropriate;

(5) Notify DOE of private persons and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2);

(6) Notify DOE if, prior to completion of the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction which may meet either of the criteria set forth at 40 CFR 1506.1(a).

(d) DOE will, upon receipt of an application, or earlier if possible, initiate and coordinate any requisite environmental analyses.

(e) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(f) For DOE programs that frequently involve another agency or agencies in related decisions subject to NEPA, DOE will cooperate with the other agencies in developing environmental information and in determining whether to prepare an EA or an EIS. Where appropriate and acceptable to the other agencies, DOE will develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

2. *Whether to Prepare an Environmental Impact Statement.*—The CEQ regulations (40 CFR 1501.4) require the Federal agency, in determining whether to prepare an EIS, to:

"(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

"(1) Normally requires an environmental impact statement, or

"(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion), and

"(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9)."

To implement this requirement and the requirements contained at 40 CFR 1507.3(b)(2):

(a) DOE has (in Section D), identified and developed specific criteria for those typical classes of DOE action:

"(i) Which normally do require environmental impact statements.

"(ii) Which normally do not require either an environmental impact statement or an environmental assessment [categorical exclusions (§ 1508.4)].

"(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(b) DOE will review individual proposed actions to ascertain whether an environmental assessment (EA) or EIS is required where:

(1) The proposed action is not encompassed within the categorizations of Section D,

(2) The proposed action is encompasssed within the categorizations of Section D, but DOE believes that the categorization is not appropriate to the individual proposed action.

(3) Public comment received on or relating to a proposal included within the categorizations of Section D raises a substantial question regarding the categorization.

(c) DOE will, in conducting the reviews of paragraph (b) above, either:

(1) Determine that neither an EA not EIS is required where it is clear that the proposed action is not a major Federal action significantly affecting the quality of the human environment. (In such cases, a brief memorandum may be prepared explaining the basis for that determination);

(2) Prepare an EA where it is unclear whether an EIS is required; or

(3) Proceed directly to EIS preparation where it is clear that an EIS is required.

(d) DOE may add actions to or remove actions from the categories in Section D, based on experience gained during implementation of the CEQ regulations and these guidelines.

3. *Scoping.*—The CEQ regulations [40 CFR 1501.7] require:

"an early and open process for determining the scope of issues to be addressed and for identifying the significant issued related to a proposed action."

(a) To implement this requirement, DOE will:

(1) As soon as practicable after a decision to prepare an EIS, publish in the Federal Register a Notice of Intent (NOI) to prepare an EIS in accordance with 40 CFR 1501.7. However, where DOE finds that there is a lengthy period between DOE's decision to prepare and EIS and the time of actual preparation, DOE may instead publish the NOI at a time sufficiently in advance of preparation of the draft EIS to provide reasonable opportunity for interested persons to participate in the EIS preparation process.

(2) Provide additional dissemination of the NOI in accordance with 40 CFR 1506.6;

(3) Through the NOI, invite comments and suggestions on the proposed scope of the EIS including environmental issues and alternatives for consideration in the preparation of the draft EIS and invite public participation in the NEPA process in accordance with 40 CFR 1501.7(a)(1), except where there is an exception for classified proposals pursuant to 40 CFR 1507.3(c) and paragraph C.1, herein. The comment period for the NOI will normally be 20 days. To the extent practicable, DOE may consider comments received after the close of the designated comment period on the NOI in preparing the draft EIS.

(4) Prepare and utilize an EIS implementation plan as described below.

(b) The EIS implementation plan will be a brief document providing guidance to DOE for the preparation of an EIS. It will contain:

(1) Information to address the provisions of 40 CFR 1501.7(a)(2), (3), (5), (6), and (7);

(2) A detailed outline of the EIS;

(3) A description of the means by which the EIS will be prepared, including the nature of any contractor assistance to be utilized.

(c) The EIS implementation plan may also contain:

(1) Target page limits for the EIS;

(2) Target time limits for EIS preparation;

(3) An allocation of assignments among DOE and cooperating agencies.

(d) DOE will complete an EIS implementation plan as soon as practicable after the close of the designated comment period on the NOI or after a scoping meeting, if one is held, whichever is later. DOE may revise the implementation plan, as necessary during EIS preparation.

4. *Supplemental Statements.*—(a) If required, DOE will prepare, circulate, and file a supplement to a draft or final EIS, in accordance with 40 CFR 1502.9(c). However, where it is unclear whether an EIS supplement is required, DOE will prepare an analysis which provides sufficient information to support a DOE determination with respect to the criteria of 40 CFR 1502.9(c) (i) and (ii). Based on the analysis, DOE will determine whether to prepare an EIS supplement. Where DOE determines that an EIS supplement is not required, DOE will prepare a brief memorandum which explains the basis for the determination.

(b) When applicable, DOE will incorporate an EIS supplement or a brief memorandum and supporting analysis into any related formal administrative

record prior to making a final decision on the action which is the subject of the EIS supplement or analysis.

Section B—NEPA and Agency Decisionmaking

1. *DOE Decisionmaking Procedures.*—The CEQ NEPA regulations (40 CFR 1505.1) require that agencies adopt procedures to ensure that decisions are made in accordance with the policies and purposes of NEPA.

To implement this CEQ requirement, this section designates the major decisionmaking processes for DOE's principal programs and provides for procedures to assure that the NEPA process corresponds with the decisionmaking processes. These processes are designated as policy level decisionmaking, program level decisionmaking, and project level decisionmaking. The procedures consist of general procedures applicable to all DOE decisionmaking processes followed by additional procedures applicable to the specific decisionmaking processes. The decisionmaking structure designated herein is consistent with the CEQ tiering concept (40 CFR 1502.20), which provides for focusing on the actual issues ripe for decision and elminating repetitive discussions of the issues already decided. Accordingly, environmental documents prepared for policy level decisions will normally focus on broad issues and will provide the foundation for subsequent program and project environmental documents. Environomental documents prepared for program level decisions will normally focus on narrower issues than at the policy level and may summarize and incorporate by reference discussions contained in any relevant policy level environmental document but should not repeat the discussion of issues already decided at the policy level of decisionmaking. Similarly, environmental documents prepared for project level decisions will normally focus on issues specific to the proposed project and may summarize and incorporate by reference discussions contained in any broader environmental documents but should not repeat the dicussion of issues already decided at higher levels of decisionmaking.

(a) The following general procedures apply to all DOE decisionmaking processes. DOE will:

(1) At the earliest possible time in the decisionmaking process: (i) identify and evaluate environmental factors and appropriate alternative courses of action, and (ii) determine in accordance with paragraph A.2 herein the appropriate level of environmental review document required.

(2) Commence preparation of the relevant environmental document as close as possible to the time that DOE begins development of or is presented with a proposal (40 CFR 1508.23), and complete the document in advance of final decisionmaking.

(3) During the development and consideration of a proposal and the relevant environmental document, review other DOE planning and decisionmaking documents to ensure that alternatives (including the proposed action) to be considered by the decisionmaker are encompassed by the range of alternatives in the relevant environmental document.

(4) Circulate the relevant environmental document or summary thereof with the proposal and other decisionmaking documents through DOE's internal review processes to ensure that DOE officials use the environmental documents in making decisions and that the decisionmaker consider the alternatives described therein.

(5) Where an EIS is prepared, publish the record of decision (40 CFR 1505.2) in the Federal Register and make it available to the public upon request except as provided in paragraph C.1. For the purposes of 40 CFR 1506.1, the record of decision will be deemed issued upon signature by the appropriate DOE official.

(6) Utilize the tiering concept in accordance with 40 CFR 1502.20 and 1508.28 to the fullest extent practicable.

(b) The following procedures are applicable to the specific decisionmaking processes.

(1) *Policy level decisionmaking.*—At this level of decisionmaking, DOE is deciding on broad strategies to achieve energy goals such as conservation, development of new resources and use of more abundant resources. Policy level decisions may, for example, be represented by proposals for legislation or by formal statements of national energy policy.

(i) For legislative proposals, DOE will: identify and evaluate relevant environmental issues and reasonable alternatives, and make a determination regarding the need to prepare an environmental document during the proposal formulation and early drafting stages; and, normally prepare, consider, and publish any required environmental document in connection with the submittal of a proposal to Congress, except as may be provided in 40 CFR 1506.8.

(ii) For formal statements of national energy policy DOE will: initiate implementation of the applicable general procedures specified in paragraph (a) above during the analysis phase of policy development; and will prepare, consider, and publish any required environmental document in advance of policy adoption for those policies that will result in or substantially alter DOE programs.

(2) *Program level decisionmaking.*—At this level of decisionmaking, DOE is deciding on a variety of approaches to implement specific policies or statutory authorities. Program level decisions are generally represented by the advancement of an energy technology program, the issuance of program regulations, or the adoption of a program plan.

(i) For energy technology research, development, demonstration and commercialization programs, DOE will: initiate the applicable general procedures in paragraph (a) above concurrent with program initiation; and, if required, prepare the relevant environmental document when environmental effects can be meaningfully evaluated. When required, the relevant environmental document would normally be prepared to support a decision to proceed with the development phase of a research, development, demonstration, and commercialization program. Nevertheless, DOE will consider the following factors throughout the program in determining the necessity and appropriate timing of the relevant environmental document: (a) The significance of the environmental impacts of the technology, if applied, on the quality of the human environment; and (b) The extent to which continued investment in the new technology is likely to cause the program to reach a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(ii) For programs that are implemented by regulations, DOE will initiate implementation of the applicable general procedures in paragraph (a) above during early regulation drafting stages. Publication of a draft EIS, if required will normally accompany publication of the proposed regulations and will be available for public comment at any hearings held on the proposed regulations. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking intended to gather information during early stages of regulation development. The relevant environmental document,

with comments and responses, will be included in the administrative record. In accordance with 40 CFR 1506.10(b)(2), final rulemakings promulgated pursuant to the Administrative Procedure Act may be issued simultaneously with publication of the notice of the availability of the final EIS.

(iii) For programs that are not included in paragraphs (i) or (ii), and that are implemented by a formal program plan, DOE will: initiate implementation of the applicable general procedures specified in paragraph (a) above concurrent with program plan formulation; and, if required, prepare the relevant environmental document when the environmental effects of the program can be meaningfully evaluated. If an EIS is required, it will be prepared, considered, and published and the requisite record of decision issued before taking an action that would have an adverse environmental impact or limit the choice of reasonable alternatives except as provided in 40 CFR 1506.1(c).

(3) *Project level decisionmaking.*—At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval of projects, by the approval or disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(i) For projects that are undertaken by DOE, DOE will: initiate implementation of the applicable general procedures specified in paragraph (a) above concurrent with project concept development; and, if required, prepare, consider, and publish the relevant environmental document before making a go/no-go decision on the project.

If a DOE project requires preparation of an EIS, DOE will not take an action concerning the project which would have an adverse environmental effect or which would limit the choice of reasonable alternatives until the required record of decision is issued.

In addition, where DOE projects are accomplished through procurement contracts, DOE will consider environmental qualification and, where appropriate, evaluation criteria along with economic and technical factors in the procurement process.

(ii) For projects that involve applications to DOE for financial assistance or applications to DOE for a permit, license, exemption, allocation or similar regulatory action involving informal administrative proceedings, DOE will: apply NEPA early in the process in accordance with 40 CFR 1501.2(d) and paragraph A.1 herein; commence preparation of the relevant environmental document, if required, no later than immediately after applications are received; and consider the relevant environmental document, if one is prepared, in decisions on the application.

(iii) For actions that involve adjudicatory proceedings, DOE will: normally prepare, consider and publish the relevant environmental document, if required, in advance of a decision, and include the document in the formal record of the proceedings. If an EIS is required, the draft EIS will normally precede preliminary staff recommendations and publication of the final EIS will normally precede final staff recommendations and that portion of the public hearing related to the EIS. The EIS need not precede preliminary hearings designed to gather information for use in the EIS.

Section C—Other Requirements of NEPA

1. *Access to NEPA Documents.*—The CEQ NEPA regulations (40 CFR 1507.3(c)) allow an agency to develop criteria for limiting public access to environmental documents which involve classified information. This section provides the DOE policy for addressing classified information as well as policy for addressing confidential information.

Classified or confidential information is exempted from mandatory public disclosure by § 552(b) of the Freedom of Information Act (FOIA) (5 U.S.C. 552) and § 1004.10(b) of DOE's regulations implementing FOIA (10 CFR Part 1004). Public access to such information will be restricted in accordance with such regulations and applicable statutes.

Except for the limited classes of documents containing information which meets the criteria set forth in the applicable statutes and regulations, all NEPA documents, as defined at 40 CFR 1508.10, the EIS implementation plan and the record of decision are subject to the mandatory public disclosure requirements of FOIA and the DOE regulations implementing FOIA. DOE will determine the treatment of documents containing classified or confidential information on a case by case basis in accordance with the requirements of DOE's FOIA regulations and the applicable statutes.

Wherever possible, the fundamental policy of full disclosure of NEPA documents will be followed. In some cases, this will mean that classified or confidential information may be excised, prepared as an appendix, or otherwise segregated to allow the release of the non-sensitive portions of a document.

2. *Revisions of Time Periods.*—The CEQ regulations (40 CFR 1507.3(d)) allow agencies to provide for periods of time other than those presented in 40 CFR 1506.10 when necessary to comply with other specific statutory requirement.

(a) Certain circumstances, such as statutory or Executive Order deadlines, may require that the periods established in 40 CFR 1506.10 for the time of DOE NEPA actions be altered. If DOE determines that, in order to comply with specific requirements of other statutes or Executive Orders, such revisions are necessary, a notice of the determination will be published in the Federal Register. This notice will briefly provide the reason for such alterations and contain information on the revised time periods. Related notices of substantive action, if applicable, may be published jointly with notices published pursuant to this paragraph.

3. *Status of NEPA Actions.*—Individuals or organizations desiring information or status reports on elements of the NEPA process should address their inquiries to: NEPA Affairs Division, Office of Environment, Department of Energy, Washington, D.C. 20585.

4. *Oversight of Agency NEPA Activities.*—The Assistant Secretary for Environment, or his/her designee, will be responsible for overall review of DOE NEPA compliance.

5. *Compliance.*—These guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. Any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

BILLING CODE 6450-01-M

SECTION D - TYPICAL CLASSES OF ACTION

normally do not require either EAs or EISs.	normally require EAs but not necessarily EISs	normally require EISs
Classes of actions generally applicable to all of DOE		
Administrative procurements (e.g., general supplies)	DOE actions which enable or result in engineering development activities, i.e., detailed design, development and test of energy system prototypes.	DOE actions which are expected to result in the construction and operation of a full-scale energy system project.
Contracts for personal services	DOE actions which provide grants to state or local governments for energy conservation programs.	DOE actions which promote energy conservation through regulation of energy use on a substantial scale.
Personnel actions		
Reports or recommendations on legislation or proposed rulemaking which was not initiated by DOE		
Compliance actions, including investigations, conferences, hearings, notices of probable violations and remedial orders		
Interpretations and rulings, or modification or rescissions thereof		
Promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended.		
Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program		
Information gathering, analysis, and dissemination		
Actions in the nature of conceptual design or feasibility studies		
Actions involving routine maintenance of DOE-owned or operated facilities.		

normally do not require either EAs or EIS	normally require EAs but not necessarily EISs	normally require EISs
Actions in the nature of analytic energy supply/demand studies which do not result in a DOE report or recommendation on legislation or other DOE proposal		
Adjustments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued pursuant to the Emergency Petroleum Allocation Act, as amended.		
Rate increases for products or services marketed by DOE and approval of rate increases for non-DOE entities which do not exceed the rate of inflation in the period since the last rate increase		
Actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid.		

Classes of actions applicable to licenses to import/export natural gas pursuant to Section 3 of the Natural Gas Act

Approval/disapproval of a new license or an amendment to an existing license which does not involve new construction, but which requires operational changes which may or may not be significant, such as an increase in LNG throughput, change in transportation or storage operations	Approval/disapproval of applications involving the construction of new liquid natural gas terminal, regasification or storage facilities or a significant expansion of an existing LNG terminal, regasification or storage facility Approval/disapproval of an application involving a significant operational change such as a major increase in the quantity of LNG imported or exported

normally do not require either EAs or EISs	normally require EAs but not necessarily EISs	normally require EISs

Classes of actions applicable to Propane Allocation Program

Assignments and allocations of propane to retail and wholesale outlets for commercial and residential use	Assignments and allocations of propane to gas utilities for peak shaving, Btu enrichment or supplemental gas supplies involving new construction or a substantial change in operations or potential impact on competing users of propane.	
Assignments and allocations of propane to gas utilities for peak shaving or Btu enrichment which do not involve new construction or a substantial change in operation and where DOE has determined that such actions will not impact the supplies available for competing uses.	New assignments and allocations of propane feedstock to enable operation of or increases in operation of petrochemical plants.	
	Changes in regulatory status such as the decontrol of propane.	

Classes of actions applicable to Synthetic Natural Gas (SNG) Feedstock Allocation Program

Approval/disapproval of an application for supplier assignment and feedstock allocation which involves continuation of SNG production at historical levels, and where DOE has determined that the requested assignment will not adversely impact competing users due to the projected availability of supply.	Issuance of an Order which reduces SNG production below historical levels and where the probability of fuel switching or other impacts caused by the reduction is unknown.	Approval/disapproval of an application for supplier assignment and feedstock allocation which involves the construction of a new SNG plant or a major modification at an existing plant.
	Issuance of an Order for an existing plant which increases the SNG production above historical levels.	Issuance of an Order which significantly reduces the feedstock allocation to an existing plant in cases where the gas supply/demand outlook indicates significant fuel switching or economic hardship may occur as a result of the curtailment of SNG feedstock.

normally do not require either EAs or EISs	normally require EAs but not necessarily EISs	normally require EISs

Classes of actions applicable to International Activities

Approval of DOE participation in international "umbrella" agreements for cooperation in energy R&D which do not commit the U.S. to any specific projects or activities.

Approval of technical exchange arrangements for information, data or personnel with other countries or international organization.

Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options.

Approval of export of small quantities of special nuclear materials or isotopic material in accordance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (Federal Register, Part VII, June 9, 1978).

Classes of actions applicable to Power Marketing Authorities (PMA)

normally do not require either EAs or EISs	normally require EAs but not necessarily EISs	normally require EISs
Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area.	Upgrading (reconstructing or reconductoring) an existing transmission line. Construction of new service facilities such as tap lines and substations. Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area. Annual vegetation management program (systemwide). Rate increases; the need for an EIS will normally depend on the size of the increase, the percentage of demand in the service area that the PMA supplies, the relative prices between PMA supplied power and other sources, the level of any induced switching of fuels, and particular customer uses, where identifiable.	Main Transmission System Additions - additions of new transmission lines, main grid substations and switching stations to PMA's main transmission grid. Integrating Transmission Facilities - transmission system additions for integrating new sources of generation into PMA's main grid.

normally do not require either EAs or EISs	normally require FAs but not necessarily EISs.	normally require EISs
Classes of actions generally applicable to Nuclear Waste Management Program		
	Exploratory and site characterization activities which by virtue of resource commitment or elapsed time for completion may foreclose reasonable site alternatives.	DOE actions resulting in the site selection, construction or operation of major storage and/or disposal of nuclear waste, and/or spent nuclear fuel.
	Land acquisition activities solely for the purposes of reserving possible candidate sites and which do not prejudice future programmatic site selection decision.	

normally do not require either EAs or EIS	normally require EAs but not necessarily EISs	normally require EISs

Classes of actions generally applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA)

The grant or denial of any temporary exemption for any electric powerplant or major fuel-burning installation

The grant or denial of any permanent exemption for any existing electric powerplant or major fuel-burning installation, other than an exemption — (1) under section 312(c), relating to cogeneration; (2) under section 312(l), relating to scheduled equipment outages; (3) under section 312(b), relating to certain State or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants

[FR Doc. 79-22443 Filed 7-17-79; 11:27 am]
BILLING CODE 6450-01-C

DEPARTMENT OF ENERGY

10 CFR Parts 208, 711, 1021

Compliance With the National Environmental Policy Act

AGENCY: Department of Energy.

ACTION: Notice of Final Rulemaking.

SUMMARY: The Department of Energy (DOE) hereby announces the establishment of Part 1021 of Chapter X of Title 10 of the Code of Federal Regulations, providing for the adoption of the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

EFFECTIVE DATE: July 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G–064, Forrestal Building, Washington, D.C. 20585, 202–252–4600.

Mr. Stephen H. Greenleigh, Esq., Acting Assistant, General Counsel for Environment, Room 6G–087, Forrestal Building, Washington, D.C. 20585, 202–252–6947.

SUPPLEMENTARY INFORMATION: The CEQ regulations, which were published in the Federal Register on November 29, 1978 (43 FR 55978), effectively replace the NEPA regulations of the predecessor agencies of DOE. Accordingly, DOE will by this rule adopt the CEQ regulations and revoke the NEPA regulations previously promulgated by its two predecessor agencies, the Energy Research and Development Administration (10 CFR Part 711) and the Federal Energy Administration (10 CFR Part 208) as well as the NEPA regulations of other predecessor agencies of DOE to the extent they had applied to functions transferred to DOE pursuant to the DOE Organization Act. Also, this rule supersedes and replaces the proposed NEPA regulations previously published by DOE in the Federal Register on February 21, 1978 (43 FR 7232).

The CEQ regulations, which become binding on Federal agencies as of July 30, 1979, require each Federal agency to adopt implementing procedures to supplement the regulations. DOE published proposed procedures implementing CEQ NEPA regulations in the Federal Register on July 18, 1979 (44 FR 42136), and will operate under these proposed procedures during the time between July 30, 1979, and DOE adoption of final procedures.

Note.—With respect to Executive Order 12044, "Improving Government Regulations", DOE has determined that this final rulemaking is a nonsignificant regulation because it is procedural in nature and is not expected to affect important policy concerns. Therefore, a regulatory analysis has not been prepared.

Issued in Washington, D.C., July 31, 1979.

Ruth C. Clusen,

Assistant Secretary for Environment.

PART 208—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT [REVOKED]

PART 711—GUIDELINES FOR ENVIRONMENTAL REVIEW [REVOKED]

In consideration of the above, the Department of Energy hereby revokes 10 CFR Parts 208 and 711 and adds a new Part 1021 to read as follows:

PART 1021—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

Authority: National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

§ 1021.1. Background.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Parts 1500–1508) on November 29, 1978.

§ 1021.2. Adoption of CEQ Regulations.

The Department of Energy (DOE) hereby adopts the CEQ regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508).

§ 1021.3. Revocation of Previous NEPA Regulations.

DOE hereby revokes the NEPA regulations previously promulgated by the Energy Research and Development Administration (10 CFR Part 711) and the Federal Energy Administration (10 CFR Part 208) as well as the NEPA regulations of other predecessor agencies of DOE to the extent they had applied to functions transferred to DOE pursuant to the DOE Organization Act.

§ 1021.4. Applicability.

This part applies to all organizational elements of DOE, except the Federal Energy Regulatory Commission.

§ 1021.5. Effective Date.

The effective date of these regulations is July 30, 1979.

[FR Doc. 79-24259 Filed 8-3-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79–SO–49; Amdt. No. 39–3524]

Airworthiness Directives: Gulfstream American Corp.; Models AA–5 Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection and modification of the aileron system and deactivation of any installed autopilot system on certain Gulfstream American Corporation (GAC) Models AA–5, AA–5A, and AA–5B aircraft. The AD is needed to eliminate aileron oscillations which could possibly result in loss of control of the aircraft.

DATES: Effective August 10, 1979. Compliance required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable GAC Service Bulletin and Service Kit may be obtained from Gulfstream American Corporation, P.O. Box 2206, Savannah, Georgia 31402. A copy of the Service Bulletin and Service Kit are also contained in Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Engineering and Manufacturing Branch,

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act; Final Guidelines

AGENCY: Department of Energy.

ACTION: Final guidelines for compliance with the National Environmental Policy Act.

SUMMARY: The Department of Energy (DOE) hereby adopts final guidelines for implementing the procedural provisions of the National Environmental Policy Act (NEPA) as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508). The guidelines published herein reflect certain revisions to the proposed guidelines, published in the **Federal Register** on July 18, 1979 (44 FR 42136), based upon DOE's consideration of comments and upon experience under the CEQ regulations and the proposed guidelines.

The guidelines are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC) which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

EFFECTIVE DATE: March 28, 1980.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G–064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252–4600.

Stephen H. Greenleigh, Esq., Assistant, General Counsel for Environment, Room 6D–033, Forrestal Building, Washington, D.C. 20585 (202) 252–6947.

SUPPLEMENTARY INFORMATION:

I. Background

The final guidelines published herein provide the supplemental implementing procedures required by the CEQ regulations. DOE published proposed guidelines in the **Federal Register** on July 18, 1979 (44 FR 42136), and established August 20, 1979, as the close of the public comment period. DOE has operated under the proposed guidelines since the time of publication.

On August 6, 1979, DOE announced in the **Federal Register** (44 FR 45918) the establishment of Part 1021 of Chapter X of Title 10 of the Code of Federal Regulations. That rulemaking provided for DOE adoption of the CEQ regulations and the revocation of the NEPA regulations of predecessor agencies of DOE. The effective date of the rulemaking was July 30, 1979.

II. Comments Received and DOE Response

Written comments were received from the Environmental Protection Agency (EPA), the Advisory Council on Historic Preservation (ACHP), and four private organizations. DOE has carefully considered all comments received and has modified the proposed guidelines, as appropriate, to assure that the final guidelines represent sound NEPA procedures.

A. EPA Comments

The EPA suggested that DOE promulgate its procedures as regulations rather than guidelines to give the procedures greater legal authority. DOE considered issuing regulations but decided, instead, to issue guidelines. This decision was based on the advice of CEQ staff and on the belief that guidelines would ensure flexibility.

The EPA also suggested adding sections to the guidelines to provide for monitoring mitigation measures and for the filing of EIS's. DOE considered these suggestions but concluded that the CEQ regulations adequately establish the requirements for monitoring mitigation measures (40 CFR 1505.2(c)) and for filing DIS's (40 CFR 1506.9).

B. ACHP Comment

The ACHP suggested adding a section to the guidelines which would detail the manner in which DOE's National Historic Presevation Act (NHPA) responsibilities will be coordinated with its NEPA responsibilities. DOE recognizes the benefits of coordinating the requirements of other environmental statutes such as the NHPA with those of NEPA, and has supplemented the CEQ requirements contained at 40 CFR 1502.25 by adding general procedures under Paragraph C.4 for coordination with environmental review requirements of other environmental statutes. DOE believes that these general procedures, in conjunction with the ACHP's regulations, 36 CFR 800, will facilitate the coordination of NEPA and NHPA requirements.

C. Other Comments

1. *Section A—NEPA and Agency Planning.* Paragraphs 1.(c)(4) and (5) of the proposed guidelines indicated that DOE expects applicants to notify DOE of other governmental actions required for project completion and of parties interested in the proposed undertaking. One commenter asserted that DOE should have the responsibility for such activities. The purpose of these paragraphs was to provide guidance to applicants for cases where actions are planned before DOE actually receives an application. In such cases, applicants, and generally not DOE, have the information necessary to determine the applicability of other environmental requirements and to identify interested parties. These efforts by applicants early in their planning process will facilitate coordination and thereby help avoid duplication and delays. Accordingly, and with the exception of some minor format changes, DOE has not changed its advice to applicants.

The same commenter suggested that the role of an applicant who is required to file a Fuels Decision Report under the Fuel Use Act (FUA) should be specified in the NEPA Guidelines. DOE published guidelines in the **Federal Register** on November 5, 1979 (44 FR 63740), for the preparation of the environmental analysis chapter of a Fuels Decision Report. The role of a FUA applicant is specifically outlined by the FUA guidelines and the NEPA guidelines.

The same commenter also asserted the necessity of establishing specified time frames for the NEPA process. DOE recognizes the benefits of setting time limits for the NEPA process and has repeated for emphasis the CEQ regulations contained at 40 CFR 1501.8 by adding a requirement under applicant processes which provides that DOE establish time limits for the NEPA process when requested to do so by an applicant.

2. *Section B—NEPA and Agency Decisionmaking.* Paragraph 1(b)(2)(i) of the proposed guidelines established factors that DOE would consider in determining the necessity and appropriate timing of a NEPA document for energy technology research, development, demonstration, and commercialization programs. One commenter was concerned that the factors did not include the likelihood that the technology will prove to be commercially feasible. DOE believes that this factor is reflected in the broader factor already in the guidelines which reads "The extent to which continued investment in the new technology is likely to cause the program to reach a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives."

3. *Section C—Other Requirements of NEPA.* One commenter requested that future revisions to the guidelines be published in the **Federal Register** for comment. DOE agrees that substantive changes to the guidelines should be published for comment and has added appropriate requirements under Paragraph C.8.

4. *Section D—Typical Classes of Action.* One commenter questioned the application of NEPA to DOE's action on an exemption petition for a combustion turbine under the Fuel Use Act (FUA), on the basis that the issuance of permits under the Clean Air Act is exempted in section 7(c)(1) of the Energy Supply and Environmental Coordination Act from NEPA. That exemption from NEPA applies only to actions taken under authority of the Clean Air Act and not to actions taken by other agencies under such other authorities as FUA.

Other commenters also questioned the application of NEPA to action on an exemption petition for a peakload powerplant, on the grounds that the exemption is non-discretionary and suggested the need for categorizing FUA exemption actions in Section D of the DOE NEPA guidelines. DOE is asssessing the general applicability of NEPA to specific FUA exemptions, as well as the need for categorizing, FUA exemption actions in Section D. Appropriate public notice and opportunity for comment will be provided on these matters as DOE gains additional experience with FUA implementation and before DOE adoption of additional categorizations in Section D for FUA exemptions.

D. Comments Beyond Scope

One set of comments was received that is beyond the scope of the guidelines. The comments included:

(1) DOE should place energy above the environment in assessing planned departmental actions.

(2) DOE's policy should include requiring substantiation and objective documentation of any EPA study which would potentially affect energy supplies.

III. Other Revisions to the Guidelines

In addition to revisions made in response to comments, DOE has also revised the guidelines as a result of experience under the CEQ regulations and DOE's proposed guidelines.

A. Format, Wording and Paragraph Arrangement

Several minor changes were made to improve continuity and clarity and to facilitate referencing specific sections of the guidelines.

B. Section A—NEPA and Agency Planning

Paragraph A.4. (d) was added to establish an adequate notice period with respect to scoping meetings.

C. Section B—NEPA and Agency Decisionmaking

Under project level decisionmaking, DOE has added Paragraph B.3. (c)(2) to provide for major system acquisition projects involving the competitive procurement of a site and/or process. The competitive procurement process has confidentiality requirements established pursuant to 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information. Accordingly, DOE has established, pursuant to the provisions of 40 CFR 1507.3(b), special procedures to provide for compliance with NEPA to the fullest extent possible. The environmental impact analysis required by the special procedures will ensure consideration of environmental factors in selection decisions between competing sites and/or processes. If selected sites and/or processes are likely to have significant effects on the quality of the human environment, the special procedures provide that DOE will prepare an EIS before making a go/no-go decision.

Upon publication, DOE will operate under the special procedures on an interim basis. However, because these procedues represent a substatnive revision to the previously proposed guidelines, DOE affirmatively solicits pubic comments on them and will make appropriate modifications before final adoption of Paragraph B.3. (c)(2). Interested persons are invited to submit written comments with respect to these procedures to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G-064, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585. To ensure consideration, comments should be received by DOE no later than 30 days after publication of the special procedures in the **Federal Register.**

D. Section D—Typical Classes of Action

Two minor changes, both involving rate increases, have been made in this section. The addition of rate increases exceeding the rate of inflation as a typical class of action normally requiring an EA and generally applicable to all of DOE is the logical counterpart to the categorical exclusion for rate increases not exceeding the rate of inflation. Since this addition is applicable to all of DOE, the rate increase typical class of action for Power Marketing Administrations has been deleted.

Issued in Washington, D.C., March 25, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

DOE NEPA GUIDELINES

DOE NEPA Guidelines

Purpose

The purpose of these guidelines is to provide procedures which the Department of Energy (DOE) will apply to implement the Council on Environmental Quality (CEQ) regulations for compliance with the National Environmental Policy Act (NEPA). The CEQ regulations are codified at 40 CFR Parts 1500–1508. The guidelines are issued pursuant to and are to be used only in conjunction with the CEQ regulations.

The guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. They are not intended, however, to create or enlarge any procedural or substantive rights against DOE. Any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

Section A—NEPA and Agency Planning

1. *DOE Process.* The CEQ regulations (40 CFR 1501.2) require that:

> Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays

later in the process, and to head off potential conflicts.

To implement this requirement DOE will:

(a) Review preliminary internal program planning documents, regulatory agenda, draft legislation, budgetary materials and other developing DOE proposals, to ensure the proper integration of the NEPA process;

(b) Incorporate into its early planning processes a careful consideration of: (i) the potential environmental consequences of its proposed actions, and (ii) appropriate alternative courses of action;

(c) At the earliest possible time, in accordance with paragraph A.3 herein, determine whether an environmental assessment (EA) or an environmental impact statement (EIS) is required.

2. *Applicant Processes.* With respect to applicant processes, the CEQ regulations (40 CFR 1501.2(d)) require agencies to:

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

To implement this requirement:

(a) Applicants for a DOE lease, permit, license, certificate, financial assistance, allocation, exemption or similar action are expected to:

(1) Consult with DOE as early as possible in their planning processes to obtain guidance with respect to the appropriate level and scope of any studies or environmental information which DOE may require to be submitted as part of or in support of their application;

(2) Conduct studies which are deemed necessary and appropriate by DOE to determine the impact of the proposed action on the quality of the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during the preliminary planning stages of the proposed action to ensure that environmental factors including permitting requirements are identified;

(4) Submit applications for all required Federal, regional, State and local permits or approvals as early as possible;

(5) Notify DOE as early as possible of other Federal, regional, State, local and Indian tribe actions required for project completion in order that DOE may coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2, regarding elimination of duplication with State and local procedures, as appropriate;

(6) Notify DOE of private persons and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2);

(7) Notify DOE if, prior to completion of the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction which may meet either of the criteria set forth at 40 CFR 1506.1(a).

(b) Upon receipt of an application, or earlier if possible, DOE will:

(1) Initiate and coordinate any requisite environmental analyses in accordance with the requirements set forth at 40 CFR 1506.5;

(2) Determine, in accordance with paragraph A.3 herein, whether an EA or an EIS is required; and

(3) Establish time limits for the NEPA Process when requested to do so by an applicant.

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(d) For DOE programs that frequently involve another agency or agencies in related decisions subject to NEPA, DOE will cooperate with the other agencies in developing environmental information and in determining whether to prepare an EA or an EIS. Where appropriate and acceptable to the other agencies, DOE will develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

3. *Whether to Prepare an Environmental Impact Statement.* The CEQ regulations (40 CFR 1501.4) require the Federal agency, in determining whether to prepare an EIS, to:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9).

To implement this requirement and the requirements contained at 40 CFR 1507.3(b)(2):

(a) DOE has (in Section D), identified typical classes of DOE action:

"(i) Which normally do require environmental impact statements.

"(ii) Which normally do not require either an environmental impact statement or an environmental assessment [categorical exclusions (§ 1508.4)].

"(iii) Which normally require environmental assessments but not necessarily environmental impact statements."

(b) DOE will review individual proposed actions to determine the appropriate level of NEPA documentation required where:

(1) The proposed action is not encompassed within the categories of Section D,

(2) The proposed action is encompassed within the categories of Section D, but DOE believes that the categorization is not appropriate to the individual proposed action.

(3) Public comment received on or relating to a proposal included within the categories of Section D raises a substantial question regarding the categorization.

(c) DOE will, in conducting the reviews of paragraph (b) above, either:

(1) Determine that neither an EA nor an EIS is required where it is clear that the proposed action is not a major Federal action significantly affecting the quality of the human environment. (In such cases, a brief memorandum may be prepared explaining the basis for that determination);

(2) Prepare an EA where it is unclear whether an EIS is required; or

(3) Proceed directly to EIS preparation where it is clear that an EIS is required.

(d) DOE may add actions to or remove actions from the categories in Section D based on experience gained during implementation of the CEQ regulations and these guidelines.

4. *Scoping.* The CEQ regulations (40 CFR 1501.7) require:

An early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.

To implement this requirement, DOE will:

(a) As soon as practicable after a decision to prepare an EIS, publish in the **Federal Register** a Notice of Intent (NOI) to prepare an EIS in accordance with 40 CFR 1501.7. However, where

DOE finds that there is a lengthy period between DOE's decision to prepare an EIS and the time of actual preparation, DOE may instead publish the NOI at a time sufficiently in advance of preparation of the draft EIS to provide reasonable opportunity for interested persons to participate in the EIS preparation process;

(b) Provide additional dissemination of the NOI in accordance with 40 CFR 1506.6;

(c) Through the NOI, invite comments and suggestions on the proposed scope of the EIS including environmental issues and alternatives for consideration in the preparation of the draft EIS and invite public participation in the NEPA process except where there is an exception for classified proposals pursuant to 40 CFR 1507.3(c) and paragraph C.1, herein. The comment period for the NOI will normally be 20 days. To the extent practicable, DOE may consider comments received after the close of the designated comment period on the NOI in preparing the draft EIS.

(d) If a scoping meeting is to be held, provide notice of the meeting in the NOI at least 15 days before the meeting.

(e) Prepare and use an EIS implementation plan to record the results of the scoping process and to provide guidance to DOE for the preparation of an EIS.

(1) The EIS implementation plan will be a brief document and will contain:

(i) Information to address the provisions of 40 CFR 1501.7(a)(2), (3), (5), (6), and (7);

(ii) A detailed outline of the EIS;

(iii) A description of the means by which the EIS will be prepared, including the nature of any contractor assistance to be used.

(2) The EIS implementation plan may also contain:

(i) Target page limits for the EIS;

(ii) Target time limits for EIS preparation;

(iii) An allocation of assignments among DOE and cooperating agencies.

(3) DOE will complete an EIS implementation plan as soon as practicable after the close of the designated comment period on the NOI or after a scoping meeting, if one is held, whichever is later.

(4) DOE may revise the implentation plan, as necessary during EIS preparation.

Section B—NEPA and Agency Decisionmaking

1. *DOE Decisionmaking.* The CEQ NEPA regulations (40 CFR 1505.1) require that agencies adopt procedures to ensure that decisions are made in accordance with the policies and purposes of NEPA.

To implement this CEQ requirement, this section designates the major decisonmaking processes for DOE's principal programs and provides procedures to assure that the NEPA process corresponds with the decisionmaking processes. These processes are designated as policy level decisionmaking, program level decisionmaking, and project level decisionmaking. The procedures consist of general procedures applicable to all DOE decisionmaking processes followed by specific procedures applicable to the individual decisionmaking processes.

The decisionmaking structure designated herein in consistent with the CEQ tiering concept (40 CFR 1502.20), which provides for focusing on the actual issues ripe for decision and eliminating repetitive discussions of the issues already decided. Accordingly, environmental documents prepared for policy level decisions will normally focus on broad issues and will provide the foundation for subsequent program and project environmental documents. Environmental documents prepared for program level decisions will normally focus on narrower issues than at the policy level and may summarize and incorporate by reference discussions contained in any relevant policy level environmental document but should not repeat the discussion of issues already decided at the policy level of decisionmaking. Similary, environmental documents propared for project level decisions will normally focus on issues specific to the proposed project and may summarize and incorporate by reference discussions contained in any broader environmental documents but should not repeat the discussion of issues decided at higher levels of decisionmaking.

(2) *General Procedures.*

(a) The following general procedures apply to all DOE decisionmaking processes. DOE will:

(1) At the earliest possible time in the decisionmaking process: (i) identify and evaluate environmental factors and appropriate alternative courses of action, and (ii) determine in accordance with paragraph A.3 herein the appropriate level of enviromental review document required.

(2) Commence preparation of the relevant environmental document as close as possible to the time that DOE begins development of or is presented with a proposal (40 CFR 1508.23), and complete the document in advance of final decisonmaking.

(3) During the development and consideration of a proposal and the relevant environmental document, review other DOE planning and decisionmaking documents to ensure that alterntives (including the proposed action) to be considered by the decisionmaker are encompassed by the range of alternatives in the relevant environmental document.

(4) Circulate the relevant environmental document or summary thereof with the proposal and other decisionmaking documents through DOE's internal review processes to ensure that DOE officials use the environmental documents in making decisions and that the decisionmaker consider the alternatives described therein.

(5) Where an EIS is prepared, publish the record of decision (40 CFR 1505.2) in the **Federal Register** and make it available to the public as specified in 40 CFR 1506.6 except as provided in paragraph C.1. For the purposes of 40 CFR 1506.1, the record of decision will be deemed issued upon signature by the appropriate DOE official.

(6) Utilize the tiering concept in accordance with 40 CFR 1502.20 and 1508.28 to the fullest extent practicable.

3. *Specific Procedures.*

(a) *Policy level decisionmaking.* At this level of decisionmaking, DOE is deciding on broad strategies to achieve energy goals such as conservation, development of new resources and use of more abundant resources. Policy level decisions may, for example, be representated by proposals for legislation or by formal statements of national energy policy.

(1) For legislative proposals, DOE will: identify and evaluate relevant environmental issues and reasonable alternatives, and make a determination regarding the need to prepare an environmental document during the proposal formulation and early drafting stages; and, normally prepare, consider, and publish any required environmental document in connection with the submittal of a proposal to Congress, except as may be provided in 40 CFR 1506.8.

(2) For formal statements of national energy policy DOE will: initiate implementation of the applicable general procedures specified above during the analysis phase of policy development; and will prepare, consider, and publish any required environmental document in advance of policy adoption for those policies that will result in or substantially alter DOE programs.

(b) *Program level decisionmaking.* At this level of decisionmaking, DOE is deciding on a variety of approaches to implement specific policies or statutory authorities. Program level decisions are

generally represented by the advancement of an energy technology program, the issuance of program regulations, or the adoption of a program plan.

(1) For energy technology research, development, demonstration and commercialization programs, DOE will: Initiate the applicable general procedures specified above concurrent with program initiation; and, if required, prepare the relevant environmental document when environmental effects can be meaningfully evaluated. When required, the relevant environmental document would normally be prepared in advance of a decision to proceed with the development phase of a research, development, demonstration, and commercialization program. Nevertheless, DOE will consider the following factors throughout the program in determining the necessity and appropriate timing of the relevant environmental document: (i) The significance of the environmental impacts of the technology, if applied, on the quality of the human environment; and (ii) The extent to which continued investment in the new technology is likely to cause the program to reach a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(2) For programs that are implemented by regulations, DOE will initiate implementation of the applicable general procedures specified above during early regulation drafting stages. Publication of a draft EIS, if required, will normally accompany publication of the proposed regulations and will be available for public comment at any hearings held on the proposed regulations. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking intended to gather information during early stages of regulation development. The relevant environmental document, with comments and responses, will be included in the administrative record. In accordance with 40 CFR 1506.10.(b)(2), final rulemakings promulgated pursuant to the Administrative Procedure Act may be issued simultaneously with publication of the notice of the availability of the final EIS.

(3) For programs that are not included in paragraphs (1) and (2) and that are implemented by a formal program plan, DOE will: initiate implementation of the applicable general procedures specified above concurrent with program plan formulation; and, if required, prepare the relevant environmental document when the environmental effects of the program can be meaningfully evaluated. If an EIS is required, it will be prepared, considered, and published and the requisite record of decision issued before taking an action that would have an adverse environmental impact or limit the choice of reasonable alternatives except as provided in 40 CFR 1506.1(c).

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval of projects, by the approval or disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) For projects that are undertaken directly by DOE, including projects involving the sole source procurement of a site and/or process, DOE will: initiate implementation of the applicable general procedures specified above concurrent with project concept development; and, if required, prepare, consider, and publish the relevant environmental document before making a go/no-go decision on the project. In addition, if a DOE project requires preparation of an EIS, DOE will not take an action concerning the project which would have an adverse environmental effect or which would limit the choice of reasonable alternatives until the required record of decision is issued.

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. (The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to that reasonably available to offerors.)

(ii) Independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential, or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the Environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly-available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500–1508 and in advance of a go/no-go decision.

(3) For projects that involve applications to DOE for financial

assistance or applications to DOE for a permit, license, exemption, allocation or similar regulatory action involving informal administrative proceedings, DOE will: apply NEPA early in the process in accordance with 40 CFR 1501.2(d) and paragraph A.2 herein; commence preparation of the relevant environmental document, if required, no later than immediately after applications are received and in accordance with the requirements set forth at 40 CFR 1506.5; and consider the relevant environmental document, if one is prepared, in decisions on the application.

(4) For actions that involve adjudicatory proceedings, excluding judicial or administrative, civil, or criminal enforcement actions, DOE will: normally prepare, consider and publish the relevant environmental document, if required, in advance of a decision, and include the document in the formal record of the proceedings. If an EIS is required, the draft EIS will normally precede preliminary staff recommendations, and publication of the final EIS will normally precede final staff recommendations and that portion of the public hearing related to the EIS. The EIS need not precede preliminary hearings designed to gather information for use in the EIS.

Section C—Other Requirements of NEPA

1. *Access to NEPA Documents.* The CEQ NEPA regulations (40 CFR 1507.3(c)) allow an agency to develop criteria for limiting public access to environmental documents which involve classified information. This section provides the DOE policy for addressing classified information as well as policy for addressing confidential information.

Classified or confidential information is exempted from mandatory public disclosure by § 552(b) of the Freedom of Information Act (FOIA) (5 U.S.C. 552), § 1004.10(b) of DOE's regulations implementing FOIA (10 CFR Part 1004), and 18 U.S.C. 1905. Public access to such information will be restricted in accordance with such regulations and applicable statutes.

All NEPA documents (as defined at 40 CFR 1508.10), the EIS implementation plan, and the record of decision are subject to the mandatory public disclosure requirements of FOIA and the DOE regulations implementing FOIA except documents which are determined, in accordance with the applicable statutes and regulations, to contain classified or confidential information. DOE will determine the treatment of documents containing classified or confidential information on a case by case basis in accordance with the requirements of DOE's FOIA regulations and the applicable statutes.

Wherever possible, the fundmental policy of full disclosure of NEPA documents will be followed. In some cases, this will mean that classified or confidential information may be excised, prepared as an appendix, or otherwise segregated to allow the release of the nonsensitive portions of a document.

2. *Supplemental Statements.* (a) If required, DOE will prepare, circulate, and file a supplement to a draft or final EIS, in accordance with 40 CFR 1502.9(c). However, where it is unclear whether an EIS supplement is required, DOE will prepare an analysis which provides sufficient information to support a DOE determination with respect to the criteria of 40 CFR 1502.9(c) (i) and (ii). Based on the anslysis, DOE will determine whether to prepare an EIS supplement. Where DOE determines that an EIS supplement is not required, DOE will prepare a brief memorandum which explains the basis for that determination.

(b) When applicable, DOE will incorporate an EIS supplement or a brief memorandum and supporting analysis into any related formal administrative record prior to making a final decision on the action which is the subject of the EIS supplement or analysis.

3. *Revisions of Time Periods.* The CEQ regulations (40 CFR 1507.3(d)), allow agencies to provide for periods of time other than those presented in 40 CFR 1506.10 when necessary to comply with other specific statutory requirements.

Certain circumstances, such as statutory deadlines, may require that the periods established in 40 CFR 1506.10 for the timing of DOE NEPA actions be altered. If DOE determines that, in order to comply with specific requirements of other statutes, such revisions are necessary, a notice of the determination will be published in the Federal Register. This notice will briefly provide the reason for such alterations and contain information on the revised time periods. Related notices of substantive action, if applicable, may be published jointly with notices published pursuant to this paragraph.

4. *Coordination With Other Environmental Laws.* The CEQ regulations (40 CFR 1502.25) provide for integrating the NEPA process and other environmental requirements.

To the fullest extent possible, DOE will:

(a) Coordinate NEPA compliance with other evnironmental review requirements including those under: the Clean Air Act, the Clean Water Act, the Coastal Zone Management Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Wild and Scenic Rivers Act, the National Historic Preservation Act, Section 13 of the Federal Nonnuclear Research and Development Act, the Marine Protection, Research and Sanctuaries Act, the Resource Conservation and Recovery Act, and other Acts, as deemed appropriate by DOE.

(b) Determine the applicability of other environmental requirements early in the planning process to ensure compliance and to avoid delays.

(c) In addition to the information required by 40 CFR 1502.25(b), include in draft and final EIS's plans and estimated schedules for compliance with other applicable environmental review requirements.

(d) Use the relevant NEPA document to support the fulfillment of the review and documentation requirements of other environmental statutes and regulations, and to report the status of compliance with these other environmental authorties.

5. *Status of NEPA Actions.* Individuals or organizations desiring information or status reports on elements of the NEPA process should address their inquiries to:

NEPA Affairs Division, Office of Environment, Department of Energy, 1000 Independence Avenue. S.W., Washington, D.C. 20585.

6. *Oversight of Agency NEPA Activities.* The Assistant Secretary for Environment, or his/her designee, will be responsible for overall review of DOE NEPA compliance.

7. *Compliance.* These guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. Any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

8. *Revisions to the Guidelines.* DOE will, in accordance with 40 CFR 1507.3, review these guidelines on a continuing basis and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA. Substantive changes will be published in the Federal Register and will be finally adopted only after an opportunity for public review.

Section D.—*Typical Classes of Action*

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
Classes of Actions Generally Applicable to All of DOE		
Administrative procurements (e.g., general supplies)	DOE actions which enable or result in engineering development activities, i.e., detailed design, development and test of energy system prototypes.	DOE actions which are expected to result in the construction and operation of a full-scale energy system project.
Contracts for personal services	DOE actions which provide grants to state or local governments for energy conservation programs.	DOE actions which promote energy conservation through regulation of energy use on a substantial scale.
Personnel actions		
Reports or recommendations on legislation or proposed rulemaking which was not initiated by DOE.		
Compliance actions, including investigations, conferences, hearings, notices of probable violations and remedial orders.		
Interpretations and rulings, or modification or rescissions thereof.		
Promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended.		
Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program.		
Information gathering, analysis, and dissemination		
Actions in the nature of conceptual design or feasibility studies.		
Actions involving routine maintenance of DOE-owned or operated facilities.		
Actions in the nature of analytic energy supply/demand studies which do not result in a DOE report or recommendation on legislation or other DOE proposal.		
Adjustments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued pursuant to the Emergency Petroleum Allocation Act, as amended.		
Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities, which do not exceed the rate of inflation in the period since the last rate increase.	Rate increases for provide products or services marketed by DOE and approval of rate increases for non-DOE entities which exceed the rate of inflation in the period since the last increase.	
Actions that are substantially the same as other actions for which the environmental actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid.		
Classes of Actions Applicable to Licenses to Import/Export Natural Gas Pursuant to Section 3 of the Natural Gas Act		
	Approval/disapproval of a new license or an amendment to an existing license which does not involve new construction, but which requires operational changes which may or may not be significant, such as an increase in LNG throughput, change in transportation or storage operations.	Approval/disapproval of applications involving the construction of new liquid natural gas terminal, regasification or storage facilities or a significant expansion of an existing LNG terminal, regasification or storage facility. Approval/disapproval of an application involving a significant operational change, such as a major increase in the quantity of LNG imported or exported.
Classes of Actions Applicable to Propane Allocation Program		
Assignments and allocations of propane to retail and wholesale outlets for commercial and residential use. Assignments and allocations of propane to gas utilities for peak shaving or Btu enrichment which do not involve new construction or a substantial change in operation and where DOE has determined that such actions will not impact the supplies available for competing uses.	Assignments and allocations of propane to gas utilities for peak shaving, Btu enrichment or supplemental gas supplies involving new construction or a substantial change in operations or potential impact on competing users of propane. New assignments and allocations of propane feedstock to enable operation of or increases in operation of petrochemical plants. Changes in regulatory status such as the decontrol of propane.	
Classes of Actions Applicable to Synthetic Natural Gas (SNG) Feedstock Allocation Program		
Approval/disapproval of an application for supplier assignment and feedstock allocation which involves continuation of SNG production at historical levels, and where DOE has determined that the requested assignment will not adversely impact competing users due to the projected availability of supply.	Issuance of an Order which reduces SNG production below historical levels and where the probability of fuel switching or other impacts caused by the reduction is unknown. Issuance of an Order for an existing plant which increases the SNG production above historical levels.	Approval/disapproval of an application for supplier assignment and feedstock allocation which involves the construction of a new SNG plant or a major modification at an existing plant. Issuance of an Order which significantly reduces the feedstock allocation to an existing plant in cases where the gas supply/demand outlook indicates significant fuel switching or economic hardship may occur as a result of the curtailment of SNG feedstock.

Section D.—*Typical Classes of Action—Continued*

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
Classes of Actions Applicable to International Activities		
Approval of DOE participation in international "umbrella" agreements for cooperation in energy R&D which do not commit the U.S. to any specific projects or activities.		
Approval of technical exchange arrangements for information, data or personnel with other countries or international organization.		
Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options.		
Approval of export of small quantities of special nuclear materials or isotopic material in accordance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (FEDERAL REGISTER, Part VII, June 9, 1978).		
Classes of Actions Applicable to Power Marketing Administrations (PMA)		
Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area.	Upgrading (reconstructing or reconductoring) an existing transmission line.	Main Transmission System Additions—additions of new transmission lines main grid substations and switching stations to PMA's main transmission grid.
	Construction of new service facilities such as tap lines and substations.	Integrating Transmission Facilities—transmission system additions for integrating new sources of generation into PMA's main grid
	Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area.	
	Annual vegetation management program (system-wide).	
Classes of Actions Generally Applicable to Nuclear Waste Management Program		
	Exploratory and site characterization activities which by virtue of resource commitment or elapsed time for completion may foreclose reasonable site alternatives.	DOE actions resulting in the site selection, construction, or operation of major storage and/or disposal of nuclear waste, and/or spent nuclear fuel.
	Land acquisition activities solely for the purposes of reserving possible candidate sites and which do not prejudice future programmatic site selection decision.	
Classes of Actions Generally Applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA)		
The grant or denial of any temporary exemption for any electric powerplant or major fuel-burning installation.		
The grant or denial of any permanent exemption for any existing electric powerplant or major fuel-burning installation, other than an exemption—(1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain State or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants.		

[FR Doc. 80-9422 Filed 3-27-80; 8:45 am]

BILLING CODE 6450-01-M

Headquarters, 1625 K Street N.W., Washington, D.C. An additional Coordinating Subcommittee meeting has also been tentatively scheduled for Friday, September 12, 1980, also at the NPC Headquarters.

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply, Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee. The tentative agendas of the meetings are as follows:

Agenda for the Refinery Capability Task Group meeting, Tuesday, August 19, 1980, beginning at 9:00 a.m.:

1. Review and approve summary minutes of the July 1, 1980 meeting of the Task Group.
2. Review and discuss progress of study groups A, B, and C.
3. Discuss plans for the final phase of the Refinery Flexibility report.
4. Discuss any other matters pertinent to the overall assignment of the Task Group.

Agenda for the Coordinating Subcommittee Meeting, to be conducted on either September 5 or September 12, 1980, beginning at 10:00 a.m.: [1]

1. Review and discuss the progress of the Refinery Capability Task Group.
2. Review and discuss the progress of the Oil Supply, Demand and Logistics Task Group.
3. Review and discuss introductory materials for the overall report on refinery flexibility.
4. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

All meetings are open to the public. The Chairmen of the Task Group and the Subcommittee are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with either the Task Group or the Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements at any of the meetings should inform Joan Walsh Cassedy, National Petroleum Council, (202) 393-6100, prior to the meeting, and provision will be made for their appearance on the respective agendas. Transcripts of the Coordinating Subcommittee meeting will be available for public review at the Freedom of Information Public Reading Room, Room 5B180, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 6, 1980.

Robert H. Lawton,

Acting Deputy Assistant Secretary for Resource Development and Operations.

[FR Doc. 80-24118 Filed 8-8-80; 8:45 am]
BILLING CODE 6450-01-M

[1] Note.—Interested parties should contact NPC Headquarters prior to September 5 to confirm which meeting date(s) are confirmed.

Compliance With the National Environmental Policy Act; Amendment to Guidelines

AGENCY: Department of Energy.

ACTION: Notice of proposed amendments to guidelines to provide for a categorical exclusion for certain exemptions under the Fuel Use Act.

SUMMARY: Section D of the Department of Energy guidelines for compliance with the National Environmental Policy Act (NEPA) identifies classes of DOE action which normally do not require either an environmental impact statement or an environmental assessment. These are termed "categorical exclusions." Classification of an action as a categorical exclusion raises a rebuttable presumption that any such actions will not significantly affect the quality of the human environment. In the NEPA guidelines, it was specified that DOE might add or remove, after an opportunity for public review, actions identified as categorical exclusions based on experience gained during implementation of the guidelines.

On the basis of recent experience, DOE has determined that certain exemptions authorized under the Fuel Use Act normally are not major Federal actions significantly affecting the quality of the human environment with respect to the provisions of NEPA and therefore are eligible for categorical exclusion status. The actions considered eligible for a categorical exclusion are the grant or denial of a permanent exemption to any electric powerplant or major burning installation for limited use, i.e., fuels mixture of 25 percent or less petroleum or natural gas; peakload powerplants; certain scheduled equipment outages; emergency purposes, and automatic exemptions based on cost for units operated no more than 600 hours per year. DOE proposes to add these exemptions to its list of categorical exclusions in Subpart D of its NEPA guidelines. Public comment is invited on this proposal. Pending final adoption or rejection of this proposal DOE will utilize the categorical exclusion process for these actions on an interim basis.

COMMENTS BY: September 15, 1980.

ADDRESS COMMENTS TO: Dr. Robert J. Stern, at the address listed below.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, Forrestal Building, Room 4G-064, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-4600.

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Forrestal Building, Room 6D-033, 1000 Independence Ave. SW., Washington, D.C. 20585, (202) 252-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980 (45 FR 20695), the Department of Energy (DOE) published in the Federal Register final guidelines for implementing the procedural provisions of the National Environmental Policy Act (NEPA) as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). The guidelines are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission which is not subject to the supervision or direction of the other parts of DOE.

Section D of the DOE NEPA guidelines identified typical classes of DOE action which normally do not require either an environmental impact statement or an environmental assessment. These classes of action were identified pursuant to Section 1507.3(b)(2)(ii) of the CEQ regulations referenced above and are termed "categorical exclusions." Section 1508.4 of the CEQ regulations defines a categorical exclusion as a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Further, allowance must be provided by an agency for extraordinary circumstances in which a

normally excluded action may have a significant environmental effect.

The DOE NEPA guidelines state that DOE may add to or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and the guidelines. Pursuant to the guidelines, substantive revisions are to be published in the Federal Register and adopted only after opportunity for public review.

This notice proposes to revise the guidelines by adding certain classes of actions to the list of categorical exclusions in Section D of the guidelines. Those actions are as follows:

1. The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95-620) for any new electric powerplant or major fuel burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum. This exemption is authorized by Section 212(d) of the Act.

2. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new peakload powerplant. This exemption is authorized by Section 212(g) of the Act.

3. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new electric powerplant or major fuel burning installation to permit operation for emergency purposes only. This exemption is authorized by Section 212(e) of the Act.

4. The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Act for any new or existing major fuel burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period. These exemptions are authorized by Section 212(j) and 312(l) of the Act.

5. The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new major fuel burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year. This exemption is authorized by Section 212(a)(1)(A)(ii) of the Act, and DOE by regulation has refined this section to provide for an automatic exemption for facilities which are operated only for the stated amount of time.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from the grant or denial of one of the above exemptions, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to ascertain whether an environmental assessment or environmental impact statement would be required for any individual action which is listed in Subpart D of the guidelines as categorically excluded from NEPA. To assist DOE in making this determination, DOE has required in the regulations covering applications for permanent exemptions that: (1) a petitioner for any of these exemptions certify that he will comply with all applicable environmental permits and approvals prior to operating the facility; and (2) he complete an environmental checklist designed to determine whether the facility in question will have an impact in certain areas regulated by specified laws which impose consultation requirements on DOE (10 CFR 403.15). This will allow DOE to verify that no significant impact will result, or that the categorical exclusion does not apply. The typical environmental impacts of each of the proposed categorical exclusion exemptions are discussed below.

B. Mixtures Exemptions

To date, peitions for fuels mixture exemptions from 10 companies have been accepted or are in the process of being reviewed. In all cases reviewed thus far, it has been determined that neither an environmental assessment nor an environmental impact statement was required in order to satisfy NEPA requirements.

Key to all cases has been the fact that the Federal action in question (proposal to grant the exemption) results in an insignificant impact as *compared to a baseline*. In the replacement boiler situation, for example, the baseline is formed by the existing conditions, such as air and water emissions, surrounding the facility as it currently operates. In this situation, the resulting environmental impact either above or below the baseline is very small.

In the case of a totally new facility, the baseline becomes that action which the petitioner could take and not be subject to the Fuel Use Act prohibitions. This action would involve constructing the facility with units which use ony alternate fuel. Since petroleum and natural gas are ordinarily cleaner-burning than other fuels, use of up to 25 percent of those regulated fuels will result in impacts slightly below the baseline level.

Based on DOE's experience to date with mixture exemption petitions, the following generalities can be drawn in each of four main categories of impact.

Air Quality

In all cases, the proposed action (granting the mixtures exemption) has resulted in air quality that is improved over baseline levels. This is because replacement boilers are generally more efficient than existing boilers and must meet New Source Performance Standards (NSPS) if they are large enough to come within NSPS jurisdiction. New facilities burning a fuel mixture also will result in cleaner emission than would result from combustion of an alternate fuel (coal in most cases). In the majority of mixtures cases to date, the petitioners have already received the appropriate air quality permits, thus indicating that the responsible state and Federal agencies consider the potential effects of the new units to be acceptable.

Water Quality

In the case of a replacement boiler, the existing water treatment system and the plant's National Pollutant Discharge Elimination (NPDES) permit usually is sufficient so that no new permit or treatment is necessary. In the case of a new facility, there is little difference from the baseline if coal is part of the mixture exemption, and there is a net benefit if the petitioner's non-option would have involved coal and the mixture in question does not (due to coal pile runoff related impacts).

Land Use

Little additional land has been required in the case of replacement units, because the area already is industrialized and owned by the company. In the case of a new facility, the difference in impact is dependent upon whether coal would have been used with the base case, the same as with water quality.

Other Areas

Other potential impact categories (e.g., socioeconomic, sociocultural) have never been a significant issue in any case to date.

C. Peakload Exemptions

Petitions for peakload powerplant exemptions from eight utilities have been accepted by DOE; of that number, four have been reviewed for NEPA requirements. Each case has involved some added impact; however, key in all cases is the fact that the new unit is only

a small addition to the existing environmental baseline, both in size (peakload units normally are about 75 megawatt units and are often located at the larger existing baseload powerplants, e.g., 500 to 1000 megawatts) and in extent of usage (peakload units can operate no more than 1500 hours per year, which equates to a capacity factor of only 17.1 percent). Impact categories for peakload powerplants can be described as follows:

Air Quality

In general, oil or gas firing has resulted in only minor increases in ambient concentrations of air pollutants (less than 15 percent). Often the increases are below the "levels of significance" established by the Environmental Protection Agency. In each case, the petitioners either have already secured or are in the process of securing the required air permits.

Water Quality

As in the case of mixtures exemptions, the existing systems and NPDES permits usually are sufficient to cover any increase in effluents from the new unit. In some other cases, whatever controls have been required by new permits make the resultant impacts insignificant.

Land Use

The area to be used in building a new peakload unit usually has already been industrialized. Normally a peakload unit requires only two to three acres of additional land.

D. Scheduled Equipment Outages, Emergencies, and Automatic Cost Exemptions

To date, no petitions for scheduled equipment outages exemptions or automatic cost exemptions have been filed with DOE. One emergency exemption petition has been accepted and a memorandum for the file demonstrating the insignificance of the action has been prepared. Common to these exemptions, however, is the fact that the new unit only will be operating when a larger existing unit or units are shut down—either in the case of a true emergency or a scheduled shutdown for maintenance, or other reasons.

The impact categories for these exemptions are characterized as follows:

Air Quality

In every case there will be a positive impact, as compared with existing emissions, because of the shutdown situation mentioned above.

Water Quality

Normally the existing system and permit will be sufficient to cover the new unit.

Land Use

Normally the area will already by industrialized and the new unit will usually be constructed within existing plant boundaries. If the unit is not to be built within existing boundaries, little extra land will be needed, probably less than one acre.

Other Areas

There is no reason to believe that any significant impacts will occur in other areas.

Proposals to deny an exemption would result in no net change to the environmental baseline.

Issued in Washington, D.C., August 5, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 80-24091 Filed 8-8-80, 8:45 am]

BILLING CODE 6450-01-M

[OFC Case No. 55381-2900-01-12; Docket No. ERA-FC-80-020]

Economic Regulatory Administration

Availability of Tentative Staff Analysis

AGENCY: Economic Regulatory Administration.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On January 16, 1980, Republic Steel Corporation (Republic) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting one major fuel burning installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.),* which prohibit the use of petroleum and natural gas as a primary energy source in new MFBIs. Republic requested a permanent fuel mixtures exemption for the MFBI in order to use a fuel mixture of blast furnace gas, natural gas and/or oil. The natural gas or oil is to be used as a supplemental fuel for pilot, flame stabilization and process requirements.

The MFBI for which the petition is filed is a field-erected boiler (identified as unit No. 3 high pressure (HP) boiler) to be installed at Republic's Mohoning Valley District, Warrne, Ohio facility. The proposed boiler will have a design heat input rate of 467 million Btu's per hour with a steam generating capacity of 300,000 pounds per hour and will be capable of burning blast furnace gas, coke oven gas, natural gas and residual fuel oil.

ERA accepted the petition February 15, 1980, and published notice of its acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the Federal Register on February 26, 1980 (45 FR 12478). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to Section 701 of FUA. During this period, interested persons were afforded an opportunity to request a public hearing. The period expired April 11, 1980. No comments were submitted. No hearing was requested.

Based upon ERA's review and analysis of the information presently contained in the record of this proceeding, a Tentative Staff Determination has been made recommending that ERA issue an order which would grant the requested permanent exemption to use a mixture of blast furnace gas, with natural gas and/or residual fuel oil in which the amount of natural gas and/or oil would not exceed 25 percent of the total annual Btu heat input in the MFBI.

The public file containing a copy of the Tentative Staff Determination and other documents and supporting materials on this proceeding is available upon request at: ERA, 2000 M Street, NW, Room B-110, Washington, DC, Monday through Friday, 8:00 AM-4:30 PM.

ERA will issue a final order granting or denying the petition for permanent exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the Federal Register.

DATES: Written comments on the Tentative Staff Determination are due on or before August 25, 1980.

ADDRESSES: Fifteen copies of written comments shall be submitted to the Department of Energy, DOE Case Control Unit, Box 4629, Room 3214, 2000 M Street, NW, Washington, DC 20461. Docket Number ERA-FC-80-020 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW, Room B-110, Washington, DC 20461, (202) 653-4055.

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration,

Order is effective as an order at the Department of Energy (DOE) on November 26, 1980.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Sampath, Esq. Department of Energy, OSC, 1421 Cherry Street, Philadelphia, PA 19102.

Copies of the Consent Order may be obtained by written request at the freedom of Information Reading Room, Forrestal Building, 1000 Independence. Ave. SW., Room 6A152.

Issued in Washington, D.C. on the 16th day of June, 1980.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 80-36928 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Compliance With the National Environmental Policy Act; Final Guidelines

AGENCY: Department of Energy.

ACTION: Adoption of special procedures for major system acquisition projects involving the competitive procurement process.

SUMMARY: The Department of Energy (DOE) hereby adopts the special procedures for major system acquisition projects involving the competitive procurement of a site and/or process as previously proposed in its final guidelines for compliance with the National Environmental Policy Act (NEPA). The procedures are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC) which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

EFFECTIVE DATE: November 26, 1980.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance and Overview, Room 4G-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Room 6D-033, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-6947

SUPPLEMENTARY INFORMATION:

The DOE published its final guidelines for compliance with NEPA in the Federal Register on March 28, 1980 (45FR 20694). In the final guidelines DOE specifically requested public comment on Paragraph B.3.(c)(2), which was added and published as interim procedures to provide for NEPA compliance for major system acquisition projects involving the competitive procurement of a site and/or process. The competitive procurement process has confidentiality requirements established pursuant to 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information. The special procedures provide for compliance with NEPA to the fullest extent possible.

The environmental impact analysis required by the special procedures will ensure consideration of environmental factors in selection decisions between competing sites and/or processes. If selected sites and/or processes are likely to have significant effects on the quality of the human environment the special procedures provide that DOE will prepare an EIS before making a go/no-go decision.

A 30-day period was established for public comment on the special procedures which are reprinted below. No written comments were received during the public comment period and accordingly, DOE hereby adopts the interim special procedures as final.

Issued in Washington, D.C. on November 19, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

DOE NEPA Guidelines Paragraph B.3.(c)(2)

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval or projects, by the approval of disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) * * *

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. [The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to that reasonably available to offerors.]

(ii) Independently evaluate and verify the accuracy of environmental data and anlyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to Comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential, or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly-available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection

statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500–1508 and in advance of a go/no-go decision.

[FR Doc. 80-36815 Filed 11-25-80; 8:45 am]
BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the supply of 438.55 grams of uranium, enriched to 2.38% in U–235, to be used as standard reference material by the Japan Nuclear Fuel Company, Ltd.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S–JA–288 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 20, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-36818 Filed 11-25-80; 8:45 am]
BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of .55 grams of natural uranium and .55 grams of thorium to the CEA, France for use as standard reference materials.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S–EU–669 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteeen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 20, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs International Nuclear and Technical Programs.

[FR Doc. 80-36819 Filed 11-25-80; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 80–CERT–037]

National Steel Corp., Recertification of Eligible Use of Natural Gas To Displace Fuel Oil

On October 21, 1980, National Steel Corporation (National Steel), Weirton Steel Division, Three Springs Drive, Weirton, West Virginia 26062, filed an application with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 for recertification of an eligible use of 3,000 Mcf of natural gas per day, which is estimated to displace approximately 600,000 gallons (14,286 barrels) of No. 6 fuel oil (1.4 percent sulfur) per month at National Steel's Weirton Steel Division located in Weirton, West Virginia. The eligible seller of the natural gas is David S. Towner Enterprises and the gas will be transported by the Columbia Gas Transmission Corporation. Notice of that application was published in the Federal Register (45 FR 73730, November 6, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On June 21, 1979, National Steel received the original certification (ERA Docket No. 79–CERT–003) of an eligible use of natural gas for use at the Weirton facility for a period of one year. The original certificate expired on June 20, 1980, but the applicant did not file for recertification until October 21, 1980.

The ERA has carefully reviewed National Steel's application for recertification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that National Steel's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information including a copy of the application, transmittal letter, and the actual recertification are available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG–55, 2000 M Street NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 20, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-36816 Filed 11-25-80; 8:45 am]
BILLING CODE 6450-01-M

Peterson Petroleum, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and on potential claims against the refunds deposited in an escrow action established pursuant to the Consent Order.

DATE: Effective date: October 27, 1980.

COMMENTS BY: December 26, 1980.

ADDRESS: Send comments to: Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001, (212) 620–6706.

FOR FURTHER INFORMATION CONTACT: Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001, (212) 620–6706.

SUPPLEMENTARY INFORMATION: On October 27, 1980, the Office of Enforcement of the ERA executed a Consent Order with Peterson Petroleum, Inc. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Management Command, ATTN: MT-PPM, Washington, DC 20315.

Copies of the regulation are available through the Superintendent of Documents, Government Printing Office, Public Documents Department, Washington, DC 20420, at a cost of $20.75 for the basic regulation and all changes thereto.

The DOD 4500.34-R may be reviewed in the Public File at the Military Traffic Management Command, Nassif Building, Room 408, 5611 Columbia Pike, Bailey's Crossroads, Virginia during normal business hours.

Dated: December 10, 1980.

John J. Durant,

Colonel, GS Director of Personal Property.

[FR Doc. 80-39077 Filed 12-16-80; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act; Amendment To Guidelines

AGENCY: Department of Energy.

ACTION: Notice of proposed amendments to guidelines to provide for a categorical exclusion for certain grants of entitlements for petroleum substitutes.

SUMMARY: Section D of the Department of Energy guidelines for compliance with the National Environmental Policy Act (NEPA) identifies classes of Department of Energy action which normally do not require either an environmental impact statement or an environmental assessment. These are termed "categorical exclusions." Classification of an action as a categorical exclusion raises a rebuttable presumption that any such action will not significantly affect the quality of the human environment. In the NEPA guidelines, it was specified that the Department of Energy might add or remove, after an opportunity for public review, actions identified as categorical exclusions based on experience gained during implementation of the guidelines.

On the basis of recent experience, the Department of Energy has determined that certain applications for entitlements for petroleum substitutes under 10 CFR 211.62 normally are not major Federal actions significantly affecting the quality of the human environment with respect to the provisions of NEPA and therefore are eligible for categorical exclusion status. The actions considered eligible for a categorical exclusion are applications for the grant of entitlements for petroleum substitutes where the facility using the petroleum substitute is existing and operating, and the receipt of entitlements will not cause an increase in size, product mix, or emissions. The Department of Energy proposes to add this exemption to its list of categorical exclusions in Section D of its NEPA guidelines. Public comment is invited on this proposal. Pending final adoption or rejection of this proposal, the Department of Energy will utilize the categorical exclusion process for these actions on an interim basis. Since each application must be evaluated to determine whether or not it meets the criteria for the categorical exclusion, use of the exclusion during the interim period will result in a reduction in administrative paperwork and not a reduction in the quality of environmental review.

COMMENTS BY: December 31, 1980.

ADDRESS COMMENTS TO: Dr. Robert J. Stern, at the address listed below.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance and Overview Office of the Assistant Secretary for Environment, Forrestal Building, Room 4G-064, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-4600.

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Forrestal Building, Room 6D-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980 (45 FR 20694), the Department of Energy published in the Federal Register final guidelines for implementing the procedural provisions of the National Environmental Policy Act (NEPA) as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). The guidelines are applicable to all organizational units of the Department of Energy, except the Federal Energy Regulatory Commission which is not subject to the supervision or direction of the other parts of the Department.

Section D of the Department NEPA guidelines identified typical classes of Department action which normally do not require either an enviornmental impact statement or an environmental assessment. These classes of action were identified pursuant to Section 1507.3(b)(2)(ii) of the CEQ regulations referenced above and are termed "categorical exclusions." Section 1508.4 of the CEQ regulations defines a categorical exclusion as a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Further, allowances must be provided by an agency for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

The Department NEPA guidelines state that the Department of Energy may add to or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and the guidelines. Pursuant to the guidelines, substantive revisions are to be published in the Federal Register and adopted only after opportunity for public review.

B. Proposed Exclusion

This notice proposes to revise the guidelines by adding a class of action to the list of categorical exclusions in Section D of the guidelines. That class of action is the grant of entitlements for petroleum substitutes where the facility using the petroleum substitute is existing and operating, and the receipt of entitlements will not cause an increase in size, product mix, or emissions.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those individual cases where the Department has reason to believe that a significant impact could arise from the grant of entitlements for petroleum substitutes, the Department's NEPA guidelines provide that such cases will be reviewed to ascertain whether an environmental assessment or an environmental impact statement is required. To assist the Department in making this determination, the Department has required in the regulations covering applications for entitlements for petroleum substitutes (10 CFR 211.62) that the applicant complete Form ERA-83. Completion of that form allows the Department to determine, among other things, the operational status of the facility and provides the applicant with the opportunity to declare whether or not the grant of entitlements will cause an increase in the size, product mix, or emissions of the facility. This will be used by the Department of Energy to determine either that no significant impact will result, or that the categorical exclusion does not apply.

To date, all applications for which it has been determined that neither an environmental assessment nor an environmental impact statement are required under NEPA have all met the criteria of the proposed categorical exclusion.

C. Comment Period

Comments concerning this proposal should be submitted by December 31, 1980, to the address indicated in the "Addresses" section of this notice and should be identified on the outside of the envelope as: "Categorical exclusion for certain grants of entitlements for petroleum substitutes." Two copies should be submitted.

Any information or data considered to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

Issued in Washington, D.C., December 12, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 80-39211 Filed 12-16-80; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for Conservation and Solar Energy

Approval of a Designated Energy Impact Area Under Section 601 of the Powerplant and Industrial Fuel Use Act

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Title VI, Section 601 of the Powerplant and Industrial Fuel Use Act (FUA) (Pub. L. 95-620) provides, *inter alia*, for the granting of financial assistance to any area designated by a Governor of a State as impacted by increased coal or uranium production development activities. Before the financial assistance may be provided, however, the Secretary of Energy (the Secretary), after consultation with the Secretary of Agriculture, must approve such designation. In accordance with Section 601's requirements and the Department of Agriculture's implementing regualtions (7 CFR Part 1948), the Secretary shall approve a Governor's designation of an energy impact area only if:

A. The Governor provides the Secretary in writing with the data and information on which such designation was made, together with any additional information which the Secretary may require for approval; and

B. The Secretary determines that the following criteria are met:

(1) During the most recent calendar year, the eligible employment in coal or uranium production development activities within the area has increased by eight percent or more from the preceding year, or such employment will increase by eight percent or more per year, during each of the next three calendar years;

(2) This increase has required or will require substantial increases in housing or public facilities and services, or both, in the area; and

(3) Available State and local financial and other resources are inadequate to meet the public need for housing or public facilities and services at present or in the next three years.

Pursuant to 7 CFR 1948.70(e), DOE hereby gives notice that it has approved, effective November 1, 1980, the following areas as energy impact areas:

Oklahoma: An area consisting of Haskell, Latimer, LeFlore, and Pittsburgh counties.

Pennsylvania: Cambria County.

Illinois: White County.

A designated and approved area is eligible for planning grants and other assistance through the Farmers Home Administration, Department of Agriculture, provided that the further requirements of Section 601 and 7 CFR 1948 are met.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Emmons, Energy Impact Program Manager, Office of Buildings and Community Systems, Mail Stop 1H-031, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-9393.

Issued in Washington, D.C., December 11, 1980.

Frank DeGeorge,

Principal Deputy Assistant Secretary Conservation and Solar Energy.

[FR Doc. 80-39207 Filed 12-16-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Solar Energy

Energy Conservation Program for Consumer Products; Petition for Waiver of Consumer Product Test Procedures From Hydro Therm, Inc. (Case No. F-002)

AGENCY: Department of Energy.

SUMMARY: The energy conservation program for consumer products, other than automobiles, was established pursuant to the Energy Policy Conservation Act. The Department of Energy (DOE) has amended the Department's regulations for the energy conservation program for consumer products by allowing the Assistant Secretary for Conservation and Solar Energy temporarily to waive test procedure requirements for a particular covered product (45 FR 64108, Sept. 26, 1980). Waivers may be granted when characteristics of the product prevent use of the prescribed test procedures or lead to results that provide materially inaccurate comparative data. Pursuant to paragraph (b) of § 430.27 of the Code of Federal Regulations, DOE is required to publish in the Federal Register all received Petitions for Waiver and supporting documents from which confidential information has been deleted in accordance with 10 CFR 1004.11. Also, DOE is required to solicit comments, data and information with respect to the determination of the petition.

DATES: DOE will accept comments, data, and information no later than January 16, 1981.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Solar Energy, Case No. D-001, Mail Stop GH-068, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James A. Smith, U.S. Department of Energy Office of Conservation and Solar Energy, Room GH-065, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9127. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Room 6B-128, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9526.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1980, Hydro Therm, Inc., filed a Petition for Waiver from the DOE test procedures for consumer products. Specifically, the petitioner believes that the use of the existing furnace test procedure will lead to results that provide materially inaccurate comparative data when these test procedures are applied to a particular design of furnace manufactured by Hydro Therm, Inc.

In consideration of the foregoing and in accordance with the provisions of § 430.27(b) of Chapter II of Title 10, Code of Federal Regulations, DOE is hereby publishing the "Petition for Waiver" in the Federal Register in its entirety. The petition contains no confidential information. DOE is hereby soliciting comments, data and information

construction, maintenance, operation, and eventual removal of structures and appurtenances required to develop, produce, transport, and treat natural gas from the lower Mobile Bay Field. This includes wells, platforms, pipelines, treating facility, and sulfur depot.

2. *Alternatives to the Proposed Action:* In responding to this permit application, the US Army Corps of Engineers has available three alternatives. These are: issue the permit, issue the permit with conditions, or deny the permit. Alternatives to the proposed action to be considered would be associated with the proposed drilling program, platforms, pipelines, gas treating facility, sulfur depot, base of operations, mitigation plans, emergency operations, and other development and production related alternatives.

3. *Description of the Scoping Process:* Public participation in this program has been lively and continuous since announcement of initial drilling plans in 1973. Two public hearings have been held, one in October 1973 and the other in April 1979, in connection with permit applications. Two EIS's have been completed for the program (January 1976, December 1980) with numerous comments being received from agencies, environmental groups, and other interests. The applicant has conducted an extensive program of meetings and tours for agencies and the public. Additionally, news media in the regional and local area has published significant amounts of information on the program.

The DEIS will undergo the public review process as required by the National Environmental Policy Act. Significant issues to be addressed will be possible impacts of the proposed action and alternatives to the Mobile Bay estuarine area and surrounding wetlands and the risks of blowouts. A public hearing will be held upon completion of the DEIS. A notice informing the public as to time and location will be issued at least 30 days prior to such hearings.

4. *Scoping Meeting:* No additional scoping meetings are scheduled.

5. *DEIS Preparation.* It is estimated that the DEIS will be available to the public in November 1981.

ADDRESS: Questions about the proposed action and DEIS can be answered by Mr. James B. Hildreth, PD-EE, US Army Engineer District, Mobile, PO Box 2288, Mobile, AL 36628.

Dated: July 7, 1981.

Ronald A. Knzman,

Lt. Col., CE, Acting Commander and Acting District Engineer.

[FR Doc. 81-20838 Filed 7-15-81; 8:45 am]

BILLING CODE 3710-CR-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA) Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of proposed amendments to the Guidelines adding to and modifying the list of typical classes of action in Section D.

On the basis of experience gained since the issuance of the Department's NEPA Guidelines, the Department of Energy proposes to revise Section D of the Guidelines by adding 11 new typical classes and by modifying 3 existing typical classes of action. Public comment is invited on this proposal. Pending final adoption or rejection of the proposed changes, the Department of Energy will utilize the proposed typical classes of action on an interim basis.

COMMENTS BY: August 17, 1981.

ADDRESS COMMENTS TO: Dr. Robert J. Stern, at the address listed below.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Director, NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness, Forrestal Building, Room 4G-064, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-4600

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Forrestal Building, Room 6D-033, 1000 Independence Avenue, S.W., Washington, D.C. 20858, (202) 252-6947

SUPPLEMENTARY INFORMATION:

A. Background. On March 28, 1980 (45 FR 20694), the Department of Energy published in the Federal Register final DOE NEPA Guidelines for implementing the procedural provisions of the NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). The Guidelines are applicable to all organizational units of the Department except the Federal Energy Regulatory Commission which is not subject to the supervision or direction of the other parts of the Department of Energy. Section D of the Department's NEPA Guidelines identifies typical classes of Department of Energy actions which normally require environmental assessments but not necessarily environmental impact statements, actions which normally require environmental impact statements, or actions which require neither environmental assessments nor environmental impact statements. These classes of actions were identified pursuant to 40 CFR 1507.3(b)(2). Section A.3.(d) of the Guidelines provides that the Department of Energy may add actions to or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and the Guidelines.

Based on the experience gained operating under the CEQ regulations and the Guidelines, the Department proposes to add 11 new typical classes of action and modify 3 existing typical classes of action. Pursuant to Section C.6 of the Guidelines, the proposed changes are being published for public review.

B. Proposed Changes to Section D of the Department of Energy NEPA Guidelines. This notice proposes to revise Section D of the Department's guidelines and add or modify the typical classes of actions.

C. Comments. Comments concerning the proposed changes to Section D of the Department's NEPA guidelines should be submitted to Dr. Stern as indicated in the "address" section of this notice and should be identified on the outside of the envelope as: "Changes to Section D of DOE's NEPA Guidelines." Two copies should be submitted.

Pending final adoption or rejection of the proposed changes, the Department of Energy will utilize the proposed typical classes of action on an interim basis.

July 9, 1981.

Barton R. House,

Acting Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness.

Proposed Changes to Section D.—*Department of Energy NEPA Guidelines*

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
Classes of Actions Generally Applicable to all of DOE		
General Plant Projects such as road and parking area resurfacing, modifications to heating-ventilating-air conditioning systems, minor alterations of existing buildings, and other similar projects where: (1) the projects are located within previously developed areas and will not affect environmentally sensitive areas such as floodplains, wetlands, archeological sites, and critical habitats; and (2) the projects are not part of a proposed action that is or may be the subject of an EA or EIS.	DOE actions which enable or result in engineering development activities, i.e. detailed design, development, fabrication, and test of energy system prototypes. (NOTE: Changes existing class of action by adding the word "fabrication.")	DOE actions which are expected to result in the construction and operation of a large scale project. (NOTE: Modifies an existing class of action by substituting "large scale project" for "full-scale energy system project.")
Installation of meteorological towers and associated activities to assess potential wind energy resources where the installation has no impacts on environmentally sensitive areas such as archeological sites, critical habitats, etc., and where the installation does not prejudice future site selection decisions for large wind turbines.		
Classes of Actions Applicable to Power Marketing Administrations (PMA)		
Emergency repair of transmission lines including replacement or repair of damaged equipment as well as the removal and replacement of downed transmission lines.	Construction and operation of wind resource, low-head hydro, and solar energy pilot projects.	
Additions or modifications to transmission facilities which do not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, replacement of poles and crossarms, and similar actions.	The allocation of power resources to customers in a manner differing from existing contractual arrangements.	
Grant or denial of requests for multiple use of DOE transmission line rights-of-way, such as grazing permits and crossing agreements including electric lines, water lines, and drainage culverts.	Implementation of an erosion control program that is systemwide.	
Execution of contracts for the short-term or seasonal allocation of excess power resources to customers who can receive these resources over existing transmission systems.		
The renewal of existing power contracts in kind.		
Classes of Actions Applicable to Nuclear Waste Management Program		
	The demonstration or implementation of intermediate-depth burial of low-level waste at DOE sites.	DOE actions resulting in the site selection, construction, or operation of major treatment, storage and/or disposal facilities for transuranic and high level nuclear waste and/or spent nuclear fuel such as spent fuel storage facilities and geologic repositories. (NOTE: Clarifies an existing class of action.)

[FR Doc. 81-20856 Filed 7-16-81; 8:45 am]
BILLING CODE 6450-01-M

National Petroleum Council, Economics Task Group of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Economics Task Group of the Committee on Arctic Oil and Gas Resources will meet in July 1981. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Economics Task Group meeting follows:

The fourth meeting of the Economics Task Group will be held on Wednesday, July 22, 1981, starting at 9:00 a.m., in the 26th Floor Conference Room, Hamilton International Oil Company, 1600 Broadway, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by the Chairman and Government Cochairman.
2. Review of the revised computer runs on economics.
3. Discussion of the Task Group's draft report.
4. Discussion of any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The Chairman of the Economics Task Group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Economics Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil and Natural Gas, Fossil Energy, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on July 8, 1981.

Roger W. A. LeGassie,
Acting Assistant Secretary for Fossil Energy.
July 8, 1981.

[FR Doc. 81-20857 Filed 7-15-81; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP81-12-000]

State of Mississippi, Section 107 NGPA Determination, Tomlinson Interests, Inc., Charles W. Cavanaugh No. 1 Well; Preliminary Finding

March 30, 1981.

On February 13, 1981, the State of Mississippi Oil and Gas Board (Mississippi) filed with the Commission notice of its determination that Tomlinson Interests, Inc.'s Charles W. Cavanaugh No. 1 Well (JD No. 81-17507) qualifies as a "high-cost natural gas" well under section 107 of the natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301 *et seq.*). The Commission published notice of the Mississippi determination in the Federal Register on March 5, 1981.

Although Mississippi did not cite the applicable subsection under section 107 for which the well was determined to be eligible,[1] review of the record submitted

[1] There are five categories of high cost gas established in section 107(c). They are: Gas produced from a well spudded on or after February 19, 1977 from a completion location below 15,000 feet (section 107(c)(1)); gas produced from geopressured brine (section 107(c)(2)); occluded gas

Continued

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Energy Department.

ACTION: Amendments to Guidelines for Compliance with the National Environmental Policy Act.

SUMMARY: The Department is amending its guidelines for compliance with the National Environmental Policy Act (NEPA) by making additions and deletions to the guidelines' included list of classes of agency actions which normally do or do not require environmental assessments or environmental impact statements.

EFFECTIVE DATE: February 23, 1982.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Director, Environmental Compliance Division, Office of Environmental Programs, Office of the Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness, Forrestal Building, Room 4G-064, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-4600

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980 (45 FR 20694), the Department of Energy published in the **Federal Register** final guidelines for implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). The guidelines are applicable to all organizational units of the Department of Energy, except the Federal Energy Regulatory Commission which is not subject to the supervision or direction of the other parts of the Department.

Section D of the Department's NEPA guidelines identifies typical classes of Department actions: Which normally do not require either an environmental assessment or an environmental impact statement; which normally require an environmental assessment but not necessarily an environmental impact statement; and which normally require an environmental impact statement. These classes of actions were identified pursuant to 40 CFR 1507.3(b)(2).

The Department's NEPA guidelines state that the Department of Energy may add to or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and the guidelines. Pursuant to the guidelines, substantive revisions are to be published in the **Federal Register** and adopted only after opportunity for public review.

B. Adoption of Amendments Proposed on August 11, 1980 (45 FR 53199)

On August 11, 1980 (45 FR 53199), the Department of Energy proposed five (5) classes of exemption actions under Title II and Title III of the Powerplant and Industrial Fuel Use Act of 1978 for categorical exclusion status, i.e., actions which require neither an environmental assessment nor an environmental impact statement. These actions involve the grant or denial of a permanent exemption for: The use of certain fuel mixtures containing natural gas or petroleum; new peakload powerplants; limited operation for emergency purposes only; purposes of meeting schedules equipment outages; and limited use due to a lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

A 30-day period was established for public comment on the categorical exclusions. No comments were received during the public comment period. Accordingly, the Department hereby adopts the categorical exclusions as proposed.

C. Adoption of Amendments Proposed on July 16, 1981 (46 FR 36884)

On July 16, 1981 (46 FR 36884), the Department of Energy proposed the addition of eleven (11) typical classes of action and the modification of three (3) existing typical classes of action.

Typical classes of action proposed for categorical exclusion, i.e., actions which require neither an environmental impact statement nor an environmental assessment included: General plant projects located within previously developed areas and not part of a project that is or may be the subject of an EA or EIS; installation of meteorological towers and associated activities to assess potential wind energy resources; emergency repair of transmission lines; additions or modifications to transmission facilities; grant or denial of requests for multiple-use of DOE transmission line rights-of-way; execution of contracts for short-term or seasonal allocation of excess power; and the renewal of existing power contracts in kind.

The following typical classes of action were proposed for addition as actions which normally require environmental assessments but not necessarily environmental impact statements: Construction and operation of wind resource, low-head hydro, and solar energy pilot projects; allocation of power resources in a manner differing from existing contractual arrangements; implementation of a systemwide erosion control program; and the demonstration or implementation of intermediate-depth burial of low-level waste at DOE sites.

Typical classes of actions proposed for modification included: DOE actions which enable or result in engineering development activities, i.e., detailed design, development, fabrication, and test of energy system prototypes (**Note.**—Changed existing class of action normally requiring an environmental assessment but not necessarily an environmental impact statement by adding the word "fabrication."); DOE actions which are expected to result in the construction and operation of a large scale project (**Note.**—Modified an existing class of action normally requiring an environmental impact statement by substituting "large scale project" for "full-scale energy system project."); and DOE actions resulting in the site selection, construction, or operation of major treatment, storage and/or disposal facilities for transuranic and high level nuclear waste and/or spent nuclear fuel such as spent fuel storage facilities and geologic repositories (**Note.**—Clarified an existing class of action normally requiring an environmental impact statement.).

A 30-day period was established for public comment on these typical classes of action. No comments were received during the public comment period. Accordingly, the Department hereby adopts the typical classes as proposed.

D. Amendments Proposed on December 17, 1980 (45 FR 82987)

On December 17, 1980 (45 FR 82987), the Department of Energy proposed that "the grant of entitlements for petroleum substitutes where the facility using the petroleum substitute is existing and operating, and the receipt of entitlements will not cause an increase in size, product mix, or emission" be added to Section D as a categorical exclusion.

Executive Order 12287 (46 FR 9909), exempted all crude oil and refined petroleum products from the price and allocation regulations adopted pursuant to the Emergency Petroleum Allocation Act of 1973, as amended (Pub. L. 93-159), including those regulations concerning entitlements for petroleum substitutes.

Therefore, the Department of Energy withdraws the previously proposed amendment to Section D for the grant of entitlements.

E. Other Actions

Activities under the Emergency Petroleum Allocation Act such as those associated with the Propane Allocation Program and the Synethetic Natural Gas Feedstock Allocation Program no longer represent typical classes of action for the Department. Therefore, the Department is deleting from Section D the following classes of actions: Assignments and allocations of propane to retail and wholesale outlets for commercial and residential use; assignments and allocations of propane to gas utilities for peak shaving or Btu enrichment which do not involve new construction or a substantial change in operation and where DOE has determined that such actions will not impact the supplies available for competing uses; assignments and allocations of propane to gas utilities for peak shaving, Btu enrichment or supplemental gas supplies involving new construction or a substantial change in operations or potential impact on competing users of propane; new assignments and allocations of propane feedstock to enable operation of or increases in operation of petrochemical plants; changes in regulatory status such as the decontrol of propane; approval/disapproval of an application for supplier assignment and feedstock allocation which involves continuation of SNG production at historical levels, and where DOE has determined that the requested assignment will not adversely impact competing users due to the projected availability of supply; issuance of an Order which reduces SNG production below historical levels and where the probability of fuel switching or other impacts caused by the reduction is unknown; issuance of an Order for an existing plant which increases the SNG production above historical levels; approval/disapproval of an application for supplier assignment and feedstock allocation which involves the construction of a new SNG plant or a major modification at an existing plant; and issuance of an Order which significantly reduces the feedstock allocation to an existing plant in cases where the gas supply/demand outlook indicates significant fuel switching or economic hardship may occur as a result of the curtailment of SNG feedstock.

Section D of the Department's NEPA guidelines is being reprinted in its entirety. Typical classes of actions added or modified since March 28, 1980, are so noted. Issued in Washington, D.C., February 1, 1982.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

SECTION D.—TYPICAL CLASSES OF ACTION

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
Classes of Actions Generally Applicable to All of DOE		
Administrative procurements (e.g., general supplies)	DOE actions which enable or result in engineering development activities, i.e., detailed design, development, fabrication, and test of energy system prototypes. NOTE.—Modifies existing class of action by adding the word "fabrication".	DOE actions which are expected to result in the construction and operation of a large scale project. (NOTE.—Modifies existing class of action by substituting "large scale project" for "full-scale energy system project.")
Contracts for personal services	DOE actions which provide grants to state and local governments for energy conservation programs.	DOE actions which cause energy conservation on a substantial scale.
Personnel actions		
Reports or recommendations on legislation or proposed rulemaking which was not initiated by DOE.		
Compliance actions, including investigations, conferences, hearings, notices of probable violations and remedial orders.		
Interpretations and rulings, or modification or rescissions thereof.		
Promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended.		
Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program.		
Information gathering, analysis, and dissemination		
Actions in the nature of conceptual design or feasibility studies		
Actions involving routine maintenance of DOE-owned or operated facilities.		
Actions in the nature of analytic energy supply/demand studies which do not result in a DOE report or recommendation on legislation or other DOE proposals.		
Adjustments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued by the Office of Hearings and Appeals.		
Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities, which do not exceed the rate of inflation in the period since the last rate increase.	Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities which exceed the rate of inflation in the period since the last increase.	
Actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid.		
General Plant Projects such as road and parking area resurfacing, modifications to heating-ventilating-air conditioning systems, minor alterations of existing buildings, and other similar projects where: (1) The projects are located within previously developed areas and will not affect environmentally sensitive areas such as floodplains, wetlands, archeological sites, and critical habitats, and (2) the projects are not part of a proposed action that is or may be the subject of an EA or EIS. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).		

SECTION D.—TYPICAL CLASSES OF ACTION—Continued

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
Installation of meteorological towers and associated activities to assess potential wind energy resources where the installation has no impacts on environmentally sensitive areas such as archeological sites, critical habitats, etc., and where the installation does not prejudice future site selection decisions for large wind turbines. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).		
Classes of Actions Applicable to Licenses to Import/Export Natural Gas Pursuant to Section 3 of the Natural Gas Act		
	Approval/disapproval of a new license or amendment to an existing license which does not involve new construction, but which requires operational changes which may or may not be significant, such as an increase in LNG throughput, change in transportation or storage operations.	Approval/disapproval of applications involving the construction of new liquid natural gas terminal, regasification or storage facilities, or a significant expansion of an existing LNG terminal, regasification or storage facility. Approval/disapproval of an application involving a significant operational change, such as a major increase in the quality of LNG imported or exported.
Classes of Action Applicable to International Activities		
Approval of DOE participation in international "umbrella" agreements for cooperation in energy R&D which do not commit the U.S. to any specific projects or activities. Approval of technical exchange arrangements for information, data or personnel with other countries or international organization. Approval of technical exchange arrangements for information, data or personnel with other countries or international organization. Approval of export of small quantities of special nuclear materials or isotopic material in accodance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (FEDERAL REGISTER, Part VII, June 9, 1978).		
Classes of Actions Applicable to Power Marketing Administrations (PMA)		
Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area.	Upgrading (reconstructing or reconductoring) an existing transmission line. Construction of new service facilities such as tap lines and substations. Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area. Annual vegetation management program (system-wide)	Main Transmission System Additions—additions of new transmission lines, main grid substations and switching stations to PMA's main transmission grid. Integrating Transmission Facilities—transmission system additions for integrating new sources of generation into PMA's main grid.
Emergency repair of transmission lines including replacement or repair of damaged equipment as well as the removal and replacement of downed transmission lines. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).	Construction and operation of wind resource, low-head hydro, and solar energy pilot projects. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).	
Classes of Actions Applicable to Power Marketing Administrations (PMA)		
Additions or modifications to transmission facilities which do not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, replacement of poles and crossarms, and similar actions. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).	The allocation of power resources to customers in a manner differing from existing contractual arrangements. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).	
Grant or denial of requests for multiple use of DOE transmission line rights-of-way, such as grazing permits and crossing agreements including electric lines, water lines, and drainage culverts. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).	Implementation of an erosion control program that is system-wide. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).	
Execution of contracts for the short term or seasonal allocation of excess power resources to customers who can receive these resources over existing transmission systems. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).		
The renewal of existing power contracts in kind. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).		
Classes of Actions Generally Applicable to Nuclear Waste Management Program.		
	Exploratory and site charactrization actities which by virtue of resource commitment or elapsed time for completion may foreclose reasonable site alternatives. Land acquisition activities solely for the purposes of reserving possible candidate sites and which do not prejudice future programmatic site selection decisions. The demonstration or implementation of intermediate-depth burial of low-level waste at DOE sites. (NOTE.—Proposed on July 16, 1981, 46 FR 36884).	DOE actions resulting in the site selection, construction, or operation of major treatment, storage and/or disposal facilities for transuranic and high level nuclear waste and/or spent nuclear fuel such as spent fuel storage facilities and geologic repositories. (NOTE.—Clarifies an existing class of action.)
Classes of Action Generally Applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA)		
The grant or denial of any temporary exemption for any electric powerplant or major fuel-burning installation.	D	

SECTION D.—TYPICAL CLASSES OF ACTION—Continued

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
The grant of denial of any permanent exemption of any existing electric powerplant or major fuel-burning installation, other than an exemption (1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain State or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants.	D	
The grant of denial of a permanent exemption from the Prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95-620) for any new electric powerplant or major fuel burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum. (NOTE.—Proposed on August 11, 1980, 45 FR 53199).	D	
The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new peakload powerplant. (NOTE.—Proposed on August 11, 1980, 45 FR 53199).	D	
Classes of Action Generally Applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA)		
The grant of denial of a permanent exemption from the prohibitions of Title II of the Act for any new electric powerplant or major fuel burning installation to permit operation for emergency purposes only. (NOTE.—Proposed on August 11, 1980, 45 FR 53199).	D	
The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Act for any new or existing major fuel burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period. (NOTE.—Proposed on August 11, 1980, 45 FR 53199).	D	
The grant or denial of a permanent exemption from the prohibitions of title II of the Act for any new major fuel burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year. (NOTE.—Proposed on August 11, 1980, 45 FR 53199).	D	

[FR Doc. 4703 Filed 2-22-82; 8:45 am]

BILLING CODE 6450-01-M

(a) The regulations in 34 CFR Part 624, which apply to both the Strengthening and Special Needs Program;

(b) The regulations in 34 CFR Part 625, which apply to the Strengthening Program;

(c) The regulations in 34 CFR Part 626, which apply to the Special Needs Program, and

(d) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, except that 34 CFR 75.128(a)(2) and 34 CFR 75.129(a) do not apply to cooperative arrangements.

Parts 624, 625 and 626 of Title 34 of the Code of Federal Regulations were published in the Federal Registered of January 5, 1982, 47 FR 540 *et seq.*

Establishment of Funding Priority

In awarding planning grants under the Strengthening Program and the Special Needs Program fiscal year 1982 suplemental competitions for institutions serving Hispanic and Native American students, the Secretary will give priority to applications submitted by eligible institutions located on Guam, American Samoa, the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

The Secretary is authorized to established this priority by section 1204 of the Higher Education Act of 1965, which provides in pertinent part that "The Secretary is authorized to provide such modifications of any programs under this Act as the Secretary deems necessary in order to adapt such programs to the needs of Guam, * * * American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands."

Further Information: For further information contact: Dr. William A. Butts, Director, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-3311. Telephone: (202) 245-2715, 9091 or 9585. (20 U.S.C. 1057-1059, and 1066-1069c)

(Catalog of Federal Domestic Assistance No. 84.031A—Strengthening Program, 84.031B—Special Needs Program)

Dated: November 18, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-32111 Filed 11-19-82; 10:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of proposed amendments to the Department of Energy's NEPA Guidelines.

SUMMARY: The Department of Energy proposes to amend Section D of its NEPA guidelines by adding eight (8) new categorical exclusions to the list of typical classes of action. Public comment is invited on this proposal. Pending final adoption of the proposed amendments, the Department of Energy will use the new categorical exclusions on an interim basis.

COMMENTS BY: December 22, 1982.

FOR FURTHER INFORMATION CONTACT:

Raymond P. Berube, Director, Compliance Policy Division, Office of Environmental Compliance, EP-361, U.S. Department of Energy 1000 Independence Ave., S.W., Rm. 4G-064, Washington, D.C. 20585, (202) 252-4600.

Henry Garson, Esq., Assistant General Counsel for Environment, GC-34, U.S. Department of Energy, 1000 Independence Ave., S.W., Rm. 6D-033, Washington, D.C. 20585, (202) 252-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980, The Department of Energy (DOE) published in the Federal Register (45 FR 20694) final guidelines for compliance with the National Environmental Policy Act (NEPA), as required by the Council on Environmental Policy Act (NEPA), as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). In accordance with 40 CFR 1507.3(b)(2), Section D of the guidelines lists typical classes of agency action: (1) which normally do require environmental impact statements; (2) which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions), and (3) which normally require environmental assessment but not necessarily environmental impact statements.

Under Paragraph A.3(d) of the guidelines, the Department may amend Section D based on experience gained during implementation of the CEQ regulations and the DOE guidelines. The last amendments to Section D were published in the Federal Register on February 23, 1982, (47 FR 7976), at which time the Department also republished Section D in its entirety.

B. Proposed Amendments

The Department proposes to further amend Section D of the guidelines adding eight (8) typical classes of actions, applicable to the Power Marketing Administrations within the Department, to the list of categorical exclusions in Section D. Categorical exclusions are typical classes of action that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is normally required.

The eight (8) categorical exclusions are:

1. Actions undertaken in order to bring an existing DOE transmission facility into compliance with changes in applicable Federal, State, or local environmental standards or to mitigate adverse environmental effects, where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, wetlands, etc. Such actions include, for example, noise abatement measures, and the acquisition of additional rights-of-way to establish buffer areas.

2. Execution of contract for the short-term (less than one-year) or seasonal acquisition of excess power from existing power resources which can be transmitted over existing transmission systems with no changes in the operations of the power resources.

3. Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events where the adjustments result in only minor changes in reservoir levels and streamflows.

4. Contract interpretations, amendments, and modifications, including replacement, which are clarifying or administrative in nature, and which do not extend the term or otherwise substantially change the contracts being amended.

5. Leasing of existing transmission facilities where the leases do not involve any change in operation.

6. Acquisition or minor relocation of existing access roads serving existing transmission facilities where the relocation does not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplain/wetlands, etc.

7. Replacing conductors on existing transmission lines where the replacement conductors carry the same nominal voltage as the existing conductors and where the replacement work does not involve new support structures, new substations, or other new facilities.

8. Research, inventory, and information collection activities which are directly related to the conservation of fish and wildlife resources and which involve only negligible animal mortality or habitat destruction, and no introduction of either contaminants or exotic organisms.

Comments concerning the proposed amendments to Section D of the Department's NEPA guidelines should be submitted to Mr. Berube at the above listed address.

Pending final adoption, the Department of Energy will use the new categorical exclusions on an interim basis.

Issued in Washington, D.C., on November 15, 1982.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 82-31839 Filed 11-19-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. G-2640-000, et al.]

Natural Gas Companies; Phillips Petroleum Company, et al.; Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates[1]

November 16, 1982.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protes with reference to said applications should on or before December 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket no. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-2640-000, D; 11/3/82	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Oklahoma 74004.	United Gas Pipe Line Company, Ball No. 1 lease, Carthage Field, Panola County, Texas.	(1)	
G-5035-001, D; 10/22/82	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.	Texas Gas Transmission Corporation, Chalkley Field, Cameron Parish, Louisiana.	(2)	
G-6588-000; 10/27/82	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Tennessee Gas Pipeline Co., Carthage Field, Panola County, Texas.	(3)	14.73
G-6591-001, D; 10/27/82	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Tennessee Gas Pipeline Company, Rincon Field, Starr County, Texas.	(4)	
G-11742-005, D; 11/1/82	Mobile Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Cities Service Gas Company, Hugoton Field, Grant County, Kansas.	(5)	
CI61-482-000, D; 10/25/82	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Natural Gas Pipeline Company of America, N.E. Thompsonville and Tequachie Creek Fields, Webb and Jim Hogg Counties, Texas.	(6)	
CI61-1024-000, D; 10/25/82	Mobile Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Natural Gas Pipeline Company of America, North Custer City Field, Custer County, Oklahoma.	(7)	
CI64-1267-000; 11/1/82	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Tennessee Gas Pipeline Co., San Ramon Field, Hidalgo County, Texas.	(3)	14.73
CI83-201-000, C; 10/27/82	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Panhandle Eastern Pipeline Co., Elk City Hoxbar Conglomerate Unit, Beckham County, Oklahoma.	(3)	14.73
CI68-1071-000, F; 10/25/82 [9]	Union Oil Company of California (Succ. in Interest to Sun Oil Company) Union Oil Center, Room 904, P. O. Box 7600, Los Angeles, California 90051.	Michigan Wisconsin Pipe Line Company, Creole Field, Cameron Parish, Louisiana.	(11)	15.025
CI73-324-000, D; 11/1/82	Tenneco Oil Company, Operator & Agent for Tenn Oil Company P.O. Box 2511, Houston, Texas 77001.	El Paso Natural Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(12)	
CI75-51-001, D; 10/28/82	American Petrofina Company of Texas, P.O. Box 2159, Dallas, Texas 75221.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Young Gas Unit, Donna Field, Hidalgo County, Texas.	(13)	
CI75-747-001, C; 10/4/82	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Eugene Island Blocks 342 and 343, Offshore Louisiana.	(14)	15.025
CI79-4-001, C; 10/8/82	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, California 94120.	Transcontinental Gas Pipe Line Corporation, High Island Block 140 Field, Offshore Texas.	(15)	14.65
CI80-278-005, C; 8/19/82	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	Natural Gas Pipeline Company of America, Sabine Pass Area, Block 9, Offshore Louisiana.	(16)	15.025
CI83-27-000, A; 10/20/82	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001	Columbia Gas Transmission Corporation, Grand Isle Block 18, Offshore Louisiana.	(17)	14.73
CI83-28-000, A; 10/21/82	Texaco Inc., P.O. Box 60252, New Orleans, Louisiana 70160	Tennessee Gas Pipeline Company, South Timbalier Blocks 29 and 38, Offshore Louisiana.	(16)	15.025
CI83-29-000, A; 10/22/82	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	MIGC, Inc., Gillette Gas Plant, Campbell County, Wyoming	(19)	15.025

DEPARTMENT OF EDUCATION

Adult Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 26, 1983, 8:00 to 12:00 noon, Program Visitation, 1:00 to 5:00 p.m., Committee Meetings; January 27–28, 1983, 8:00 a.m. to 5:00 p.m., Full Council Meeting.

ADDRESS: Ramada Valley Ho, 6850 Main Street, Scottsdale, Arizona.

FOR FURTHER INFORMATION CONTACT: Helen Banks, Administrative Assistant, National Advisory Council on Adult Education, 425 13th St., NW., Washington, D.C. 20004 (202/376–8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council is open to the public. The proposed agenda includes:

Development of Recommendation on Consolidation.

Development of Format for 1982 Annual Report.

Program Visitation to Indian Reservations.

Committee Meetings.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 425 13th St., N.W., Suite 323, Washington, D.C., 20004, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, D.C. on January 3, 1983.

Rick Ventura,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 83–259 Filed 1–5–83; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Energy Department.

ACTION: Amendments to Guidelines for Compliance with the National Environmental Policy Act.

SUMMARY: The Department of Energy is amending its guidelines for compliance with the National Environmental Policy Act (NEPA) by adding eight (8) new categorical exclusions to the list of typical classes of action and modifying one (1) existing typical class of action.

EFFECTIVE DATE: Date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Raymond P. Berube, Director, Compliance Policy Division, Office of Environmental Compliance, EP–361, U.S. Department of Energy, 1000 Independence Ave. SW., Room No. 4G–064, Washington, D.C. 20585, (202) 252–4600.

Henry Garson, Esq., Assistant General Counsel for Environment, GC–34, U.S. Department of Energy, 1000 Independence Ave. SW., Room No. 6D–033, Washington, D.C. 20585, (202) 252–6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 26, 1980 (45 FR 20694), the Department of Energy published in the Federal Register final guidelines for implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508). The guidelines are applicable to all organizational units of the Department of Energy, except the Federal Energy Regulatory Commission which is not subject to the supervision or direction of the other parts of the Department.

Section D of the Department's NEPA guidelines identifies typical classes of Department actions: Which normally do not require either an environmental assessment or an environmental impact statement; which normally require an environmental assessment but not necessarily an environmental impact statement; and which normally require an environmental impact statement. These classes of action were identified pursuant to 40 CFR 1507.3(b)(2).

The Department's NEPA guidelines state that the Department of Energy may add or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and the guidelines. Pursuant to the guidelines, substantive revisions are to be published in the Federal Register and adopted only after opportunity for public review.

B. Adoption of Amendments Proposed on November 22, 1982 (47 FR 52499)

On November 22, 1982 (47 FR 52499), the Department of Energy proposed the addition of eight (8) new categorical exclusions, i.e., actions which normally require neither an environmental impact statement nor an environmental assessment. The new categorical exclusions are applicable to the Power Marketing Administrations within the Department, and are as follows:

1. Actions undertaken in order to bring an existing DOE transmission facility into compliance with changes in applicable Federal, state, or local environmental standards or to mitigate adverse environmental effects, where such actions do not impact environmental sensitive areas such as archeological sites, critical habitats, floodplains, wetlands, etc. Such actions include, for example, noise abatement measures, and the acquisition of additional rights-of-way to establish buffer areas.

2. Execution of contracts for the short-term (less than one-year) or seasonal acquisition of excess power from existing power resources which can be transmitted over existing transmission systems with no changes in the operations of the power resources.

3. Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events where the adjustments result in only minor changes in reservoir levels and streamflows.

4. Contract interpretations, amendments, and modifications, including replacement, which are

clarifying or administrative in nature, and which do not extend the term or otherwise substantially change the contracts being amended.

5. Leasing or existing transmission facilities where the leases do not involve any change in operation.

6. Acquisition or minor relocation of existing access roads serving existing transmission facilities where the relocation does not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplain/wetlands, etc.

7. Replacing conductors on existing transmission lines where the replacement conductors carry the same nominal voltage as the existing conductors and where the replacement work does not involve new support structures, new substations, or other new facilities.

8. Research, inventory, and information collection activities which are directly related to the conservation of fish and wildlife resources and which involve only negligible animal mortality or habitat destruction, and no introduction of either contaminants or exotic organisms.

A 30-day period was established for public comment on the categorical exclusions proposed on November 22, 1982. No comments were received during the public comment period. Accordingly, the Department hereby adopts the categorical exclusions as proposed.

C. Other Actions

As a result of adding the categorical exclusion for "Replacing conductors on existing transmission lines where the replacement conductors carry the same nominal voltage as the existing conductors and where the replacement work does not involve new support structures, new substations, or other new facilities," a modification to an existing typical class of action which normally requires an environmental assessment is necessary.

This typical class of action is "Upgrading (reconstructing or reconductoring) an existing transmission line", and should be modified by deleting the words "or reconductoring".

Issued in Washington, D.C., December 30, 1982.

William A. Vaughn,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 83-368 Filed 1-5-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval since December 22, 1982.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Wednesday, December 22, 1982. (47 FR 57088)

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., NW., Washington, DC 20585, (202) 252-2308

Jefferson B. Hill, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7340

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395-3087

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; comments should also be provided Mr. Gross. If you anticipate commenting on a form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., December 30, 1982.

Louis Gordon,

Acting Director, Statistical Standards, Energy Information Administration.

DOE FORMS REVIEW BY OMB

Form No.	Form title	Type of request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
EIA-67	Foreign Crude Oil Cost Report.	Revision	Monthly	Mandatory	Selected Crude Oil Dealers.	20	1,776	Data are used to develop weighted average costs for crude oil acquisitions from designated streams. Aggregated data are submitted to the International Energy Agency to monitor international petroleum market conditions and are used by DOE for analytical purposes.
EPA-781	International Import/ Export Data.	Reinstatement.	Annual	Mandatory	Electric Utilities	30	300	Data are used to monitor utilities authorized to export electric energy or to operate or construct facilities for the transmission of electric energy at international boundaries.
FERC-520	Application for Authority to Hold Interlocking Directions Position.	Extension	On occasion	Mandatory	Individuals	100	100	Data are used to determine whether an applicant should be authorized to hold certain interlocking positions pursuant to section 305(b) of the Federal Power Act.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Three-year State Plan for Independent Living (IL) Rehabilitation Services under Title VII (Part A) of the Rehabilitation Act of 1973, as amended
Agency Form Number: ED (RSA)—SPIL
Frequency: Annually; 3 year cycle
Affected Public: State or Local Governments
Reporting Burden: Responses: 83; Burden Hours: 1,660
Recordkeeping Burden: Recordkeepers: 83; Burden Hours: 7

Abstract: Title VII, Part A, of the Rehabilitation Act authorizes grants to assist State Vocational Rehabilitation (VR) agencies (a total of 83 State agencies) in providing Independent Living rehabilitation services to the severely handicapped who do not have potential for gainful employment but may receive VR services to help them function independently. Each state submits a State plan in order to receive Federal funds. (29 US.C. 796d)

Office of Postsecondary Education

Type of Review Requested: Reinstatment
Title: Program Announcement—Fund for the Improvement of Postsecondary Education (FIPSE): Comprehensive Program Final Year Dissemination Competition
Agency Form Number: ED 0003
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 63; Burden Hours: 264
Recordkeeping Burden: Recordkeepers: 63; Burden Hours: 264

Abstract: This is a grant competition for awards with a limited eligibility requirement—a current FIPSE grantee under the comprehensive Program whose projects are in its final year of funding may apply, or recipients of single-year grants may apply within one year following the termination of its project. The purpose of these awards is to disseminate FIPSE project results or ideas.

[FR Doc. 85-4539 Filed 2-22-85; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of Proposed Amendments to the Department of Energy's NEPA Guidelines.

SUMMARY: The Department of Energy proposes to amend Section D of its NEPA guidelines by adding, modifying, and deleting typical classes of action. Public comment is invited on this proposal. Pending final adoption of the proposed amendments, the Department of Energy will use the amendments on an interim basis.

DATES: Comments by: March 27, 1985.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Director, Office of Environmental Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 3G-092, Washington, D.C. 20585, (202) 252-4600.
Henry Garson, Esq., Assistant General Counsel for Environment, GC-11, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 6A-113, Washington, D.C. 20585, (202) 252-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980, the Department of Energy (DOE) published in the **Federal Register** (45 FR 20694) final guidelines for compliance with the National Environmental Policy Act (NEPA), as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). In accordance with 40 CFR 1507.3(b)(2), Section D of the guidelines lists typical classes of agency action: (1) Which normally require environmental impact statements (EIS); (2) which normally require environmental assessments but not necessarily environmental impact statements; and (3) which normally do not require either environmental assessments or environmental impact statements.

Under Paragraph A.3(d) of the guidelines, the Department may amend Section D based on experience gained during implementation of the CEQ regulations and the DOE guidelines. The last amendments to Section D were published in the **Federal Register** on January 6, 1983, (48 FR 685).

B. Proposed Amendments

The Department proposes to further amend Section D of the guidelines by adding 8 new typical classes of actions, by modifying 4 existing typical classes of action, and by deleting 1 typical class of action.

The following categorical exclusions, i.e., actions which do not individually or cumulatively have a significant effect on the quality of the human environment and therefore for which neither an environmental assessment (EA) nor an EIS is required, are proposed:

1. Construction of tap lines (usually less than 6 miles in length) which are not for the integration of major new sources of generation into DOE's main transmission systems, and where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, wetlands, etc.

2. Construction of microwave towers and associated facilities where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, wetlands, etc., and where such actions do not prejudice future site selection decisions for substations or other transmission facilities.

3. Disposal of real property by the Department of Energy through the General Services Administration where the planned land-use is to remain unchanged.

4. Financial and technical assistance to individual (builders, owners, designers) and to state and local governments to promote energy-efficiency in new structures built in compliance with applicable, duly adopted building codes.

5. Small scale research and development projects designed to demonstrate potential electrical energy conservation associated with residential/commercial buildings, appliance/equipment efficiency standards, and manufacturing and industrial processes (e.g. insulation effectiveness, lighting efficiencies, appliance efficiency ratings, and development of manufacturing or industrial plant efficiencies).

6. Activities undertaken to restore existing fish and wildlife facilities, including minor habitat improvements or improvements to existing fish passage facilities at existing dams or diversion canals.

7. Power marketing services including storage, load factoring, seasonal exchanges, or other similar activities where the operations of hydroelectric projects remain within established

constraints and which do not alter the environmental status quo.

As a result of the addition of the new categorical exclusion number 2 listed above, it is necessary to modify an existing typical class of action normally requiring an EA. The typical class of action "Construction of new service facilities such as tap lines and substations," is modified to read as follows: "Construction of new substations and service facilities."

The following typical class of action is being added to those which normally require environmental assessments but not necessarily environmental impact statements:

1. Execution of contracts for the long term (greater than 1 year) allocation of existing or excess power resources to customers who can receive the resources over existing transmission facilities.

The following existing typical classes of action are being modified to add clarity.

1. "DOE actions which cause energy conservation on a substantial scale," is modified as follows: DOE actions which cause energy conservation on a substantial scale including those which cause effects on the indoor environment (indoor air quality, etc.).

2. "Execution of contracts for the short term or seasonal allocation of excess power resources to customers who can receive these resources over existing transmission systems," is modified as follows: Execution of contracts for the short-term or seasonal allocation (less than 1 year) of existing or excess power resources to customers who can receive these resources over existing transmission systems.

3. "Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area," is modified as follows: Minor substation modifications, which do not involve the construction of new transmission lines or the intergration of a major new resource, and where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, wetlands, etc.

As a result of this modification, the following typical class of action normally requiring an EA but not necessarily an EIS is being deleted: "Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area."

Comments concerning the proposed amendments to Section D of the Department's NEPA guidelines should be submitted to Dr. Stern at the above cited address.

Pending final adoption, the Department of Energy will use the proposed typical classes of action on an interim basis.

Issued in Washington, D.C., on February 12, 1985.

William A. Vaughan,

Acting Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 85-4512 Filed 2-22-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangements; Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of American and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement involves approval of the following sales:

Contract Number S-CA-370, to the University of Montreal, Montreal, Canada, 0.105 grams of uranium, enriched to 99.82% in U-235, and 26 grams of natural uranium metal, for use as standard reference material.

Contract Number S-CA-371, to Atomic Energy of Canada, Ltd., Chalk River, Canada, 148.8 grams of natural uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 19, 1985.

For the Department of Energy.

George J. Bradley, Jr.

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-4518 Filed 2-22-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Civil Uses; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/JA (EU)-33, from the Federal Republic of Germany to Japan, 4.505 kilograms of uranium, enriched to approximately 19.95% in U-235, in the form of fuel elements for use in the Japan Atomic Energy Research Institute Oarai reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 19, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-4517 Filed 2-22-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-JA-355, to the Nissho Iwai Corp., Tokyo,

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of Proposed Amendments to the Department of Energy's NEPA Guidelines.

SUMMARY: The Department of Energy proposes to amend Section D of its NEPA guidelines by adding the permanent cogeneration exemption authorized under Title II of the Fuel Use Act to its list of categorical exclusions. A categorical exclusion is a class of DOE action which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). Public comment is invited on this proposal. Pending final adoption or rejection of the proposed amendments, the Department of Energy will utilize the categorical exclusion process for permanent cogeneration exemptions.

DATE: Comments by June 23, 1986.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Director, Office of Environmental Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 3G-092, Washington, DC 20585, (202) 252-4600

Henry Garson, Esq., Assistant General Counsel for Environmental, GC-11, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 6A-113, Washington, DC 20585, (202) 252-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980, the Department of Energy (DOE) published in the **Federal Register** (45 FR 20695) final guidelines for implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1509). In accordance with these regulations Section D of the DOE guidelines lists three classes of agency action: (1) Those which normally require environmental impact statements (EIS); (2) those which normally require environmental assessments (EA) but not necessarily environmental impact statements and; (3) those which normally do not require either environmental assessments or environmental impact statements. This third class was identified pursuant to § 1507.3(b)(2)(ii) of the CEQ regulations referenced above and are termed "categorical exclusions." The CEQ regulations defines a categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." The regulations permit agency discretion, in that "an agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect."

The DOE NEPA guidelines state that "DOE may add actions to or remove actions from the categories in section D based on experience gained during the implementation of the CEQ regulations and these guidelines." Pursuant to the guidelines, substantive revisions are to be published in the **Federal Register** and adopted only after opportunity for public review. The last amendments to section D were published in the **Federal Register** on February 5, 1985.

B. Proposed Amendments

The Department proposes to further amend section D of its guidelines by adding to the list of categorical exclusions in section D, the grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95-620) for any new cogeneration powerplant. This exemption is authorized by section 212(c) of the Act.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from the grant or denial of a specific cogeneration exemption, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to ascertain whether an environmental assessment or environmental impact statement would be required for any individual action which is listed in Subpart D of the guidelines as categorically excluded from NEPA. To assist DOE in making this determination, DOE is concurrently amending, in a document published elsewhere in this **Federal Register**, its regulations covering applications for cogeneration exemptions by requiring a petitioner for this exemption to (1) certify that he will comply with all applicable environmental permits and approvals prior to operating the facility; and (2) complete an environmental checklist designed to determine whether the facility in question will have an impact in certain areas regulated by specified laws which impose consultation requirements on DOE (10 CFR 503.13(b)(2)). This will allow DOE to verify that either no significant impact will result, or that the categorical exclusion does not apply.

Under section 500.2 of DOE's final rule as amended (47 FR 29209, July 6, 1982), a "cogeneration facility" is an electric powerplant or a major fuel burning installation that produces:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

In its revised rulemaking of July 6, 1982 (47 FR 29209) (final rule) the DOE recognized the important role cogeneration technologies can play in assisting the nation to meet the energy goals of increased fuel efficiency and oil and natural gas savings. The final rule included a table by which potential cogeneration exemption applicants could determine the oil and gas savings that could be expected, on a regional basis, for electricity backed off the grid through cogeneration. The table displayed oil and gas savings, based on Btu/kWh for 11 regions. Examples of expected oil and gas savings by electric region, per Btu/kWh range from 300 in the Southeastern Electric Reliability Council (Virginia, N. Carolina, S. Carolina, etc.) a region in which the majority of the utility-generated electricity is from coal and nuclear, to 7,000 for the Western Systems Coordinating Council (California, Oregon, Washington, etc.), an area heavily dedicated to the use of oil and gas for electricity generation.

To date 94 cogeneration exemption requests have been submitted to the DOE (during 1985 alone, 38 petitions were accepted). Of this number, four were rejected for lack of sufficient information and three were terminated because the facilities did not require FUA exemptions. The remaining 86 facilities have either been granted cogeneration exemptions or the exemption requests are currently being acted upon by the DOE. Only 29 of these facilities have not been located in California.

Number of facilities	State
1	Alaska.
1	Arkansas.
3	Colorado.
3	Louisiana.
1	Massachusetts.
2	Michigan.
1	New Hampshire.
1	New Jersey.
1	Oklahoma.
14	Texas.
1	Washington.

These exemption petitions have effectively backed-out substantial quantities of electricity. In 1979, the first year after enactment of FUA, 185 megawatts of electricity were backed-off the grid. In 1985, 2926 megawatts were backed-off (the average unit size was 75 megawatts).

All cogeneration exemption petitions must be reviewed for compliance with NEPA requirements. In some, but not all approved cases, some added impact has been involved. Based on DOE's experience to date, the following generalities can be drawn in each of four main categories of impacts.

Air Quality

In general, natural gas or oil firing has resulted at worst in only very minor increases in air emissions. Often, the offsetting reduction in emissions resulting from the operation of a new cogeneration unit will cause a net decrease as compared to the preoperation condition. This has been achieved in many cases through the retirement of old units which the new cogenerator replaces. Even in those cases where no units are replaced, operation of a new cogeneration system will inherently result in the reduction of emissions from existing utility sources. Under the Fuel Use Act, a cogeneration exemption can be granted only if it will result in less oil and gas being consumed. Thus, cogeneration results in less fuel consumption for an equal amount of produced electricity and other useable energy. Although the offsetting utility emission reductions are not always equal to the emissions of the new cogenerator, because of pollution control requirements and relative system efficiencies, any net increases have been so minor that the threshhold levels necessary to qualify for New Source Review have not been exceeded.

Water Resources and Quality

Given the nature of cogeneration, the majority of cogeneration exemption petitions are for facilities to be constructed at existing industrial sites, and the systems for water supply and disposal are usually already in place. Even though water requirements of a cogeneration facility can be large, it generally represents an insignificant additional demand on supply.

Land Use

Land proposed for a new cogeneration facility is generally within an existing plant boundary on an already industrialized site. Usually little or no undeveloped land is affected. For a proposed facility sited outside of such areas, usually only a few acres of undeveloped land are affected.

Other Impacts

Cogeneration facilities have rarely been found to cause significant impacts on other environmental or socio-economic parameters such as solid waste, noise, cultural resources, threatened and endangered species, floodplains and wetlands, employment, industrial development, etc.

The granting of a cogeneration exemption generally results in no significant impact to the environment, while the denial of a cogeneration exemption results in no net change to the environment. The DOE, therefore, based on public comment on the above findings, proposes to add cogeneration to its list of Fuel Use Act exemptions subject to NEPA categorical exclusion.

Comments concerning the proposed amendments to Section D of the Department's NEPA guidelines should be submitted to Dr. Robert J. Stern at the above cited address.

Pending final adoption or rejection of the proposed action, the Department of Energy will effect the proposal on an interim basis.

Issued in Washington, DC, on May 7, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety, & Health.

[FR Doc. 86-10082 Filed 5-21-86; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA) Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of amendments to the Department of Energy's NEPA guidelines.

SUMMARY: The Department of Energy herewith amends Section D of its NEPA guidelines by adding the permanent cogeneration exemption authorized under Title II of the Fuel Use Act to its list of categorical exclusions. A categorical exclusion is a class of DOE action which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA).

DATES: Effective January 7, 1987.

FOR FURTHER INFORMATION CONTACT:

Carol Borgstrom, Acting Director, Office of NEPA Project Assistance, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 3G-092, Washington, DC 20585, (202) 586-4600.

Henry Garson, Esq., Assistant General Counsel for Environment, GC-11, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 6A-113, Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION: On May 22, 1986, the Department of Energy (DOE) published in the **Federal Register** (51 FR 18867) a notice of a proposed change to Section D of its National Environmental Policy Act (NEPA) Guidelines by adding the permanent cogeneration exemption authorized under Title II of the Fuel Use Act to its list of categorical exclusions.

Publication of this notice commenced a 30-day comment period during which public comment was invited. No timely comments were received. The DOE has elected to address the one late comment received in which the commentor contended that DOE has not presented any evidence to justify the categorical exclusion for cogeneration facilities. The commentor disagreed with DOE's analysis and conclusion that cogeneration facilities typically do not result in significant environmental impacts. The commentor states that "[t]his picture of cogeneration ignores the wide disparity in both the design of cogeneration facilities and the relative concentration of cogeneration sites within a specific region. * * * Not only the cogeneration facility, but also the industrial facilities they are associated with are quite varied in design and, consequently, varied in their environmental effects."

The commentor further maintained that the categorical exclusion gives unjustifiable preferential treatment to petitioners seeking cogeneration systems as compared to those seeking other types of exemptions for their powerplants.

This comment misunderstands the basic nature of the categorical exclusion process under NEPA. The Council on Environmental Quality regulations implementing NEPA authorize Federal agencies to identify those classes of actions which *normally* do not require either an environmental impact statement (EIS) or an environmental assessment (EA) (see 40 CFR 1507.3(b)(2)). These may be categorically excluded from NEPA documentation (40 CFR 1500.4). DOE has identified these classes of actions in Section D of its Guidelines. 40 CFR 1507(c) requires agencies to put in place procedures to assure that individual actions properly fall under the basis for the categorical exclusion. DOE established such procedures in paragraphs A.3.b.2. and 3. of its Guidelines, which provide that: (1) DOE will review individual proposed actions to determine if it is appropriate for the categorical exclusion to apply, and (2) further NEPA review will be conducted for those individual actions when public comment raises a substantial question regarding the categorization. These requirements are implemented for Fuel Use Act exemptions at 10 CFR 503.13(b), which require petitioners to certify that all environmental permits will be obtained, and to complete an "environmental checklist" concerning sensitive environmental concerns, and in the Notice of Acceptance of the petition, which invites public comment on the categorical exclusion for the facility. Thus, DOE has put in place procedures to create a presumption that all actions in a class require neither an EIS or EA, and to rebut it in individual cases.

DOE believes that experience is the most reliable basis for determining whether a class of action normally does not require further NEPA documentation and can be categorically excluded. As noted in the Guidelines modification proposal, none of the 96 cogeneration exceptions granted to date have required either an EIS or an EA. The proposed amendment briefly summarized the nature of the environmental data and information which DOE analyzed in each of the cases to reach the conclusion that no significant impacts would occur. Contrary to the inference contained in the comment, each analysis was performed using the fuel most likely to cause significant environmental impacts (either oil or natural gas) which the facility would be allowed to burn under the terms of its environmental permits.

DOE believes that this consistent history of performance is a sufficient basis to raise the rebuttable presumption necessary to establish a categorical exclusion. The environmental checklist and certification that all environmental permits will be obtained, coupled with the opportunity for public comment on the Notice of Acceptance of the exemption petition, provides adequate assurance that each action will be sufficiently scrutinized to determine if it correctly falls within the categorical exclusion.

Finally, DOE disagrees that this procedure improperly differentiates between types of exemptions. Paragraph A.3.d. of DOE's Guidelines clearly states that further additions to the categories may occur as experience is gained during implementation. When sufficient experience is gained with other types of powerplant exemptions, they will be considered for categorical exclusions also.

DOE has consulted with the Council on Environmental Quality (CEQ) regarding this categorical exclusion, in accordance with 40 CFR 1507.3. CEQ had no objection to the proposed amendment. Therefore, DOE has adopted this amendment to Section D of its NEPA guidelines, effective immediately.

Issued in Washington, DC on December 22, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87-163 Filed 1-6-87; 8:45 am]

BILLING CODE 6540-01-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of amendments to and republication of the Department of Energy's NEPA guidelines.

SUMMARY: The Department of Energy is amending Section D of its guidelines for compliance with the National Environmental Policy Act (NEPA) by adding eight new typical classes of actions, by modifying four existing typical classes of actions, and by deleting one typical class of actions, as proposed on February 25, 1985, (50 FR 7629). Section D was originally published on March 28, 1980, (45 FR 20694) and subsequently has been amended on February 23, 1982, (47 FR 7976), January 6, 1983, (48 FR 685), and January 7, 1987, (52 FR 659). Sections A, B, C, and amended Section D of the NEPA guidelines are republished in their entirety.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT:

Carol Borgstrom, Acting Director, Office of NEPA Project Assistance EH-25, Room 3E-080 U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586-4600.

Henry Garson, Esq. Assistant General Counsel for Environment, GC-11, Room 6A-113 U.S. Department of Energy 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION: On March 28, 1980, the Department of Energy (DOE) published in the **Federal Register** (45 FR 20694) final guidelines for compliance with the National Environmental Policy Act (NEPA), as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). Section D of the Department's guidelines identifies typical classes of DOE actions: (1) which normally do not require either an environmental assessment (EA) or an envi ronmental impact statement (EIS), i.e., categorical exclusions, (2) which normally require an EA but not necessarily an EIS, and (3) which normally require an EIS. These classes of actions were identified pursuant to CEQ regulations (40 CFR 1507.3(b)(2)).

A notice of proposed amendments to Section D of DOE's guidelines was published on February 25, 1985, (50 FR 7629). The proposed amendments related primarily to activities of the Department's Power Marketing Administrations, and proposed adding eight new typical classes of actions, modifying four existing typical classes of actions, and deleting one typical class of actions. Specifically, the proposed amendments were the addition of seven and modification of two categorical exclusions, the addition, modification, and deletion of classes of actions which normally require an EA, and the modification of one class of actions which normally requires an EIS.

Publication of the proposed amendments commenced a 30-day public comment period. No comments were received. The final amendments as stated below are essentially the same as the proposed amendments. Certain clarifying changes have been made, as noted.

The following categorical exclusions, i.e., actions which normally do not individually or cumulatively have a significant effect on the quality of the human environment and therefore for which neither an EA nor an EIS is required, have been added:

1. Construction of tap lines (defined as usually being less than 10 miles in length) which are not for the integration of major new sources of generation into DOE's main transmission systems, and where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands. (Note - This has been modified from the amendment proposed in 50 FR 7629 to make it clear that the parenthetical information is a definition of "tap lines" and is not a transmission line length criterion, and to use a length that is more in keeping with the normal maximum length of a tap line, i.e., 10 miles instead of 6 miles.)

2. Construction of microwave and radio communication towers and associated facilities where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands, and where such actions do not prejudice future site selection decisions for substations or other transmission facilities. (Note - The words "and radio communication" have been added to the amendment proposed in 50 FR 7629 to include radio towers, which have environmental impacts similar to those of microwave towers.)

3. Disposal of real property by the DOE through the General Services Administration where the planned land use is to remain unchanged.

4. Financial and technical assistance to individuals (builders, owners, designers) and to state and local governments to promote energy efficiency in new structures built in compliance with applicable, duly adopted building codes.

5. Small scale research and development projects designed to demonstrate potential electrical energy conservation associated with residential/commercial buildings, appliance/ equipment efficiency standards, and manufacturing and industrial processes (e.g., insulation effectiveness, lighting efficiencies, appliance efficiency ratings, and development of manufacturing or industrial plant efficiencies).

6. Activities undertaken to restore existing fish and wildlife facilities, including minor habitat improvements or improvements to existing fish passage facilities at existing dams or diversion canals.

7. Power marketing services including storage, load shaping, seasonal exchanges, or other similar activities where the operations of hydroelectric projects remain within established constraints and which do not alter the environmental status quo. (Note - The term "load factoring" in the amendment proposed in 50 FR 7629 has been replaced by the term "load shaping".)

The addition of the new categorical exclusion number 1 above makes it necessary to make a conforming change, as proposed, to an existing typical class of actions normally requiring an EA. The typical class of actions "Construction of new service facilities such as tap lines and substations," has been modified to read as follows: "Construction of new substations."

The following typical class of actions has been added to those which normally require EAs but not necessarily EISs: Execution of marketing plans or allocation plans for the long term allocation (greater than 1 year) of existing or excess power resources to customers who can receive the resources over existing transmission systems. (Note - This has been modified from the amendment proposed in 50 FR 7629 to reflect the focus of environmental review on marketing or allocation plans rather than on individual contracts executed under approved plans. The allocation of power resources to customers in a manner differing from existing contractual arrangements is already an existing class of actions requiring an EA. The term "facilities" in the amendment proposed in 50 FR 7629 has been replaced by the term "systems".)

The existing categorical exclusion "Execution of contracts for the short term or seasonal allocation of excess

power resources to customers who can receive these resources over existing transmission systems," is modified as follows: Execution of contracts, marketing plans, or allocation plans for the short term or seasonal allocation (less than 1 year) of existing or excess power resources to customers who can receive these resources over existing transmission systems. (Note: This has been modified from the amendment proposed in 50 FR 7629 to include marketing or allocation plans as well as individual contracts executed under approved plans. The allocation of power resources to customers in a manner differing from existing contractual arrangements is already an existing class of actions requiring an EA.)

The existing class of actions normally requiring an EIS, "DOE actions which cause energy conservation on a substantial scale," is modified as follows: DOE actions which cause energy conservation on a substantial scale, including those where effects are primarily on the indoor environment (e.g., indoor air quality). (Note: This has been modified from the amendment proposed in 50 FR 7629 for clarification.)

The existing categorical exclusion "Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area," is modified as follows: Minor substation modifications, which do not involve the construction of new transmission lines or the integration of a major new resource, and where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands. (Note: This modification is identical to that proposed in 50 FR 7629.)

As a result of the above modification, the following typical class of actions normally requiring an EA but not necessarily an EIS has been deleted: "Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area." Thus, an EA is not automatically required for facility modifications that extend beyond the previously developed area. However, if the limiting criteria in the categorical exclusion cannot be met (if the action involves construction of new transmission lines or the integration of a major new source or if there will be impacts in environmentally sensitive areas), then an EA would be required.

DOE has consulted with the Council on Environmental Quality (CEQ) regarding these amendments, in accordance with 40 CFR 1507.3. CEQ had no objection to the proposed amendments. Therefore, DOE has adopted these amendments to Section D of its NEPA Guidelines, effective immediately.

The Department's NEPA Guidelines are republished as follows in their entirety. The republication incorporates amendments to the original Section D (45 FR 20694, March 28, 1980) which were finalized on February 23, 1982, (47 FR 7976), January 6, 1983, (48 FR 685), January 7, 1987, (52 FR 659), and by this notice. Sections A, B, and C of the Guidelines are reprinted as published in 45 FR 20694 with the exceptions that (1) responsible DOE offices have been changed as appropriate and (2) the list of other environmental laws that are coordinated with the NEPA process has been updated.

Issued in Washington, DC on November 19, 1987.

Mary L. Walker,

Assistant Secretary for Environment, Safety and Health.

DOE NEPA GUIDELINES

Purpose

The purpose of these guidelines is to provide procedures which the Department of Energy (DOE) will apply to implement the Council on Environmental Quality (CEQ) regulations for compliance with the National Environmental Policy Act (NEPA). The CEQ regulations are codified at 40 CFR Parts 1500-1508. The guidelines are issued pursuant to and are to be used only in conjunction with the CEQ regulations.

The guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. They are not intended, however, to create or enlarge any procedural or substantive rights against DOE. Any deviation from the guidelines must be soundly based and must have the advance approval of the Under Secretary of DOE.

Section A - NEPA and Agency Planning

1. DOE Process

The CEQ regulations (40 CFR 1501.2) require that: "Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."

To implement this requirement DOE will:

(a) Review preliminary internal program planning documents, regulatory agenda, draft legislation, budgetary materials and other developing DOE proposals, to ensure the proper integration of the NEPA process;

(b) Incorporate into its early planning processes a careful consideration of: (i) The potential environmental consequences of its proposed actions, and (ii) appropriate alternative courses of action;

(c) At the earliest possible time, in accordance with paragraph A.3 herein, determine whether an environmental assessment (EA) or an environmental impact statement (EIS) is required.

2. Applicant Processes

With respect to applicant processes, the CEQ regulations (40 CFR 1501.2(d)) require agencies to:

"(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that: (1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time."

To implement this requirement:

(a) Applicants for a DOE lease, permit, license, certificate, financial assistance, allocation, exemption or similar action are expected to:

(1) Consult with DOE as early as possible in their planning processes to obtain guidance with respect to the appropriate level and scope of any studies or environmental information which DOE may require to be submitted as part of or in support of their application;

(2) Conduct studies which are deemed necessary and appropriate by DOE to determine the impact of the proposed action on the quality of the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during the preliminary planning stages of the proposed action to ensure that environmental factors including permitting requirements are identified;

(4) Submit applications for all required Federal, regional, State and local permits or approvals as early as possible;

(5) Notify DOE as early as possible of other Federal, regional, State, local and Indian tribe actions required for project completion in order that DOE may coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2, regarding elimination of duplication with State and local procedures, as appropriate;

(6) Notify DOE of private persons and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2);

(7) Notify DOE if, prior to completion of the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction which may meet either of the criteria set forth at 40 CFR 1506.1(a).

(b) Upon receipt of an application, or earlier if possible, DOE will:

(1) Initiate and coordinate any requisite environmental analyses in accordance with the requirements set forth at 40 CFR 1506.5;

(2) Determine, in accordance with paragraph A.3 herein, whether an EA or an EIS is required; and

(3) Establish time limits for the NEPA process when requested to do so by an applicant.

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(d) For DOE programs that frequently involve another agency or agencies in related decisions subject to NEPA, DOE will cooperate with the other agencies in developing environ-mental information and in determining whether to prepare an EA or an EIS. Where appropriate and acceptable to the other agencies, DOE will develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

3. Whether to Prepare an Environmental Impact Statement

The CEQ regulations (40 CFR 1501.4) require the Federal agency, in determining whether to prepare an EIS, to:

"(a) Determine under its procedures supplementing these regulations (described in Section 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Section 1508.9)."

To implement this requirement and the requirements contained at 40 CFR 1507.3(b)(2):

(a) DOE has (in Section D), identified typical classes of DOE action:

"(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment [categorical exclusions (Section 1508.4)].

(iii) Which normally require environmental assessments but not necessarily environmental impact statements."

(b) DOE will review individual proposed actions to determine the appropriate level of NEPA documentation required where:

(1) The proposed action is not encompassed within the categories of Section D,

(2) The proposed action is encompassed within the categories of Section D, but DOE believes that the categorization is not appropriate to the individual proposed action.

(3) Public comment received on or relating to a proposal included within the categories of Section D raises a substantial question regarding the categorization.

(c) DOE will, in conducting the reviews of paragraph (b) above, either:

(1) Determine that neither an EA nor an EIS is required where it is clear that the proposed action is not a major Federal action significantly affecting the quality of the human environment. (In such cases, a brief memorandum may be prepared explaining the basis for that determination);

(2) Prepare an EA where it is unclear whether an EIS is required; or

(3) Proceed directly to EIS preparation where it is clear that an EIS is required.

(d) DOE may add actions to or remove actions from the categories in Section D based on experience gained during implementation of the CEQ regulations and these guidelines.

4. Scoping

The CEQ regulations (40 CFR 1501.7) require:

"* * * an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action."

To implement this requirement, DOE will:

(a) As soon as practicable after a decision to prepare an EIS, publish in the **Federal Register** a Notice of Intent (NOI) to prepare an EIS in accordance with 40 CFR 1501.7. However, where DOE finds that there is a lengthy period between DOE's decision to prepare an EIS and the time of actual preparation, DOE may instead publish the NOI at a time sufficiently in advance of preparation of the draft EIS to provide reasonable opportunity for interested persons to participate in the EIS preparation process;

(b) Provide additional dissemination of the NOI in accordance with 40 CFR 1506.6;

(c) Through the NOI, invite comments and suggestions on the proposed scope of the EIS including environmental issues and alternatives for consideration in the preparation of the draft EIS and invite public participation in the NEPA process except where there is an exception for classified proposals pursuant to 40 CFR 1507.3(c) and paragraph C.l, herein. The comment period for the NOI will normally be 20 days. To the extent practicable, DOE may consider comments received after the close of the designated comment period on the NOI in preparing the draft EIS.

(d) If a scoping meeting is to be held, provide notice of the meeting in the NOI at least 15 days before the meeting.

(e) Prepare and use an EIS implementation plan to record the results of the scoping process and to

provide guidance to DOE for the preparation of an EIS.

(1) The EIS implementation plan will be a brief document and will contain:

(i) Information to address the provisions of 40 CFR 1501.7(a)(2), (3), (5), (6), and (7);

(ii) A detailed outline of the EIS;

(iii) A description of the means by which the EIS will be prepared, including the nature of any contractor assistance to be used.

(2) The EIS implementation plan may also contain:

(i) Target page limits for the EIS; (ii) Target time limits for EIS preparation; (iii) An allocation of assignments among DOE and cooperating agencies.

(3) DOE will complete an EIS implementation plan as soon as practicable after the close of the designated comment period on the NOI or after a scoping meeting, if one is held, whichever is later.

(4) DOE may revise the implementation plan, as necessary during EIS preparation.

Section B - NEPA and Agency Decisionmaking

1. DOE Decisionmaking

The CEQ NEPA regulations (40 CFR 1505.1) require that agencies adopt procedures to ensure that decisions are made in accordance with the policies and purposes of NEPA.

To implement this CEQ requirement, this section designates the major decisionmaking processes for DOE's principal programs and provides procedures to assure that the NEPA process corresponds with the decisionmaking processes. These processes are designated as policy level decisionmaking, program level decisionmaking, and project level decisionmaking. The procedures consist of general procedures applicable to all DOE decisionmaking processes followed by specific procedures applicable to the individual decisionmaking processes.

The decisionmaking structure designated herein is consistent with the CEQ tiering concept (40 CFR 1502.20), which provides for focusing on the actual issues ripe for decision and eliminating repetitive discussions of the issues already decided. Accordingly, environmental documents prepared for policy level decisions will normally focus on broad issues and will provide the foundation for subsequent program and project environmental documents. Environmental documents prepared for program level decisions will normally focus on narrower issues than at the policy level and may summarize and incorporate by reference discussions contained in any relevant policy level environmental document but should not repeat the discussion of issues already decided at the policy level of decisionmaking.

Similarly, environmental documents prepared for project level decisions will normally focus on issues specific to the proposed project and may summarize and incorporate by reference discussions contained in any broader environmental documents but should not repeat the discussion of issues decided at higher levels of decisionmaking.

2. General Procedures

(a) The following general procedures apply to all DOE decisionmaking processes. DOE will:

(1) At the earliest possible time in the decisionmaking process: (i) Identify and evaluate environmental factors and appropriate alternative courses of action, and (ii) determine in accordance with paragraph A.3 herein the appropriate level of environmental review document required.

(2) Commence preparation of the relevant environmental document as close as possible to the time that DOE begins development of or is presented with a proposal (40 CFR 1508.23), and complete the document in advance of final decisionmaking.

(3) During the development and consideration of a proposal and the relevant environmental document, review other DOE planning and decisionmaking documents to ensure that alternatives (including the proposed action) to be considered by the decisionmaker are encompassed by the range of alternatives in the relevant environmental document.

(4) Circulate the relevant environmental document or summary thereof with the proposal and other decisionmaking documents through DOE's internal review processes to ensure that DOE officials use the environmental documents in making decisions and that the decisionmaker consider the alternatives described therein.

(5) Where an EIS is prepared, publish the record of decision (40 CFR 1505.2) in the **Federal Register** and make it available to the public as specified in 40 CFR 1506.6 except as provided in paragraph C.l. For the purposes of 40 CFR 1506.1, the record of decision will be deemed issued upon signature by the appropriate DOE official.

(6) Utilize the tiering concept in accordance with 40 CFR 1502.20 and 1508.28 to the fullest extent practicable.

3. Specific Procedures

(a) *Policy-level-decisionmaking.* At this level of decisionmaking, DOE is deciding on broad strategies to achieve energy goals such as conservation, development of new resources and use of more abundant resources. Policy level decisions may, for example, be represented by proposals for legislation or by formal statements of national energy policy.

(1) For legislative proposals, DOE will: Identify and evaluate relevant environmental issues and reasonable alternatives, and make a determination regarding the need to prepare an environmental document during the proposal formulation and early drafting stages; and, normally prepare, consider, and publish any required environmental document in connection with the submittal of a proposal to Congress, except as may be provided in 40 CFR 1506.8.

(2) For formal statements of national energy policy DOE will: Initiate implementation of the applicable general procedures specified above during the analysis phase of policy development; and will prepare, consider, and publish any required environmental document in advance of policy adoption for those policies that will result in or substantially alter DOE programs.

(b) *Program-level-decisionmaking.* At this level of decisionmaking, DOE is deciding on a variety of approaches to implement specific policies or statutory authorities. Program level decisions are generally represented by the advancement of an energy technology program, the issuance of program regulations, or the adoption of a program plan.

(1) For energy technology research, development, demonstration and commercialization programs, DOE will: initiate the applicable general procedures specified above concurrent with program initiation; and, if required, prepare the relevant environmental document when environmental effects can be meaningfully evaluated. When required, the relevant environmental document would normally be prepared in advance of a decision to proceed with the development phase of a research, development, demonstration, and commercialization program. Nevertheless, DOE will consider the following factors throughout the program in determining the necessity and appropriate timing of the relevant environmental document: (i) The significance of the environmental impacts of the technology, if applied, on the quality of the human environment;

and (ii) The extent to which continued investment in the new technology is likely to cause the program to reach a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(2) For programs that are implemented by regulations, DOE will initiate implementation of the applicable general procedures specified above during early regulation drafting stages. Publication of a draft EIS, if required, will normally accompany publication of the proposed regulations and will be available for public comment at any hearings held on the proposed regulations. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking intended to gather information during early stages of regulation development. The relevant environmental document, with comments and responses, will be included in the administrative record. In accordance with 40 CFR 1506.10(b)(2), final rulemakings promulgated pursuant to the Administrative Procedure Act may be issued simultaneously with publication of the notice of the availability of the final EIS.

(3) For programs that are not included in paragraphs (1) or (2) and that are implemented by a formal program plan, DOE will: initiate implementation of the applicable general procedures specified above concurrent with program plan formulation; and, if required, prepare the relevant environmental document when the environmental effects of the program can be meaningfully evaluated. If an EIS is required, it will be prepared, considered, and published and the requisite record of decision issued before taking an action that would have an adverse environmental impact or limit the choice of reasonable alternatives except as provided in 40 CFR 1506.1(c).

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval of projects, by the approval or disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) For projects that are undertaken directly by DOE, including projects involving the sole source procurement of a site and/or process, DOE will: initiate implementation of the applicable general procedures specified above concurrent with project concept development; and, if required, prepare, consider, and publish the relevant environmental document before making a go/no-go decision on the project. In addition, if a DOE project requires preparation of an EIS, DOE will not take an action concerning the project which would have an adverse environmental effect or which would limit the choice of reasonable alternatives until the required record of decision is issued.

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. (The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to those reasonably available to offerors.)

(ii) Independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500-1508 and in advance of a go/no-go decision.

(3) For projects that involve applications to DOE for financial assistance or applications to DOE for a permit, license, exemption, allocation or similar regulatory action involving informal administrative proceedings, DOE will: apply NEPA early in the process in accordance with 40 CFR 1501.2(d) and paragraph A.2 herein; commence preparation of the relevant environmental document, if required, no later than immediately after applications are received and in accordance with the requirements set forth at 40 CFR 1506.5; and consider the relevant environmental document, if one is prepared, in decisions on the application.

(4) For actions that involve adjudicatory proceedings, excluding judicial or administrative, civil, or criminal enforcement actions, DOE will: normally prepare, consider and publish the relevant environmental document, if required, in advance of a decision, and include the document in the formal record of the proceedings. If an EIS is required, the draft EIS will normally precede preliminary staff recommendations, and publication of

the final EIS will normally precede final staff recommendations and that portion of the public hearing related to the EIS. The EIS need not precede preliminary hearings designed to gather information for use in the EIS.

Section C - Other Requirements of NEPA

1. Access to NEPA Documents

The CEQ NEPA regulations (40 CFR 1507.3(c)) allow an agency to develop criteria for limiting public access to environmental documents which involve classified information. This section provides the DOE policy for addressing classified information as well as policy for addressing confidential information.

Classified or confidential information is exempted from mandatory public disclosure by Section 552(b) of the Freedom of Information Act (FOIA) (5 U.S.C. 552), Section 1004.10(b) of DOE's regulations implementing FOIA (10 CFR Part 1004), and 18 U.S.C. 1905. Public access to such information will be restricted in accordance with such regulations and applicable statutes.

All NEPA documents (as defined at 40 CFR 1508.10), the EIS implementation plan, and the record of decision are subject to the mandatory public disclosure requirements of FOIA and the DOE regulations implementing FOIA except documents which are determined, in accordance with the applicable statutes and regulations, to contain classified or confidential information. DOE will determine the treatment of documents containing classified or confidential information on a case by case basis in accordance with the requirements of DOE's FOIA regulations and the applicable statutes.

Wherever possible, the fundamental policy of full disclosure of NEPA documents will be followed. In some cases, this will mean that classified or confidential information may be excised, prepared as an appendix, or otherwise segregated to allow the release of the nonsensitive portions of a document.

2. Supplemental Statements

(a) If required, DOE will prepare, circulate, and file a supplement to a draft or final EIS, in accordance with 40 CFR 1502.9(c). However, where it is unclear whether an EIS supplement is required, DOE will prepare an analysis which provides sufficient information to support a DOE determination with respect to the criteria of 40 CFR 1502.9(c) (i) and (ii). Based on the analysis, DOE will determine whether to prepare an EIS supplement. Where DOE determines that an EIS supplement is not required, DOE will prepare a brief memorandum which explains the basis for that determination.

(b) When applicable, DOE will incorporate an EIS supplement or a brief memorandum and supporting analysis into any related formal administrative record prior to making a final decision on the action which is the subject of the EIS supplement or analysis.

3. Revisions of Time Periods

The CEQ regulations (40 CFR 1507.3(d)), allow agencies to provide for periods of time other than those presented in 40 CFR 1506.10 when necessary to comply with other specific statutory requirements.

Certain circumstances, such as statutory deadlines, may require that the periods established in 40 CFR 1506.10 for the timing of DOE NEPA actions be altered. If DOE determines that, in order to comply with specific requirements of other statutes, such revisions are necessary, a notice of the determination will be published in the **Federal Register**. This notice will briefly provide the reason for such alterations and contain information on the revised time periods. Related notices of substantive action, if applicable, may be published jointly with notices published pursuant to this paragraph.

4. Coordination With Other Environmental Laws

The CEQ regulations (40 CFR 1502.25) provide for integrating the NEPA process and other environmental requirements.

To the fullest extent possible, DOE will:

(a) Coordinate NEPA compliance with other environmental review requirements including those under: the Clean Air Act, the Clean Water Act, the Coastal Zone Management Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Wild and Scenic Rivers Act, the National Historic Preservation Act, Section 13 of the Federal Nonnuclear Research and Development Act, the Marine Protection, Research and Sanctuaries Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and other Acts, as deemed appropriate by DOE.

(b) Determine the applicability of other environmental requirements early in the planning process to ensure compliance and to avoid delays.

(c) In addition to the information required by 40 CFR 1502.25(b), include in draft and final EISs plans and estimated schedules for compliance with other applicable environmental review requirements.

(d) Use the relevant NEPA document to support the fulfillment of the review and documentation requirements of other environmental statutes and regulations, and to report the status of compliance with these other environmental authorities.

5. Status of NEPA Actions

Individuals or organizations desiring information or status reports on elements of the NEPA process should address their inquiries to:

Office of NEPA Project Assistance, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

6. Oversight of Agency NEPA Activities

The Assistant Secretary for Environment, Safety and Health, or his/her designee, will be responsible for overall review of DOE NEPA compliance.

7. Compliance

These guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. Any deviation from the guidelines must be soundly based and must have the advance approval of the Under Secretary of DOE.

8. Revisions to the Guidelines

DOE will, in accordance with 40 CFR 1507.3, review these guidelines on a continuing basis and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA. Substantive changes will be published in the **Federal Register** and will be finally adopted only after an opportunity for public review.

SECTION D.—TYPICAL CLASSES OF ACTIONS

Normally do not require EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
Classes of Actions Generally Applicable to All of DOE		
Administrative procurements (e.g., general supplies).	DOE actions which enable or result in engineering development activities, i.e., detailed design, development, fabrication, and test of energy system prototypes.	DOE actions which are expected to result in the construction and operation of a large scale project.
Contracts for personal services.	DOE actions which provide grants to state and local governments for energy conservation programs.	DOE actions which cause energy conservation on a substantial scale, including those where effects are primarily on the indoor environment (e.g., indoor air quality).
Personnel actions.	Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities which exceed the rate of inflation in the period since the last increase.	
Reports or recommendations on legislation or proposed rulemaking which was not initiated by DOE.		
Compliance actions, including investigations, conferences, hearings, notices of probable violations and remedial orders.		
Interpretations and rulings, or modification or rescissions thereof.		
Promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended.		
Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program.		
Information gathering, analysis, and dissemination.		
Actions in the nature of conceptual design or feasibility studies.		
Actions involving routine maintenance of DOE-owned or operated facilities.		
Actions in the nature of analytic energy supply/demand studies which do not result in a DOE report or recommendation on legislation or other DOE proposals.		
Adjustments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued by the Office of Hearings and Appeals.		
Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities, which do not exceed the rate of inflation in the period since the last rate increase.		
Actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid.		
General plant projects such as road and parking area resurfacing, modifications to heating-ventilating-air conditioning systems, minor alterations of existing buildings, and other similar projects where: (1) The projects are located within previously developed areas and will not affect environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands and (2) the projects are not part of a proposed action that is or may be the subject of an EA or EIS.		
Installation of meteorological towers and associated activities to assess potential wind energy resources where the installation has no impacts on environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands, and where the installation does not prejudice future site selection decisions for large wind turbines.		
Construction of microwave and radio communication towers and associated facilities where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands, and where such actions do not prejudice future site selection decisions for substations or other transmission facilities.		
Disposal of real property by the Department of Energy through the General Services Administration where the planned land use is to remain unchanged.		
Financial and technical assistance to individuals (builders, owners, designers) and to state and local governments to promote energy efficiency in new structures built in compliance with applicable, duly adopted building codes.		
Small scale research and development projects designed to demonstrate potential electrical energy conservation associated with residential/commercial buildings, appliance/equipment efficiency standards, and manufacturing and industrial processes (e.g. insulation effectiveness, lighting efficiencies, appliance efficiency ratings, and development of manufacturing or industrial plant efficiencies).		
Activities undertaken to restore existing fish and wildlife facilities, including minor habitat improvements or improvements to existing fish passage facilities at existing dams or diversion canals.		
Classes of Actions Generally Applicable to Licenses to Import/Export Natural Gas Pursuant to Section 3 of the Natural Gas Act		
	Approval/disapproval of new license or amendment to an existing license which does not involve new construction, but which requires operational changes which may or may not be significant, such as an increase in liquid natural gas throughput, change in transportation or storage operations.	Approval/disapproval of applications involving the construction of new liquid natural gas (LNG) terminals, regasification or storage facilities, or a significant expansion of an existing LNG terminal, regasification or storage facility.

SECTION D.—TYPICAL CLASSES OF ACTIONS—Continued

Normally do not require EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
		Approval/disapproval of an application involving a significant operational change, such as a major increase in the quality of liquid natural gas imported or exported.
Classes of Actions Generally Applicable to International Activities		
Approval of DOE participation in international "umbrella" agreements for cooperation in energy R&D which do not commit the U.S. to any specific projects or activities. Approval of technical exchange arrangements for information, data or personnel with other countries or international organizations. Approval of export of small quantities of special nuclear materials or isotopic materials in accordance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" FEDERAL REGISTER, Part VII, June 9, 1978).		
Classes of Actions Generally Applicable to Power Marketing Administrations (PMA)		
Minor substation modifications, which do not involve the construction of new transmission lines or the integration of a major new resource, and where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands.	Upgrading (reconstructing) an existing transmission line.	Main transmission system additions—additions of new transmission lines, main grid substations and switching stations to PMA's main transmission grid.
Emergency repair of transmission lines including replacement or repair of damaged equipment as well as the removal and replacement of downed transmission lines.	Construction of new substations.	Integrating transmission facilities—transmission system additions for integrating new sources of generation into PMA's main grid.
Additions or modifications to transmission facilities which do not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, replacement of poles and crossarms, and similar actions.	Annual vegetation management program (system-wide).	
Grant or denial of requests for multiple use of DOE transmission line rights-of-way, such as grazing permits and crossing agreements including electric lines, water lines, and drainage culverts.	Construction and operation of wind resource, low-head hydro, and solar energy pilot projects.	
Execution of contracts, marketing plans, or allocation plans for the short term or seasonal allocation (less than 1 year) of existing or excess power resources to customers who can receive these resources over existing transmission systems.	The allocation of power resources to customers in a manner differing from existing contractual arrangements.	
The renewal of existing power contracts in kind.	Implementation of an erosion control program that is system-wide.	
Construction of tap lines (defined as usually being less than 10 miles in length) which are not for the integration of major new sources of generation into DOE's main transmission systems, and where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands.	Execution of marketing plans or allocation plans for the long term allocation (greater than 1 year) of existing or excess power resources to customers who can receive the resources over existing transmission systems.	
Power marketing services including storage, load shaping, seasonal exchanges, or other similar activities where the operations of hydroelectric projects remain within established constraints and which do not alter the environmental status quo.		
Actions undertaken in order to bring an existing DOE transmission facility into compliance with changes in applicable Federal, state, or local environmental standards or to mitigate adverse environmental effects, where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands. Such actions include, for example, noise abatement measures, and the acquisition of additional rights-of-way to establish buffer areas.		
Execution of contracts for the short term (less than one-year) or seasonal acquisition of excess power from existing power resources which can be transmitted over existing transmission systems with no changes in the operations of the power resources.		
Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events where the adjustments result in only minor changes in reservoir levels and streamflows.		
Contract interpretations, amendments, and modifications, including replacement, which are clarifying or administrative in nature, and which do not extend the term or otherwise substantially change the contracts being amended.		
Leasing of existing transmission facilities where the leases do not involve any change in operation.		
Acquisition or minor relocation of existing access roads serving existing transmission facilities where the relocation does not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands.		
Replacing conductors on existing transmission lines where the replacement conductors carry the same nominal voltage as the existing conductors and where the replacement work does not involve new support structures, new substations, or other new facilities.		
Research, inventory, and information collection activities which are directly related to the conservation of fish and wildlife resources and which involve only negligible animal mortality or habitat destruction, and no introduction of either contaminants or exotic organisms.		

SECTION D.—TYPICAL CLASSES OF ACTIONS—Continued

Normally do not require EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
	Classes of Actions Generally Applicable to Nuclear Waste Management Program.	
	Exploratory and site characterization activities which by virtue of resource commitment or elapsed time for completion may foreclose reasonable site alternatives.	DOE actions resulting in the site selection, construction, or operation of major treatment, storage and/or disposal facilities for transuranic and high level nuclear waste and/or spent nuclear fuel such as spent fuel storage facilities and geologic repositories.
	Land acquisition activities solely for the purposes of reserving possible candidate sites and which do not prejudice future programmatic site selection decisions.	
	The demonstration or implementation of intermediate-depth burial of low-level waste at DOE sites.	
	Classes of Actions Generally Applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA)	
The grant or denial of any temporary exemption for any electric powerplant or major fuel-burning installation.		
The grant or denial of any permanent exemption of any existing electric powerplant or major fuel-burning installation, other than an exemption (1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain state or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95-620) for any new electric powerplant or major fuel-burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new peakload powerplant.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new electric powerplant or major fuel-burning installation to permit operation for emergency purposes only.		
The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Act for any new or existing major fuel-burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new major fuel-burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year.		
The grant or denial of a permanent exemption from the prohibitions of Title II of the Power Plant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620) for any new cogeneration powerplant.		

[FR Doc. 87-28586 Filed 12-14-87; 8:45 am]

BILLING CODE 6450-01-T

students would be housed in suites. Therefore, the University has claimed that, in approving the grants, the Department had accepted the University's dormitory costs as fixed costs of the grants. Since the University's possible failure to serve sufficient migrant students is not a part of the audit determination, the University has contended that the Department's approval of its applications constitutes approval of the housing costs in question.

In the area of commuter meal costs (approximately $4,000), the University has presented a recreation of data on the number of enrolled HEP students that, while not directly linked to meal charges, could explain some of the excess in meal charges that the audit determination attributes to commuters. Finally, University records do not adequately suggest how its sole migrant student recruiter spent his time between August of 1982 and January of 1983 when he was largely on a travel status. However the conclusion that both his salary and fringe benefits ($7,034) and travel reimbursement ($5,946) for that period be returned might be partially offset by the migrant student recruitment that apparently did occur during this five-month period.

Given each of these factors, the percentage of the claim the University has agreed to repay, and the cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Department is satisfied that since the University no longer operates a HEP program, the practices that resulted in the claim will not recur.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Richard B. Mellman, Esq., at the address given at the beginning of the notice.

(20 U.S.C. 1234a(f))

(Catalog of Federal Domestic Assistance No. 84-141 Migrant Education—High School Equivalency Program)

Dated: August 3, 1988.

Bruce M. Carnes,

Acting Deputy Under Secretary for Management.

[FR Doc. 88-17934 Filed 8-8-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Benedict College

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to Benedict College to conduct an HBCU (Historically Black Colleges and Universities) regional workshop. The term of the grant will be for one year; DOE funding level is approximately $44,902. Pursuant to § 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to Benedict College.

Procurement Request Number: 09-88SR18055.000.

Project Scope: Benedict College will conduct a workshop to inform HBCU's in the Southeastern United States of the opportunities available in the HBCU program. Invitations will be sent to approximately 59 HBCU's inviting each to send two [2] representatives. DOE funds will pay for travel and lodging for these representatives. The three-day workshop will be held in Augusta, GA. The objectives of the workshop are: (1) To increase participation of HBCU's in DOE's research and development activities in both nuclear and non-nuclear programs; (2) to develop long and short-term interactions between DOE and HBCU's; and (3) to implement the President's HBCU initiative.

Benedict College is a predominantly black institution located in Columbia, SC. The participation of Historically Black Colleges and Universities (HBCU's) in federally supported research, education and training is relatively limited. In order to overcome some of these limitations, the President's Executive Order 12320 directed federal agencies to increase the participation of HBCU's in federally-funded programs and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen the HBCU community and provide the HBCU's within the Southeastern United States an opportunity to more fully understand the HBCU program.

DOE has determined that this award to Benedict College on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Simpson, Chief, Contracts and Procurement Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802. Telephone: (803) 725-2096.

Issued in Aiken, SC, on July 25, 1988

P.W. Kaspar,

Manager, Savannah River Operations Office.

[FR Doc. 88-17868 Filed 8-8-88; 8:45 am]

BILLING CODE 6450-01-M

Compliance with the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Notice of proposed amendments to the Department of Energy's NEPA guidelines.

SUMMARY: The Department of Energy (DOE) proposes to amend section D of its NEPA guidelines by adding to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas under Section 3 of the Natural Gas Act, in cases not involving new construction. A categorical exclusion is a class of DOE actions which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). The DOE also proposes to change the classification in section D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA but not necessarily an EIS. Public comment is invited on these proposals. Pending final adoption or rejection of the proposed amendment, the Department of Energy will utilize the revised classifications for the approval/disapproval of import/export authorizations.

DATE: Comments by September 8, 1988.

FOR FURTHER INFORMATION CONTACT:

Carol M. Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 3E-080, Washington, DC 20585, (202) 586-4600

William Dennison, Esq., Acting Assistant General Counsel for Environment, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980, the Department of Energy (DOE) published in the **Federal Register** [45 FR 20695] final guidelines for implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508). In accordance with these regulations, section D of the DOE guidelines lists three classes of agency action: (1) Those which normally require an environmental impact statement (EIS); (2) those which normally require an

environmental assessment (EA) but not necessarily an EIS and; (3) those which normally do not require either an EA or an EIS. This third class was identified pursuant to § 1507.3(b)(2)(ii) of the CEQ regulations and are termed "categorical exclusions." The CEQ regulations define a categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." The regulations permit agency discretion, in that "an agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." The DOE NEPA guidelines state that "DOE may add actions to or remove actions from the categories in Section D based on experience gained during the implementation of the CEQ regulations and these guidelines." Pursuant to the guidelines, substantive revisions are to be published in the **Federal Register** and adopted only after opportunity for public review. The last amendments to section D were published in the **Federal Register** on December 15, 1987, concurrently with republication of the DOE's NEPA guidelines in their entirety.

B. Proposed Amendments

The DOE proposes to further amend section D of its guidelines by adding to the list of categorical exclusions in section D, the approval or disapproval of an import/export authorization for natural gas under Section 3 of the Natural Gas Act, in cases not involving new construction. In addition, the DOE proposes to change the classification in section D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA but not necessarily an EIS. This action is being taken because ten years of experience has shown that DOE's original estimate as to which actions would normally require preparation of an EIS or an EA was overly conservative. Normally, natural gas import/export approval actions involving minor new construction have not required the preparation of an EIS. Normally, actions in which no new construction is involved have not required the preparation of either an EA or an EIS. The proposed amendments to section D, therefore, would establish categories that are appropriate for the type of action involved, consistent with DOE's experience.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where the DOE has reason to believe that a significant import could arise from the grant or denial of a specific natural gas import/export authorization, the DOE's NEPA guidelines provide that individual proposed actions will be reviewed to ascertain whether an EA or an EIS would be required for any individual action which is listed in Subpart D of the guidelines as categorically excluded from NEPA. Likewise, actions classified as normally requiring an EA but not necessarily an EIS will be evaluated on a case by case basis.

Currently, Section D of the DOE NEPA guidelines lists the approval/disapproval of a natural gas import/export license under Section 3 of the NGA in cases not involving new construction as an action which normally requires an EA. Where new construction is involved, Section D classifies the approval/disapproval of an import/export license for natural gas as the type of action which normally requires the preparation of an EIS.

During the more than ten years since the inception of the DOE in 1977, the ERA has granted 123 blanket import/export authorizations for short-term and spot market sales of natural gas and 61 authorizations for long-term natural gas import/export arrangements. In addition, 34 approval actions have been taken on applications for extension, amendment or reassignment of existing authorizations for a complete final case action total, as of May 31, 1988, of 218. Of this total, nine cases involved new construction and 209 did not. Each of the cases not involving new construction where individually examined and found not to have a significant effect on the human environment. Accordingly, based on this experience, the DOE has concluded that such actions or functions do not normally constitute major federal actions significantly affecting the quality of the human environment and should be added to the list of categorical exclusions in Section D of the DOE NEPA guidelines. Although under the proposed change, such actions will be presumed not to cause any significant direct or indirect environmental impact, this presumption does not foreclose an environmental review if unusual circumstances indicate that such an action might, in a particular case, have a significant environmental impact.

This proposed change to section D will reduce the regulatory burden on pesons wishing to import or export natural gas through existing facilities by eliminating environmental studies that are not warranted. It is noted in this regard that the Federal Energy Regulatory Commission (FERC) has recently included in the categorical exclusion category the sale, exchange and transportation of natural gas that does not involve the construction of new facilities and the approval of natural gas import/export sites in which no new construction is invovled. See 18 CFR 380.4(a)(27) and (31) (52 FR 47897, December 17, 1987), as amended by 53 FR 8177, March 14, 1988.

The DOE also proposes to change the classification in Section D of its NEPA guidelines for approval actions on natural gas imports/exports that involve minor new construction. As stated above, DOE NEPA guidelines now provide that all natural gas import/export authorization approval actions involving new construction normally require preparation of an EIS. However, the DOE's experience over the past ten years reveals that of the nine cases which involved new construction, four required preparation of an EA, two required the preparation of an EIS, and three were terminated before any NEPA determination was made. Those cases which required preparation of an EA involved relatively minor new construction, such as construction of a short pipeline, adding new connections, looping or compression to an existing natural gas interstate pipeline, or converting an existing interstate oil pipeline to an interstate natural gas pipeline using the existing right-of-way. Conversely, the two cases which required preparation of an EIS involved in one case the construction of 36 miles of pipeline looping and a new gas-fired combined cycle powerplant, and in the other case, 257 miles of pipeline looping in five states plus related facilities. Accordingly, the DOE proposes to include natural gas import/export approval actions involving minor new construction in the category of actions in section D that normally require an EA but no necessarily an EIS.

If section D is amended, as proposed, approval actions that involve major pipeline construction, the construction of LNG terminals, regasification or storage facilities, or other related facilities; or the significant expansion of such facilities, pipelines, or LNG terminals would continue to be classified as actions normally requiring

an EIS. Thus, no change is being proposed for actions involving new construction of major industrial facilities or significant expansion of such facilities.

Comments concerning the proposed amendments to section D of the DOE's NEPA guidelines should be submitted to Ms. Carol M. Borgstrom at the address given above. Pending final adoption or rejection of the proposed action, the DOE will effect the proposed changes on an interim basis.

Issued in Washington, DC, on August 3, 1988.

Ernest C. Baynard, III,

Assistant Secretary, Environment, Safety and Health.

The DOE NEPA Guidelines are hereby amended in Section D with respect to natural gas actions and functions to read as follows:

DOE NEPA Guidelines

Section A—[no change]
Section B—[no change]
Section C—[no change]
Section D—[Typical Classes of Actions]
* * * * *

CLASSES OF ACTIONS GENERALLY APPLICABLE TO AUTHORIZATIONS TO IMPORT/EXPORT NATURAL GAS PURSUANT TO SECTION 3 OF THE NATURAL GAS ACT

Normally do not require EA's or EIS's	Normally requires EA's but not necessarily EIS's	Normally requires EIS's
Approval of new authorization or amendment of existing authorization which does not involve new construction but only requires operational changes, such as an increase in natural gas throughput, change in transportation or change in storage operations..	Approval or disapproval of an application involving minor new construction, such as a relatively short pipeline, adding new connections, looping or compression to an existing natural gas pipeline or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way..	Approval or disapproval of an application involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities; or a significant expansion of an existing pipeline or related facility, or LNG terminal, regasification or storage facility.

[FR Doc. 88-17986 Filed 8-8-88; 8:45 am]
BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File No. SCE-86M]

Proposed Modification of Southern California Edison Formula Rate Schedule SC-86 and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and request for comments. BPA requests in the process of modifying Southern California Edison Formula Rate Schedule SC-86 reference the file designation SCE-86M.

SUMMARY: BPA seeks to modify its existing Southern California Edison Contract Formula Rate Schedule by reopening and supplementing BPA's offical record. This rate is available to the Southern California Edison Company (SCE or Edison) for the purchase of surplus firm power. The existing schedule, SC-86, approved in 1986 by the Federal Energy Regulatory Commission (FERC) for 20 years, defines a rate that is no longer useful for marketing BPA's surplus firm power in today's West Coast energy markets, and is no longer acceptable to SCE. BPA and SCE have negotiated a rate that escalates with SCE's alternate generation cost, *i.e.*, the cost of natural gas and fuel oil. In addition, the proposed rate is bounded by floor and ceiling rates. The proposed rate will recover more revenues than BPA's alternative of sales in the economy energy markets over the term of the power sale.

Responsible Official: Shirley R. Melton, Director, Division of Contracts and Rates, is the official responsible for the modification of the SC-86 formula rate schedule.

DATE: Any interested person may submit written comments to BPA no later than 5 p.m., September 16, 1988, at the address listed below.

ADDRESSES: Written comments should be submitted to Ms. Jo Ann C. Scott, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Sugai, Public Involvement Office, at the address listed above, 503-230-3478. Oregon callers outside Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-328-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terry G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue, Suite 400, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Tom Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Original SC-86 Contract Formula Rate Schedule

i. Proceedings Before BPA

BPA's original SC-86 rate proposal was published in the **Federal Register** on March 31, 1986. *See* Proposed Southern California Edison Contract Rates and Opportunity for Public Review and Comment, 51 **Federal Register** 10911 (1986). This notice initiated an original agency proceeding under section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). 16 U.S.C. 839e(i). Subsequently, a prehearing conference was held before an independent hearing officer on April 8, 1986, at which time 13 intervenors were granted party status and a procedural schedule was established.

BPA's initial proposal included the written testimony and exhibits of its witness. Parties were afforded the opportunity to conduct discovery on BPA's rate proposal, and then filed direct and rebuttal testimony on April 28, 1986. Additional rebuttal testimony was filed by BPA on May 9, 1986. Cross-examination of all witnesses was conducted on May 14, 1986. The parties filed briefs on May 27, 1986. BPA issued a Draft Record of Decision on June 13, 1986. In response to the Draft Record of Decision, the parties presented oral arguments to the Administrator's designees on June 20, 1986.

Pursuant to section 7(i)(5) of the Northwest Power Act, 16 U.S.C. 839e(i)(5), the Administrator issued a final Record of Decision on July 10, 1986,

Schools Assistance Program for fiscal year (FY) 1989.

SUMMARY: On February 2, 1989, the Department of Education published in the Federal Register a notice inviting applications under the Magnet Schools Assistance Program for FY 1989. The purpose of this notice is to extend the closing date for transmittal of applications from March 17, 1989 to April 3, 1989, to provide applicants additional time to submit applications. Applicants that have already submitted applications will be able to supplement or revise their applications up to April 3, 1989. Three copies of any supplementary information or of the revised application must be received by the Application Control Center by April 3, 1989. The Intergovernmental Review date is also extended from May 16, 1989 to June 5, 1989.

Applicants should note that § 280.10(c) of the regulations requires a local educational agency that is implementing a non-voluntary desegregation plan to have approval for any modification of its desegregation plan, from the court, agency, or official that originally approved the plan. A previously approved desegregation plan that does not include the magnet schools for which a local educational agency is seeking assistance under this program must be modified to include the magnet schools component, and the modified plan with the magnet schools component must be approved by the court, agency, or official that originally approved the plan. All modifications to approved desegregation plans must be approved by the appropriate court, agency, or official by May 1, 1989. Proof of such approval must be submitted to the Department by May 5, 1989.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2067, FOB #6, Washington, DC 20202–6440. Telephone (202) 732–4358.

Program Authority: 20 U.S.C. 3021–3032.

Dated: March 23, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89–7267 Filed 3–24–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to the Guidelines

AGENCY: Department of Energy.

ACTION: Notice of amendments to the Department of Energy's NEPA guidelines.

SUMMARY: The Department of Energy (DOE) herewith amends section D of its NEPA guidelines by adding to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas under section 3 of the Natural Gas Act, in cases not involving new construction. A categorical exclusion is a class of DOE action which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). The DOE also hereby amends its NEPA guidelines to change the classification in section D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA but not necessarily an EIS.

DATE: Effective March 27, 1989.

FOR FURTHER INFORMATION CONTACT:

Carol Borgstrom, Director, Office of NEPA Project Assistance, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm 3E–080, Washington, DC 20585, (202) 586–4600.

William Dennison, Acting Assistant General Counsel for Environment, GC–11, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm 6A–113, Washington, DC 20585, (202) 586–6947.

SUPPLEMENTARY INFORMATION: On December 15, 1987, the Department of Energy (DOE) published in the Federal Register (52 FR 47662) its National Environmental Policy Act (NEPA) Guidelines. On August 9, 1988 (53 FR 29934), DOE published a notice of proposed changes to section D of its NEPA Guidelines by adding to the list of categorical exclusions in section D, the approval or disapproval of an import/export authorization for natural gas under section 3 of the Natural Gas Act, in cases not involving new construction. In addition, the DOE proposed to change the classification in section D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA but not necessarily an EIS.

Publication of this notice commenced a 30-day comment period during which public comment was invited. One timely comment and one late comment were received. The timely comment supported the proposed amendments and the concept that eliminating the regulatory burden of unwarranted environmental studies would reduce the cost of energy supplies. This comment noted that if the Federal Energy Regulatory Commission (FERC) has already prepared an EIS or EA, the DOE should be able to rely on the FERC's conclusions and avoid unnecessary duplication of agency work. DOE agrees with this comment, and in the past has relied on FERC-prepared documents to facilitate its NEPA compliance. DOE has, after an independent review, adopted a number of FERC EA's and used them to support findings of no significant impact, and, in one instance, was a cooperating agency for a FERC EIS.

DOE also has elected to address the late comment, which urged that LNG projects not involving facility construction or the significant expansion of such facilities should not require either an EA or an EIS. DOE believes that experience is the most reliable basis for determining whether a class of action normally requires further documentation, and the extent of analysis and documentation required. As noted in the proposed modification of the NEPA guidelines, none of the import/export cases processed since the inception of the DOE in 1977 through May 31, 1988, not involving new construction, were found to have a significant effect on the human environment. Further, most of the nine new construction cases processed involved relatively minor new construction, such as construction of a relatively short pipeline or expanding an existing pipeline by adding new connecting looping or compression, or converting an interstate oil pipeline to an interstate natural gas pipeline using an existing right-of-way. These cases required preparation of an EA but not an EIS. Conversely, the two cases processed over the past ten years that did result in preparation of an EIS involved major new construction, i.e., in one case, construction of 36 miles of pipeline looping and a new gas-fired combined cycle powerplant, and in the other case, 257 miles of pipeline looping in five States plus related facilities.

DOE believes that this history of performance is sufficient basis to raise the rebuttable presumption necessary to establish a categorical exclusion under which approval or disapproval of an import/export authorization for natural gas (including LNG) under section 3 of the NGA would normally not require preparation of either an EIS or an EA where new construction is not involved. DOE also believes that the same

performance history is sufficient to raise the presumption that natural gas import/export authorization actions under section 3, involving relatively minor new construction, would require preparation of an EA but not necessarily an EIS. This would include actions involving relatively minor expansion of LNG facilities. DOE's experience does not provide a basis upon which to classify such LNG actions differently from other natural gas cases involving minor new construction as suggested by one commentor. Major pipeline construction, or construction of LNG terminals, regasification or storage facilities, or other related facilities; or the significant expansion of such facilities, pipelines or LNG terminals, will continue to be classified as actions normally requiring an EIS.

The classification of particular actions under section D only raises a presumption as to what environmental documentation and analysis is required. Each action will be evaluated on a case-by-case basis to determine environmental effects and the applicable NEPA procedural requirements.

The DOE has consulted with the Council on Environmental Quality (CEQ) regarding these amendments to section D of DOE's NEPA guidelines, in accordance with 40 CFR 1507.3. CEQ had no objection to the proposed amendments. Therefore, DOE hereby adopts the proposed amendments to section D of its NEPA guidelines effective immediately.

Issued in Washington, DC, on March 7, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

The DOE NEPA Guidelines are hereby amended in Section D with respect to natural gas actions and functions to read as follows:

DOE NEPA GUIDELINES

Section A—[no change]
Section B—[no change]
Section C—[no change]
Section D—Typical Classes of Actions

* * * * *

CLASSES OF ACTIONS GENERALLY APPLICABLE TO AUTHORIZATIONS TO IMPORT/EXPORT NATURAL GAS PURSUANT TO SECTION 3 OF THE NATURAL GAS ACT

Normally do not require EA's or EIS's	Normally requires EA's but not necessarily EIS's	Normally requires EIS's
Approval of new authorization or amendment of existing authorization which does not involve new construction but only requires operational changes, such as an increase in natural gas throughput, change in transportation or change in storage operations.	Approval of disapproval of an application involving minor new construction, such as a relatively short pipeline, adding new connections, looping or compression to an existing natural gas pipeline or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way.	Approval of disapproval of an application involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities; or a significant expansion of an existing pipeline or related facility, or LNG terminal, regasification or storage facility

[FR Doc. 89-7229 Filed 3-24-89; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $199.6 million, plus accrued interest, in crude oil violation amounts obtained from Getty Oil Company, Case No. KEF-0124. The OHA has determined that the funds will be distributed in accordance with the January 18, 1989 Order of the United States District Court for the District of Delaware, as well as the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Application for refund must be filed by October 31, 1989, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Getty Oil Company. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the January 18, 1989 Order of the United States District Court for the District of Delaware and the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption or petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by October 31, 1989, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decison, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Date: March 21, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 21, 1989.

Decision and Order

Implementation of Special Refund Procedures

Name of Firm: Getty Oil Company.
Date of Filing: January 31, 1989.
Case Number: KEF-0124.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement refund procedures to distribute funds received as a result of enforcement proceedings. 10 CFR

DEPARTMENT OF ENERGY

Compliance with the National Environmental Policy Act (NEPA); Amendments to DOE's NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Amendments to the Department of Energy's NEPA Guidelines with request for comments.

SUMMARY: The Department of Energy (DOE) proposes to amend section D of its NEPA guidelines by adding to its list of categorical exclusions. A categorical exclusion is a class of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, normally do not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). DOE proposes three additional categorical exclusions that concern: (1) Removal actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and actions similar in scope under the Resource Conservation and Recovery Act (RCRA), (2) improvements to environmental control systems to comply with environmental permit conditions, and (3) site characterization and environmental monitoring under CERCLA and RCRA. Public comment is invited on this proposal. DOE will use these categorical exclusions on an interim basis, pending notice of final action on the proposed amendments in the **Federal Register**.

DATES: Comments by May 7, 1990.

ADDRESSES: Send comments to Carol M. Borgstrom at the following address.

FOR FURTHER INFORMATION CONTACT:

Carol M. Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000, Independence Avenue, SW., Room 3E–080, Washington, DC 20585, (202) 586–4600.

William J. Dennison, Esq., Acting Assistant General Counsel for Environment, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 6A–113, Washington, DC 20585, (202) 586–6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980, DOE originally published (45 FR 20694) guidelines [1] for implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508). In accordance with these regulations, section D of the DOE guidelines lists three classes of agency actions: (1) Those that normally require an EIS, (2) those that normally require an EA but not necessarily an EIS, and (3) those that normally do not require either an EA or an EIS.

Identification of this third class of actions, termed "categorical exclusions," was required by § 1507.3(b)(2)(ii) of the CEQ regulations. Section 1508.4 of the CEQ regulations defines a categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on the human environment * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." The CEQ regulations permit agency discretion, in that "[a]n agency may decide in its procedures or otherwise, to prepare environmental assessments * * * even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a signficant environmental effect." *Id.*

The DOE NEPA guidelines state that "DOE may add actions to or remove actions from the categories in section D based on experience gained during the implementation of the CEQ regulations and these guidelines." The last amendments to Section D were published on March 27, 1989 (54 FR 12474). Before that, amendments were published on December 15, 1987 (52 FR 47662), concurrently with republication of DOE's NEPA guidelines in their entirety. Under the DOE guidelines, substantive revisions are to be published in the **Federal Register** and adopted only after opportunity for public review (52 FR 47667).

The amendments below concern categorical exclusions for certain actions under CERCLA or RCRA. However, it is the policy of DOE, where DOE remedial actions under CERCLA trigger the procedures set forth in NEPA, to integrate the procedural and documentation requirements of CERCLA and NEPA, wherever practical. The primary instrument for this integration will be the Remedial Investigation/Feasibility Study (RI/FS) process, which will be supplemented, as needed, to meet the procedural and documentation requirements of NEPA. In addition, the public review processes of CERCLA and NEPA will be combined for RI/FS–NEPA documents, where appropriate. DOE also intends to establish, for cases where DOE corrective actions under RCRA trigger the procedures set forth in NEPA, a policy to integrate the procedural and documentation requirements of RCRA and NEPA, wherever practical.

B. Amendments

DOE proposes to amend Section D of its guidelines further by adding three categorical exclusions. The first categorical exclusion proposed is for removal actions under CERCLA (including those taken as final response actions and those taken before remedial action) and for actions similar in scope under RCRA (including those taken as partial closure actions and those taken before corrective action).

DOE proposes to limit this categorical exclusion to those actions that: (1) Are implemented clearly in accordance with applicable statutory and regulatory requirements and permits, (2) do not involve construction or expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating surface water and groundwater), and (3) affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole source aquifers. The proposed categorical exclusion includes examples of covered actions (such as capping or other containment of contaminated soils or sludges; stabilization of berms, dikes, impoundments, or caps; and closing of surface impoundments).

DOE uses the following CERCLA terms in this categorical exclusion: CERCLA section 101(23) defines "remove" or "removal" to mean the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. CERCLA section 101(24) defines "remedy" or "remedial action" to mean those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that

[1] Pursuant to a recent decision by the Secretary of Energy, the DOE NEPA guidelines will be revised shortly and published for public comment as proposed regulations.

they do not migrate to cause substantial danger to present or future public health or welfare or the environment. CERCLA section 101(25) defines "respond" or "response" to mean remove, removal, remedy, and remedial action.

In proposing to categorically exclude certain RCRA actions that are similar in scope to CERCLA removal actions, DOE uses the term "partial closure" as defined in 40 CFR 260.10 and "corrective action" as referred to in sections 3004 (u) and (v), 3008(h), and 9001–9010 of RCRA.

This categorical exclusion is proposed because DOE believes that CERCLA removal actions and actions similar in scope under RCRA that are limited as described above do not have the potential for significant effects on the human environment. DOE intends to apply the categorical exclusion regardless of time or cost to implement the actions. DOE's presumption that these actions have no potential for significant environmental impact and therefore do not require preparation of an EA or EIS is independent of the extent of documentation or public review that may be provided under CERCLA or RCRA.

The second categorical exclusion DOE proposes is for improvements to environmental control systems (e.g., changes to scrubbers in air quality control systems or ion-exchange devices in water treatment systems) that reduce the amount or concentration of regulated substances in air emissions or water effluents in order to comply with environmental permit conditions. DOE proposes that this categorical exclusion apply only if: (1) the improvements will be conducted within an existing facility, (2) any substance captured or produced thereby during subsequent operations of the facility will be disposed of or otherwise released through existing facilities and clearly in accordance with applicable statutory and regulatory requirements and permits, or these substances will be recycled through existing permitted facilities, and (3) for any such substance identified within the definition of hazardous substances under section 101(14) of CERCLA, there are applicable statutory or regulatory requirements or permits for its disposal, release or recycling.

The third categorical exclusion DOE proposes is for site characterization and environmental monitoring activities (including the installation of field monitoring stations) under CERCLA or RCRA. This categorical exclusion would only apply to activities that: (1) Will not introduce or spread substances identified within the definition of hazardous substances under section 101(14) of CERCLA, pollutants or contaminants as defined by section 101(33) of CERCLA, or non-native organisms; and (2) will affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole-source aquifers.

DOE proposes the categorical exclusions for improvements to environmental control systems and for CERCLA and RCRA site characterization and environmental monitoring activities because DOE believes that, under the conditions proposed for use of the categorical exclusions, the actions do not have the potential for significant effects on the human environment.

Categorically excluding certain classes of actions from environmental analysis under NEPA only creates a rebuttable presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from categorically excluded actions, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to determine the appropriate level of NEPA documentation.

DOE has consulted with CEQ regarding these proposed amendments in accordance with 40 CFR 1507.3. DOE has addressed CEQ's comments, and CEQ has no objection to publication of this Notice.

Comments concerning the proposed amendments to section D of the DOE NEPA guidelines should be submitted to Carol M. Borgstrom at the address given above.

Pending notice of final action on the proposed categorical exclusions in the **Federal Register**, the DOE will use the categorical exclusions set forth below on an interim basis.

Issued in Washington, DC, on April 2, 1990.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

The DOE NEPA Guidelines are hereby amended by adding the following at the end of section D:

Classes of Actions Generally Applicable to All of DOE Normally Do Not Require EAs or EISs

1. Removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (including those taken as final response actions and those taken before remedial action) and for actions similar in scope under the Resource Conservation and Recovery Act (RCRA) (including those taken as partial closure actions and those taken before corrective action), where the actions: (1) Are implemented clearly in accordance with applicable statutory and regulatory requirements and permits, (2) do not involve construction or expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating surface water and groundwater), and (3) affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole source aquifers.

These removal and similar actions could include, but are not limited to, the following types of actions:

- Excavation or consolidation of contaminated soils or materials from drainage channels or retention basins;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain substances identified within the definition of hazardous substances under section 101(14) of CERCLA or pollutants or contaminants as defined by section 101(33) of CERCLA;
- Removal of asbestos-containing materials from existing buildings in accordance with 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants), subpart M (National Emission Standard for Asbestos); 40 CFR part 763 (Asbestos), subpart G (Asbestos Abatement Projects); 29 CFR part 1910, subpart I (Personal Protective Equipment), part 1910.134 (Respiratory Protection); subpart Z (Toxic and Hazardous Substances), part 1910.1001 (Asbestos, tremolite, anthophyllite, and actinolite); and 29 CFR part 1926 (Safety and Health Regulations for Construction), subpart D (Occupational Health and Environmental Controls), part 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite).
- Removal of polychlorinated biphenyl (PCB) items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other above-ground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions);
- Storage of wastes in Department of Transportation approved containers or at storage facilities in compliance with RCRA pending treatment (including incineration), recovery, or disposal;

- Treatment (including incineration), recovery, or disposal or wastes at existing permitted facilities for which, if they are Federal facilities, appropriate NEPA review has been completed;
- Repair or replacement of leaking containers;
- Capping or other containment of contaminated soils or sludges;
- Closing of man-made surface impoundments;
- In-situ stablization using conventional, widely-used technologies (e.g., grouting with cement) where consistent with existing long-term land-use management plans for which appropriate NEPA review has been completed;
- Confinement or perimeter protection using dikes, trenches, ditches, or diversions;
- Stabilization of berms, dikes, impoundments, or caps;
- Drainage controls;
- Segregation of reactive wastes;
- Use of chemicals and other materials to neutralize wastes;
- Installation and operation of gas ventilation systems in soil to remove methane or other potentially explosive gases;
- Installation of fences, warning signs, or other security or site control precautions;
- Provision of an alternative water supply that does not involve new water sources.

2. Improvements to environmental control systems (e.g., changes to scrubbers in air quality control systems or ion-exchange devices in water treatment systems) that reduce the amounts or concentrations of regulated substances in air emissions or water effluents in order to comply with environmental permit conditions, where: (1) The improvements will be conducted within an existing facility, (2) any substance captured or produced thereby during subsequent operations of the facility will be disposed of or otherwise released through existing facilities and clearly in accordance with applicable statutory and regulatory requirements and permits, or these substances will be recycled through existing permitted facilities, and (3) for any such substance identified within the definition of hazardous substances under section 101(14) of the Comprehensive Evnironmental Response, Compensation and Liability Act, there are applicable statutory or regulatory requirements or permits for its disposal, release, or recycling.

3. Site characterization and environmental monitoring activities (including the installation of field monitoring stations) under the Comprehensive Response, Compensation and Liability Act (CERCLA) or Resource Conservation and Recovery Act, where the activities: (1) will not introduce or spread substances identified within the definition of hazardous substances under section 101(14) of CERCLA, pollutants or contaminants as defined by section 101(33) of CERCLA, or non-native organisms; and (2) will affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole-source aquifers.

[FR Doc. 90-8023 Filed 9-5-90; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act (NEPA); Amendments to DOE Guidelines

AGENCY: Department of Energy.

ACTION: Notice of amendments to the Department of Energy's NEPA Guidelines.

SUMMARY: The Department of Energy (DOE) is amending section D of its NEPA Guidelines by adding to its list of categorical exclusions three new categorical exclusions that concern: (1) Certain removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and actions similar in scope under the Resource Conservation and Recovery Act (RCRA) and other authorities; (2) improvements to environmental control systems that reduce the amounts and concentrations of regulated substances in air emissions and water effluents; and (3) site characterization and environmental monitoring under CERCLA and RCRA. A categorical exclusion is a class of DOE actions that normally do not require the preparation of either an environmental impact statement or an environmental assessment. These amendments are necessary to establish categorical exclusions for actions that clearly have no potential for significant impact on the human environment. The intended effect is to facilitate the NEPA review for some environmental restoration and waste management activities.

EFFECTIVE DATE: September 7, 1990.

FOR FURTHER INFORMATION CONTACT:
Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.
William J. Dennison, Acting Assistant General Counsel for Environment, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6947.

SUPPLEMENTARY INFORMATION:

I. Background

DOE originally published its NEPA Guidelines in the **Federal Register** on March 28, 1980 (45 FR 20694). These Guidelines implemented the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508). These Guidelines were subsequently revised a number of times and were republished in their entirety on December 15, 1987 (52 FR 47662). The Guidelines were further amended by a notice published in the **Federal Register** on March 27, 1989 (54 FR 12474). On April 6, 1990 (55 FR 13064), DOE published a notice requesting comments on additional proposed amendments to section D of its NEPA Guidelines. Today's notice adopts the amendments proposed at that time, with certain changes described below.

II. Comments Received and DOE Responses

Publication of the April 6, 1990 notice began a 30-day period during which public comment was invited. Two comment letters were received.

A. Procedural Comments

One commenter asserted that any categorical exclusions adopted by DOE should be issued as binding regulations rather than as guidelines. This commenter asserted further that because DOE announced in the April 6, 1990 notice (55 FR 13064) its intention to revise its NEPA Guidelines and publish them for public comment as proposed rules, the proposed categorical exclusions should be considered in the context of the overall revision of the Guidelines rather than in this isolated context.

In Secretary of Energy Notice (SEN) 15–90, dated February 5, 1990, the Secretary of Energy directed that the DOE NEPA Guidelines be revised and published for public comment as proposed regulations using the notice and comment procedures of the Administrative Procedure Act. DOE expects to propose such regulations for public comment in the near future. At that time, the three categorical exclusions adopted herein, as well as all other categorical exclusions and other typical classes of actions, will be subject to public comment in the context of the proposed regulations. However, the need for DOE to use these three categorical exclusions in the near term justifies their adoption at this time.

The same commenter suggested that DOE should reconsider the promulgation of the proposed categorical exclusions before certain questions are resolved regarding the integration of NEPA with RCRA and CERCLA activities. The commenter's concern was that the adoption of the proposed exclusions could prejudice the outcome of the integration issue.

It is DOE's policy to integrate the procedural and documentation requirements of CERCLA and NEPA, wherever practical, based on DOE's assumption, in the absence of definitive CEQ guidance to the contrary, that NEPA applies to remedial activities under CERCLA. DOE also intends to establish a similar policy to integrate the procedural and documentation requirements of RCRA and NEPA. DOE believes that the adoption of these categorical exclusions will not prejudice any subsequent resolution of the applicability issue. While DOE's policy of integrating CERCLA and NEPA requirements is subject to change if necessary to be consistent with any subsequent CEQ guidance, the categorical exclusions promulgated today are needed to implement DOE's current policy efficiently.

Finally, the commenter objected to the use of the proposed categorical exclusions on an interim basis pending their final adoption, on the basis that the CEQ regulations require that

> categorical exclusions and other NEPA procedures "shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations." (40 CFR 1507.3(a).)

DOE's application of the proposed amendments on an interim basis was consistent with its previous practice. DOE consulted with CEQ regarding the proposed amendments published on April 6, 1990, in accordance with 40 CFR 1507.3. DOE addressed CEQ's comments and CEQ made no objection to the publication of the April 6, 1990 notice. However, CEQ was not specifically asked for its opinion on whether the categorical exclusions could be used on an interim basis, and CEQ's approval of publication of the categorical exclusions was not an endorsement of such use. Because the categorical exclusions are today being finally adopted, DOE believes that there is no longer an issue requiring resolution.

B. Comments on the Proposed Categorical Exclusions

1. *Removal actions including those under CERCLA and similar actions under RCRA.* Both commenters expressed overall concern about this categorical exclusion and asserted that the actions included have the potential for significant effects on the environment. One commenter cited three factors supporting this concern. First, the commenter said that DOE provided no justification to support its contention that the actions included in this exclusion do not have the potential for significant effects on the human environment. Second, the categorical exclusion was not limited to the actions illustrating the exclusion, and the commenter perceived the reference to "actions similar in scope under RCRA" as vague and imprecise. Third, because removal activities under CERCLA do not

require a Remedial Investigation/ Feasibility Study, the commenter regarded the exclusion of these actions from NEPA documentation as particularly significant when considered together with the breadth of the exclusion, which exceeded the scope of the removal actions described in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (55 FR 8843; March 8, 1990.)

DOE agrees that its intended application of this categorical exclusion, as proposed in the April 6, 1990 **Federal Register** notice, was too broad. In that notice, DOE stated that it intended to apply this categorical exclusion "regardless of time or cost to implement these actions." In addition, some of the examples of actions proposed to be categorically excluded exceeded the scope of examples of appropriate removal actions set forth in the recently revised CERCLA NCP regulations (55 FR 8843; March 8, 1990).

However, the underlying determination that most actions described in this categorical exclusion do not have the potential for significant effects on the human environment is based on experience with many similar types of activities over the past several years. For example, DOE has considerable experience with excavating contaminated soils from drainage and other areas and capping contaminated soils or sludges, performing both types of actions to reduce contact with, or the migration of, hazardous substances, pollutants, and contaminants. This experience demonstrates that such actions do not have the potential for significant effects on the human environment so long as they are carried out in accordance with appropriate requirements. As a result, this categorical exclusion would apply to excavation and capping actions only when accomplished in accordance with applicable statutory, regulatory, and permit requirements, including the requirements of DOE Orders.

As a result of this comment, DOE intends to limit its application of this categorical exclusion to removal actions under CERCLA (and actions similar in scope under RCRA and other authorities) that meet the statutory limits and exemptions set forth in the NCP regulations. These limits for removal actions (other than those authorized under section 104(b) of CERCLA) are: The actions shall not either (1) cost more than $2 million or (2) take longer than 12 months from the time that activities begin on-site. Exemptions to these cost and time limits can be applied when "(i) there is an immediate risk to public health or welfare or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and such assistance will not otherwise be provided on a timely basis; or (ii) continued response action is otherwise appropriate and consistent with the remedial action to be taken." (55 FR 8843; March 8, 1990).

The language of this categorical exclusion has been revised to paraphrase more closely the language used in the CERCLA NCP regulations. The phrase "and other authorities" has been inserted to make clear that there are other authorities under which DOE may take similar actions. In addition, two proposed removal actions—the removal of polychlorinated biphenyl items and the removal of asbestos-containing materials—have been deleted from the list of examples of removal actions under CERCLA and established as separate categorical exclusions, so as not to imply inadvertently an overly broad scope for removal actions under CERCLA and because these activities are not always performed as RCRA or CERCLA activities.

DOE does not agree with the comment that an unreasonably broad categorical exclusion is created by the use of a noninclusive list of examples of excluded removal actions. In providing a list of examples that is comprehensive but not all-inclusive, DOE has followed the lead set in the CERCLA NCP regulations, which sets forth a list of appropriate removal actions that is not "exhaustive." (55 FR 8843; March 8, 1990.)

Both commenters expressed concern regarding the scope of the three limitations proposed to apply to this categorical exclusion. These limitations provided that removal actions be categorically excluded only where the actions: "(1) are implemented clearly in accordance with applicable statutory and regulatory requirements and permits, (2) do not involve construction or expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating surface water and groundwater), and (3) affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole source aquifers." In the discussion that follows, these limitations will be referred to as "limitation 1," "limitation 2," and "limitation 3," respectively.

One commenter asserted that limitation 1 did not ensure the absence of deleterious environmental impacts because of gaps in regulations. The other commenter asserted that limitation 1 is unnecessary because removal actions under CERCLA or RCRA must be in compliance with the law.

In response to these comments, limitation 1 has been revised to restrict application of the categorical exclusion to only those actions that "would not threaten a violation of applicable statutory, regulatory, and permit requirements, including requirements of DOE Orders." The revised language conforms more closely to the CEQ regulations at 40 CFR 1508.27(b)(10), which provide guidance on determining the severity of environmental impact.

One commenter asserted that limitation 2 is inadequate because it does not include as a disqualifying factor the construction of waste storage facilities, which is particularly important when removal actions include the storage of what the commenter described as "virtually unlimited quantities of wastes for virtually unlimited periods of time."

DOE has determined not to change limitation 2 in the manner suggested by the commenter. However, in response to the substance of the comment, DOE has deleted the storage of waste pending treatment, recovery or disposal as a separate example within this categorical exclusion. Storage of wastes has been added to another example, and is categorically excluded only if it occurs at "existing facilities permitted for the type of waste resulting from the removal action, where needed to reduce the likelihood of human, animal, or food chain exposure."

Both commenters asserted that limitation 3 as proposed was inadequate. The commenters preferred a more expansive definition of "environmentally sensitive areas" and made a number of suggestions in that regard. DOE has adopted these suggestions, with one exception. DOE has chosen not to include "population centers" in the definition of environmentally sensitive areas, because DOE believes that, considering the three limitations applied to the use of the categorical exclusions, populations centers are not threatened. DOE has limited the definition of environmentally sensitive areas to those areas that legislation and Executive Orders have recognized as deserving of special protection.

One commenter noted that the proposed categorical exclusion failed to explain when and how the

determination of environmental sensitivity would be made. All three of the limitations discussed above, when applicable to a categorical exclusion, function as threshold limitations. Their applicability must be established before any determination is made that a particular action falls within the categorical exclusion, and their consideration must be documented.

One letter commented on most of the examples listed in this proposed categorical exclusion. The following discussion describes each of these comments that has not already been addressed.

Excavation or consolidation of contaminated soils, etc. The commenter asserted that this action should not be categorically excluded because soil or sediment removal can, under certain circumstances, accelerate groundwater contamination and because the action as proposed exceeds the "excavation or consolidation" activity described as appropriate in the CERCLA NCP regulations. DOE has revised the description of this action to limit it to areas "that are not receiving contaminated surface or waste water" and "where surface or groundwater would not collect" to eliminate the possibility of accelerating groundwater contamination. DOE has further limited excluded actions of this type to those that "would reduce the spread of, or direct contact with, the contamination" to be consistent with language used in the CERCLA NCP regulations.

Removal of drums, barrels, tanks, etc. The commenter stated that there would be no objection to this categorical exclusion if it were limited to small-scale removal actions or the threat of a release. As discussed above, DOE will apply the CERCLA statutory limitations, which limit the dollar amount and the duration of categorically excluded removal actions under CERCLA, and exemptions. In response to this comment, DOE has further limited this exclusion to situations in which the action "would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain."

Removal of asbestos-containing materials, etc. The commenter stated it would not object to the categorical exclusion of this action provided that language were added to require compliance with state and local requirements, including certification of removal contractors and technicians, and oversight by Federal or authorized state Occupational Safety and Health Administration (OSHA) inspectors. In response to the first point, DOE has revised the description of this action to limit its exclusion to actions carried out in accordance with "appropriate state and local requirements, including certification of removal contractors and technicians." DOE has not adopted the second comment because not all DOE operations are legally subject to OSHA oversight. However, the categorical exclusion has been revised to include, in addition to 29 CFR 1926.58, compliance with "other appropriate OSHA standards in title 29, chapter XVII of the CFR" as a condition of its application. DOE has adopted for its operations the regulations issued pursuant to OSHA and is currently working with Federal OSHA officials to improve DOE's program for oversight and inspection of worker health and safety.

Removal of polychlorinated biphenyl (PCB) items, etc. The commenter suggested that this action be limited to those situations in which there is an imminent threat of fire or offsite release, because the disposal of PCB materials offers a range of alternatives. This categorical exclusion, however, applies only to the removal of the PCB items, and not to their disposal. Disposal of removed PCB items would be subject to further NEPA review unless such disposal fell within the scope of another categorically excluded action, such as the one described in paragraph 1.c.(16) of the amendments being adopted today.

Treatment (including incineration), recovery, or disposal of wastes, etc. The commenter asserted that the categorical exclusion of this action is unnecessary because it appears to include a requirement for NEPA review where such review has already occurred. On the other hand, the commenter would object to the categorical exclusion of this action if it were interpreted to exclude NEPA review of actions that would result in significant changes in the operations of a waste facility. In response to this comment, DOE has deleted the requirement that such actions be carried out at "existing permitted facilities for which, if they are federal facilities, appropriate NEPA review has been completed" and added language to limit excluded actions to those that are carried out at "existing facilities permitted for the type of waste resulting from the removal action, where needed to reduce the likelihood of human, animal, or food chain exposure."

Capping or other containment of contaminated soils or sludges. The commenter objected to the categorical exclusion of this action because such actions could reduce or eliminate the use of long-term remedial alternatives. As a result of this comment, DOE has revised the description of this action to limit its categorical exclusion to situations in which there would be no "effect on future groundwater remediation and where needed to reduce migration" of hazardous substances, pollutants or contaminants into soil, groundwater, surface water, or air.

Closing of man-made surface impoundments. The commenter objected to the categorical exclusion of this action based on the assertion that such actions are not considered appropriate removal actions under the CERCLA NCP regulations and could have substantial impacts. On the basis of this comment, DOE has revised the description of the action to limit its exclusion to situations in which such action is needed to maintain the integrity of the impoundment, to be consistent with language used in the CERCLA NCP regulations.

In-situ stabilization, etc. The commenter objected to the categorical exclusion of this action in the manner proposed, because of the lack of clarity concerning what documentation or considerations would constitute a land-use management plan, and because the characterization of such actions as removal actions might eliminate review under environmental statutes other than NEPA. After considering these comments, DOE has determined to delete this example. DOE may, however, redefine the action and include it in the proposed NEPA regulations that will be published for comment in the near future.

Confinement or perimeter protection, etc. In response to a comment that the extent of such actions should be limited, DOE has limited the categorical exclusion of this action to situations in which the action is "needed to reduce the spread of, or direct contact with, the contamination."

Stabilization of berms, dikes, etc. This action has been revised to adopt the commenter's suggestion that "stabilization" not include any expansion of the affected structures.

Drainage controls. In response to a comment that this action should be narrowed, the description of this action has been revised to conform substantially to a similar removal action in the CERCLA NCP regulations.

Use of chemicals and other materials to neutralize wastes. This action has been limited to the neutralization of pH, as suggested by the commenter.

Installation and operation of gas ventilation systems, etc. The commenter pointed out that the "potentially explosive gases" referred to in this action could include toxic gases or be associated with toxic and/or radioactive

co-contaminants. The commenter indicated, however, that there would be no objection to the categorical exclusion of this action if it were limited to "situations involving methane or petroleum vapors without any toxic or radioactive co-contaminants, and where appropriate filtration or gas treatment was in place." The description of this action has been revised in accordance with this comment.

2. *Improvements to environmental control systems.* One commenter expressed the view that two changes should be made to this categorical exclusion if it were adopted. The commenter suggested that the phrase, "within an existing facility," be changed to "within an existing plant or structure" because the term "facility" could be interpreted to encompass an entire site. DOE agrees with this comment and has revised the phrase to "within an existing building or structure." The commenter also believed that this categorical exclusion should be limited to situations where there is a clear net environmental benefit and where source reduction and waste minimization alternatives have been considered. The commenter was concerned that the categorical exclusion of these improvements would eliminate an opportunity to consider various alternatives and impacts.

In response to this concern, DOE has restricted the scope of this categorical exclusion by applying the three limitations discussed above, which were previously applicable only to the categorical exclusion dealing with removal actions. DOE disagrees that the categorical exclusion of such improvements will eliminate the opportunity to consider alternatives. DOE directives (such as the DOE Orders for the Department's environmental protection program, hazardous and radioactive mixed waste program, and radioactive waste management) require development and implementation of waste minimization programs. In addition, on June 27, 1990, DOE issued a waste reduction policy statement to consolidate these minimization requirements and to initiate a pollution prevention program.

3. *Site characterization and environmental monitoring activities.* One commenter expressed the belief that the terms "site characterization" and "environmental monitoring" should be defined if this categorical exclusion were adopted. In response to this comment and as a result of DOE's own consideration of how best to clarify the scope of this exclusion, it has been revised to list as examples 11 specific activities that could qualify for the categorical exclusion.

III. Other Revisions to the Proposed Amendments

In addition to revisions made in response to comments and other revisions already discussed, DOE has made a number of editorial, stylistic and format revisions. DOE has also made the following substantive changes for clarity and consistency.

As previously indicated, DOE has clarified the three limitations applicable to the first categorical exclusion, and has applied them to the second categorical exclusion as well. The phrase "construction or expansion" in proposed limitation 2 has been revised to read "construction or major expansion." This revision was made because DOE believes that the minor expansion of a waste facility consistent with permit requirements does not have the potential for significant effects on the human environment.

DOE has added two actions to the list of examples of categorically excluded actions. One example—use of chemicals and other materials to retard the spread of a release or to mitigate its effect under certain limited circumstances—is also listed in the CERCLA NCP regulations. DOE believes that the second example—removal of an underground storage tank in certain limited circumstances—is consistent with the intent of the proposed categorical exclusion.

DOE has revised one example of a categorically excluded removal action. The example as proposed, "segregation of reactive wastes," has been revised to read "segregation of wastes that react with one another to result in adverse environmental impacts" for clarification.

The second categorical exclusion, as proposed, involved improvements to environmental permit conditions. DOE has expanded this exclusion to include improvements made to lower emissions or effluents regardless of whether the action is motivated by a permit requirement. This revision does not affect the scope and nature of the types of improvements categorically excluded.

DOE has again consulted with CEQ regarding these amendments to section D of DOE's NEPA Guidelines, in accordance with 40 CFR 1507.3. CEQ has found that these amendments set forth procedures that are in conformance with NEPA and the CEQ regulations. Therefore, DOE adopts these amendments to Section D of its NEPA Guidelines, effective immediately.

Issued in Washington, DC, on August 31, 1990.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

Section D of the DOE NEPA Guidelines is amended by adding the following items at the end of the subsection entitled "Classes of Actions Generally Applicable to All of DOE" under the column entitled "Normally Do Not Require EAs or EISs":

1. The removal actions and other actions described below, if it is determined that such an action would not threaten a violation of applicable statutory, regulatory, or permit requirements, including requirements of DOE Orders; would not require siting and construction or major expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, or groundwater); and would not adversely affect environmentally sensitive areas as defined in Paragraph 4 below:

a. Removal of asbestos-containing materials from existing buildings in accordance with 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants), Subpart M (National Emission Standards for Asbestos); 40 CFR Part 763 (Asbestos), Subpart G (Asbestos Abatement Projects); 29 CFR Part 1910, Subpart I (Personal Protective Equipment), § 1910.134 (Respiratory Protection); Subpart Z (Toxic and Hazardous Substances), § 1910.1001 (Asbestos, tremolite, anthophyllite and actinolite); 29 CFR Part 1926 (Safety and Health Regulations for Construction), Subpart D (Occupational Health and Environmental Controls), § 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite), and other appropriate OSHA standards in title 29, chapter XVII of the CFR; and appropriate state and local requirements, including certification of removal contractors and technicians.

b. Removal of polychlorinated biphenyl (PCB)-containing items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other aboveground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).

c. Removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (including those taken as final response actions and those taken before remedial action) and actions

similar in scope under the Resource Conservation and Recovery Act (RCRA) and other authorities (including those taken as partial closure actions and those taken before corrective action). These actions could include, but are not limited to, the following types of actions:

(1) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, where surface water or groundwater would not collect, and where such actions would reduce the spread of, or direct contact with, the contamination;

(2) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain substances identified within the definition of hazardous substances under section 101(14) of CERCLA, or pollutants or contaminants as defined by section 101(33) of CERCLA, or hazardous wastes under 40 CFR part 261, where such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(3) Removal of an underground storage tank, including its associated piping and underlying containment systems, in compliance with 40 CFR part 280, where such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(4) Repair or replacement of leaking containers;

(5) Capping or other containment of contaminated soils or sludges where the capping or containment would not affect future groundwater remediation and where needed to reduce migration of substances identified within the definition of hazardous substances under section 101(14) of CERCLA, or pollutants or contaminants as defined by section 101(33) of CERCLA, into soil, groundwater, surface water, or air;

(6) Drainage or closing of man-made surface impoundments where needed to maintain the integrity of the structure;

(7) Confinement or perimeter protection using dikes, trenches, ditches, or diversions, where needed to reduce the spread of, or direct contact with, the contamination;

(8) Stabilization, but not expansion, of berms, dikes, impoundments, or caps where needed to maintain the integirty of the structures;

(9) Drainage controls (e.g., run-off or run-on diversion) where needed to reduce offsite migration of substances identified within the definition of hazardous substances under section 101(14) of CERCLA, or pollutants or contaminants as defined by section 101(33) of CERCLA, or to prevent precipitation or run-off from other sources from entering the release area from other areas;

(10) Segregation of wastes that react with one another to result in adverse environmental impacts;

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

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

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

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

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

(16) Treatment (including incineration), recovery, storage, or disposal of wastes at existing facilities permitted for the type of waste resulting from the removal action, where needed to reduce the likelihood of human, animal, or food chain exposure.

2. Improvements to environmental control systems (e.g., changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems) that reduce the amounts or concentrations of regulated substances in air emissions or water effluents, if (a) the improvements would be conducted within an existing building or structure; (b) any substance captured or produced thereby during subsequent operations of the environmental control systems would be recycled, released, or otherwise disposed of within existing permitted facilities; (c) for any such substance indentified within the definition of hazardous substances under section 101(14) of CERCLA that is collected or produced in increased quantity or was not previously collected or produced, there are applicable statutory or regulatory requirements or permit conditions for its disposal, release, or recycling; and (d) it is determined that such improvement would not threaten a violation of applicable statutory, regulatory, or permit requirements, including requirements of DOE Orders; would not require siting and construction or major expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, or groundwater); and would not adversely affect environmentally sensitive areas as defined in paragraph 4 below.

3. Site characterization and environmental monitoring, including siting, construction, or operation of characterization and monitoring devices, under CERCLA and RCRA, if the activities would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances as defined in section 101(14) of CERCLA, pollutants or contaminants as defined in section 101(33) of CERCLA, or non-native organisms, and would not adversely affect environmentally sensitive areas as defined in paragraph 4 below. Activities covered include but are not limited to:

a. Geological and engineering surveys and mapping, including the establishment of survey marks;

b. Installation and operation of field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, geophysical exploration tools, and drilling of slim core holes;

c. Drilling of groundwater or vadose (unsaturated) zone sampling and monitoring wells;

d. Well logging;

e. Aquifer response testing;

f. Installation and operation of water-level recording devices in wells;

g. Installation of ambient air monitoring equipment;

h. Sampling and characterization of water, soil, rock and contaminants;

i. Sampling and characterization of water effluents, air emissions, or solid waste streams;

j. Installation of meteorological towers and associated activities, including assessment of potential wind energy resources; and

k. Sampling of flora or fauna.

4. For purposes of paragraphs 1 through 3 above, areas considered to be environmentally sensitive include:

a. Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance, as officially designated by Federal, state, or local governments, including those eligible for listing on the National Register of Historic Places;

b. Potential habitat (including critical habitat) of Federally-listed endangered, threatened, proposed, or candidate

species or of state-listed endangered and threatened species;

c. Floodplains and wetlands;

d. Natural areas such as Federally- and state-designated wilderness areas, National Parks, National Natural Landmarks, Wild and Scenic Rivers, coastal zones, state and Federal wildlife refuges, and marine sanctuaries;

e. Prime agricultural lands; and

f. Special sources of water (such as Class I groundwater, sole-source aquifers, wellhead protection areas and other water sources that are vital in a region).

[FR Doc. 90-21103 Filed 9-6-90; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 1021

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to revise the existing rule at 10 CFR part 1021, entitled "Compliance with the National Environmental Policy Act," to incorporate revised provisions of DOE's Guidelines for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA). The DOE NEPA Guidelines were last published in full in the **Federal Register** on December 15, 1987 (52 FR 47662). The proposed new rule incorporates changes required by certain policy initiatives instituted by the Secretary of Energy to facilitate participation of the public and affected states in the NEPA process for proposed DOE actions, and to develop a revised and expanded list of typical classes of actions, including categorical exclusions. A categorical exclusion is a class of actions that normally do not require the preparation of either an environmental impact statement or an environmental assessment.

DATES: Written comments on the proposed rule (revising the DOE NEPA Guidelines) should be submitted on or before December 17, 1990, to ensure their consideration. A public hearing will be held on Wednesday, December 5, 1990, beginning at 9:30 a.m. local time at the address indicated below. Requests to speak at the hearing should be received by 4:30 p.m. local time on Monday, December 3, 1990. Later requests will be accommodated to the extent practicable.

ADDRESSES: Written comments on the proposed rule and requests to speak at the public hearing should be submitted to Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or may be hand-delivered to the same address on workdays between the hours of 8 a.m. and 4:30 p.m.

The public hearing will be held at the U.S. Department of Energy, room GJ-015, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Speakers are requested to bring two copies of their statement to the hearing. Copies of the transcript of the public hearing, and any additional public comments received, may be reviewed at the DOE Freedom of Information Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6020.

FOR FURTHER INFORMATION CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTARY INFORMATION:

I. Background

DOE originally published its NEPA Guidelines on March 28, 1980 (45 FR 20694). These Guidelines implemented the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508). The Guidelines were subsequently revised a number of times and were republished in their entirety on December 15, 1987 (52 FR 47662). The Guidelines were further amended on March 27, 1989 (54 FR 12474) and on September 7, 1990 (55 FR 37174).

DOE's existing regulations at 10 CFR part 1021 were published as a final rule on August 6, 1979 (44 FR 45918). They adopted the then recently-promulgated CEQ Regulations (published on November 29, 1978 (43 FR 55978)) and revoked the NEPA regulations previously promulgated by DOE's predecessor agencies, because they were inconsistent with the CEQ Regulations.

On June 27, 1989, the Secretary of Energy announced a ten-point initiative to ensure that all DOE activities are carried out in full compliance with the letter and spirit of environmental statutes and regulations. In order to implement this initiative as it relates to NEPA, the Secretary issued Secretary of Energy Notice (SEN) 15-90 on February 5, 1990. SEN-15-90 directed significant changes in DOE policies and procedures for complying with NEPA, including revising provisions of the DOE NEPA Guidelines and publishing the revised provisions for public comment as proposed regulations using the notice and comment as proposed regulations using the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

II. Purpose

The purpose of the proposed rule is to revise the provisions of the DOE NEPA Guidelines to incorporate the changes directed by SEN-15-90 and other changes to provide more specificity and detail to the Guidelines; and to codify the results as regulations at 10 CFR part 1021. By issuing its NEPA Guidelines as regulations that will be published in the *Code of Federal Regulations*, DOE will ensure that its NEPA procedures are more accessible to the public.

The changes to the Guidelines directed by SEN-15-90 focus on improving the clarity and consistency of DOE NEPA policies and procedures, and on facilitating public participation, including that of affected states, in DOE's NEPA compliance activities. In particular, SEN-15-90 directed that the Guidelines be revised to include:

- A new agency policy for developing and updating site-wide NEPA documents (a site-wide NEPA document is defined in proposed § 1021.104(b) as a broad-scope environmental impact statement (EIS) or environmental assessment (EA) that identifies and assesses the individual and cumulative impacts of the continuing and reasonably foreseeable future actions at a DOE site);
- A revised and expanded list of categorical exclusions formulated to minimize the need for subjective judgment;
- The elimination of a DOE document generally referred to as a NEPA "memorandum-to-file," which DOE has used to document a determination (other than a categorical exclusion) that neither an EIS nor and EA is required for a proposed action;
- A requirement that DOE hold public scoping meetings for all EISs and public hearings for all draft EISs;
- Provisions for the public availability of all EIS implementation plans and all analyses made to determine whether a supplement to an EIS is required;
- Provisions for notifying states of determinations to prepare an EA or an EIS for all proposed DOE projects in the states; and
- Provisions allowing states an opportunity to comment on EAs for proposed DOE projects in the state prior to DOE approval of the EA.

The proposed rule published today reflects these changes. The proposed rule also includes revisions to the DOE NEPA Guidelines that provide more detail; and specificity to the DOE NEPA process.

III. Discussion

This section briefly describes the contents of each subpart of the proposed rule, followed by a discussion of the major differences between the subpart and its counterparts in the DOE NEPA Guidelines and the existing regulations at 10 CFR part 1021.

Subpart A—General

Proposed subpart A states the purpose, policy, and applicability of the proposed regulations. It also adopts the CEQ Regulations and defines the terms and acronyms used in the proposed rule. Proposed subpart A corresponds to the "Purpose" sections of the Guidelines and of the existing regulations at 10 CFR part 1021.

Proposed § 1021.101 contains a policy statement in which DOE makes a commitment to follow the letter and the spirit of NEPA, to comply fully with the CEQ Regulations, and to apply NEPA early in the planning stages of proposed DOE actions. Proposed § 1021.102(b) limits the application of the proposed rule to DOE actions affecting the environment of the United States and its territories and possessions, and identifies those regulations and the Executive Order that control actions having environmental effects outside the United States, its territories and possessions. Proposed § 1021.104 defines the terms, abbreviations, and acronyms used in the proposed rule, and incorporates the definitions used in the CEQ Regulations.

DOE is proposing to revise the existing regulations at 10 CFR part 1021 by striking the current text and replacing it with the proposed rule. The proposed rule does not incorporate the provisions of existing § 1021.1 that restate basic NEPA legislative policy or the provision of the existing § 1021.3 that revokes the NEPA regulations of DOE's predecessor agencies.

Subpart B—DOE Planning and Decisionmaking

Proposed subpart B establishes NEPA requirements for the planning stage of proposed DOE actions, and specifies how DOE will coordinate its NEPA review with respect to general and specific types of decisionmaking. The specific types of decisionmaking covered by this subpart are interim actions (40 CFR 1506.1); research, development, demonstration, and testing; rulemaking; adjudicatory proceedings; the applicant process; and procurements and financial assistance. Proposed Subpart B defines, with respect to each of these decisionmaking activities, the timing requirements for initiating the NEPA process and for completing an EIS or EA, if required, as well as requirements for including NEPA documentation in records of decisionmaking.

Proposed subpart B sets forth substantially the same requirements as are now found in section B and § A.1 (DOE Process) and § A.2 (Applicant Processes) of the Guidelines, which are combined into a single subpart and separated from the procedural requirements that are grouped in proposed subpart C.

Section 1021.211—Interim Actions

This proposed section contains requirements not present in the Guidelines. This section would prohibit any action being taken on a DOE proposal that is the subject of an EIS, before issuance of the record of decision (ROD), unless the action qualifies as an interim action under 40 CFR 1506.1. Further, this section prohibits the categorical exclusion of any action that is covered by, or is a part of, a DOE proposal that is the subject of an EIS unless such action qualifies as an interim action under 40 CFR 1506.1 or is otherwise covered by an existing EIS or EA.

Section 1021.215—Applicant Process; Section 1021.216—Procurement and Financial Assistance

These proposed sections would reorganize the requirements of the Guidelines to separate DOE regulatory actions from actions involving the transfer of funds. Proposed § 1021.215 includes the same requirements set forth in § B.3(c)(3) of the Guidelines regarding regulatory matters, while proposed § 1021.216 includes the same requirements set forth in § B.3(c)(2) of the Guidelines regarding "major system acquisition projects involving selection of sites and/or process by competitive procurements." In addition, proposed § 1021.216 would apply these requirements to applications for financial assistance. Certain of the requirements would be applicable as well to sole and limited source procurements and noncompetitive awards of financial assistance. Proposed § 1021.216 also introduces new terminology. The "environmental critique" referred to in proposed § 1021.216(d) is identical to the "environmental impact analysis" referred to in § B.3(c)(2)(iii) of the Guidelines, and the term "environmental synopsis" used in proposed § 1021.216(h) denotes the same document referred to in § B.3(c)(2)(iv) of the Guidelines as a "selection statement."

Subpart C—Implementing Procedures

Proposed subpart C contains procedural requirements for compliance with NEPA. It details requirements for the public availability of documents and for public participation in the NEPA process; the preparation of EAs and findings of no significant impact; and the preparation of EISs, including requirements for scoping, implementation plans, mitigation plans, records of decisions, supplements to EISs, the programmatic and site-wide EISs. Proposed subpart C also describes procedures to be followed when classified or confidential information is present in NEPA documentation, and establishes standards for the coordination of NEPA compliance with other environmental review requirements and with other Federal agencies. Finally, proposed subpart C describes the circumstances under which variances from the proposed rule may be permitted, and the requirements associated with such variances.

Proposed subpart C contains provisions that are similar to § A.4 (Scoping) and section C of the Guidelines. In response to SEN-15-90, it omits the provisions in § A.3 of the Guidelines, under which a determination not to prepare an EIS or an EA for a proposed DOE action not categorically excluded could be documented by a NEPA memorandum-to-file. The Secretary of Energy announced in SEN-15-90 that the use of such memoranda-to-file would terminate on September 30, 1990. As a result of this directive, all proposed DOE actions that are not listed as categorical exclusions, and for which an EIS is not required, will be the subject of an EA.

One additional provision in section C of the Guidelines is not carried over into the proposed rule. § C.8 (Revisions to the Guidelines) has been eliminated because revision of the DOE NEPA Regulations will be governed by the Administrative Procedure Act.

Because of the number of significant additional procedural requirements proposed in subpart C, and other differences between the procedures proposed in subpart C and the Guidelines, each section of subpart C is discussed below, excluding only those sections that reflect no substantive changes.

Section 1021.300—General Requirements

Paragraph (b) of this proposed section contains a new provision that would permit the discretionary preparation of NEPA documents for any DOE action "to further the purposes of NEPA" and requires that such documents conform to the same standards as required NEPA documents.

Section 1021.301—Agency Review and Public Participation

This proposed section contains new provisions not present in the Guidelines. It would implement the CEQ Regulations

at 40 CFR 1506.6 regarding public involvement and also would implement 40 CFR 1502.8 by requiring, wherever feasible, that DOE NEPA documents explain technical, scientific, or military terms or measurements in plain language.

Proposed § 1021.301 would implement the SEN-15-90 requirement to encourage greater participation by states that would host proposed DOE actions. It would require that host states be notified of a DOE determination to prepare an EA or an EIS. Adjacent states or other states may also be notified if DOE determines that they would be affected by the proposed action. This section also would require that host states be given an opportunity to comment on an EA before it is approved by DOE. Other affected states may be invited to comment on the EA prior to approval if DOE determines that it would be appropriate.

Section 1021.311—Notice of Intent and Scoping

This proposed section includes the following procedures not found in the Guidelines:

1. Publication, at DOE's discretion, of an advance notice of intent (NOI) where there will be a lengthy delay between the time DOE decides to prepare an EIS and the beginning of the public scoping process;

2. A minimum comment period of 30 days following the publication of a NOI (The Guidelines provide that the comment period will "normally be 20 days.");

3. At least one public scoping meeting for every EIS (excluding supplemental EISs);

4. Public notice if additional meetings are held or an announced public scoping meeting is changed; and

5. A provision making a public scoping process optional for a supplemental EIS but requiring that, when such a public scoping process is elected, it conform to the requirements of this section.

Section 1021.312—EIS Implementation Plan

The significant change proposed in this section is a requirement that EIS implementation plans be made available to the public and that, at DOE's discretion, they be placed in public reading rooms. There are minor changes in the wording of the requirements for the content of implementation plans. For example, proposed § 1021.312 does not refer to the implementation plan as a "brief" document as do the Guidelines, and the proposed rule would require that the plan include the "planned scope and content of the EIS," rather than a "detailed outline of the EIS," as required by the Guidelines.

Section 1021.313—Public Review of Environmental Impact Statements

This proposed section has no counterpart in the Guidelines. It would implement 40 CFR 1506.10(c) by providing for a public comment period on a DOE draft EIS of not less than 45 days and implements the requirements of 40 CFR 1503.4 (Response to comments). It would require at least one public hearing for every draft DOE EIS after at least 15 days notice. It also would provide that, at DOE's discretion, publication of notice of the availability of draft and final EISs and of public hearings on a draft EIS may be accomplished by other means in addition to those defined in this section.

Section 1021.314—Supplemental Environmental Impact Statements

This proposed section corresponds to § C.2 of the Guidelines. In addition to implementing the CEQ Regulations, proposed § 1021.314 would require that a determination regarding whether an EIS should be supplemented, as well as the Supplement Analysis supporting that decision, be made available to the public and, at DOE's discretion, be placed in DOE public reading rooms. It authorizes the use of an optional scoping process for supplements to EISs. (The CEQ Regulations do not require public scoping for EIS supplements.) Proposed § 1021.314(c) also would include DOE guidance on when a supplemental EIS would not be required.

Section 1021.315—Records of Decision

Procedures for records of decisions (RODs) are not included in the Guidelines. Proposed § 1021.315 tracks the procedures for RODs set forth in the CEQ Regulations and contains additional proposed requirements for the inclusion in the ROD of any necessary determinations required by 10 CFR part 1022 (Compliance with Floodplain/Wetlands Environmental Review Requirements) and publication of the ROD in the **Federal Register**.

Section 1021.321—Requirements for Environmental Assessments

This proposed section also covers procedures not included in the Guidelines, and adds to those set forth in the CEQ Regulations by providing that when appropriate, an EA will include assessments and analyses required to satisfy other environmental requirements; that DOE may consult with other agencies or interested parties regarding the scope of an EA; and that an EA must assess a no-action alternative even when the proposed action is required by law or court order.

Section 1021.322—Findings of No Significant Impact

The Guidelines do not include procedures for findings of no significant impact (FONSIs). Proposed § 1021.322 would provide more detailed requirements for the contents of a FONSI than do the CEQ Regulations, and would make mandatory the inclusion in the FONSI of a summary of the supporting EA and information regarding any mitigation commitments.

Section 1021.330—Programmatic NEPA Documents

Programmatic NEPA documents are not addressed in the Guidelines. Proposed § 1021.330 would require the preparation of programmatic EISs when necessary to support a decision on connected actions, and would authorize the preparation of discretionary programmatic documents to further the purposes of NEPA. The section also states that DOE programmatic NEPA documents are subject to the same requirements as any other NEPA documents.

Section 1021.331—Site-Wide NEPA Documents

As indicated above, SEN-15-90 required the development of a new DOE policy for site-wide EISs. Site-wide EISs are not addressed in the Guidelines. Proposed § 1021.331 would require, as a matter of policy, the preparation of site-wide EISs for certain large, multiple-facility DOE sites and an evaluation of these EISs every five years to determine if they should be supplemented. The preparation of site-wide EISs for other DOE sites would be optional under this proposed section.

Section 1021.332—Mitigation Action Plans

This proposed section, which was developed in response to SEN-15-90, would require mitigation action plans for all EISs and for each EA that will result in a FONSI based in significant part on DOE's commitment to take mitigation measures. Proposed § 1021.332 requires that a mitigation action plan be prepared, in the case of an EIS, prior to DOE taking any action that may have an adverse environmental impact, and, when required for a FONSI, prior to the issuance of the FONSI. The proposed section would also require that mitigation action plans address all mitigation commitments that are made

in the ROD or that are necessary to support the issuance of a FONSI. There is no counterpart to this section in the Guidelines.

Section 1021.340—Classified, Confidential, or Otherwise Exempt Information

This proposed section differs from its counterpart in the Guidelines, § C.1, by requiring that interagency memoranda transmitting a federal agency's comments on the environmental impacts of a DOE proposal be disclosed even if exempted from mandatory disclosure by the Freedom of Information Act (5 U.S.C. 552). It would also require that NEPA documents withheld in their entirety because of the presence of classified, confidential, or other protected information otherwise conform to all the requirements of the CEQ and DOE NEPA Regulations.

Section 1021.342—Interagency Cooperation

This proposed section, which is a counterpart to § A.2(d) of the Guidelines, would express DOE's policy of cooperation with other agencies in complying with NEPA.

Section 1021.343—Variances

Paragraph (a) of this proposed section (Emergency Actions) would implement 40 CFR 1506.11 (Emergencies); emergencies are not covered in the Guidelines.

Paragraph (b) (Reduction of Time Periods) is significantly different from its counterpart provision in the Guidelines. § C.3, which authorizes the reduction of time periods established by the CEQ Regulations where necessary to comply with other specific statutory requirements. The proposed provision, on the other hand, would permit the reduction of only those time periods not established by the CEQ Regulations. The procedure set forth in this proposed section for a permissible reduction in a time period is publication of a notice announcing the reduction in the **Federal Register.**

Proposed paragraph (c) of this section corresponds to the Purpose statement and § C.7 of the Guidelines, concerning the circumstances under which a variance from the provisions of DOE's NEPA procedures may be authorized. The Guidelines allow such deviations if DOE's Under Secretary determines them to be "soundly based." This section of the proposed rule would implement the directive of SEN–15–90 that deviations must be approved by the Secretary of Energy. This proposed section also would clarify the grounds for any deviations by requiring that they be "soundly based on the interests of national security or the public health, safety, or welfare." This section also makes clear that the Secretary may not approve a variance from any provision of the CEQ Regulations except as provided for in those regulations.

Subpart D—Typical Classes of Action

Proposed subpart D would provide requirements and guidance for determining the appropriate level of NEPA review for proposed DOE actions, and would establish criteria for determining the eligibility of specific actions for categorical exclusion. Four appendices to subpart D set forth the classes of actions that normally would be categorically excluded from preparation of an EIS or an EA (appendices A and B), actions that normally would require preparation of an EA but not necessarily an EIS (appendix C), and actions that normally would require preparation of an EIS (appendix D).

Subpart and its appendices correspond to § A.3. (Whether to Prepare an Environmental Impact Statement) and section D (Typical Classes of Actions) of the Guidelines. There are major changes proposed in subpart D and its appendices. Most significant is the revision and expansion of the list of actions which would be categorically excluded.

In considering these revisions, commenters should bear in mind that the classes of actions listed in these appendices do not constitute a conclusive determination regarding the appropriate level of NEPA review. Rather, the listing creates a presumption that the defined level of review is appropriate for the listed actions. As indicated in proposed § 1021.400, that presumption can be overcome when "extraordinary circumstances related to the specific proposal (including issues raised in public comments or other information available to DOE) cause DOE to have a reasonable question as to whether the categorization is appropriate for the specific proposal."

Appendices A and B—Categorical Exclusions

As discussed above, SEN–15–90 mandates the elimination of the NEPA memorandum-to-file on September 30, 1990. A NEPA memorandum-to-file was previously used to document a determination that a proposed DOE action, not included in the list of categorical exclusions, would have clearly insignificant impacts, and therefore did not require either an EA or an EIS. The result of the elimination of the memorandum-to-file is that all proposed DOE actions not included in the list of categorical exclusions must be the subject of an EA or an EIS. Because the list of categorical exclusions in the Guidelines is relatively small, this situation could in turn result in DOE preparing EAs for actions that clearly have no potential for significant effects on the human environment.

Therefore, SEN–15–90 also mandated that a revised and expanded list of categorical exclusions be developed in part to retain efficiency of NEPA compliance for insignificant actions. Another reason for the requirement to develop a revised and expanded list, as expressed in SEN–15–90, is to formulate the lists of classes of actions in a manner that minimizes the need for subjective judgment. To further this purpose, SEN–15–90 immediately eliminated use of the Guidelines' so-called "catch-all" exclusion, which applied to:

> Actions that are substantially the same as other actions for which the environmental impacts have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is still valid.

In order to develop a list of categorical exclusions that would be sufficiently detailed to eliminate the preparation of clearly unnecessary EAs, and that would be sufficiently specific to eliminate the need for subjective judgment, DOE solicited the assistance of its program and field offices in identifying the types of actions that they routinely perform and the evaluation of which has consistently resulted in a determination that the actions do not individually or cumulatively have a significant effect on the human environment.

The lists of 121 actions set forth in proposed appendices A and B to subpart D are the result of that effort. Not only is the number of proposed excludable classes of actions much greater than that included in the Guidelines, but every effort has been made to define the actions with specificity. For example, the list of categorical exclusions in the Guidelines includes "Actions involving routine maintenance of DOE-owned or operated facilities." In the proposed rule (appendix A, 1.26), routine maintenance is defined and 20 examples of actions that fall within the definition are set forth. DOE believes that this approach will lead to a more objective determination of the application of the categorical exclusion for routine maintenance.

As another example, the Guidelines include General Plant Projects (defined by DOE as miscellaneous minor new

construction projects costing less than $1.2 million) as a class of actions that are categorically excluded. The proposed rule instead lists a number of specific activities that normally are performed as General Plant Projects. This change recognizes that the impact of an action, not its cost, is the appropriate basis for categorical exclusion.

Two other revisions to the classes of categorically excluded actions are significant. The most recent amendments to section D of the Guidelines, adopted on September 7, 1990 (55 FR 37174), established screening criteria to limit the scope of certain additions to the list of categorically excluded actions. Proposed § 1021.410(b) includes those same criteria and makes them applicable to all actions included in appendices A and B. Finally, the list of classes of categorically excluded actions has been divided into two parts. The list in appendix A can be applied to particular proposed DOE projects without any requirement to document the application. The application of a class of action in appendix B to a particular proposed action, on the other hand, must be documented. (Pursuant to SEN–15–90, that documentation will be reviewed by the DOE Office of NEPA Oversight staff, who will have 14 days to object to the determination made on the basis of that documentation.)

Appendix C—Classes of Actions that Normally Require EAs But Not Necessarily EISs

The list in proposed appendix C contains 16 items, seven of which are taken from the corresponding 14-item list in the Guidelines. Only one of those seven items contains a noteworthy change. The action (which consolidates two overlapping items in the Guidelines) is described in the proposed rule as

Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the long-term allocation (five years or longer) of power.

The similarly described items in the Guidelines defines long term as "greater than one year."

The new actions proposed in appendix C are derived from the same experience-based process used to develop proposed appendices A and B. The revised and expanded list is more specifically worded, and more accurately reflects the types of activities that DOE and its contractors currently perform.

Appendix D—Classes of Actions that Normally Require EISs

The list in proposed appendix D includes all but one of the seven actions described in the corresponding list in section D of the Guidelines. The action that is not proposed to be retained is:

DOE actions which cause energy conservation on a substantial scale including those where effects are primarily on the indoor environment (e.g., indoor air quality).

DOE's experience indicates that NEPA review requirements for substantial energy conservation actions should be decided on a case-by-case basis; environmental assessments may be adequate for some large scale energy conservation projects. One of the retained items has been significantly changed. The action described in the Guidelines as, "DOE actions which are expected to result in the construction and operation of a large scale project," has been revised in the proposed appendix D to read, "Major System Acquisitions, as designated by DOE Order 4240.1 'Designation of Major System Acquisitions and Major Projects.' " DOE has revised the description of this action because it believes that the phrase "large scale project" is too vague. On the other hand "major system acquisitions" are designated as such on the basis of specific criteria set forth in DOE Order 4240.1.

Proposed appendix D lists 5 new actions, related to the siting, construction, and operation of major nuclear facilities, and facilities for storing and disposing of hazardous and radioactive wastes.

IV. Revocation of Existing Guidelines and Replacement of Regulations

If the proposed rule is issued as a final rule, DOE intends to revoke the existing DOE NEPA Guidelines, and to revise the existing regulations at 10 CFR part 1021 by striking the current text and replacing it with the proposed rule, effective on the date of publication of the final rule, which DOE intends also to be the effective date of the final rule. DOE believes that there is good cause for making the final rule immediately effective because prompt use of the new and expanded list of categorical exclusions will make DOE resources (time and money) that would otherwise be spent preparing unnecessary documentation available for more productive purposes. DOE invites the public to comment on this intention.

V. Environmental Review

The proposed rule consists of the revision and consolidation of the existing NEPA Guidelines and the existing part 1021. Its purpose is primarily to establish procedures without substantially changing their environmental effect. Thus, these revisions are not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, but rather are categorically excluded under section D of the Guidelines. Consequently, neither an EIS nor an EA is required for the proposed rule.

VI. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291, which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, or public or private organizations, or on state and local governments. The Executive Order also requires that a regulatory impact analysis be prepared for a "major rule." The Executive Order defines "major rule" as any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would amend and codify already existing policies and procedures for compliance with NEPA. The proposed rule contains no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or other similar actions, which is the area where one might anticipate an economic effect. Therefore, DOE has determined that the incremental effect of today's proposed rule, if finalized, will not have the magnitude of effects on the economy to bring the proposed rule within the definition of a "major rule."

Pursuant to the Executive Order, the proposed rule was submitted to the Office of Management and Budget (OMB) for pre-publication regulatory review.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and

local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The rulemaking to revise DOE's NEPA Guidelines and 10 CFR part 1021 will not have any substantial direct effects on state and local governments within the meaning of the Executive Order; it will, however, allow states the opportunity to play a more significant role in DOE's NEPA process. The final rule will affect Federal NEAP compliance procedures, which are not subject to state regulation.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This proposed rule would modify existing policies and procedural requirements for DOE compliance with NEPA. It makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that this rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

IX. Public Comment Procedures

Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting information, views, or arguments with respect to the proposed regulations set forth in this Notice. Comments should be submitted to the address indicated in the **ADDRESSES** section of this Notice and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Comments on Proposed NEPA Rule." Two copies should be submitted, if possible. All comments received by the date indicated in the **DATES** section will be considered by DOE before final action is taken on the proposed rule. Late comments will be considered to the extent practicable.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and three copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Public Hearing

In addition to receiving written comments, DOE will conduct a public hearing on the proposed rule. The time and place of the public hearing are indicated at the beginning of this Notice under **DATES** and **ADDRESSES**, respectively. DOE invites any person who has an interest in today's proposed rule, or who represents a group of people that have an interest in the proposed rule, to make an oral presentation.

1. Procedures for submitting Requests to Speak

Requests to speak should be directed to the address indicated in the **ADDRESSES** section of this Notice. Requests should be labeled: NEPA Rule Hearing. The person making the request should give a telephone number where he or she may be contacted. People who have not requested to speak in advance will be accommodated to the extent practicable.

DOE asks that each speaker submit two copies of any written statement at the hearing registration desk.

2. Conduct of Hearing

DOE reserves the right to schedule the speakers and to establish the procedures governing the conduct of the hearing.

A representative of the DOE Office of General Counsel will be designated to preside at the hearing. The presiding official will establish the order of speakers and provide any additional procedures necessary for conduct of the hearing. A panel of DOE representatives will assist in conducting the hearing. The hearing will not be conducted as a judicial or evidentiary hearing, but will be conducted in accordance with 5 U.S.C. 553.

To ensure that all persons wishing to make a presentation can be heard, each presentation may be limited to 10 minutes. Speakers who wish to provide further information for the record should submit such information in writing as described above.

People who do not make advance arrangements may register to speak at the time of the hearing; after all previously scheduled speakers have been given an opportunity to make their presentations, an opportunity will be provided to these registrants to speak, as time permits.

DOE reserves the right to change the location, date, and procedures for this hearing. Such changes would be announced in the appropriate media, such as the **Federal Register**.

The entire record of the hearing, including a transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday. Any person may make a copy of the transcript at the DOE Freedom of Information Reading Room or purchase a copy of the hearing transcript from the court reporter.

List of Subjects in 10 CFR Part 1021

Environmental assessment, Environmental impact assessment, National Environmental Policy Act.

Issued in Washington, DC, October 29, 1990.

Paul L. Ziemer,

Assistant Secretary, Environmental, Safety and Health.

For reasons set out in the preamble, it is proposed to revise 10 CFR part 1021 to read as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTATION PROCEDURES

Subpart A—General

Sec.

Subpart B—DOE Planning and Decisionmaking

Subpart C—Implementing Procedures

Authority: Sec. 644 of the Department of Energy Organization Act (42 U.S.C. 7254); and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Subpart A—General

§ 1021.100 Purpose.

The purpose of this part is to establish procedures that the Department of Energy (DOE) shall use to comply with section 102(2) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). This part supplements, and is to be used in conjunction with, the CEQ Regulations.

§ 1021.101 Policy.

It is the Department of Energy's policy to follow the letter and spirit of NEPA; comply fully with the CEQ Regulations; and apply the NEPA review process early in the planning stages for DOE proposals.

§ 1021.102 Applicability.

(a) This part applies to all organizational elements of DOE except the Federal Energy Regulatory Commission.

(b) This part applies to any DOE action affecting the environment of the United States, its territories or possessions. DOE actions having environmental effects outside the United States, its territories or possessions are subject to the provisions of Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions" (3 CFR, 1979 Comp., p. 356; 44 FR 1957, Jan 4, 1979), DOE guidelines implementing that Executive Order (46 FR 1007, January 5, 1981) and the Department of State's "Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114" (44 FR 65560, November 13, 1979).

§ 1021.103 Adoption of CEQ NEPA Regulations.

The Department of Energy adopts the regulations for implementing NEPA published by the Council on Environmental Quality at 40 CFR parts 1500 through 1508.

§ 1021.104 Definitions.

(a) The definitions set forth in 40 CFR part 1508 are referenced and used in this part.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

Action means a DOE endeavor regarding a project, program, plan, or policy, as discussed at 40 CFR 1508.18.

Adjacent state means a state that has a common boundary with a host state.

Advance NOI means a formal public notice of DOE's intent to prepare an EIS, which is published in advance of a NOI in order to facilitate public involvement in the NEPA process.

Categorical exclusion means a category of actions, as defined at 40 CFR 1508.4 and listed in appendix A and B to subpart D of this part, for which neither an EA nor an EIS is normally required.

CEQ means the Council on Environmental Quality as defined at 40 CFR 1508.6.

CEQ Regulations means the regulations issued by CEQ (40 CFR parts 1500–1508) to implement the procedural provisions of NEPA.

Contaminant means a substance identified within the definition of contaminant in section 101(33) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C 9601.101(33)).

Day means a calendar day.

DOE means the United States Department of Energy.

DOE decision (or *decision*) means a final DOE determination to take a given course of action, as discussed at 40 CFR 1508.18; the action may commence as soon as a decision is issued.

DOE proposal (or *proposal*) means a proposal, as discussed at 40 CFR 1508.23, for an action, as discussed at 40 CFR 1508.18 (whether initiated by DOE, another Federal agency, or an applicant), if the proposal requires a DOE decision.

Documentation (of a categorical exclusion listed in appendices A and B to subpart D of this part) means a record of DOE's decision that a proposed action or group of proposed actions meet eligibility criteria for categorical exclusions and that a DOE categorical exclusion has been applied to a proposed action or group of proposed actions.

EA means an environmental assessment as defined at 40 CFR 1508.9.

EIS means an environmental impact statement as defined at 40 CFR 1508.11, or, unless this part specifically provides otherwise, a Supplemental EIS.

EIS Implementation Plan means a document that explains and supports the scope and approach DOE will use to prepare an EIS.

Eligibility screening means the process of comparing a proposed action or group of proposed actions to criteria that must be met before an action can be considered for a categorical exclusion; "eligibility criteria" refers to those criteria listed in § 1021.410 of this part.

EPA means the United States Environmental Protection Agency.

FONSI means a Finding of No Significant Impact as defined at 40 CFR 1508.13.

Host state means a state within whose boundaries DOE proposes an action at an existing facility or construction or operation of a new facility.

Hazardous substance means a substance identified within the definition of hazardous substances in section 101(14) of CERCLA (42 U.S.C 9601.101(14)).

Interim action means an action that is within the scope of an ongoing EIS and that DOE proposes to take before the ROD is issued, and that is permissible under 40 CFR 1506.1.

Mitigation Action Plan means a document that describes the plan for implementing commitments made in a DOE EIS and its associated ROD, or when appropriate, an EA or FONSI, to mitigate adverse environmental impacts associated with an action.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4231 *et seq.*).

NEPA document means a DOE NOI, EIS, ROD, EA, FONSI, any documentation of a categorical exclusion, or any other document prepared pursuant to a requirement of NEPA or the CEQ Regulations.

NEPA review means the process used to comply with section 102(2) of NEPA.

NOI means a Notice of Intent to prepare an EIS as defined at 40 CFR 1508.22.

Notice of Availability means a formal notice, published in the **Federal Register**, that announces the issuance and public availability of a draft or final EIS. The Environmental Protection Agency (EPA) Notice of Availability is the official public notification of an EIS; a DOE Notice of Availability is an optional notice used to provide information to the public.

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

Program means a sequence of connected or related DOE actions or projects as discussed at 40 CFR 1508.18(b)(3) and 1508.25(a).

Programmatic NEPA document means a broad-scope EIS or EA that identifies and assesses the environmental impacts of a DOE program; it may also refer to an associated NEPA document such as a NOI, ROD or FONSI.

Project means a specific DOE undertaking, which may include design, construction and operation of an individual facility; research, development, demonstration, and testing for a process or product; funding for a facility, process, or product; or similar activities, as discussed at 40 CFR 1508.18(b)(4).

ROD means a Record of Decision as described at 40 CFR 1505.2.

Scoping means the process described at 40 CFR 1501.7; "public scoping process" refers to that portion of the scoping process where the public is invited to participate, as described at 40 CFR 1501.7 (a)(1) and (b)(4).

Site-wide NEPA document means a broad-scope EIS or EA that identifies and assesses the individual and cumulative impacts of continuing and reasonably foreseeable future actions at a DOE site; it may also refer to an associated NEPA document such as a NOI, ROD or FONSI.

Supplement Analysis means a DOE document used to determine whether a supplemental EIS should be prepared pursuant to 40 CFR 1502.9(c), or to support a decision to prepare a new EIS or a revised ROD.

Supplemental EIS means an EIS prepared to supplement a prior EIS as provided at 40 CFR 1502.9(c).

The Secretary means the Secretary of Energy.

§ 1021.105 Oversight of Agency NEPA activities.

The Assistant Secretary for Environment, Safety and Health, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA review procedures and status reports on individual NEPA reviews may be obtained upon request from the Office of NEPA Oversight, EH-25, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Subpart B—DOE Planning and Decisionmaking

§ 1021.200 DOE planning.

(a) DOE shall provide for adequate and timely NEPA review of DOE proposals, including those for any program, policy, project, regulation, or legislation, in accordance with 40 CFR 1501.2 and this section. In its planning for each proposal, DOE shall include adequate time and funding for proper NEPA review and for preparation of anticipated NEPA documents.

(b) DOE shall begin its NEPA review as soon as possible, in DOE's judgment, after the time that DOE proposes an action or is presented with a proposal.

(c) DOE shall determine the level of NEPA review required for a proposal in accordance with § 1021.300 and subpart D of this part.

(d) During the development and consideration of a DOE proposal, DOE shall review any relevant planning and decisionmaking documents, whether prepared by DOE or another agency, to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, DOE shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR 1506.3.

§ 1021.210 DOE decisionmaking.

(a) For each DOE proposal, DOE shall coordinate its NEPA review with its decisionmaking. Sections 1021.211 through 1021.214 of this part specify how DOE will coordinate its NEPA review with decision points for certain types of proposals (40 CFR 1505.1(b)).

(b) For each DOE proposal, DOE shall complete its NEPA review before making a decision on the proposal, except as provided in 40 CFR 1506.1 and §§ 1021.211 and 1021.216 of this part.

(c) For each DOE proposal, during the decisionmaking process DOE shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of its consideration of the proposal (40 CFR 1505.1(d)).

(d) If any EIS or EA is prepared for a DOE proposal, DOE shall consider the alternatives analyzed in that EIS or EA before rendering a decision on that proposal; the decision on the proposal shall be within the range of alternatives analyzed in the EA or EIS (40 CFR 1505.1(e)).

(e) For each DOE proposal, DOE shall include the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments as part of the ROD or other administrative record (40 CFR 1505.1(c)).

(f) When DOE uses a broad decision (such as one on a policy or program) as a basis for a subsequent narrower decision (such as one on a project or other site-specific proposal), DOE may use tiering (40 CFR 1502.20) and incorporation of material by reference (40 CFR 1502.21) in the NEPA review for the subsequent narrower proposal.

§ 1021.211 Interim actions.

While DOE is preparing an EIS that is required under § 1021.300(a) of this part, DOE shall take no action on the proposal, or any part thereof, that is the subject of the EIS before issuing a ROD (except as provided at 40 CFR 1506.1). Actions that are covered by, or are a part of, a DOE proposal for which an EIS is being prepared shall not be categorically excluded from preparation of a EA or EIS under supbart D or this part unless they qualify as interim actions under 40 CFR 1506.1 or are covered by an existing EA or EIS.

§ 1021.212 Research, development, demonstration, and testing.

(a) This section applies to the adoption and application of programs that involve research, development, demonstration and testing for new technologies (40 CFR 1502.4(c)(3)). Adoption of such programs might also lead to commercialization or other broad-scale implementation by DOE or another entity.

(b) For any proposed program described in paragraph (a), DOE shall begin its NEPA review (if otherwise required by this part) as soon as, in DOE's judgment, environmental effects can be meaningfully evaluated, and before DOE has reached the level of investment or commitment likely to determine subsequent development or restrict later alternatives, as discussed at 40 CFR 1502.4(c)(3). Normally, DOE will complete any relevant NEPA document in advance of, and for use in reaching, a decision to proceed with the detailed design, except as provided in 40 CFR 1506.1 and § 1021.211 of this part.

(c) For subsequent phases of development and application, DOE shall prepare one or more additional NEPA documents (if otherwise required by this part).

§ 1021.213 Rulemaking.

(a) This section applies to regulations promulgated by DOE.

(b) DOE shall begin its NEPA review of a proposed rule (if otherwise required by this part) while drafting the proposed regulation, and as soon as, in DOE's judgment, environmental effects can be meaningfully evaluated.

(c) DOE shall include any relevant NEPA documents, public or agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS is required, DOE will normally publish the draft EIS at the time it publishes the proposed rule (40 CFR 1502.5(d)). DOE will normally combine any public hearings required for a proposed rule with the public hearings required on the draft EIS under § 1021.313 of this part. The draft EIS needs not accompany notices of inquiry or advance notices of proposed rulemaking that DOE may use to gather information during early stages of regulation development. When engaged in rulemaking for the purpose of protecting the public health and safety, DOE may issue the final rule simultaneously with publication of the EPA Notice of Availability of the final EIS in accordance with 40 CFR 1506.10(b).

(e) If an EA is required, DOE will normally complete the EA and issue any related FONSI prior to or simultaneously with issuance of the proposed rule; however, if the EA leads to preparation of an EIS, the provisions of paragraph (d) shall apply.

§ 1021.214 Adjudicatory proceedings.

(a) This section applies to DOE proposed actions that involve DOE adjudicatory proceedings, excluding judicial or administrative, civil or criminal enforcement actions.

(b) DOE shall begin its NEPA review (if otherwise required by this part) before rendering any final adjudicatory decision. If an EIS is required, the final EIS will normally be completed at the time of or before final staff recommendation, in accordance with 40 CFR 1502.5(c).

(c) For formal adjudicatory proceedings, DOE shall include any relevant NEPA documents, public or agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

§ 1021.215 Applicant process.

(a) This section applies to actions that involve application to DOE for a permit, license, exemption or allocation, or other similar actions, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) An applicant described in paragraph (a) shall:

(1) Consult with DOE as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that DOE may require to be submitted as part of, or in support of, the application;

(2) Conduct studies that DOE deems necessary and appropriate to determine the environmental impacts of the proposed action;

(3) Consult with appropriate Federal, state, regional and local agencies, Indian tribes, and other potentially interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements;

(4) Notify DOE as early as possible of other Federal, state, regional, local or Indian tribal actions required for project completion to allow DOE to coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2 regarding elimination of duplication with state and local procedures, as appropriate;

(5) Notify DOE of private entities and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2); and

(6) Notify DOE if, before completing the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction that may have an adverse environmental impact or limit the choice of alternatives, in accordance with 40 CFR 1506.1(a).

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(d) DOE shall begin its NEPA review (if otherwise required by this part) as soon as possible after receiving an application described in paragraph (a), and shall independently evaluate and verify the accuracy of information received from an applicant in accordance with 40 CFR 1506.5(a). At DOE's option, an applicant may prepare an EA in accordance with 40 CFR 1506.5(b). If an EIS is prepared, the EIS shall be prepared by DOE or by a contractor that is selected by DOE and that may be funded by the applicant, in accordance with 40 CFR 1506.5(c). The contractor shall provide a disclosure statement in accordance with 40 CFR 1506.5(c), as discussed in § 1021.312(b)(4) of this part. DOE shall complete any NEPA documents (or evaluation of any EA prepared by the applicant) before rendering a final decision on the application and shall consider the NEPA document in reaching its decision, as provided in § 1021.210 of this part.

§ 1021.216 Procurement and Financial Assistance.

(a) This section applies to DOE competitive and limited-source procurements, and to awards of financial assistance by a competitive process, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part. Paragraphs (b), (c), and (i) of this section apply as well to DOE sole source procurements of sites, systems, or processes, and to noncompetitive awards of financial assistance, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) Where relevant in DOE's judgment, DOE shall require that offerors submit environmental data and analyses as a discrete part of the offeror's proposal. DOE shall specify in its solicitation document the type of information and level of detail for environmental data and analyses so required. The data will be limited to those reasonably available to offerors.

(c) DOE shall independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(d) For offers in the competitive range, DOE shall prepare and consider an environmental critique before the selection.

(e) The environmental critique will be subject to the confidentiality requirements of the procurement process.

(f) The environmental critique will evaluate the environmental data and analyses submitted by offerors; it may also evaluate supplemental information developed by DOE as necessary for a reasoned decision.

(g) The environmental critique will focus on environmental issues that are pertinent to a decision on proposals and will include:

(1) A brief discussion of the purpose of the procurement and each offer, including any site, system, or process variations among the offers having environmental implications;

(2) A discussion of the salient characteristics of each offeror's proposed site, system, or process as well as alternative sites, systems or processes;

(3) A brief comparative evaluation of the potential environmental impacts of the offers, which will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects that cannot be avoided, areas where important environmental information is incomplete and unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal; and

(4) To the extent known for each offer, a list of Federal, state, and local government permits, licenses, and approvals that must be obtained.

(h) DOE shall prepare a publicly available environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The synopsis will not contain business, confidential, trade secret or other information that DOE otherwise would not disclose pursuant to 18 U.S.C. 1905, the confidentiality requirements of the competitive procurement process, 5 U.S.C. 552(b), or § 1021.340 of this part. After a selection has been made, the environmental synopsis shall be filed with EPA, shall be made publicly available, and shall be incorporated in any NEPA document prepared under paragraph (i) of this section.

(i) If an EA or EIS is required, DOE shall prepare, consider and publish the EA or EIS in conformance with the CEQ Regulation and other provisions of this part before taking any action pursuant to the contract or award of financial assistance (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). The provisions of § 1021.340 shall apply to such NEPA documents. If the NEPA process is not completed before the award of the contract or financial assistance, then the contract or financial assistance shall be contingent on completion of the NEPA process (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). DOE shall phase subsequent contract work to allow the NEPA review process to be completed in advance of a go/no-go decision.

Subpart C—Implementing Procedures

§ 1021.300 General requirements.

(a) DOE shall determine, under the procedures in the CEQ Regulations and this part, whether any DOE proposal:

(1) Requires preparation of an EIS;

(2) Requires preparation of an EA; or

(3) Is categorically excluded from preparation of either an EIS or an EA. DOE shall prepare any pertinent NEPA documents as required by NEPA, the CEQ Regulations, or this part.

(b) At its discretion, DOE may prepare a NEPA document for any DOE action at any time in order to further the purposes of NEPA. This may be done to analyze the consequences of ongoing activities, support DOE planning, assess the need for mitigation, or fully disclose the potential environmental consequences of DOE actions. Documents prepared under this paragraph shall be prepared in the same manner as DOE documents prepared under paragraph (a) of this section.

§ 1021.301 Agency review and public participation.

(a) DOE shall make its NEPA documents available to other Federal agencies, states, local governments, Indian tribes, and the general public, in accordance with 40 CFR 1506.6, except as provided in § 1021.340 of this part.

(b) Wherever feasible, DOE NEPA documents shall explain technical, scientific or military terms or measurements using terms familiar to the general public, in accordance with 40 CFR 1502.8.

(c) DOE shall provide any host state with an opportunity to comment on any DOE EA prior to DOE's approval of the EA. At DOE's discretion, this review period shall be from 14 to 30 days. If a host state does not respond during the review period, waives the opportunity for prior review, or provides a response before the end of the comment period, DOE may proceed to approve the EA. DOE shall provide an adjacent state with the same opportunity to review and comment on a DOE EA before approval if, in DOE's judgment, the adjacent state may be affected by the proposed action. At its discretion, DOE may also extend an opportunity to review and comment on a DOE EA to other states that may be affected by a proposal.

(d) DOE shall notify any host state of a DOE determination to prepare an EA or EIS for the DOE proposal, and any adjacent state that, in DOE's judgment, may be affected by the proposal. At its discretion, DOE may also notify other states of a DOE determination to prepare an EA or EIS if, in DOE's judgment, those states may be affected by a proposal.

§ 1021.310 Environmental impact statements.

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart.

§ 1021.311 Notice of intent and scoping.

(a) DOE shall publish a NOI in the **Federal Register**, in accordance with 40 CFR 1501.7, as soon as practicable, in DOE's judgment, after a decision is made to prepare an EIS, except as provided in § 1021.340 of this part. If there will be a lengthy period of time between its decision to prepare an EIS and the time of actual preparation, DOE may defer publication of the NOI until a reasonable point in time before preparing the EIS, provided that DOE allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, DOE shall invite comments and suggestions on the scope of the EIS. DOE shall disseminate the NOI in accordance with 40 CFR 1506.6.

(b) If there will be a lengthy delay between the time DOE has decided to prepare an EIS and the beginning of the public scoping process, at its discretion DOE may publish an Advance NOI in the **Federal Register** to provide an early opportunity to inform interested parties of the pending EIS or to solicit early public comments. This Advanced NOI does not serve as a substitute for the NOI provided for in paragraph (a).

(c) Publication of the NOI in the **Federal Register** shall begin the public scoping process. The public scoping process for a DOE EIS shall allow a minimum of 30 days for the receipt of public comments.

(d) Except as provided in paragraph (g), DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. DOE shall announce the location, date and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the **Federal Register**, news releases to the local media, or letters to affected parties. Public scoping meetings shall not be held until at least 15 days after public notification. Should DOE change the location, date or time of a public scoping meeting, or schedule additional public scoping meetings, DOE shall publicize these changes in the **Federal Register** or in other ways as appropriate.

(e) In determining the scope of the EIS, DOE shall consider all comments received during the announced comment period held as part of the public scoping process. At DOE's discretion, DOE may choose to consider comments received after the close of the announced comment period.

(f) The results of the scoping process shall be documented in the EIS Implementation Plan as provided in § 1021.312 of this part.

(g) A public scoping process is optional for DOE supplemental EISs (40 CFR 1502.9(c)(4)). If DOE initiates a public scoping process for a supplemental EIS the provisions of paragraphs (a) through (f) of this section shall apply.

§ 1021.312 EIS implementation plan.

(a) DOE shall prepare an EIS Implementation Plan to provide guidance for the preparation of an EIS and record the results of the scoping process. DOE shall complete the EIS Implementation Plan as soon as possible after the close of the public scoping process; but in any event before issuing the draft EIS. At its option, DOE may amend the EIS Implementation Plan to incorporate changes in schedules, alternatives, or other content.

(b) The EIS Implementation Plan shall include:

(1) A statement of the planned scope and content of the EIS;

(2) The purpose and need for the proposed action;

(3) A description of the scoping process and the results (as needed to document DOE compliance with 40 CFR 1501.7), including a summary of comments received, and their disposition; and

(4) A disclosure statement executed by any contractor (or subcontractor) under contract with DOE to prepare the EIS document in accordance with 40 CFR 1506.5(c).

(c) A DOE's option, the Implementation Plan may include target page limits and schedules for the EIS, planned work assignments, anticipated consultation with other agencies and organizations, or any other information to support the approach to be used in preparing the EIS.

(d) DOE shall makes the EIS Implementation Plan and any formal revisions available to the public for information. Copies of these documents shall be provided upon written request; at its discretion, DOE may make copies available for inspection in DOE public reading rooms or other appropriate locations for a reasonable time.

§ 1021.313 Public review of environmental impact statements.

(a) The public review and comment period on a DOE draft EIS shall be no less than 45 days (40 CFR 1506.10(c)). The public comment period begins when EPA publishes a Notice of Availability of the document in the **Federal Register.**

(b) DOE shall hold at least one public hearing on DOE draft EISs. Such public hearings shall be announced at least 15 days in advance. The announcement shall identify the subject of the draft EIS, and include the location, date, and time of the public hearings.

(c) DOE shall prepare a final EIS following the public comment period and hearings on the draft EIS. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided at 40 CFR 1503.4.

(d) In addition to the formal announcements provided for in paragraphs (a) and (b) of this section, at its discretion DOE shall publicize the availability or draft and final EISs, and the time and place for public hearings on a draft EIS, in other ways as appropriate, such as news releases to the local media.

§ 1021.314 Supplemental environmental impact statements.

(a) DOE shall prepare a supplemental EIS if there are substantial changes to the proposal or significant new information relevant to environmental concerns, as discussed in 40 CFR 1502.9(c)(1).

(b) DOE may supplement a draft EIS or final EIS at any time, to further the purposes of NEPA, in accordance with 40 CFR 1502.9(c)(2).

(c) A supplemental EIS is not required when:

(1) Changes to the proposed action, new information, or new circumstances would not result in significant changes to the environmental impacts analyzed in the EIS, and would not cause significant, reasonably foreseeable environmental impacts that were not considered in the EIS; or

(2) After issuance of a ROD, DOE decides to proceed with an alternative that was fully evaluated in an EIS but not part of the initial decision; in such a case, a revised ROD shall be prepared and circulated in accordance with § 1021.315 of this part.

(d) Where it is unclear whether or not an EIS supplement is required, DOE shall prepare a Supplement Analysis.

(1) The Supplement Analysis shall discuss the circumstances that might lead to the preparation of a supplemental EIS, pursuant to 40 CFR 1502.9(c).

(2) Supplement Analysis shall contain sufficient information for DOE to determine whether:

(i) An existing EIS should be supplemented;

(ii) A new EIS should be prepared;

(iii) An existing ROD should be revised; or

(iv) No further NEPA documentation is required.

(3) DOE shall make the determination, and the related Supplement Analysis available to the public for information. Copies of these document shall be provided upon written request; at its discretion, DOE may make copies available for inspection in DOE public reading rooms or other appropriate locations for a reasonable time.

(e) DOE shall prepare, circulate and file a supplement to a draft or final EIS in the same manner as any other draft and final EISs, except that scoping is optional for a supplement. If DOE decides to take action on a proposal covered by a supplemental EIS, DOE shall either prepare a new ROD or revise the existing ROD.

(f) When applicable, DOE will incorporate an EIS supplement, or the determination and supporting Supplement Analysis made under paragraph (d) of this section, into any related formal administrative record on the action that is the subject of the EIS supplement or determination (40 CFR 1502.9(c)(3)).

§ 1021.315 Records of decision.

(a) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

(b) In addition to the requirements at 40 CFR 1505.2, a DOE ROD shall include any determination required by 10 CFR part 1022, "Compliance with Floodplain/ Wetlands Environmental Review Requirements."

(c) DOE RODs shall be published in the **Federal Register** and made available to the public as specified in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c) and § 1021.340 of this Part.

(d) For the purposes of 40 CFR 1506.1, the date of issuance of a ROD is the date of signature, rather than the date that the ROD is published in the **Federal Register.**

(e) Except as provided at 40 CFR 1506.1 and 1506.10(b) and § 1021.211 of this part, no decision may be made on a proposal during a 30-day "waiting period" following completion of the final EIS; this is not considered a public comment period.The 30-day period starts when the EPA Notice of Availability for the final EIS is published in the **Federal Register.**

(f) DOE may revise a ROD at any time, so long as the revised decision is supported by a existing EIS. A revised ROD is subject to the provisions of

paragraphs (a) through (d) of this section.

§ 1021.320 Environmental assessments.

DOE shall prepare and circulate EAs and related FONSIs in accordance with the requirements of the CEQ Regulations, as suppplemented by this subpart.

§ 1021.321 Requirements for environmental assessments.

(a) *When to prepare an EA.* As required by 40 CFR 1501.4(b), DOE shall prepare an EA for a proposed DOE action that is described in the classes of actions listed in Appendix C to subpart D of this part, and for a proposed DOE action that is not described in any of the classes of actions listed in appendices A, B, or D to subpart D, except that an EA is not required if DOE has decided to prepare an EIS. DOE may prepare an EA on any action at any time in order to assist agency planning and decisionmaking.

(b) *Scope.* A DOE EA shall focus on the environmental consequences necessary to determine whether to prepare an EIS or a FONSI. If appropriate, a DOE EA shall include any floodplain/wetlands assessment prepared under 10 CFR 1022.12; and may include analyses needed for other envoronmental determinations.

(c) *Comment.* A DOE EA shall comply with the requirements found at 40 CFR 1508.9. In addition to any other alternatives, DOE shall assess the no action alternative (40 CFR 1502.14(d)) in an EA, even when the proposed action in specifically required by legislation or a court order

§ 1021.322 Findings of no significant impact.

(a) DOE shall prepare a FONSI only if the finding can be supported by the analysis of environmental impacts in the related EA. If a required DOE EA cannot support a FONSI, DOE shall prepare an EIS and issue a ROD before taking action on the proposal addressed by the EA, except as permitted under 40 CFR 1506.1 and § 1021.211 of this part.

(b) In addition to the requirements found at 40 CFR 1508.13, a DOE FONSI shall include the following:

(1) A summary of the supporting EA, including a brief description of the proposed action and alternatives considered in the EA, environmental factors considered and projected impacts;

(2) Any mitigation commitments incorporated into a DOE decision to proceed with the proposed action;

(3) Reference to any Mitigation Action Plan prepared under § 1021.332 of this part;

(4) Any determination required by 10 CFR part 1022, "Compliance with Floodplain/Wetlands Environmental Review Requirements";

(5) The date of issuance; and

(6) The signature of the DOE approving official.

(c) DOE shall make FONSIs available to the public as provided at 40 CFR 1501.4(e)(1) and 1506.6.

(d) DOE shall issue a proposed FONSI for public review and comment before making a final determination on the FONSI if required by 40 CFR 1501.4(e)(2); at its discretion, DOE may issue a proposed FONSI for public review and comment in other situations as well.

(e) Upon issuance of the FONSI, DOE may proceed with the proposed action subject to any mitigation commitments included in the FONSI.

(f) DOE may revise a FONSI at any time, so long as the revision is supported by an existing EA. A revised FONSI is subject to all provisions of paragraph (d) of this section.

§ 1021.330 Programmatic NEPA documents.

(a) When required to support a DOE decision on connected actions (40 CFR 1508.25(a)(1)), or, at DOE's discretion, when the purposes of NEPA would be furthered, DOE shall prepare a programmatic EIS or EA (40 CFR 1502.4).

(b) A DOE programmatic NEPA document shall be prepared, issued, and circulated in accordance with the requirements for any other NEPA document, as established by the CEQ Regulations and this part.

§ 1021.331 Site-wide NEPA documents.

(a) As a matter of policy, to further the purposes of NEPA DOE will prepare site-wide EISs for certain large, multiple-facility DOE sites; DOE may prepare EISs or EAs for other sites to assess the impacts of all or selected functions at those sites.

(b) DOE will evaluate site-wide NEPA documents at least every five years by means of a Supplement Analysis, as provided in § 1021.314. Based on the Supplement Analysis, DOE will determine whether previous NEPA documents remain adequate, or whether to prepare a new site-wide EIS or EA, supplement the existing EIS or EA, or revise the ROD or FONSI as appropriate.

§ 1021.332 Mitigation action plans.

(a) Following completion of each EIS and its associated ROD, and each EA for which, in DOE's judgment, the FONSI would be based, in significant part, on DOE's commitment to take mitigative actions, DOE shall prepare a Mitigation Action Plan. The Mitigation Action Plan shall explain how measures designed to mitigate adverse environmental impacts associated with the proposed action will be planned and implemented.

(b) In the case of an EIS, the Mitigation Action Plan shall be prepared before DOE takes any action under the ROD that may have an adverse environmental effect. The Plan shall address all mitigation commitments expressed in the ROD.

(c) In the case of an EA described in paragraph (a), the Mitigation Action Plan shall be prepared before issuing, and shall be referenced in, the associated FONSI. The Plan shall address all mitigation commitments expressed in the FONSI that are necessary, in DOE's judgment, to render the impacts of the proposed action not significant.

(d) Each Mitigation Action Plan shall be as complete as possible, commensurate with the information available regarding the proposed action. DOE may revise the Plan as more specific and detailed information becomes available.

§ 1021.340 Classified, confidential, or otherwise exempt information.

(a) Notwithstanding other sections of this part, DOE shall not disclose classified, confidential, restricted, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552), and 10 CFR 1004.10(b) of DOE's regulations implementing FOIA (provided, however, that DOE shall disclose any interagency memoranda that transmit a Federal agency's comments on the environmental impacts of a DOE proposal (40 CFR 1506.6(f))).

(b) Wherever possible, in DOE's judgment, DOE shall prepare any information that is exempt from disclosure requirements as an appendix, or otherwise segregate the exempt information to allow public review of the remainder of a NEPA document.

(c) If exempt information cannot be segregated, or if segregation would leave essentially meaningless material, DOE shall withhold the entire NEPA document from the public; however, DOE shall prepare the NEPA document, in accordance with the CEQ Regulations and this part, and use it in DOE decisionmaking.

§ 1021.341 Coordination with other environmental review requirements.

(a) In accordance with 40 CFR 1502.25, DOE shall integrate the NEPA process and coordinate NEPA compliance with other environmental review requirements, to the fullest extent possible in DOE's judgment.

(b) To the extent possible, DOE shall determine the applicability of other environmental requirements early in the planning process to ensure compliance and to avoid delays, and shall incorporate any such relevant requirements as early in the NEPA review process as possible in DOE's judgment.

§ 1021.342 Interagency cooperation.

For DOE programs that involve another Federal agency or agencies in related decisions subject to NEPA, DOE shall cooperate with the other agencies in developing environmental information and in determining whether a proposal requires preparation of an EIS or EA, or can be categorically excluded from preparation of either. Where appropriate and acceptable to the other agencies, DOE shall develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

§ 1021.343 Variances.

(a) *Emergency actions.* DOE may take emergency actions without observing all provisions of this part or the CEQ Regulations, in accordance with 40 CFR 1506.11, in extraordinary situations that demand immediate action. DOE shall consult with CEQ as soon as possible regarding emergency actions having significant environmental impacts. DOE shall document emergency actions covered by this paragraph within two weeks after such action occurs; this documentation shall identify any adverse impacts from the actions taken, further mitigation necessary, and any NEPA documents that may be required.

(b) *Reduction of time periods.* On a case-by-case basis, DOE may reduce time periods established in this part that are not required by the CEQ Regulations. If DOE determines that such reduction is necessary, DOE shall publish notice in the **Federal Register** specifying the revised time periods and the rationale for the reduction.

(c) *Other.* Any variance from the requirements of this part, other than under paragraphs (a) and (b) of this section, must be soundly based on the interests of national security or the public health, safety, or welfare and must have the advance written approval of the Secretary; however, the Secretary shall not waive or grant a variance from any provision of the CEQ Regulations (except as provided for in those regulations).

Subpart D—Typical Classes of Actions

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document);

(2) Require preparation of an EA, but not necessarily an EIS; or

(3) Require preparation of an EIS.

(b) If a DOE proposal has been adequately analyzed in an existing EIS or EA, and is covered by an existing ROD or FONSI, no additional NEPA documentation is needed.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless extraordinary circumstances related to the specific proposal (including issues raised in public comments or other information available to DOE) cause DOE to have a reasonable question as to whether the categorization is appropriate for the specific proposal.

(d) If a DOE proposal is not encompassed within the classes of action listed in the appendices to this subpart D, or if extraordinary circumstances raise a reasonable question as to the appropriateness of the categorization, before taking action on the proposal (except as provided at 40 CFR 1506.1 and § 1021.211 of these regulations) DOE shall either:

(1) Prepare an EA, and on the basis of that EA determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) *General.* The actions listed in appendices A and B to this subpart D are classes of actions that normally do not require EAs or EISs (categorical exclusions). All categorical exclusions may be applied by any element of DOE. The sectional divisions in appendices A and B are only for purposes of organization of these Appendices.

(b) *Eligibility criteria for categorical exclusions.* (1) To be eligible for a categorical exclusion listed in appendix A or B, a proposed action must be one that:

(i) Would not threaten a violation of applicable statutory, regulatory, and permit requirements, including requirements of DOE Orders;

(ii) Would not require siting and construction or major expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, and groundwater); and

(iii) Would not adversely affect environmentally sensitive areas. An action may be categorically excluded if, although sensitive areas are present on a site, the action would not adversely affect those areas (e.g, construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands).

(2) For purposes of paragraph (b)(1)(iii), environmentally sensitive areas include:

(i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;

(ii) Habitat (including critical habitat) of Federally-listed endangered, threatened, proposed, or candidate species, or of state-listed endangered and threatened species;

(iii) Floodplains and wetlands;

(iv) Natural areas such as Federally and state-designated wilderness areas, National Parks, National Natural Landmarks, Wild and Scenic Rivers, state and Federal wildlife refuges, and marine sanctuaries;

(v) Prime agricultural lands; and

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

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1.4 Contract interpretations, amendments, and modifications, including replacements and assignments, that are clarifying or administrative in nature.

1.5 Ministerial actions to implement congressionally-mandated funding for actions not proposed by DOE as to which DOE has no discretion (that is, "pass-throughs").

1.6 Rate increases for products or services marketed by parts of DOE other than Power Marketing Administrations and approval of rate increases for non-DOE entities that do not exceed the change in the overall price level in the economy (inflation), as measured by the Gross National Product (GNP) fixed weight price index published by the Department of Commerce, during the period since the last rate increase.

1.7 Administrative enforcement actions, including investigations, conferences, hearings, and notices of probable violations.

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

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

1.10 Promulgation of rules and regulations that are clarifying in nature, or that do not change the environmental effect of the regulations being amended.

1.11 Rulemaking (under 48 CFR part 9) establishing procedures for technical and pricing proposals, and establishing contract clauses and contracting practices for the purchase of goods and services.

1.12 Rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.

1.13 Rulemaking for actions that are categorically excluded in this subpart.

1.14 Rulemakings that are strictly procedural.

1.15 Transfer, lease, acquisition or disposition of interests in property, including disposition through the General Services Administration, if the property use is to remain unchanged or if the proposed use is categorically excluded in this Subpart.

1.16 Personnel actions and contracts for personal services, including technical support contracts and contracts for the management and operation of a DOE facility.

1.17 Actions consisting solely of document preparation (including, but not

limited to, conceptual design, feasibility, energy supply and demand, and other studies).

1.18 Information gathering (including, but not limited to, literature surveys, inventories, audits), analysis (including computer modelling), and dissemination (including, but not limited to, document mailings, publication, and distribution).

1.19 Reports or recommendations on legislation or rulemaking that is not proposed by DOE.

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

1.21 Classroom training and informational programs.

1.22 Emergency preparedness planning activities.

1.23 Training exercises and simulations (including, but not limited to, firing-range training, emergency response training, fire-fighter and rescue training, and spill cleanup training).

1.24 Administrative, organizational, or procedural changes in inspection, surveillance, or maintenance requirements.

1.25 Support activities for the normal conduct of business (such as document copying and making identification badges).

1.26 Routine maintenance activities and custodial services for buildings, structures, and equipment. Routine maintenance activities, both corrective (that is, repair) and preventive, are required to maintain and preserve buildings, structures, or equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that the replacement is in kind and is not a substantial upgrade or improvement. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

(a) Repair of facility equipment such as lathes, mills, pumps, and presses;

(b) Door and window repair or replacement;

(c) Wall or basement repair;

(d) Reroofing;

(e) Plumbing, electrical utility, and telephone service repair;

(f) Routine replacement of high efficiency particulate air filters;

(g) Inspection and treatment of currently installed wood utility poles;

(h) Repair of road embankments;

(i) Repair or replacement of fire protection sprinkler systems;

(j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing;

(k) Erosion control and soil stabilization measures (such as reseeding and revegetation);

(l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 5820.2A, "Radioactive Waste Management";

(m) Repair and maintenance of transmission facilities, including replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, crossarms, insulators, and downed transmission lines; and

(n) Removal and/or replacement of above- or below-ground tanks and related piping if there is no evidence of leakage. This includes activities taken under 40 CFR part 280, subparts B, C, and D for underground storage tanks.

Custodial services are activities to preserve facility appearance, working conditions, and sanitation, and include, but are not limited to:

(a) Moving furniture;

(b) Window washing;

(c) Lawn mowing;

(d) Trash collection;

(e) Indoor and outdoor painting, including surface preparation; and

(f) Snow removal.

1.27 Siting, construction (and/or modification), and operation of a storage area for supplies and equipment for administrative services, and maintenance and repair activities.

1.28 Replacement of existing utility systems (for example, electrical, sewer, septic, water supply, fire suppression, communication, data processing) or extension of utility systems required as a result of actions categorically excluded in this subpart.

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

1.30 Minor improvements to cooling water systems within an existing building or structure if the improvements would not: (1) Create new sources of water or involve new receiving waters, (2) adversely affect water withdrawals or the temperature of discharged water, or (3) increase introductions of or involve new introductions of hazardous substances, pollutants, or contaminants.

1.31 Installation of, or improvements to, liquid retention tanks, small (normally, under 5 acres) basins, and piping. Installations and improvements include, but are not limited to, increasing retention capacity or installing liners or covers.

1.32 Acquisition, installation, and operation of communication systems, data processing equipment, and similar electronic equipment.

1.33 Modifications to screened water intake structures that result in intake velocities and volumes that are within existing permit limits.

1.34 Routine testing and calibration of facility components or subsystems (including, but not limited to, control valves, in-core monitoring devices, transformers, capacitors) within nationally recognized engineering code requirements and if testing would not release hazardous substances, pollutants, or contaminants.

1.35 Routine decontamination (radioactive and nonradioactive) of equipment, rooms, hot cells, or the surfaces (interior or exterior) of buildings, if the action is not part of a decommissioning project.

1.36 Airway safety markings and painting (but excluding lighting) of existing electrical transmission line and antenna structures in accordance with Federal Aviation Administration standards.

1.37 On-site storage at an existing facility (that is, no construction required) of activated material (including lead) or equipment used at that facility that is not waste to allow for radioactive decay.

1.38 Installation of fencing, including that for border marking, that will not adversely affect wildlife movements.

1.39 Actions to conserve energy that do not affect the exchange of indoor and outdoor air and do not increase the concentrations of potentially harmful substances (for example, programmed lowering of thermostat settings, placement of timers on hot water heaters, installation of solar hot water systems, installation of efficient lighting).

1.40 Detonation of high explosives in areas reserved for this purpose to avoid hazards of transportation and/or handling, if done within the requirements of any existing permit issued by the state or local authorities and in accordance with DOE Orders.

1.41 Acquisition or minor relocation of existing access roads serving existing facilities if the traffic they are to carry will not change substantially.

1.42 Routine transportation of nonhazardous materials and nonradioactive, nonwaste hazardous materials (hazardous materials as designated in 49 CFR 172.101).

1.43 Routine transportation to an existing treatment, storage or disposal facility of:

(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;

(b) Low-level radioactive waste (LLW) (waste that contains radioactivity and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel, or byproduct material as defined in 11(e)(2) of the Atomic Energy Act (AEA));

(c) Low-level radioactive mixed waste (LLW also containing hazardous waste as designated in 40 CFR part 261);

(d) Nonhazardous solid waste (as designated in 40 CFR 261.4(b); or

(e) Byproduct material as defined in AEA 11(e)(2).

1.44 Temporary shutdown (that is, for up to approximately two years) and subsequent restart of a facility (such as a nuclear reactor, chemical processing plant, electrical substation, or oil and gas well) for inventory and for routine maintenance (both corrective and preventative) actions.

1.45 Temporary shutdown (that is, for up to approximately two years) of a nuclear reactor for refueling and subsequent restart.

1.46 Shutdown of an operating facility, including temporary shutdown (that is, for up to approximately two years) for safety and/or environmental improvements or in response to safety and/or environmental requirements. (See also appendix B, 1.9.)

2. *Categorical Exclusions Applicable to Safety and Health*

2.1 Modifications of an existing structure to enhance workplace habitability (including, but not limited to, improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation; noise reduction).

2.2 Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, building monitors, remote control panels, remote

monitoring capability, alarm and surveillance systems, and control systems to provide automatic shutdown and fire protection and detection).

2.3 Establishment of, or improvements to, announcement and emergency warning systems, criticality and radiation monitors and alarms, safeguards and security equipment, and on-site evacuation routes.

2.4 Activities related to the promotion and maintenance of employee health, including installation of eye washes, safety showers, and radiation monitoring devices.

2.5 Development and implementation of Equipment Qualification Programs (under DOE Order 5480.6, "Safety of DOE-owned Nuclear Reactors") to augment information on safety-related system components or to improve systems reliability.

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

3.1 Site characterization and environmental monitoring, including siting, construction, operation, and dismantlement or closing (abandonment) of characterization and monitoring devices, if the activities would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants, or non-native organisms. Activities covered include, but are not limited to:

(a) Geological and engineering surveys and mapping, including the establishment of survey marks;

(b) Installation and operation of field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, geophysical exploration tools, and drilling of slim core holes;

(c) Drilling of groundwater or vadose (unsaturated) zone sampling and monitoring wells;

(d) Well logging;

(e) Aquifer response testing;

(f) Installation and operation of water-level recording devices in wells;

(g) Installation and operation of ambient air monitoring equipment;

(h) Sampling and characterization of water, soil, rock or contaminants;

(i) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(j) Installation and operation of meterological towers and associated activities, including assessment of potential wind energy resources; and

(k) Sampling of flora or fauna.

3.2 Geochemical surveys, geological mapping, and gravity, magnetic, electrical, seismic, radar and geophysical investigations for resource evaluation and site characterization.

3.3 Archaeological, historical, and cultural resource identification in compliance with 36 CFR part 800 performed by professionals who meet the qualifications set forth in 43 CFR 7.8(a)(1) (i)–(v).

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

3.5 Research, inventory, and information collection activities that are directly related to the conservation of fish and wildlife resources and that involve only negligible animal mortality or habitat destruction, and if the activities would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants, or non-native organisms.

3.6 Drop, puncture, water-immersion, thermal, and fire tests of transport packaging for radioactive or hazardous materials to certify that designs meet the requirements of 49 CFR 173.411 and 173.412 and requirements of severe accident conditions as specified in 10 CFR 71.73.

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

3.8 Indoor bench-scale research projects and conventional laboratory operation (for example, preparation of standards and sample analysis).

4. *Categorical Exclusions Applicable to the Power Marketing Administrations and to all of DOE With Regard to Power Resources.*

4.1 Establishment and implementation of contracts, marketing plans, policies, annual operating plans, or allocation plans for the short term (less than five years) or seasonal disposition, allocation, or acquisition of excess power, if transmission would occur over existing transmission systems.

4.2 Leasing of existing transmission facilities if the leases would not involve any change in operation.

4.3 Export of electricity over existing transmission lines as provide by section 202(e) of the Federal Power Act.

4.4 Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements that does not exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate adjustment for that product or service or, if the rate change does exceed the change in the GNP fixed weight price index, the rate change would have no potential for affecting the operation of power generation resources.

4.5 Power marketing services, including storage, load shaping, seasonal exchanges, or other similar activities if the operations of hydroelectric projects would remain within normal operating limits and would not alter the existing environmental conditions.

4.6 The acquisition of additional rights-of-way at existing transmission facilities to establish buffer areas.

4.7 Minor substation modifications and expansions, including minor realignments and modifications to approach-structures, that would not involve the construction of new transmission lines or the integration of a major new resource.

4.8 Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events if the adjustments would result in only minor changes to reservoir levels or stream flows.

4.9 Additions, or modifications, to transmission facilities that would not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, and replacement of poles, circuit breakers, transformers, and crossarms.

4.10 Adding fiber optic cable to transmission structures or burying fiber optic cable in existing transmission line rights-of-way.

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

5.1 Modifications to oil, gas, and geothermal facility pump and piping configurations, manifolds, metering systems, and other instrumentation that would not change design process flow rates or affect permitted air emissions.

5.2 Modification (but not expansion) or abandonment (including plugging), which is not part of site closure, or crude oil storage access wells, bring injection wells, or geothermal wells.

5.3 Repair or replacement of sections of a crude oil, produced water, brine, or geothermal pipeline, if the actions are determined by the Army Corp of Engineers to be within the maintenance provisions of DOE's permit under section 404 of the Clean Water Act.

5.4 Removal of drilling fluids, produced waters, or other oil field wastes not subject to regulation under subtitle C of RCRA that are recovered in the course of routine facility operation, are not mixed with hazardous waste, and would be disposed of in a state-approved oil field waste disposal facility.

6. *Categorical Exclusions Applicable to International Activities*

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

6.2 Approval of DOE participation in international "umbrella" agreements for cooperation in energy research and development activities that (a) would not commit the U.S. to any specific projects or activities, or (b) would commit the U.S. only to specific projects or activities that fall within the classes of actions categorically excluded in this Subpart.

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4.6 Minor relocations of existing transmission lines (less than 10 miles in length)
4.7 Noise abatement
5. *Categorical exclusions applicable to fossil, conservation, and renewable energy activities, including activities authorized by the Natural Gas Act or the Powerplant and Industrial Fuel Use Act*
5.1 Construction/operation of short crude oil/geothermal pipeline segments
5.2 Oil spill cleanup operations
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1. *Categorical Exclusions Applicable to Facility Operation*

1.1 Siting, construction (and/or modification), and operation of buildings and support structures (including butler buildings and trailers) on an existing DOE site and in accordance with any site development plan, for office purposes, parking, cafeteria services, education and training, visitor reception, computer and data processing services, employee recreation, maintenance, security (including security posts), and fire protection.

1.2 Removal of contaminated material and equipment (other than fuel or special nuclear material in reactors), if the action is not part of a decommissioning project.

1.3 Removal of abestos-containing materials from existing buildings in accordance with 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants), subpart M (National Emission Standard for Asbestos); 40 CFR part 763 (Asbestos), subpart G (Asbestos Abatement Projects); 29 CFR part 1910, subpart I (Personal Protective Equipment), § 1910.134 (Respiratory Protection); subpart Z (Toxic and Hazardous Substances), § 1910.1001 (Asbestos, tremolite, anthophyllite and actinolite); and 29 CFR part 1926 (Safety and Health Regulations for Construction), subpart D (Occupational Health and Environmental Controls), § 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite), other appropriate Occupational Safety and Health Administration standards in title 29, chapter XVII of the CFR, and appropriate state and local requirements, including certification of removal contractors and technicians.

1.4 Removal of polychlorinated biphenyl (PCB)-containing items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other above-ground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).

1.5 Construction and operation of additional water supply wells (or replacement wells) within an aquifer already accessed by operating wells, if there would be no drawdown other than in the immediate vicinity of the well, and no degradation of the freshwater aquifer as a result of the new or replacement wells.

1.6 Construction and operation of microwave and radio communication towers and associated facilities, if such actions would not prejudice future site selection decisions for substations or other facilities.

1.7 Actions to conserve energy, demonstrate potential energy conservation, and promote energy-efficiency that may affect the exchange of indoor and outdoor air but do not increase the concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, designers), organizations (such as utilities), and state and local governments. Covered actions include, but are not limited to: Improvements in generator efficiency and appliance efficiency ratings, development of energy-efficient manufacturing or industrial practices, and small-scale conservation and renewable energy research and development and pilot projects. The actions could involve building renovations or new structures in commercial, residential, agricultural, or industrial sectors. These actions do not include rulemakings, standard-settings, or proposed DOE legislation.

1.8 Small-scale activities undertaken to protect, restore or improve fish and wildlife habitat, fish passage facilities (such as fish ladders or minor diversion channels), or fisheries.

1.9 Restart of a facility (such as a nuclear reactor, chemical processing plant, electrical substation, or oil and gas well) after a temporary shutdown (that is, for up to approximately two years) for safety or environmental improvements, if the improvements are categorically excluded in this subpart. (See also appendix A, 1.46 and section 2; and appendix B, 2.1 and 6.3.)

2. *Categorical Exclusions Applicable to Safety and Health*

2.1 Improvement of a facility or replacement/upgrade of facilitye components (such as control valves, in-core monitoring devices, and facility air filtration systems; adding structural bracing to meet earthquake standards and/or to sustain high wind loading; transformers or capacitors or other components of a substation). These actions do not include replacement of a reactor

vessel, and do not result in a significant extension of the expected useful life or design capacity of the facility.

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

3.1 Siting, construction, and operation of a small-scale laboratory building or renovation of a room is an existing building for analysis of water, soil, air, biota, geological, geochemical, geophysical and other samples obtained for site characterization and environmental monitoring activities.

3.2 New infill exploratory and experimental (test) oil, gas, and geothermal wells, which are to be drilled in a geological formation that has existing operating wells.

3.3 Outdoor ecological and environmental research activities including waste treatability, stabilization and disposal studies in a small area (generally less than five acres), which (1) would not involve construction that is not categorically excluded in this Subpart, and (2) would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants. These actions also would not result in any permanent change to the ecosystem, except for environmental restoration experiments concerned with waste (for example, in situ vitrification, experiments with clay liners or water treatment).

3.4 Demonstration actions proposed under the Clean Coal Technology Demonstration Program, if the actions would not increase the quantity or rate of air emissions. These demonstration actions include, but are not limited to:

(a) Test treatment of 20 percent or less of the throughput product (solid, liquid, or gas) generated at an existing and fully operational coal-fired power producing facility;

(b) addition or replacement of equipment for reduction or control of sulfur dioxide or oxides of nitrogen that require only minor modification to the existing structures at an existing coal-fired power producing facility for which the existing use remains unchanged;

(c) addition or replacement of equipment for reduction or control of sulfur dioxide of nitrogen that involves no permanent change in the quantity or quality of coal being burned and involves no permanent change in the capacity factor of the coal-fired power producing facility, other than for demonstration purposes of two years or less in duration.

3.5 Research and development and pilot-scale testing actions that (1) do not involve special nuclear materials, high-level or TRU waste, irradiated nuclear fuel, or highly toxic substances (substances that present an unreasonable risk of injury to health or the environment), (2) are conducted in an existing facility not requiring major structural modification, and (3) are conducted to verify a concept before demonstration actions. These actions include, but are not limited to:

(a) Fossil energy research and development activities for enhanced oil and unconventional gas recovery, coal preparation, flue gas cleanup, coal liquefaction, advanced combustion, alternative fuels, and magnetohydrodynamics;

(b) Geothermal energy research and development activities;

(c) Routine tritium research and development activities for reactor fuel and target fabrication, irradiation, and extraction;

(d) Waste treatability tests;

(e) Projects to improve the capability or efficiency of existing accelerators; and

(f) projects using accelerators whose beams have insufficient energy to produce neutrons when impacting the intended targets.

3.6 Outdoor reliability, quality assurance, and developmental tests and experiments (including, but not limited to, burn tests, such as tests of electric cable fire resistance and weapons safety features; impact tests of weapon system components, such as pneumatic ejector tests using earthen embankments or concrete slabs) under controlled conditions and not involving radioactive materials.

4. *Categorical Exclusions Applicable to Power Marketing Administrations and to all of DOE With Regard to Power Resources*

4.1 New electricity transmission agreements and modifications to existing transmission arrangements (such as the use of a transmission facility of one system to transfer power of and for another system) if system operation would continue within normal operating limits, no new generation projects would be involved, and no physical changes in the transmission system would be made beyond the previously developed facility area.

4.2 Grant or denial of requests for multiple use of DOE transmission facility rights-of-way if DOE has ownership or jurisdiction, such as grazing permits and crossing agreements including electric lines, water lines, and drainage culverts.

4.3 Dismantling and removal of transmission lines and right-of-way abandonment.

4.4 Construction or modification of customer service substations (that is, power delivery at 230 kV or below).

4.5 Construction of tap lines (less than 10 miles in length) that are not for the integration of major new sources of generation into DOE's main transmission systems.

4.6 Minor relocations of existing transmission lines (less than 10 miles in length) made to enhance existing environmental and land use conditions. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

4.7 Minor noise abatement measures, such as construction of noise barriers and installation of noise control materials.

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

5.1 Construction and subsequent operation of short offsite crude oil or geothermal pipeline segments between DOE and existing commercial crude oil transportation, storage, or refining facilities, or geothermal transportation or storage facilities, within a single industrial complex, if the pipeline segments are within existing rights-of-way.

5.2 Removal of oil and contaminated materials recovered in oil spill cleanup operations in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and disposed of in accordance with locl contingency plans in accordance with the NCP.

5.3 Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act that does not involve new construction and ony requires operational changes, such as an increase in natural gas throughput, change in transportation, or change in storage operations.

5.4 Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act involving a new cogeneration powerplant (as defined in the Powerplant and Industrial Fuel Use Act) that will only require short gas pipeline segments within a single industrial complex, if the pipeline segments are within existing rights-of-way.

5.5 The grant or denial of any temporary exemption under the Powerplant and Industrial Fuel Use Act of 1978 for any electric powerplant or major fuel-burning installation.

5.6 The grant or denial of any permanent exemption under the Powerplant and Industrial Fuel Use Act of 1978 of any existing electric powerplant or major fuel-burning installation, other than an exemption (1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain state or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants.

5.7 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant or major fuel-burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum.

5.8 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new peak-load powerplant.

5.9 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant or major fuel-burning installation to permit operation for emergency purposes only.

5.10 The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Powerplant and Industrial Fuel Use Act of 1978 for any new or existing major fuel-burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period.

5.11 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new major fuel-burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year.

5.12 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for new cogeneration powerplant.

6. *Categorical Exclusions Applicable to Environmental Restoration and Waste Management*

6.1 Removal actions under CERCLA (including those taken as final response actions and those taken before remedial action) and actions similar in scope under RCRA and other authorities (including those taken as partial closure actions and those taken before corrective action). These actions include, but are not limited to:

(a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or waste water, if surface water or groundwater would not collect, and if such actions would reduce the spread of, or direct contact with, the contamination;

(b) Removal of bulk containers (for example, drums, barrels) that contain or may contain hazardous substances, pollutants, contaminants, or hazardous wastes (designated in 40 CFR part 261), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(c) Removal of an underground storage tank including its associated piping and underlying containment systems in compliance with 40 CFR part 280, subparts F and G, if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(d) Repair or replacement of leaking containers;

(e) Capping or other containment of contaminated soils or sludges if the capping or containment would not affect future groundwater remediation and if needed to reduce migration of hazardous substances, pollutants, or contaminants into soil, groundwater, surface water, or air;

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

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

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

(i) Drainage controls (for example, run-off or run-on diversion) if needed to reduce migration offsite of hazardous substances, pollutants, or contaminants, or to prevent precipitation or run-off from other sources from entering the release area from other areas;

(j) Segregation of wastes that react with one another to result in adverse environmental impacts;

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

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

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

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

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

(p) Transportation to, and treatment (including incineration), recovery, storage, or disposal of wastes at, existing facilities permitted for the type of waste resulting from the removal action, if needed to reduce the likelihood of human, animal, or food chain exposure.

6.2 The siting, construction, and operation of temporary (generally less than 2 years) pilot-scale waste collection and treatment facilities if the action: (1) Supports remedial investigations/feasibility studies under CERCLA, and similar studies under RCRA, such as RCRA facility investigations/corrective measure studies, (2) would not unduly limit the choice of reasonable remedial alternatives (by permanently altering substantial site area or by committing large amounts of funds relative to the scope of the remedial alternatives), and (3) would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants.

6.3 Improvements to environmental control systems (for example, changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems) that reduce the amounts or concentrations of regulated substances in air emissions or water effluents, if: (1) The improvements would be conducted within an existing building or structure; (2) any substance captured or produced thereby during subsequent operations of the environmental control systems would be recycled, released, or otherwise disposed of within existing permitted facilities; and (3) for any such hazardous substance that is collected or produced in increased quantity or was not previously collected or produced, there are applicable statutory or regulatory requirements or permit conditions for its disposal, release, or recycling.

6.4 Siting, construction (or modification or expansion), and operation of an onsite waste storage facility or staging area (that is, area involving waste repackaging) for:

(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;

(b) Low-level radioactive waste (LLW) (waste that contains radioactivity and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel), or byproduct material as defined in section 11(e)(2) of the Atomic Energy Act (AEA));

(c) Low-level radioactive mixed waste (LLW) also containing hazardous waste was designed to 40 CFR part 261);

(d) Nonhazardous solid waste (as designated in 40 CFR 261.4(b); or

(e) Byproduct material as defined in AEA section 11(e)(2).

6.5 Modification (excluding expansion) of an existing structure currently used as a waste storage facility or staging area (that is, area involving waste repackaging) for TRU waste or TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

6.6 Under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (5 (c)(5)), granting of a petition qualified under 10 CFR 730.6 for allocation of commercial disposal capacity for an unusual or unexpected volume of commercial low-level radioactive waste, or denying such a petition when adequate storage capacity exists at the petitioner's facility.

6.7 Relocation of buildings, or demolition and subsequent disposal of buildings and support structures (including, but not limited to, smoke stacks and parking lot surfaces), if there would be no releases of hazardous substances, pollutants, or contaminants.

6.8 Modification and implementation of operating and administrative procedures at an existing facility for minimizing waste generation and for reuse of materials. These modifications include, but are not limited to: Adding filtration and recycle piping to allow reuse of machining oil, setting up a sorting area to improve process efficiency, and segregating two waste streams previously mingled and assigning new identification codes to the two resulting wastes.

7. *Categorical Exclusions Applicable to International Activities*

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

7.2 Approval, in accordance with the Nuclear Non-Proliferation Act of 1978, of retransfers of source, special nuclear, or byproduct materials that will not involve transport within the United States or its territorial seas.

Appendix C to Subpart D—Classes of Actions that Normally Require EAs but Not Necessarily EISs

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5. Siting/construction/operation of synchrotron or accelerator
6. Siting/construction/operation of energy system prototypes
7. Upgrading (reconstructing) an existing transmission line
8. Implementation of system-wide vegetation management program (Power Marketing Administrations)
9. Implementation of system-wide erosion control program (Power Marketing Administrations)
10. Long-term allocation of power
11. Import-export natural gas, minor new construction (other than a cogeneration powerplant)
12. Siting/construction/operation of water treatment facilities
13. Siting/construction/operation of research and development incinerators/ nonhazardous waste incinerators
14. Siting/construction/operation of TRU waste onsite storage facilities
15. Siting/construction/operation of waste disposal facility in contaminated area (not TRU or high-level waste)
16. Field demonstration projects for wetlands

1. Major Projects, as designated by DOE Order 4240.1, "Designation of Major System Acquisitions and Major Projects."

2. Protection, restoration, or improvement of fish and wildlife habitat, fish passage facilities, and fish hatcheries if the proposed action may adversely affect an environmentally sensitive area.

3. Rate increases for products or services marketed by DOE, except for electric power, power transmission, and other products or services provided by the Power Marketing Administrations, and approval of rate increases for non-DOE entities, that exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate increase for that product or service.

4. Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements that exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last change for that power or service and are tied to changes in operations of power generation projects.

5. Siting, construction (or major modification), and operation of a synchrotron radiation (light source) or low- and medium-energy particle-scattering accelerator facility.

6. Siting, construction, and operation of energy system prototypes including, but not limited to, wind resource, hydro, geothermal, fossil fuel, biomass, and solar energy pilot projects.

7. Upgrading (reconstructing) an existing transmission line.

8. Implementation of a system-wide vegetation management program for a Power Marketing Administration.

9. Implementation of a system-wide erosion control program for a Power Marketing Administration.

10. Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the long-term allocation (five years or longer) of power.

11. Approval or disapproval of an application to import/export natural gas under section 3 of the Natural Gas Act involving minor new construction (other than a cogeneration powerplant) such as adding new connections, looping, or compression to an existing natural gas pipeline or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way.

12. Siting, construction (or expansion), and operation of water treatment facilities, including facilities for wastewater, potable water, and sewage.

13. Siting, construction (or expansion), and operation of research and development incinerators for any type of waste and of any other incinerators that would treat nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

14. Siting, construction (or expansion), and operation of onsite storage facilities and staging areas (that is, areas involving waste repackaging) for TRU waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

15. Siting, construction (or expansion), and operation of a waste disposal facility for the types of wastes listed below, in an area in or adjacent to an area contaminated with any of these wastes:

(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;

(b) Low-level radioactive waste (LLW) (waste that contains radioactivity and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel, or byproduct material as defined in section 11(e)(2) of the Atomic Energy Act (AEA));

(c) Low-level radioactive mixed waste (LLW also containing hazardous waste as designated in 40 CFR part 261);

(d) Nonhazardous solid waste (as designated in 40 CFR part 261.4(b); or

(e) Byproduct material as defined in AEA section 11(e)(2).

16. Field demonstration projects for wetlands mitigation, creation, and restoration.

Appendix D to Subpart D—Classes of Actions that Normally Require EISs

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1. Major System Acquisitions
2. Siting/construction/operation/ decommissioning of nuclear fuel reprocessing facilities
3. Siting/construction/operation/ decommissioning of uranium enrichment facilities
4. Siting/construction/operation/ decommissioning of reactors
5. Main transmission system additions
6. Integrating transmission facilities
7. Import/export of natural gas, involving major new facilities
8. Import/export of natural gas, involving significant operational change
9. Siting/construction/operation of major high-level waste treatment, storage, disposal facilities
10. Siting/construction/expansion of waste disposal facility for transuranic waste;
11. Siting/construction/expansion of waste disposal facility in uncontaminated area (not transuranic or high-level waste)
12. Siting/construction/operation of incinerators (other than research and development, other than nonhazardous solid waste)

1. Major System Acquisitions, as designated by DOE Order 4240.1, "Designation of Major System Acquisitions and Major Projects."

2. Siting, construction, operation, and decommissioning of nuclear fuel reprocessing facilities.

3. Siting, construction, operation, and decommissioning of uranium enrichment facilities.

4. Siting, construction, operation, and decommissioning of power reactors, nuclear weapons material production reactors, and test and research reactors.

5. Main transmission system additions (that is, additions of new transmission lines) to a Power Marketing Administration's main transmission grid.

6. Integrating transmission facilities (that is, transmission system additions for integrating major new sources of generation into a Power Marketing Administration's main grid).

7. Approval or disapproval of an application to import/export natural gas under Section 3 of the Natural Gas Act involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities; or a significant expansion of an existing pipeline or related facility, or LNG terminal, regasification, or storage facility.

8. Approval/disapproval of an application to import/export natural gas under section 3 of the Natural Gas Act involving a significant operational change, such as a major increase in the quantity of liquid natural gas imported or exported.

9. Siting, construction operation, and decommissioning of major treatment, storage and/or disposal facilities for high-level waste and/or spent nuclear fuel, such as spent fuel storage facilities and geologic repositories.

10. Siting, construction (or expansion), and operation of a disposal facility for TRU waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

11. Siting, construction (or expansion), and operation of a disposal facility for types of wastes listed below, at a location that is not in or adjacent to an area that has been previously contaminated with any of these wastes:

(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;

(b) Low-level radioactive waste (LLW) (waste that contains radioactivity and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel, or by-product material as defined in section 11(e)(2) of the Atomic Energy Act (AEA));

(c) Low-level radioactive mixed waste (LLW) also containing hazardous waste as designated in 40 CFR part 261);

(d) Nonhazardous solid waste (as designated in 40 CFR 261.4(b); or

(e) Byproduct material as defined in AEA section 11(e)(2).

12. Siting, construction, operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

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DEPARTMENT OF ENERGY

10 CFR Part 1021

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is revising the existing rule at 10 CFR part 1021, titled "Compliance with the National Environmental Policy Act," to incorporate revised provisions of DOE's Guidelines for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA). DOE is also revoking its existing NEPA guidelines. This rule incorporates changes required by certain policy initiatives instituted by the Secretary of Energy to facilitate participation of the public and affected states in the NEPA process for proposed DOE actions. The rule also includes a revised and expanded list of typical classes of actions, including categorical exclusions. Categorical exclusions are classes of actions that normally do not require the preparation of either an environmental impact statement or an environmental assessment.

EFFECTIVE DATE: This rule will become effective May 26, 1992.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 1990 (55 FR 46444), DOE published a proposed rule that would revise 10 CFR part 1021, revoke the DOE NEPA Guidelines (52 FR 47662, December 15, 1987, as amended), and adopt the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508). Publication of the Notice of Proposed Rulemaking began a 45-day public comment period, ending December 17, 1990. As part of the notice and comment process, DOE held a public hearing on the proposed rule on December 5, 1990. Comments were received from 19 sources, including private individuals, state and Federal agencies, public interest groups, and other organizations. Copies of all written comments and the transcript of the public hearing have been provided to CEQ and are available for public inspection at the DOE Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

Today's notice adopts the revisions proposed at that time, with certain changes discussed below, and codifies them at 10 CFR Part 1021. A separate notice published today revokes the existing Guidelines on the date that these regulations become effective.

Copies of the final rule are available upon request to the information contact listed above.

In accordance with 40 CFR 1507.3, DOE has consulted with CEQ regarding this rule. CEQ has found that this regulation conforms with NEPA and the CEQ regulations and has no objection to its promulgation.

II. Statement of Purpose

The purpose of the rule is to revise the provisions of DOE's NEPA Guidelines, based on DOE's experience in the implementation of NEPA and on the directives of Secretary of Energy Notice 15–90 (SEN–15–90), to provide more specificity and detail than the Guidelines and to enhance public review opportunities. (For further information on SEN–15–90, issued February 5, 1990, see the Notice of Proposed Rulemaking (55 FR 46445, November 2, 1990); copies are available from the information contact listed above.) The rule is to be codified at 10 CFR part 1021. By issuing its NEPA Guidelines as regulations published in the Code of Federal Regulations, DOE will ensure that its NEPA procedures are more accessible to the public.

III. Comments Received and DOE's Responses

DOE has considered and evaluated the comments received during the public comment period. Many revisions suggested in these comments have been incorporated into the final rule. The following discussion describes the comments received, provides DOE's position on the comments, and describes any resulting changes to the rule. Section references, unless otherwise indicated, are to those in the proposed rule rather than the final rule; changed section designations are noted below, in response to corresponding comments.

Many of the commenters expressed overall support for DOE's efforts to improve its NEPA procedures, especially in the areas of increased public participation and requirements for programmatic and site-wide NEPA documentation and mitigation action plans. Because these comments are general in nature and do not require consideration of any changes to the proposed rule, they will not be discussed individually.

In addition to revisions made in response to comments and other revisions already discussed, DOE has made a number of editorial, stylistic, and format revisions. DOE also has made certain technical changes for clarity and consistency, which are described below under corresponding subject headings.

A. Procedural Comments

Several commenters addressed the procedural aspects of this rulemaking. One commenter requested that DOE hold public hearings on the proposed rule in the vicinity of its nuclear weapons facilities. DOE provided an opportunity for both oral and written comment on this rule. Written comments were given the same consideration as oral comments. For this reason, DOE determined that additional public hearings in the vicinity of its nuclear weapons facilities were not necessary.

One commenter disagreed with DOE's position—stated in the November 2, 1990, Preamble, regarding NEPA review requirements for the proposed rule—that the promulgation of this rule does not require an environmental assessment (EA) or environmental impact statement (EIS). The commenter asserted that, in light of the absence of documentary support for the many decisions made in the rule, especially the identification of classes of categorically excluded actions, not only is NEPA review required, but an EA or EIS would help to provide a basis for these decisions.

Issuance of this rule complies fully with NEPA's review requirements. DOE's NEPA Guidelines (52 FR 47662, December 15, 1987) list a categorical exclusion for "promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended." The regulations adopted today will revise 10 CFR part 1021, which simply adopts the CEQ regulations. The amendment clarifies the previous rule by adding specificity, and contains only procedural requirements. Therefore, this action is categorically excluded from further NEPA review. (Also see section V, below.)

A number of commenters addressed the effective date of the final rule. One supported DOE's intention to have the rule become effective immediately upon publication. Another asserted that the rule should not become effective immediately upon publication because "good cause" does not exist within the meaning of the Administrative Procedure Act, 5 U.S.C. 535(d), to waive the standard 30-day period between publication and effective dates. Two

commenters asserted that because their comments suggested such substantial revisions to the proposed rule, the rule should be reissued as a proposed rule.

As indicated earlier in this Notice of Final Rulemaking, the effective date of the rule will be 30 days from the date of publication. DOE does not agree that the rule should be reproposed for further public comment. The revisions are a logical outgrowth of the Notice of Proposed Rulemaking published on November 2, 1990, reflecting responses to public comments and limited technical changes in the proposed rule.

B. General Comments on Subparts A Through C

Two commenters were concerned about the length of time needed to complete NEPA documentation. One commenter suggested that DOE establish time periods for internal DOE review and decisions. The other commenter suggested establishing limits on the total time allowed for the completion of each NEPA document process, as many states have done in connection with state processes under NEPA-equivalent laws. Although DOE is aware of the advantages of being able to predict the time the NEPA process will take for proposed actions, the variety of the type and complexity of DOE actions precludes establishing a single time period that would be practical for all actions. Therefore, DOE does not believe that establishing time limits for NEPA review is feasible.

One commenter was concerned in particular about the duplication of effort that might arise from the need to meet both Federal and state NEPA requirements and asserted that guidance on this issue should be provided in DOE's NEPA procedures. One of the goals of these regulations is to implement the CEQ regulation encouraging Federal agencies to cooperate with state agencies to the fullest extent possible to reduce duplication between NEPA and state requirements (see 40 CFR 1506.2). In the past, DOE has been successful in attaining that goal, and, in nearly all cases, a single document has sufficed for both NEPA and state requirements. Under this rule, DOE will continue to work to minimize duplication and to maximize coordination and cooperation. Should the unusual situation arise where there is a conflict between NEPA and state requirements, however, DOE is bound by the requirements of NEPA. Accordingly, DOE believes that no revisions to the proposed rule are necessary as a result of this comment.

There were three comments regarding DOE internal procedures related to the proposed rule. One commenter requested a discussion of the future role of the Action Description Memorandum (ADM). An ADM is an internal DOE document used to assist DOE in determining the appropriate level of NEPA review—EA or EIS—for a proposed action that is not listed in the classes of actions in the appendices to Subpart D of the rule or for which the appropriate initial level of review is unclear. The role of the ADM will not change with the promulgation of this rule.

One commenter requested clarification of how the final rule would be applied to NEPA documents that had been initiated before its effective date. DOE intends to apply the rule to ongoing activities and to environmental documents begun before the effective date of the rule to the fullest extent practicable. The rule will not apply to an EIS if the draft EIS was filed before the rule's effective date, and completed environmental documents will not be required to be redone as a result of this rule.

Two commenters stated that the proposed rule contains an overabundance of imprecise, subjective, and discretionary language, sometimes in provisions where discretionary language is inconsistent with NEPA and the CEQ regulations. The commenters urged DOE to eliminate such language from the proposed rule. DOE generally agrees with these comments and has removed the phrase "in DOE's judgment" from the following sections of the proposed rule: 1021.200(b), 212(b), 213(b), 301(d), 311(a), 332(a) and (c), 340(b), and 341(a) and (b). Similarly, the phrase "at its [or DOE's] discretion" has been removed from the following sections: 1021.300(b), 301(c) and (d), 311(b) and (e), 312(d), 313(d), 314(d)(3), 322(d), and 330(a). The phrase "at its option" has been removed from 1021.312(a).

C. Comments on Subpart A—General

Section 1021.102 Applicability

One commenter suggested that the phrase "any DOE action affecting the environment" be changed to the language in NEPA: "major Federal actions significantly affecting the quality of the human environment." Because DOE is required to examine all actions that affect the environment to determine whether they are major Federal actions that may significantly affect the human environment, the commenter's suggested change was not adopted.

Another commenter suggested that DOE follow the lead of other agencies with overseas activities (e.g., the U.S. Agency for International Development and the National Oceanic and Atmospheric Administration) and analyze all the environmental impacts of proposed activities, not just impacts within U.S. territory. Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," states in section 1-1 that the Order "represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of [NEPA], with respect to the environment outside the United States, its territories and possessions." As explained in the proposed rule, DOE has adopted procedures (46 FR 1007, January 5, 1981) implementing E.O. 12114, pursuant to section 2-1 of that Order. As long as the Order is in effect, DOE will use these procedures in addressing the extraterritorial environmental effects of DOE actions, and no change is needed in this final rule.

Section 1021.104 Definitions

Section 1021.104(b). In addition to the comments discussed below, other comments that nominally relate to definitions are addressed elsewhere, in the discussion of sections of the rule where the comment has more substantive relevance.

Definition: Action and DOE decision. One commenter stated that the failure of officials to act was reviewable and thus should be included in DOE's definition of action. The commenter suggested that DOE should simply reference the CEQ definition at 40 CFR 1508.18. The proposed rule did reference § 1508.18 of the CEQ Regulations, and DOE's paraphrasing of that section in the proposed rule was not intended to exclude any activity covered by 40 CFR 1508.18, including the failure to act. In response to the comment, however, the final rule has been modified to more closely parallel 40 CFR 1508.18. [As a result of this change and a related comment on the definition of "DOE decision," DOE has deleted the definition of "DOE decision" from the final rule.) The definition of "action" has also been changed to make clear that these regulations do not apply to "ministerial actions," such as congressionally mandated funding passthroughs, which DOE does not propose and over which it has no discretion. [Also see the discussion of appendix A1.5, below.]

Definition: Adjacent state. One commenter stated that the requirement that a state must have a common boundary with a host state in order to be an adjacent state was too limiting.

Specifically, they asserted that states may be downwind or downstream from the location of a proposed action or have vital social or economic interests in a proposed action without sharing a common boundary. In response to the comment, the definition of "adjacent state" has been deleted, and in corresponding provisions of the rule, DOE has replaced "adjacent state" with the concept of a state or American Indian tribe that may be affected by a proposed action.

Definition: American Indian tribe. This definition has been added to accommodate changes made in §§ 1021.301(c) and (d) in response to comments and the addition of § 1021.301(e).

Definition: Contaminant and hazardous substance. One commenter objected to defining these words by reference to their definitions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) because this would potentially exclude actions involving petroleum and natural gas products from NEPA review. DOE has addressed the commenter's concern by adding a definition for "CERCLA-excluded petroleum and natural gas products" and incorporating this phrase in appropriate parts of the final rule.

Definition: Documentation. One commenter stated that the proposed definition would supplant the environmental assessment that CEQ requires as the basis for determining the significance of the environmental effects of a proposed action. DOE agrees with the commenter's basic assertion that the purpose of "documentation" should be to have a record of a decision that categorical exclusion from environmental analysis is appropriate. This was DOE's intention, but comments on the definition of "documentation" and related parts of the proposed rule suggest that the intended purpose was not well understood. The CEQ regulations do not require documentation of the application of a categorical exclusion, and DOE is withdrawing the proposed regulatory requirement for such documentation. DOE believes that internal procedural and recordkeeping requirements for overseeing the application of categorical exclusions are more appropriate, and therefore has deleted the proposed definition and related provisions of the proposed rule.

Definition: EIS Implementation Plan. One commenter suggested that the definition be altered by adding "schedule" so as to read "that explains and supports the scope, *schedule,* and approach * * *" DOE accepts the comment, but has also added the qualifying word "target" because schedules are subject to change.

Definition: Host tribe. This definition has been added to accommodate changes made in 1021.301(c) and (d).

Definition: Interim action. One commenter thought that this definition would be more instructive if it cited the CEQ definition rather than referring to it. The commenter's suggested change, however, would include only one of the limitations from 40 CFR 1506.1. The proposed language that was the source of confusion has been rewritten.

Definition: NEPA document. One commenter would expand this definition by adding "Supplement Analysis," "Environmental Critique," and "Environmental Synopsis." DOE disagrees because these documents are not required by NEPA or the CEQ regulations. DOE has deleted "documentation of a categorical exclusion" from this definition because listing it was inappropriate at the outset, and the final rule does not require such documentation.

Definition: Pollutant. This definition has been affected indirectly by the addition of a new definition—"CERCLA-excluded petroleum and natural gas products"—in response to comments.

Definition: Project. DOE has modified this definition to more explicitly comport with CEQ's corresponding language, as a commenter suggested.

Definition: Site-wide NEPA document. The definition in the final rule acknowledges the programmatic nature of a site-wide NEPA document, in response to a commenter's request for clarification.

Section 1021.105 Oversight of Agency NEPA Activities

One commenter interpreted DOE's proposed offer to provide information on procedures and the status of NEPA reviews as an offer to provide written guidance and reports, and suggested that the rule make further provisions regarding such materials. DOE does not prepare written reports on individual NEPA reviews. The rule has been changed to clarify the original intent that DOE will make every effort to respond to public inquiries and to provide timely information regarding the status of NEPA review of specific projects.

D. Comments on Subpart B—DOE Decisionmaking

Section 1021.200 DOE Planning

Section 1021.200(a). A commenter stated that many DOE orders issued under the Department's Atomic Energy Act authority govern critical environmental, health, and safety matters with the potential for significant impacts on the human environment, and suggested that promulgation of DOE orders be included as an activity that may require NEPA review. DOE accepts the suggestion and § 1021.200(a) has been modified accordingly. Another commenter requested that the rule clearly state the criteria DOE will use in deciding when to initiate a NEPA review in order to ensure a consistent approach to the NEPA process. The commenter was concerned that DOE might begin NEPA review after committing to a course of action. Section 1021.210(b) has been modified to emphasize DOE's intention to complete NEPA review before committing to a course of action. However, DOE believes that specific criteria for individual types of actions can be more effectively administered through internal procedures.

Section 1021.200(b). One commenter suggested the addition of, or a reference to, the CEQ requirement (40 CFR 1501.2) to integrate the NEPA process with other planning as early as possible. In § 1021.200(a), DOE commits to performing an adequate and timely NEPA review in accordance with 40 CFR 1501.2. Section 1021.200(b) only amplifies the general directive for a proposed action and is not intended to eliminate that commitment.

Section 1021.211 Interim Actions

One commenter supported the intent of the section but was concerned that DOE commitment of resources to an action before completing NEPA review might bias the consideration of alternatives. This commenter also requested that criteria for determining whether future actions fall within the bounds of permissible interim actions under the CEQ regulations (40 CFR 1506.1) be proposed for public review and comment. The commenter expressed concern that DOE will interpret this section too loosely. The commenter did not offer additional criteria. DOE believes that the criteria in the CEQ regulations are adequate, and, therefore, no additional criteria are included in the final rule. The title and language of this section have been modified editorially, however, to more closely parallel the CEQ regulations.

Another commenter was concerned that ongoing and planned environmental restoration actions would be delayed until records of decision for larger "umbrella" EISs or supplemental EISs are issued. DOE believes that many such actions would satisfy the criteria of 40 CFR 1506.1 and, therefore could

proceed while "umbrella" NEPA reviews are being prepared.

Section 1021.212 Research, Development, Demonstration, and Testing

Section 1021.212(b). One commenter requested that criteria be added for DOE to use in determining when to begin a NEPA review, but did not suggest additional criteria. DOE believes that the criteria in this section, in 40 CFR 1501.2, and elsewhere in this rule are sufficient for that purpose.

In the final rule DOE has moved the last part of proposed § 1021.212(b), which concerned completion of NEPA review before a decision to proceed with detailed design, to § 1021.210(b) in the final rule. This was done to emphasize that this aspect of timing has general applicability.

Section 1021.212(c). One commenter was concerned that this section might be read to allow improper segmentation of the NEPA review of a project. DOE's rule, at § 1021.212(b), provides for subsequent NEPA reviews to evaluate those environmental impacts that could not be meaningfully evaluated at the time the initial review was prepared. Accordingly, the rule does not sanction improper segmentation. In the event that there are legitimate phases to an action, each successive EA or EIS considers cumulative impacts as required under 40 CFR 1508.25.

Section 1021.213 Rulemaking

Section 1021.213(b). One commenter objected to the "internal, subjective" decisionmaking process for determining when to begin NEPA review, but did not offer specific suggestions for more objective criteria. DOE believes that the criteria contained in § 1021.213(b) are adequate and consistent with 40 CFR 1501.2, in that they emphasize conducting NEPA review early in the process.

Section 1021.214 Adjudicatory Proceedings

Sections 1021.214(a) and 1021.214(c). One commenter questioned the meaning of "adjudicatory proceeding" and how it is distinguished from "administrative action." The comma inadvertently placed after "administrative" has been deleted to clarify the provision and to be consistent with 40 CFR 1508.18(a). Also, the phrase "for formal adjudicatory proceedings" has been deleted from § 1021.214(c) to eliminate confusion.

Section 1021.215 Applicant Process

Section 1021.215(b)(6). In response to a comment, and to clarify DOE's original intent, language has been added indicating that DOE would take appropriate action if an applicant were about to take an action that would not satisfy the criteria in 40 CFR 1506.1(a) before DOE completes the NEPA process.

Section 1021.215(c). One commenter believed that the generic guidelines mentioned in this section should be proposed under the Administrative Procedure Act with adequate public notice and opportunity for comment. DOE has modified the section to clarify that any guidance issued to assist preparation of applications would be nonbinding on the applicants. Such guidance need not be subjected to public notice and comment.

Section 1021.216 Procurement and Financial Assistance

This section has been modified to clarify that it applies to DOE joint ventures entered into as a result of a competitive solicitation. Such joint ventures are authorized pursuant to the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101-218).

E. Comments on Subpart C—Implementing Procedures

Section 1021.300 General Requirements

Section 1021.300(b). One commenter requested that this section be clarified to reflect the mandatory nature of NEPA review for ongoing activities. DOE agrees that NEPA applies to ongoing activities in appropriate circumstances; however, this section addresses preparation of NEPA documents that are not required by law or regulations. DOE has made clarifying changes.

Section 1021.301 Agency Review and Public Participation

Section 1021.301(a). The term "interested groups" has been added to the list of entities to which DOE will make its NEPA documents available, in response to a comment. In response to another commenter's general concern about the public's information and involvement opportunities regarding DOE's activities, DOE notes that the rule enhances such opportunities and exceeds CEQ's minimum requirements.

Section 1021.301(c). (Section 1021.301(d) of the final rule). Commenters addressed several aspects of this section, including to whom the proposed opportunity for pre-approval review of EAs should be offered, the length of the review period, and the fact that states may vary in making DOE's documents available to the public.

DOE accepts several commenters' suggestions that American Indian tribes be accorded the same pre-approval review opportunities as similarly situated states. The opportunity will not be extended to the public generally or to citizen groups, however, as several commenters also suggested. The pre-approval review opportunity implements the Secretary of Energy's policy to closely coordinate DOE's NEPA actions with host and potentially affected states and American Indian tribes. The courtesy established by this policy is consistent with the special relationship between the Federal Government and the sovereign states and American Indian tribes. The rule exceeds and does not detract from CEQ's public review requirements.

In regard to the length of the review period, two commenters stated that the proposed 14- to 30-day period was inadequate, and one commenter thought the proposed period was adequate. DOE believes that the proposed period is adequate, and notes that this period is a minimum that may be extended as appropriate. DOE believes that the phrase "[a]t DOE's discretion" regarding the review period is necessary to provide flexibility in tailoring the review process to the circumstances of an individual action.

One commenter questioned the meaning of the proposed language explaining how DOE will proceed after giving the opportunity for pre-approval review. DOE has clarified that it may take any appropriate action on the EA before the end of the review period if the states and American Indian tribes have already waived the opportunity or have responded.

Finally, as previously noted regarding the definition of "adjacent state," this definition has been replaced with the concept of a state or American Indian tribe that may be "affected" by a proposed action. DOE believes that it is necessary to maintain the phrase "in DOE's judgment," however, when determining which states or American Indian tribes may be affected by a proposed action, contrary to several commenters. In many cases, this determination will depend on subjective evaluations of multiple factors. Therefore, DOE believes that the rule should state that DOE retains the discretion to exercise judgment in these matters.

Section 1021.301(d). (Section 1021.301(c) of the final rule). Two commenters recommended that, in addition to adjacent (now "affected") states, Indian tribes should also be notified of DOE's determination to prepare an EA or EIS for a DOE action. DOE agrees. One of the commenters

further suggested that interested agencies, citizen groups, and the general public should be notified. This comment was not accepted for the same reasons described in the response to comments on proposed § 1021.301(c).

Section 1021.301(e). In considering the comments opposing the early notification and review and comment provisions of §§ 1021.301 (c) and (d), DOE concluded that there are circumstances when this process would be inappropriate. Therefore, DOE added this section to the final rule so that these provisions would not apply where providing such advance information to a state or American Indian tribe could create a conflict of interest. The rule specifically cites power marketing actions, such as rate-setting, in which a state or Indian tribe is a customer.

Section 1021.311 Notice of Intent and Scoping

Section 1021.311(a). One commenter suggested that a Notice of Intent (NOI) should include at least a brief discussion of potential alternatives. DOE agrees, and a reference to 40 CFR 1508.22, which includes potential alternatives within the NOI contents, has been added to the section.

One commenter objected to the lack of criteria on which DOE will base its decisions on publishing an NOI or an Advance NOI, and also suggested that the rule should allow for maximum public notice of any opportunity for public comment. DOE notes that the wording of the first portion of this subsection is almost a direct quotation of the CEQ regulations, and it is not intended to limit public notice and comment.

The same commenter also stated that the section could be interpreted to mean that DOE has a choice whether or not to provide a reasonable opportunity for public participation regarding a proposed action. DOE believes that this would not be a reasonable interpretation of the section. The provision allowing an NOI to be deferred is intended to ensure that scoping comments are timely, not to limit public participation.

Section 1021.311(b). Two commenters recommended that criteria be established for requiring the publication of an Advance NOI; one suggested that an Advance NOI should be required if the delay between the time DOE has decided to prepare an EIS and the beginning of the public scoping process will be longer than three months. DOE disagrees. The purpose of an Advance NOI is to enhance public involvement, not to restrict it. It is neither necessary nor practical to establish fixed criteria for providing this opportunity. Issuance of an Advance NOI exceeds the requirements of the CEQ regulations, and, therefore, no change is necessary to this section.

Section 1021.311(c). Three commenters suggested that the minimum scoping period should be at least 45 days; another commenter objected to extending the minimum scoping period from the current 20 days to 30 days. DOE has retained the proposed 30-day period as a minimum that can be extended when appropriate, commensurate with the importance, size, and complexity of an individual project and other factors (see 40 CFR 1501.8(b)(1)). Late comments may also be considered when practicable (see § 1021.311(e)). DOE believes that the rule provides an adequate opportunity for informed participation without risking significant project delay as a result of the NEPA process.

Section 1021.311(d). Three commenters suggested that there should be at least 30 days between the announcement of the scoping meeting and the meeting itself and that DOE should provide notice of meetings and schedule changes in the **Federal Register** and in other ways. DOE has retained the 15-day notice period as a minimum. DOE believes that a 15-day notice will generally provide adequate opportunity for informed public participation without risking significant project delay. The notice period may be extended when appropriate, commensurate with the importance, size, complexity of an individual project and other factors.

Regarding the request that DOE provide notice of meetings and schedule changes by publication in the **Federal Register** and through other means, DOE believes that the proposed rule reflects the Department's commitment to aggressively promote use of the most effective means of publicizing the details of public meetings, including schedule changes. As noted in § 1021.311(d), DOE intends to use various means of announcements, including the **Federal Register**, news releases, or letters to affected parties, to ensure that the public has adequate notification.

Section 1021.311(g). A commenter noted that the rule did not establish any criteria for determining the need for a scoping period for a supplemental EIS or any reason why such a scoping period should be optional. DOE believes that there is no need to repeat the public scoping process if the scope of the proposed action has not changed. This provision is consistent with 40 CFR 1502.9, which does not require public scoping for a supplemental EIS. When the scope has changed, however, or when the importance, size, or complexity of the proposal warrants, DOE may elect to have a scoping process.

Section 1021.312 EIS Implementation Plan

Section 1021.312(c). A commenter objected to the proposed rule's categorization of target schedules and anticipated consultations with other agencies in an EIS Implementation Plan as discretionary. DOE has modified the rule to include target schedules and anticipated consultations with other agencies in the list of required items (§ 1021.312(b)).

Section 1021.312(d). Several commenters objected to the provision in the proposed rule for making copies of the EIS Implementation Plan available in DOE public reading rooms. To enhance public access to EIS Implementation Plans, DOE has modified the rule to remove the discretionary language and to require that all EIS Implementation Plans be made available in the appropriate DOE public reading rooms or other appropriate locations.

Section 1021.313 Public Review of Environmental Impact Statements

Section 1021.313(a). Several commenters suggested that the minimum public review and comment period for a draft EIS should be 60 to 90 days or more, except under documented extraordinary circumstances. One commenter objected to the establishment of a minimum period and said that if a minimum is established, it should be no more than 30 days. DOE will retain the minimum comment period of 45 days, consistent with CEQ's minimum requirement (40 CFR 1506.10(c)). DOE may specify a longer comment period for an individual proposal, and often does.

Section 1021.313(b). Two commenters suggested that the minimum notice for a public hearing on a draft EIS should be 30 rather than 15 days. DOE does not agree. As noted in responses to comments at § 1021.311 (c) and (d), DOE believes that a 15-day notice will generally provide adequate opportunity for informed public participation without risking significant project delay due to the NEPA process. DOE may provide a longer period of notice before a hearing when the circumstances warrant, and often does.

Section 1021.313(d). Two commenters stated that DOE should be required to publicize the availability of draft and final EISs and the time and place for

public hearings, and to announce the availability of these documents through additional methods beyond a **Federal Register** notice. DOE agrees and has modified the section by removing discretionary language and clarifying that DOE shall use other appropriate means to publicize the availability of such events.

Section 1021.314 Supplemental Environmental Impact Statements

Section 1021.314(a). A commenter questioned why the phrase "new circumstances," which appears in the CEQ regulations (40 CFR 1502.9(c)(1)), was omitted from DOE's proposed rule. The omission in the proposed rule was inadvertent, and "new circumstances" has been added to the final rule.

Section 1021.314(c)(1). (Not included in the final rule). A commenter suggested that a supplemental EIS might be required even though the impacts may not change, such as when the need for the proposed action, the range of reasonable alternatives, or available mitigation measures may have changed. The commenter suggested that the proposed provision at § 1021.314(c)(1) was inconsistent with CEQ provisions at 40 CFR 1502.9(c) regarding when a supplemental EIS is required. DOE has deleted the proposed subsection from the final rule, and other provisions of the section have been redesignated as appropriate.

Section 1021.314(c)(2). (Not included in the final rule). No comments were received on this section, which provided that DOE could revise an existing Record of Decision (ROD) if a decision were subsequently made to proceed with an alternative that was evaluated in the EIS but was not part of the initial decision. The proposed provision has been deleted, however, because the circumstances under which it would apply are adequately addressed by § 1021.315(d) of the final rule (which was § 1021.315(f) of the proposed rule).

Section 1021.314(d). (Section 1021.314(c) of the final rule). Two commenters stated that DOE should provide a public notice and comment opportunity concerning its intent to prepare an EIS Supplement Analysis (SA) and publish a Notice of Availability of the SA and the resulting determination. One commenter further suggested treating an SA like an EA (i.e., providing the same review and comment opportunities as for an EA). An EA, in contrast to an SA, is a NEPA document required by the CEQ regulations. DOE does not believe parallel procedures for the two documents are appropriate, and does not believe it is necessary to seek public input prior to a determination whether a supplemental EIS is required. DOE will follow the criteria at 40 CFR 1502.9(c)(1) when determining whether to supplement an EIS. If a supplement is required, the public will be fully involved in the NEPA process per the requirements at 40 CFR 1502.9(c)(4) and § 1021.314(d) of these rules. In response to the comments, however, DOE has modified § 1021.314(d)(3) to provide that SAs shall be placed in the appropriate DOE public reading rooms or other appropriate locations.

Section 1021.314(d)(1). (Section 1021.314(c)(1) of the final rule). DOE modified this section in accordance with a commenter's suggestion that the content of an SA be described more specifically.

Section 1021.314(d)(2). (Section 1021.314(c)(2) of the final rule). Language in the proposed rule regarding revision of an existing ROD has been deleted from this subsection of the final rule to eliminate potential confusion regarding the basis for revising an ROD. As provided for in § 1021.315(d) of the final rule, DOE may revise an ROD only when it is adequately supported by an existing EIS.

Section 1021.314(d)(3). (Section 1021.314(c)(3) of the final rule). A commenter thought that it should be required, not discretionary, for the SA and the determination resulting from it to be provided to the public in relevant DOE reading rooms. Another commenter suggested that DOE should establish an affirmative system for providing access to SAs. (See response under § 1021.314(d)).

Section 1021.314(e). (Section 1021.314(d) of the final rule). Language of the proposed rule regarding revision of an ROD has been deleted to be consistent with changes made at § 1021.314(d)(2). Additionally, a reference to § 1021.315 of the final rule has been added to this section to clarify and emphasize provisions associated with issuing RODs.

Section 1021.315 Records of Decision

Section 1021.315(b). (Section 1021.313(c) of the final rule). DOE has moved the requirements in this proposed subsection to § 1021.313(c) of the final rule in order to be consistent with the requirements of 10 CFR part 1022. Part 1022 requires that a Statement of Findings for floodplain actions shall be noted in a final EIS.

Section 1021.315(d). (Not included in the final rule). A commenter objected to having the date of issuance of an ROD be the date of signature rather than the date it is published in the **Federal Register** because that could mean that the action might proceed before the public becomes aware of the decision. DOE has modified § 1021.315(b) of the final rule (§ 1021.315(a) of the proposed rule) to clarify that no action may be taken until the decision has been "made public"; proposed § 1021.315(d) has been deleted. Section 1021.315(c) of the proposed and final rule provide a requirement that RODs be published in the **Federal Register**, which exceeds CEQ's requirement. DOE may also provide initial public notification by a press release, for example, announcing the availability of the ROD in appropriate DOE public reading rooms.

Section 1021.315(e). (Section 1021.315(a) of the final rule). DOE agrees with the commenters that the CEQ regulations allow for situations when comments on a final EIS may be appropriate. The phrase leading to confusion regarding this subject has been deleted.

Section 1021.315(f). (Section 1021.315(d) of the final rule). One commenter stated that revision of the preferred alternative would only be appropriate if all of the alternatives had received the same level of analysis and discussion of mitigation. DOE acknowledges the general correctness of this comment, but believes strict equality of treatment among alternatives may not be necessary in all cases. Rather, each alternative must be analyzed to a degree commensurate with its potential for environmental impact, and sufficient information must be provided for all alternatives to allow a proper basis for comparison among them. Rather than making the rule more specific, as the commenter further suggested, DOE has added language to the final rule to assure that revisions of the ROD will only take place if the EIS "adequately" supports the revised decision.

Section 1021.321. Requirements for Environmental Assessments.

Section 1021.321(a). One commenter expressed concern about the breadth of DOE's proposal to prepare an EA for all proposed actions not listed in appendices A, B, or D to subpart D. No change has been made to the final rule. DOE will prepare an EA for such actions unless it has already decided to prepare an EIS. This is consistent with 40 CFR 1501.4(b). DOE may add classes of actions to the lists in appendices A, B, or D in accordance with the CEQ regulations (40 CFR 1507.3).

Section 1021.321(b). One commenter thought the proposed focus of an EA was too limited, in comparison with the CEQ requirements. The discussion in the proposed rule focused on the major

purpose of an EA but was not intended to be limiting. DOE has added clarifying language to indicate that an EA shall serve all the purposes identified in 40 CFR 1508.9(a).

Section 1021.321(c). One commenter suggested that DOE withdraw the requirement to analyze the no action alternative in an EA when a proposed action is required by law or court order. DOE believes that it is appropriate to retain this provision. Presentation of the impacts of the no action alternative establishes a "baseline" for judging the impacts of the proposed action. The purpose served by this requirement (i.e., informing Congress and the public, as well as the decisionmaker, of the implications of not taking the action) is consistent with the reasoning behind the judicial interpretations and the CEQ regulation requiring consideration of the no action alternative in EISs.

Section 1021.322 Findings of no Significant Impact

Section 1021.322(a). DOE accepts a commenter's suggestions regarding clarification of when it is appropriate to issue a Finding of No Significant Impact (FONSI). DOE has modified this section editorially to clarify that a FONSI will be issued only if the related EA supports the finding that the proposed action will not have a significant effect on the human environment.

Section 1021.322(b)(2). A commenter requested that DOE clarify this section to distinguish the types of environmental impacts that may be mitigated consistent with issuance of a FONSI from those warranting preparation of an EIS. Because of the varied nature of DOE's projects, it is not practical to define with precision the types of mitigation that would support the issuance of a FONSI. However, DOE does not view activities that are routine parts of proposed actions, such as routine erosion control, as "mitigation commitments" in the context of § 1021.322(b)(2). Rather, § 1021.322(b)(2) refers to mitigation actions over and above the proposed action that are necessary to render the impacts of the action insignificant. DOE agrees with the commenter's suggestion that actions requiring relocation of endangered species habitat or reconstruction of major wetlands are EIS candidates. DOE believes such determinations should be made case by case, however, taking account of all the pertinent circumstances. DOE has revised the appropriate parts of § 1021.322 to make these distinctions clearer.

Section 1021.322(c). One commenter suggested that DOE should add a commitment to the final rule to provide a notice of availability of FONSIs to interested state and Federal agencies, tribal governments, citizen groups, and members of the general public. The procedure proposed by DOE and retained in the final rule is in accordance with CEQ regulations for distribution of a FONSI. It includes options such as those proposed by the commenter. DOE believes this is adequate, but will accommodate the commenter's further suggestion to make FONSIs available in the appropriate DOE public reading rooms or other appropriate locations. The section is modified accordingly.

Section 1021.330 Programmatic NEPA Documents

A commenter requested clarification of the distinction between programmatic NEPA documents and site-wide NEPA documents as discussed in proposed § 1021.331, especially in view of DOE having proposed periodic review only for the latter. DOE considers site-wide NEPA documents to be programmatic in nature and, accordingly, has merged proposed § 1021.331 into § 1021.330 of the final rule. Many DOE sites contain facilities that support diverse and unrelated missions and activities. Site-wide NEPA documents are programmatic in the sense that they review the collective potential environmental effects of such facilities on a single geographic location, and in the sense that these facilities are operated under a single management. However, DOE has retained the requirement for periodic review of site-wide NEPA documents without extending it to programmatic NEPA documents in general. A site-wide NEPA review evaluates the potential individual and cumulative environmental impacts of ongoing and reasonably foreseeable activities at a DOE site (including potential mitigations of any environmental problems); periodic review of those evaluations is appropriate. Periodic review of programmatic NEPA documents (other than site-wide NEPA documents) would not be useful if the proposed program has been implemented, as often is the case.

Section 1021.330(a). A commenter observed that a programmatic EIS is required not only for "connected actions," but also for "cumulative actions" and "similar actions." DOE did not intend to limit the circumstances that require a programmatic EIS. The section has been revised to delete the reference to connected actions and to refer instead to the CEQ Regulations (40 CFR 1508.18(b)(3)), which define a program to include a group of concerted actions and systematic and connected agency decisions.

Section 1021.331 Site-wide NEPA Documents (Included in Section 1021.330 of the Final Rule)

Section 1021.331(a). A commenter maintained that DOE's requirement in the proposed rule to prepare site-wide EISs for certain large, multiple-facility sites is inconsistent with the definition of an EIS, would not significantly further the purposes of NEPA, and would mainly provide information that is already available from other sources. DOE believes, however, that site-wide NEPA review will serve to improve and coordinate agency plans, functions, programs, and resource utilization. A site-wide EIS provides an overall NEPA baseline for a site that is particularly useful for tiering or as a reference when preparing project-specific NEPA documents for new proposals. The requirement is retained.

Another commenter stated that inclusion of the phrase "as a matter of policy" was inappropriate because site-wide EISs may be required under NEPA in certain circumstances. DOE will prepare site-wide EISs when required, but may also, "as a matter of policy," prepare site-wide EISs for a number of reasons including, for example, to improve site planning efforts, to consolidate activities, and to maximize cost-saving efficiencies.

As discussed at § 1021.330, DOE considers site-wide NEPA documents to be programmatic in nature and, accordingly, has merged proposed § 1021.331 into § 1021.330 of the final rule.

Section 1021.331(b). Several commenters suggested public participation opportunities for the proposed periodic evaluation of site-wide NEPA documents. DOE does not believe it necessary to require public notice of its intent to conduct such evaluations and will evaluate case by case whether such notice is appropriate. DOE has modified the rule, however, so that analyses and determinations resulting from such reviews will be made available in the appropriate DOE public reading rooms or other appropriate locations.

One commenter requested that DOE define the starting time of the cycle for the five-year reviews. DOE does not agree that specifying procedural starting times in this regulation is necessary or appropriate.

Finally, DOE has modified this section of the final rule to delete an unintended reference in the proposed rule to supplementing an EA.

Section 1021.332 Mitigation Action Plans (Section 1021.331 of the Final Rule)

One commenter stated that DOE must narrow the scope of this section, which allows for mitigation in support of a FONSI, citing the answer to Question 40 of CEQ's "Forty Most Asked Questions" (46 FR 18038, March 23, 1981), which addresses the circumstances under which a FONSI based on mitigation is appropriate. DOE has not modified the rule in this regard because it believes that the rule, as proposed, is consistent with CEQ's guidance. The answer to Question 40 focuses on the principle that a FONSI cannot be based only on the possibility of mitigation. However, DOE action under a FONSI supported by mitigation would be based on a commitment to perform the mitigation, not the possibility. This section has been modified to clarify this point; in doing so, DOE separated the discussion of EISs and EAs into different subsections. The discussion regarding Mitigation Action Plans (MAPs) for EISs and EAs/FONSIs can now be found at § 1021.331(a) and (b), respectively.

Two commenters suggested that MAPs be made available for public review and comment. DOE believes that public review of the MAP is not necessary because commitments to perform the subject actions would be included in the FONSI or EIS and associated ROD. The MAP is an internal DOE document that describes the plan for implementing and monitoring mitigation commitments made in these documents. DOE, however, will make copies of MAPs available in the appropriate DOE public reading rooms or other appropriate locations (see § 1021.331(d) of the final rule).

Section 1021.332(a) (Section 1021.331(b) of the Final Rule)

One commenter suggested that the phrase "in significant part" was inappropriate and should be deleted because, no matter how small the mitigation, its accomplishment would be critical to avoid the need for an EIS. The phrase "in significant part" has been deleted from the final rule, and the section has been changed to clarify that DOE commits to performing all mitigations "essential to render the impacts of the proposed action not significant." However, as discussed under and clarified in § 1021.322(b)(2), DOE does not intend the term "commitments to mitigations" to apply to actions that are routinely taken as part of or are integral elements of a proposed action.

Section 1021.340 Classified, Confidential, and Otherwise Exempt Information

A commenter suggested that DOE exercise greater restraint in deciding which information to withhold from the public. DOE believes that this rule in many ways enhances public access to information. With respect to confidential or classified documents, however, DOE must comply with applicable laws and regulations. Procedures for classifying information are beyond the scope of this rule.

Although no comments were received to this effect, DOE has deleted the reference to disclosure of interagency memoranda transmitting comments on EISs. This modification was made to avoid the possible misconception that DOE intended to disclose classified comments. For unclassified comments, the provisions of the CEQ Regulations at 40 CFR 1506.6(f) would apply. Additionally, DOE has deleted from the final rule the inadvertent and unnecessary reference to "restricted" information made in the proposed rule.

Section 1021.340(a). A commenter expressed a concern that unless this section is limited, inappropriate material will be made available to the public, especially draft comments and attorney work product. The provision at issue addresses interagency memoranda transmitting comments. By their nature, such documents are final and become public comments (40 CFR 1506.6(f)). No exception in the requirement is made for the case where the agency's responding unit is its legal counsel. DOE legal counsel's comments (intraagency), like other internal deliberative documents, are exempt from release. The section is not changed.

Section 1021.340(b). One commenter suggested that the phrase "wherever possible" should be deleted because it might lead to a determination that the release of information was not "possible" because of costs or inconvenience. This section addresses the preparation of a document in the context of § 1021.340(c), in which cost and inconvenience are not issues. The final rule has been modified, however, to indicate that DOE will, to the fullest extent possible, segregate any information that is exempt from disclosure into an appendix to facilitate public review of the remainder of the document.

Another commenter suggested that the rule acknowledge that classified portions of documents will undergo an independent review by other Federal agencies whenever appropriate. This comment refers to the responsibilities of the Environmental Protection Agency under section 309 of the Clean Air Act. This rule need not restate review responsibilities that are otherwise provided for by law.

Section 1021.341 Coordination With Other Environmental Review Requirements

Section 1021.341(a). One commenter suggested that the rule provide for integrating NEPA with CERCLA requirements in order to preclude delays and unnecessary duplication of effort. Another expressed a concern that this rule should not prejudice an ongoing, broader discussion of the applicability of NEPA to the environmental restoration activities conducted by Federal agencies other than EPA. It is DOE's policy to integrate NEPA values into activities undertaken pursuant to CERCLA wherever practical. DOE's implementation of this policy is not intended to represent a statement on the legal applicability of NEPA to environmental restoration activities conducted under CERCLA or other legal authority, and DOE believes that this policy will not prejudice any subsequent resolution of the applicability issue.

Section 1021.341(b). DOE agrees with a comment noting that the determination of applicability of other environmental requirements (e.g., those of the Endangered Species Act, section 106 of the Historic Preservation Act, and section 404 of the Clean Water Act) is not always left to the agency proposing an action, but sometimes to other agencies with given program responsibilities. DOE did not intend to imply in the proposed rule that it could unilaterally determine the applicability of such requirements. The final rule has been modified from the proposed rule to state that DOE will determine the applicability of other environmental requirements in consultation with other agencies when necessary or appropriate.

Section 1021.342 Interagency Cooperation

One commenter requested clarification of DOE's procedures for the designation of a lead office within DOE and the designation of cooperating offices and agencies within and without DOE, including entities other than Federal agencies. Another commenter thought that the provisions for involvement of cooperating agencies should be expanded and improved to reference or acknowledge the CEQ regulations. DOE has reinforced its general obligation, acknowledged in § 1021.103, to comply with all CEQ requirements, including those for lead

and cooperating agencies, by establishing in § 1021.342 an affirmative policy to cooperate with other agencies, including the development of interagency agreements. The final rule cites specific CEQ requirements (i.e., 40 CFR 1501.5 and 1501.6) for greater clarity. DOE's internal procedures for carrying out its responsibilities are beyond the scope of this rulemaking, however.

Section 1021.343 Variances

Section 1021.343(a). DOE has modified the rule in response to a commenter's request to make the rule more clearly consistent with the CEQ regulation regarding consultation with CEQ about "alternative arrangements." The final rule also requires DOE to publish a notice in the **Federal Register** after taking an emergency action, which exceeds CEQ requirements.

Section 1021.343(b). A commenter suggested that DOE limit its reduction of time periods established in the rule to extraordinary situations that demand immediate attention. The only time periods that DOE has discretion to change are those established by DOE that exceed CEQ's requirements. DOE does not believe it is appropriate to establish criteria for reducing these time periods, because it is not possible to foresee all possible circumstances under which reductions may be needed. However, in no case would the time periods resulting from application of this subsection be less than the minimums established by CEQ.

Section 1021.343(c). One commenter suggested that the variance provision should be deleted, describing it as a "catch-all." Another suggested that a **Federal Register** notice be required for such variances. DOE believes the variance provision is reasonable and appropriate, and consistent with 40 CFR 1506.11. The rule has been modified, however, to require that a notice of variance be published in the **Federal Register**, as the commenter suggested. Editorial modifications were also made to clarify responsibilities of the Secretary of Energy.

F. General Comments on Subpart D—Typical Classes of Actions

DOE received extensive comments on the approach to NEPA compliance reflected in the proposed regulations and appendices of Subpart D, with the major focus of these comments on the classes of actions proposed in appendices A and B to be categorically excluded from the preparation of an EA or EIS.

Commenters pointed out that DOE failed in the proposed rule to make the finding required by the CEQ regulations (at 40 CFR 1508.4) that the classes of actions categorically excluded from the requirement to prepare an EA or EIS do not individually or cumulatively have a significant effect on the human environment. Two commenters further asserted that DOE must, for each class of action included in appendices A and B, make an explicit finding with an articulated basis, supported by documentation, that the actions encompassed by the class never, except in extraordinary circumstances, have a significant effect on the human environment.

DOE agrees that the CEQ regulations do require DOE to find that the classes of actions in appendices A and B will not individually or cumulatively have a significant effect on the human environment and that this finding be made in procedures adopted in implementing the CEQ regulations. Accordingly, DOE has included such a finding at § 1021.410(a) of the final rule. However, DOE does not believe that it is required to set forth in the preamble a detailed, individualized explanation for such finding for each of the classes of actions in appendices A and B. In finding that the classes of actions categorically excluded in the final rule will not individually or cumulatively have a significant effect on the human environment, DOE has considered, among other things, its own experiences with these classes of actions, other agencies' experiences as reflected in their NEPA procedures, and the comments received on the proposed rule.

One commenter also questioned DOE's exclusive reliance on experience to support its identification of categorical exclusions and the use of memoranda-to-file as a part of this experience record because, the commenter asserted, DOE has determined that memoranda-to-file do not constitute acceptable NEPA documentation. Although DOE stopped using the memorandum-to-file as part of its NEPA process on September 30, 1990, DOE believes that memoranda-to-file prepared before that date are valid documents that should be considered as part of DOE's experience with particular actions. The purpose of memoranda-to-file was to determine whether proposed actions, not included in the list of categorical exclusions, would have clearly insignificant impacts, and therefore not require either an EA or an EIS. This is precisely the type of document that is relevant for the finding required by 40 CFR 1508.4.

Some commenters stated that DOE's extensive list of categorical exclusions suggested a DOE position that classes of actions can be categorically excluded if, some of the time, they would not have significant impacts. The commenters compared this to the CEQ regulations, which clearly limit categorical exclusions to those classes of actions that have significant impacts only in extraordinary circumstances. DOE believes its categorical exclusions comply with the CEQ regulations and agrees that to be eligible for categorical exclusion, a class of actions must not individually or cumulatively have significant effects on the human environment except in extraordinary circumstances. DOE has determined that the classes of actions included in appendices A and B of the final rule meet this standard.

One commenter noted that if the individual actions encompassed by a categorical exclusion have the potential for significant impact on a cumulative basis, then the categorical exclusion is invalid. DOE agrees that it must find that classes of actions categorically excluded do not individually or cumulatively have a significant effect on the human environment. The commenter further noted that if a proposal encompasses actions within multiple categorical exclusions and cumulatively the actions have the potential for significant impacts, then the categorical exclusions encompassed are invalid. DOE agrees that such a proposal could not be categorically excluded but believes that the individual categorical exclusions would still be valid. DOE has added § 1021.410(b)(3) to address this concern and to preclude the segmentation of a proposal into component parts, which as discrete proposals are categorically excluded, to avoid preparation of an EA or EIS.

Commenters, expressing the view that DOE's proposed categorical exclusions are too broad, asserted that DOE should prepare more EAs and that DOE's extensive list of categorical exclusions results from a reluctance on DOE's part to prepare EAs because its internal EA requirements are so burdensome. Commenters asserted that the approach represented by the expanded list of categorical exclusions is not consistent with the requirements of NEPA and the CEQ regulations. One commenter noted that an increased reliance on EAs would not necessarily require vast new commitments of time and resources if DOE would take heed of CEQ regulations and guidance that intend the EA to be a concise and expeditious analysis. Other commenters criticized DOE for presenting a confusing and illogical mix of activities, ranging from

the payment of salaries to the restart of nuclear facilities, and for not having a *de minimis* level for actions to be subject to a NEPA review.

The extensive list of categorical exclusions results primarily from the fact that DOE is engaged in many different types of activities. DOE's extensive list of categorical exclusions also reflects DOE's policy that some NEPA review is required for all DOE actions potentially affecting the environment, even if there is no apparent potential for any significant effect. DOE believes the extensive list of categorically excluded actions in the final rule is consistent with NEPA and the CEQ regulations. The CEQ regulations require agencies to reduce excessive paper work and avoid delays by using categorical exclusions (40 CFR 1500.4(p) and 1500.5(k)). DOE will prepare EAs when necessary—that is, when the class of actions has not been excluded and/or when DOE is uncertain whether the proposed action would have significant environmental impacts. DOE believes it will serve environmental concerns best if it focuses its efforts on analyzing those actions that may or do have potential for significant impact.

One commenter stated that the categorical exclusions in proposed appendix B were inappropriate because they were vaguely drafted and were entirely without reference to size, volume, or significance in a way that would encompass major Federal actions that were likely to have significant environmental impacts. Others expressed concern about the broad scope of the classes of actions categorically excluded. DOE has reevaluated all categorical exclusions in the proposed rule to determine the appropriateness of more precise language, adding limiting factors or otherwise narrowing the scope of the categorical exclusions, and has modified several accordingly. DOE has decided not to categorically exclude some classes of actions that were included on the list in the proposed rule. These deletions and changes are described in more detail in the discussion under section III G below.

One commenter suggested that DOE delete proposed appendix B in its entirety, and instead add explicit limits on the size of each class of actions proposed in that appendix and move the classes of actions to proposed appendix A. The commenter further suggested that DOE prepare EAs or EISs for all proposed activities beyond the expressed size limit of the classes of action in the resulting appendix A.

DOE believes it is reasonable to retain two appendices for categorical exclusions but has revised the distinction between the types of classes of actions included in appendices A and B. Appendix A in the final rule lists categorical exclusions applicable to general agency actions and includes those classes of actions with impacts so remote or conjectural as to preclude meaningful consideration. Appendix A includes some classes of actions to which NEPA probably does not apply but that DOE has listed to clarify that neither an EA nor EIS is needed and to avoid any potential misunderstanding associated with the absence of such listing. Appendix B in the final rule lists categorical exclusions that are applicable to specific agency actions and have conditions specified as integral elements of the classes of actions. The conditions that are integral elements of the classes of actions in appendix B of the final rule were the eligibility criteria in § 1021.410(b) of the proposed rule. Even though originally proposed to apply to all categorical exclusions as eligibility criteria, DOE believes that inclusion of the conditions specified in appendix B would be meaningless for the categorical exclusions DOE retained in appendix A in the final rule. This is because appendix A is limited to classes of actions with impacts that cannot be meaningfully evaluated. DOE moved the classes of actions with impacts that are not so remote or conjectural as to preclude meaningful analysis that were included in appendix A of the proposed rule to appendix B in the final rule so that the conditions specified in appendix B would be integral elements of these classes of actions. Categorical exclusions in appendices A and B have been found by DOE not to individually or cumulatively have a significant effect on the human environment.

Two commenters were concerned that, while DOE's proposed rule purports to abolish the memorandum-to-file, DOE has merely substituted a new system, "documentation," which also would not be made available to the public. One commenter considered the documented categorical exclusions as "phantom" EAs that would reinsert into DOE's NEPA process the very subjectivity, discretion, and secrecy that SEN 15–90 was intended to eliminate. Another commenter viewed DOE's creation of the proposed Appendix B as indicating a lower level of certainty about those categorical exclusions and noted that, when an analysis is required to decide whether an action meets the criteria for a categorical exclusion, then the proper format for that analysis is an EA subject to public review, not documentation behind closed doors.

DOE has eliminated the requirements for documentation of categorical exclusions from its regulations. It was not DOE's intent that any categorical exclusion in appendix B be supported by an analysis of environmental effects ("phantom" EAs) or that the documented categorical exclusion be equivalent to the memorandum-to-file, which DOE has eliminated from its NEPA procedures. The documentation that DOE referred to for these categorical exclusions in the proposed rule was to be a record of the determination that the action was appropriately categorically excluded and was to be used for internal oversight purposes. Although the CEQ regulations require public review of categorical exclusions proposed for listing, the regulations do not require documentation, public review, or notification when categorical exclusions are applied.

One commenter was concerned that proper documentation is needed to ensure that an established process has been followed, and suggested that DOE use a checklist to demonstrate why an action has been excluded from further NEPA review. DOE is evaluating the need for internal recordkeeping procedures and, if such procedures are established, will consider the use of a checklist.

In contrast to the commenters who believed that the classes of actions proposed to be categorically excluded were too broad, some commenters believed the classes of actions to be categorically excluded should be broader than those proposed. One commenter thought that rather than listing specific classes of actions, DOE should establish "guiding criteria." Some commenters suggested that certain classes of actions, in addition to those in the proposed rule, should be categorically excluded in the final rule. DOE believes that the classes of actions categorically excluded in the final rule are appropriate and does not believe that it could make the necessary findings at this time for any broader classes of actions. As to the comments suggesting the categorical exclusion of classes of actions not proposed by DOE, DOE cannot categorically exclude in the final rulemaking any classes of actions not included in the proposed categorical exclusions. The CEQ regulations require that categorical exclusions be established only after public notice and the opportunity for public comment. DOE will consider the suggestions of the

commenters in determining whether to propose new or broader classes of actions for categorical exclusion in a future rulemaking.

The comment was made that because many of the classes of actions proposed to be categorically excluded in appendices A and B entail activities that could affect the character or use of historic properties, DOE should make absolutely clear in its final rule that the categorical exclusion of an action does not exempt it from the requirements of other environmental regulations. DOE's NEPA rule addresses NEPA compliance only, not other environmental requirements. Coordination with other environmental review requirements is addressed in § 1021.341; in addition, condition B.(4)(i) in appendix B of the final rule precludes a proposed action from categorical exclusion if the action would have an adverse effect on historic properties.

Four commenters expressed concern about the lack of public participation in, and public scrutiny of, the process of determining whether particular proposed actions are appropriately categorically excluded. One commenter suggested that records of determinations that proposed actions are categorically excluded be placed in public reading rooms. Another commenter felt that in view of the breadth of the classes of actions on the list of categorical exclusions and the discretion to be exercised in applying eligibility criteria to proposed actions, there should be public participation in the process.

The CEQ regulations do not provide for public participation in determinations that particular proposed actions are categorically excluded, nor do they require that records of such determinations be kept or made public. DOE believes that requiring public participation in categorical exclusion determinations or that documentation of categorical exclusion determinations be made available in public reading rooms would be contrary to the purposes of categorical exclusions, as stated in the CEQ regulations—reducing paperwork and avoiding delays.

G. Comments on Specific Sections of Subpart D—Typical Classes of Actions

Section 1021.400 Level of NEPA Review

A commenter suggested that § 1021.400 as proposed should address proposed actions covered by "memoranda-to-file." DOE does not believe a reference in the rule to memoranda-to-file is needed or appropriate because such documents are no longer part of DOE's NEPA procedures. To clarify the effect of this rulemaking on completed NEPA reviews and documents, DOE has changed § 1021.400(b) in the final rule to state that "any completed, valid NEPA review does not have to be repeated, and no completed NEPA documents need to be redone by reasons of these regulations, except as provided in § 1021.314" (which concerns supplemental EISs). Because a memorandum-to-file issued before September 30, 1990, is a valid NEPA document, § 1021.400(b) would apply. (See additional discussion under section III B above.)

A commenter suggested that clarification be provided in § 1021.400(b), as proposed, on the use of existing site-wide EAs or EISs during the evaluation of those documents or the preparation of new site-wide documents for continuing or new actions. DOE believes that this issue is generally addressed by § 1021.400(b) and that any further clarification is better addressed in internal guidance than in this rulemaking because of site-specific issues and circumstances. Accordingly, DOE did not provide the requested clarification in the final rule.

Another commenter was concerned that the language in § 1021.400(c), as proposed, did not make it sufficiently clear that the application of a categorical exclusion to a particular DOE proposal depends on the proposal meeting the eligibility criteria of proposed § 1021.410(b). DOE agrees with respect to those classes of actions listed in appendix B of the final rule. However, rather than modifying § 1021.400(c) in the final rule, DOE has included the eligibility criteria in § 1021.410(b) of the proposed rule in appendix B of the final rule as conditions that are integral elements of the classes of actions listed in appendix B. DOE has not included the proposed eligibility criteria in § 1021.410 of the final rule. DOE believes that this provides the clarification requested by the commenter.

A commenter expressed concern that the proposed rule did not provide for instances where actions falling within a category of categorically excluded actions might have significant environmental effects because of extraordinary circumstances. DOE intended to provide for such instances in § 1021.400(c) as proposed. In light of the commenter's concern, DOE has modified § 1021.400(c) in the final rule and added § 1021.410(b) (2) to clarify that DOE will not proceed with the level of review indicated in the appendices if there are extraordinary circumstances related to the proposal that may affect the significance of its environmental effects. DOE has included a circumstance cited by the commenter (i.e., the unresolved conflicts concerning alternative uses of available resources within the meaning of § 102(2)(E) of NEPA) as an example of an extraordinary circumstance in § 1021.410(b) (2) of the final rule. DOE also modified § 1021.400(d) in the final rule to be consistent with the revisions to § 1021.400(c).

Section 1021.410 Application of Categorical Exclusions (Classes of Actions That Normally Do Not Require EAs or EISs)

Section 1021.410(a) General. In the final rule, DOE has expanded this section to clarify the application of categorical exclusions and has divided the proposed section into four parts. DOE has incorporated § 1021.410(b) of the proposed rule into appendix B in the final rule. Therefore, § 1021.410(a) of the proposed rule as modified is § 1021.410 in the final rule, as explained below.

Section 1021.410(a) states DOE's required finding that the classes of actions listed in appendices A and B of subpart D are classes of actions that DOE has determined do not individually or cumulatively have a significant effect on the human environment.

Section 1021.410(b)(1) clarifies that to be eligible for categorical exclusion, the proposal must be determined by DOE to fit within a class of actions listed in appendix A or B. For a proposal to fit within a class of actions in appendix B, it must meet the conditions specified in B.(1)–(4) in appendix B.

Section 1021.410(b)(2) clarifies that to find that a proposal is categorically excluded, DOE must determine that there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. This section identifies three examples of extraordinary circumstances that could exclude actions within a class of actions in appendix A or B from eligibility for categorical exclusions. These examples are unresolved conflicts concerning alternative uses of available resources, scientific controversy about the environmental effects of the proposal, and uncertain effects or effects involving unique or unknown risks.

Section 1021.410(b)(3) clarifies that DOE, in determining that a proposal is categorically excluded, shall find that the proposal is not connected to other actions with potentially significant impacts, is not related to other proposed actions with cumulatively significant impacts (following 40 CFR 1508.25(a) (1) and (2)), and is not precluded by 40 CFR 1506.1 or § 1021.211 of these regulations. Section 1021.410(b)(3) was included in

response to comments concerning cumulative impacts, as discussed above.

Section 1021.410(c) includes the statements contained in proposed § 1021.410(a) concerning the application of the classes of action by any element of DOE and the division of appendices A and B only for organizational purposes. In the final rule the word "organizational" was added before "element of DOE" to be consistent with § 1021.102(a).

Section 1021.410(d) modifies § 1021.410(a) as proposed to clarify that, to avoid segmentation, the classes of actions are intended to include all activities necessary to implement a proposal, such as transportation activities and award of implementing grants and contracts.

A commenter recommended that § 1021.410(a) as proposed be revised to provide for a case-by-case determination that a proposed action, not included within classes of actions listed in appendices A and B, be categorically excluded if the action meets the eligibility criteria set forth in § 1021.410(b). DOE has not made the requested revision because, as discussed above, the CEQ regulations require that categorically excluded classes of actions be identified in an agency's published procedures. The proposed eligibility criteria and the appendix B conditions in the final rule are not classes of actions.

Section 1021.410(b) Eligibility criteria for categorical exclusions (Appendix B of the final rule). One commenter expressed concern that DOE used as eligibility criteria for categorical exclusions some of the factors in 40 CFR 1508.27 intended for evaluating the intensity or severity of impacts and for determining the significance of the environmental impacts of proposed actions. The commenter pointed out that the analysis of such factors is more appropriately accomplished in an EA. The commenter acknowledged, however, that the use of these factors as eligibility criteria is better than no requirement for screening and suggested that, if such a screening mechanism is developed, it include several additional critical factors found in 40 CFR 1508.27. Another commenter also recommended that other factors in 40 CFR 1508.27 be added to DOE's list of eligibility criteria.

DOE agrees that subjective evaluation of the intensity or severity of an impact as prescribed in 40 CFR 1508.27 is not appropriate in a determination that an action fits within a categorically excluded class of actions. The conditions specified as integral elements of the classes of actions in appendix B in the final rule, which were the eligibility criteria in proposed § 1021.410(b)(1), require a factual determination. That is, the presence, not the severity, of the factor would make a proposed action ineligible for categorical exclusion. For example, 40 CFR 1508.27(b)(8) requires an evaluation of "(t)he degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places." On the other hand, condition B.(4)(i) of DOE's final rule screens from categorical exclusion status proposed actions that "adversely affect environmentally sensitive resources," which include property listed on the National Register.

The final rule retains the eligibility criteria proposed for classes of actions in appendix B as conditions that are integral elements of the classes of actions in appendix B in the final rule. DOE did not include, however, additional conditions based on the CEQ factors in 40 CFR 1508.27. DOE believes that controversial environmental effects (40 CFR 1508.27(b)(4)) and uncertain effects or effects that involve unique or unknown risks (40 CFR 1508.27(b)(5)) would not, except in extraordinary circumstances, be associated with any of the categorically excluded classes of actions included in the final rule. As explained earlier, DOE has identified these factors as possible extraordinary circumstances in § 1021.410(b)(2) of the final rule. The other CEQ criteria of establishing a precedent for future actions with significant effects (40 CFR 1507.28(b)(6)) or relation to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1507.28(b)(7)) are included in § 1021.400(b)(3) of the final rule, discussed above.

In the final rule, DOE has added a condition that is an integral element of the classes of actions listed in Appendix B: a proposal must be one that would not disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases (B.(3)). This condition is similar to an element of several categorical exclusions in the proposed rule (proposed A1.34, A3.1, A3.5, B3.3, B6.2, and B6.7) that concerned inadvertent or uncontrolled movement of hazardous substances, pollutants, contaminants, or non-native organisms.

In response to comments that many of the proposed categorical exclusions were too broad, DOE believes that condition B.(3) in the final rule, along with other changes described herein, will appropriately narrow the scope of categorical exclusions in appendix B. Proposed disturbance with subsequent unpermitted or uncontrolled releases of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products warrants analysis to determine if there is potential for significant impact. DOE is concerned that such an action, otherwise without potential for significant impact, may have the side-effect of spreading preexisting contamination in the environment.

As a consequence of adding condition B.(3) to the final rule, the corresponding restricting phrase proposed as part of several categorical exclusions is not included in those categorical exclusions in the final rule. With regard to proposed A1.34 (final B1.3) that concerns component testing (generally an indoor activity), condition B.(1) of the final rule (i.e., proposals cannot threaten applicable environment, safety, and health requirements) would provide the assurance that emissions are controlled. With regard to the condition in proposed A3.1 (site characterization/environmental monitoring) and proposed A3.5 (research related to conservation of fish and wildlife) that the proposals not result in the uncontrolled movement of non-native organisms, DOE now believes that these actions (final B3.1 and B3.3, respectively) will not foreseeably involve non-native organisms.

In response to a suggestion by a commenter that § 1021.410(b)(1)(i) should have a disjunctive effect, the word "and" in the phrase "applicable statutory, regulatory, and permit requirements" has been changed to "or" in condition B.(1) in appendix B in the final rule. DOE also added the phrase "for environment, safety, and health" to the condition in appendix B.(1) in the final rule to clarify its intent that the term "requirements" applies to safety and health as well as environment in response to a comment in this regard.

DOE has revised the proposed eligibility criterion in § 1021.410(b)(1)(ii) of the proposed rule as condition B.(2) in appendix B in the final rule, and that condition includes waste storage facilities because DOE believes the siting, construction, or major expansion of waste storage facilities cannot be categorically excluded.

DOE has revised proposed §§ 1021.410(b)(1)(iii) and (b)(2) of the proposed rule as condition B.(4) in the final rule, and that condition refers to "environmentally sensitive resources" rather than "environmentally sensitive areas" in light of a comment that the

proposed criteria reflected the sensitivity of the habitat of protected species but not the species themselves. Condition B.(4) also includes the protected species as well as its habitat as examples of environmentally sensitive resources.

In response to another comment on § 1021.410(b)(2) of the proposed rule, DOE added the phrase "but not limited to" after the word "include" in condition B.(4) in appendix B in the final rule to clarify that the listing of environmentally sensitive resources is not intended to be inclusive.

H. Comments on Appendices

In the following discussion of the comments on the appendices, the headings are those used in the table of contents of the appendices in the proposed rule. The conversion table on the following page shows which proposed classes of actions have not been included in the final rule and also refers the reader to the appropriate headings in the final rule for those proposed classes of actions that are included in the final rule. There were many numbering changes between the proposed and final rule because some classes of actions were deleted, combined with other classes of actions, or reordered to group similar classes of actions. As explained above, many classes of actions in proposed appendix A of the proposed rule were moved to appendix B in the final rule so that the conditions specified in appendix B would be integral elements of these classes of actions.

Proposed A1.1 Administrative Procurements (Final A1)

Proposed A1.2 Routine Financial Transactions (Final A1)

Proposed A1.16 Personnel Actions/ Personal Service Contracts (Final A1 and A8)

Proposed A1.25 Business Support Activities (Final A1)

DOE consolidated these four separate categorical exclusions into one inclusive categorical exclusion in the final rule. DOE believes that there was overlap among the four and that combining them into one categorical exclusion avoids segmentation. (See also discussion of proposed A1. 16 below.) A1 in the final rule categorically excludes routine actions necessary to support the normal conduct of business, which are those actions that are encompassed in the four proposed categorical exclusions.

Proposed A1.3 Grant/Contracts for Categorically-Excluded and Some Interim Actions (Not Included in the Final Rule)

DOE has not included this proposed categorical exclusion in the final rule because grants and contracts are merely elements of a proposed action rather than separate actions, as indicated in § 1021.410(d) of the final rule. Separating the award of grants or contracts to implement the proposed action from the proposed action for purposes of determining the level of NEPA review would constitute inappropriate segmentation.

Conversion Table

Subpart D—Typical Classes of Actions

Designation of Classes of Action in Subpart D

Proposed	Final
A1.1	A1.
A1.2	A1.
A1.3	Not included.[1]
A1.4	A2.
A1.5	Not included.[2]
A1.6	B1.1.
A1.7	Not included.[3]
A1.8	A3.
A1.9	A4.
A1.10	A5.
A1.11	A6.
A1.12	A6.
A1.13	Not included.
A1.14	A6.
A1.15	A7.
A1.16	A1, A8.
A1.17	A9.
A1.18	A9.
A1.19	A10.
A1.20	A11.
A1.21	A9.
A1.22	A12.
A1.23	B1.2.
A1.24	A13.
A1.25	A1.
A1.26	B1.3, B2.5.
A1.27	B1.15, B4.11.
A1.28	B1.3, B2.5.
A1.29	B1.4.
A1.30	B1.5.
A1.31	B1.6.
A1.32	B1.7.
A1.33	B1.8.
A1.34	B1.3.
A1.35	B1.3.
A1.36	B1.9.
A1.37	B1.10.
A1.38	B1.11.
A1.39	B5.1.
A1.40	B1.12.
A1.41	B1.13.
A1.42	Not included.[1]
A1.43	Not included.[1]
A1.44	Not included.[1]
A1.45	B1.14.
A1.46	Not included.[1]
A2.1	B2.1.
A2.2	B2.2.
A2.3	A12, B1.3, B2.2, B2.5.
A2.4	B2.3.
A2.5	B2.4.
A3.1	B3.1.
A3.2	B3.1.
A3.3	B3.1.
A3.4	B3.2.
A3.5	B3.3.
A3.6	B3.4.
A3.7	B3.5.
A3.8	B3.6.
A4.1	B4.1.
A4.2	A7.
A4.3	B4.2.
A4.4	B4.3.
A4.5	B4.4.
A4.6	Not included.
A4.7	B4.11.
A4.8	B4.5.
A4.9	B4.6.
A4.10	B4.7.
A5.1	B5.2.
A5.2	B5.3.
A5.3	B5.4.
A5.4	Not included.
A6.1	A14.
A6.2	A15.
A6.3	B7.1.
B1.1	B1.15.
B1.2	B1.3.
B1.3	B1.16.
B1.4	B1.17.
B1.5	B1.18.
B1.6	B1.19.
B1.7	B5.1.
B1.8	B1.20.
B1.9	Not included.[1]
B2.1	B2.5.
B3.1	B3.1, B3.8, B6.2.
B3.2	B3.7.
B3.3	B3.8, B6.2.
B3.4	B3.9.
B3.5	B3.10.
B3.6	B3.11.
B4.1	B4.8.
B4.2	B4.9.
B4.3	B4.10.
B4.4	B4.11.
B4.5	B4.12.
B4.6	B4.13.
B4.7	B1.21.
B5.1	B5.5.
B5.2	B5.6.
B5.3	B5.7.
B5.4	B5.8.
B5.5	B5.9.
B5.6	B5.10.
B5.7	B5.11.
B5.8	B5.12.
B5.9	B5.13.
B5.10	B5.14.
B5.11	B5.15.
B5.12	B5.16.
B6.1	B6.1.
B6.2	B6.2.
B6.3	B6.3.
B6.4	C16, B6.4, B6.5, B6.6.
B6.5	B6.6.
B6.6	B6.7.
B6.7	B1.22.
B6.8	B6.8.
B7.1	B7.2.
B7.2	Not included
C1	C1.
C2	C8.
C3	C2.
C4	C3.
C5	C10, C11.
C6	C12.
C7	C4.
C8	C5.
C9	C6.
C10	C7.
C11	C13.

Proposed	Final
C12	C14.
C13	C15.
C14	C16.
C15	Not included.
C16	C9.
D1	D1.
D2	D2.
D3	D3.
D4	D4.
D5	D5.
D6	D6.
D7	D8.
D8	D9.
D9	D10.
D10	D11.
D11	Not included.
D12	D12.

[1] In scope of broader proposals.
[2] CEQ definition of action excludes this classification.

Proposed A1.5 Pass-throughs (Not Included in the Final Rule)

DOE has not included this proposed categorical exclusion in the final rule because congressionally mandated funding pass-throughs are "ministerial actions," which DOE does not propose and over which it has no discretion. Therefore, these are not DOE actions as discussed above under "action" in III C.

Proposed A1.7 Administrative Enforcement Actions (Not Included in the Final Rule)

DOE has not included this proposed categorical exclusion in the final rule because the CEQ definition of a "major Federal action" at 40 CFR 1508.18(a) specifically excludes administrative enforcement actions.

Proposed A1.11 Rulemaking for Technical and Pricing Proposals (Final A6)

Proposed A1.12 Rulemaking for Grants and Cooperative Agreements (Final A6)

Proposed A1.14 Procedural Rulemakings (Final A6)

DOE has consolidated these proposed categorical exclusions into one categorical exclusion in the final rule because rulemakings that are strictly procedural include those described in proposed A1.11 and A1.12.

Proposed A1.13 Rulemaking for Categorically-excluded Actions (Not Included in the Final Rule)

DOE has not included this categorical exclusion in the final rule. Specific classes of rulemakings that are categorically excluded are specified in appendix A of the final rule; other types of rulemaking will require an EA or EIS.

Proposed A1.15 Transfer of Property, Use Unchanged or Categorically Excluded (Final A7)

DOE has modified the wording of this categorical exclusion in the final rule. The phrase referring to proposed uses that are "categorically excluded in this subpart" has been deleted because DOE believes that transfers, leases, dispositions, or acquisitions of property that are part of a broader proposed action must be reviewed for NEPA purposes in the context of the broader proposed action. Separating these property transfers from the proposed new use would constitute inappropriate segmentation. DOE also deleted the phrase referring to disposition through the General Services Administration because the phrase was unnecessary.

Proposed A1.16 Personnel Actions/ Personal Service Contracts (Final A1 and A8)

One commenter was concerned that technical support contracts and management and operating (M&O) contracts should not be categorically excluded because hiring certain contractors or using ineffective contracting practices and procedures might have environmental impacts that could require an EA or EIS. DOE does not believe that contracts for technical services, management and operation of DOE facilities, or personal services, or even contracting procedures in general, have potential for significant environmental effects because they are merely arrangements to perform future actions, yet to be assigned. Subsequent actions carried out under such contracts, however, may have environmental consequences and will be the subject of NEPA review. Furthermore, Federal procurement policy requires that contracts be awarded only to responsible contractors (48 CFR part 9), and based on this standard, DOE will not knowingly contract with an environmentally irresponsible party. DOE believes that discussion of the purported environmental merits of potential contractors in a NEPA document would be extremely speculative and not amenable to meaningful analysis.

The commenter also mentioned that DOE's proposed "Alternate Contracting System" would benefit from NEPA analysis. DOE believes that this reference is to the alternate business strategy for environmental restoration (Notice of Intent to develop an environmental restoration alternate business strategy, 55 FR 48544, October 31, 1990). This strategy would establish environmental restoration management contractors at certain DOE field offices, separate from the M&O contractors that otherwise manage DOE facilities. DOE believes that establishing the framework for these contracts does not have the potential for significant environmental impact. Specific restoration activities carried out under the contracts will be subject to separate NEPA review.

DOE has revised the categorical exclusion in the final rule to refer only to the award of contracts (final A8) and has rephrased it to clarify that contracts for technical support services and for management and operation of a government-owned facility are not subsets of contracts for personal services. In the final rule, personnel actions are included in the categorical exclusion for actions necessary to support the normal conduct of business (Final A1). (See also discussion of proposed A1.1, A1.2, A1.16, and A1.25, above.)

Proposed A1.17 Document Preparation (Final A9)

Proposed A1.18 Information Gathering/Analysis/Dissemination (Final A9)

Proposed A1.21 Classroom Training and Informational Programs (Final A9)

DOE has consolidated these categorical exclusions into one covering information gathering, analysis, documentation preparation, and dissemination of information. DOE believes that these proposed categorical exclusions are interrelated, and combining them into one categorical exclusion avoids segmentation. One commenter suggested that the list of documents given as examples should be expanded to include monitoring reports, permit applications, project scope, and cost estimating. DOE does not believe that additional examples are necessary to ensure that the scope of the consolidated categorical exclusion is clearly understood to be paperwork activities.

Proposed A1.19 Reports or Recommendations on non-DOE Legislation (Final A10)

One commenter suggested that the proposed categorical exclusion be expanded to include reports or recommendations on legislation or rulemaking proposed by DOE. This change was not made because DOE-proposed legislation and rulemaking that is not categorically excluded in the final rule may require preparation of an EA or an EIS.

Proposed A1.26 Routine Maintenance/ Custodial Services for Building Structures and Equipment (Final B1.3 and B2.5)

Proposed A1.34 Routine Testing/ Calibration of Facility Components (Final B1.3)

Proposed A1.35 Routine Decontamination, not part of Decommissioning (Final B1.3)

Proposed B1.2 Removal of Contamination, not Decommissioning Project (Final B1.3)

DOE has revised the definition and scope of proposed A1.26 to clarify that the scope includes work on infrastructures (such as roads), maintenance work of a predictive nature (i.e., continuous or periodic monitoring or diagnosis to forecast component degradation), and suspension of operations to perform maintenance and subsequent resumption of operations. In addition, DOE has included custodial services in the general description and scope paragraph in the final rule (rather than as an example of routine maintenance, as proposed).

DOE has added two examples of routine maintenance. One example (example B1.3(n) in the final rule) concerns predictive maintenance and incorporates proposed A1.34 (discussed below under that heading). The other example (example B1.3(o) in the final rule) concerns routine decontamination of the interior surfaces of buildings and removal of contaminated equipment and other material. This last example incorporates activities in proposed A1.35 and proposed B1.2, as discussed below under those headings.

One commenter objected to categorically excluding the repair and maintenance of transmission facilities (example (m) of proposed A1.26 and final B1.3) because of the potential for polychlorinated biphenyl (PCB) contamination, noting that maintenance of transformers at many DOE facilities has resulted in environmental contamination. The routine maintenance procedure referred to by the commenter (i.e., draining a small amount, about one quart, of transformer oil into the ground to flush out impurities before sampling) was common practice before regulations controlling PCBs were established in 1979 (40 CFR part 761). This practice has now been discontinued. DOE believes that maintenance activities involving PCBs carried out in compliance with applicable regulations are appropriate for a categorical exclusion. For purposes of clarity, DOE has added a stipulation to the example that the activities be conducted in accordance with 40 CFR part 761.

The commenter was concerned that cumulative maintenance activities involving PCBs would have significant impact and stated that an EA or EIS might be a valuable means of demonstrating long-term benefits of a systematic phaseout of PCB-containing equipment. In establishing this categorical exclusion, DOE has determined, based on its experience, that the class individually and cumulatively has no potential for significant environmental effect.

In response to two commenters' requests that applicable statutory and regulatory requirements be added to the example concerning removal and replacement of tanks and piping (example (n) of proposed A1.26), DOE has included citations of applicable statutory and regulatory requirements. As one commenter also requested, DOE has added a requirement that there be no evidence of leakage based on regulatory performance requirements. On further analysis, DOE determined that removal and replacement of tanks and piping form an example of an upgrade rather than routine maintenance. Accordingly, DOE has deleted it as an example of routine maintenance and included it as an example in B2.5 in the final rule (B2.1 in the proposed rule), which addresses safety and environmental improvements and facility upgrades.

Proposed A1.27 Siting/Construction/ Operation of Storage Area for Maintenance/Administrative Supplies/ Equipment (Final B1.15 and B4.11)

To avoid inappropriate segmentation, DOE has not included this categorical exclusion as a separate class of actions in the final rule but incorporated this categorical exclusion into proposed B1.1 (B1.15 of the final rule) as one of several categorically excluded support facilities and into proposed B4.4 (B4.11 of the final rule). (See the discussion under proposed B1.1, below.)

Proposed A1.28 Replacement/ Extension of Existing Utility Systems for Categorically-Excluded Actions (Final B1.3 and B2.5)

Commenters requested that the concepts of repair, modification, and upgrade be added to this categorical exclusion. DOE has not included this categorical exclusion in the final rule because it duplicates activities (e.g., replacement of existing utility systems) in both proposed A1.26 (B1.3 of the final rule) and B2.1 (B2.5 of the final rule). DOE also now recognizes that extension of utility systems required as a result of categorically excluded actions is part of the larger action and the exclusion would have resulted in inappropriate segmentation.

Proposed A1.31 Installation of/ Improvements to Liquid Retention Tanks, Small Basins (Final B1.6)

DOE has narrowed the scope of this categorical exclusion by limiting the size of basins installed or modified to generally less than one acre. One commenter felt that the term "liquid retention" implied the exclusion of holding tanks for gas and other materials and suggested that the term be deleted. DOE intended the categorical exclusion to apply to a facility's improved handling of materials (such as sludges, wastewater, or stormwater) to control spills and runoff. DOE deleted the term "liquid" and otherwise modified the categorical exclusion to clarify this intent.

Proposed A1.32 Acquisition/ Installation/Operation of Communication Systems, Data Processing Equipment (Final B1.7)

In response to a comment on this categorical exclusion, DOE has added "removal" to the stated activities.

Proposed A1.34 Routine Testing/ Calibration of Facility Components (Final B1.3)

In response to a comment, DOE has added portable equipment in the list of proposed items. Because testing and calibration of equipment is predictive maintenance, DOE has incorporated this proposed categorical exclusion as an example (example (n)) in the categorical exclusion for routine maintenance (proposed A1.26 and final B1.3).

Proposed A1.35 Routine Decontamination, not Part of Decommissioning (Final B1.3)

One commenter objected to categorically excluding decontamination activities, even if they are not part of a decommissioning project. At many DOE facilities, decontamination of equipment, rooms, hot cells, and the interior of buildings is a daily or weekly activity, which includes wiping with rags, using strippable latex, and minor vacuuming. These activities are part of routine maintenance. The commenter interpreted a much broader scope to this proposed categorical exclusion than DOE intended. Therefore, DOE incorporated the categorical exclusion as an example (along with proposed B1.2) into the categorical exclusion for routine maintenance (proposed A1.26, final B1.3, example (o)).

Another commenter suggested that exterior decontamination activities should be categorically excluded as well. Exterior decontamination is addressed in categorical exclusion B6.1, CERCLA removals/similar actions under RCRA or other authorities.

Proposed A1.37 On-site Storage of Activated Material at Existing Facility (Final B1.10)

One commenter suggested that this categorical exclusion be deleted because it allowed too broad a range of actions, given the risks of storing any radionuclides. DOE has revised this categorical exclusion in the final rule to emphasize that its scope is the routine storage of activated equipment and construction materials to allow radionuclides with short halflives (days or weeks) to decay sufficiently before reuse. The activation-produced radioisotopes are in the matrix of the material and are not likely to leak out.

Proposed A1.40 Detonation of High Explosives in Reserved Areas (Final B1.12)

One commenter objected to this categorical exclusion because, based on its vague wording, it could be interpreted to apply broadly to all high explosive detonations. DOE has revised the categorical exclusion to clarify that it applies only to the detonation or burning of failed or damaged explosives or propellants under an existing permit issued by state or local authorities.

Proposed A1.42 Routine Transportation of Nonhazardous Materials and Nonradioactive, Nonwaste Hazardous Materials (Not included in the final rule)

Proposed A1.43 Routine Transportation of Waste (Not Transuranic, not High Level) (Not Included in the final rule)

One commenter objected to the broad scope of proposed A1.42, based on concern about the transport of hazardous substances (including CERCLA-excluded petroleum and natural gas products), uncertainty regarding DOE's adoption of the Nuclear Regulatory Commission's Below Regulatory Concern level, and the lack of eligibility criteria to screen for potential impacts on public health and safety and for cumulative impacts. DOE believes that reviewing transportation for proposals separately from the proposals themselves would be inappropriate segmentation. DOE will consider the transportation impacts of proposed actions in EAs and EISs, as appropriate. As indicated in § 1021.410(d) of the final rule, DOE views classes of actions as including all activities necessary to implement a proposal within the class of actions, such as associated transportation activities. DOE has not adopted the Nuclear Regulatory Commission's Below Regulatory Concern level. DOE has revised the proposed eligibility criterion concerning statutory, regulatory, and permit requirements and, as explained above, included it as condition B.(1) in appendix B of the final rule to clearly indicate that public health and safety issues are covered. DOE also has added § 1021.410(b)(3) to address cumulative impacts.

Proposed A1.44 Temporary Shutdown/ Restart of a Facility for Inventory, Routine Maintenance (Not Included in the Final Rule)

Proposed A1.46 Shutdown of an Operating Facility (Not Included in the Final Rule)

DOE now recognizes that in proposing these two categorical exclusions, it inappropriately identified suspension and resumption of operations as separate and distinct actions. These exclusions identified activities that are part of ongoing routine operations of an existing facility and thus by themselves are not subject to NEPA. The final rule has been revised to focus on the activities to be performed while operations are suspended. (See, e.g., proposed A1.26 (final B1.3), proposed A1.45 (final B1.14), and proposed B1.9 (final B2.5). See also the discussion below for proposed A1.45 (final B1.14) and proposed B1.9 (final B2.5).) Therefore, DOE has not included proposed A1.44 and A1.46 in the final rule.

One commenter, in reference to proposed A1.44, was concerned about the vagueness of the terms related to maintenance and about the potential for DOE to carry out substantial work to correct safety or environmental concerns through repeated shutdowns. The categorical exclusion for routine maintenance (proposed A1.26, final B1.3) provides many examples that describe and limit the nature and scope of these activities.

Another commenter, in reference to proposed A1.44 and A1.46, stated that it was unreasonable for DOE to predetermine that a shutdown for up to two years would not require an EA or EIS and expressed concern, in reference to proposed A1.44, that the magnitude of problems at DOE facilities can easily be underestimated. DOE agrees that it cannot predetermine the length of time that activities appropriately categorically excluded might take, and has not included a time period in those categorical exclusions that may involve a suspension and resumption of operations. DOE must determine the appropriate level of NEPA review and complete it before taking the proposed action. If a proposed action changes as a result of initial activities, DOE will complete a new NEPA review before taking further action.

One commenter, in reference to proposed A1.46, was concerned that this categorical exclusion would exempt shutdown of facilities intended primarily for environmental mitigation or improvement (e.g., a wastewater treatment plant or a renewable energy facility), and that such a shutdown could have potential for significant adverse impacts. DOE believes that temporary suspension of operation and subsequent resumption (e.g., for routine maintenance) would not have potential for significant impacts except in extraordinary circumstances. This commenter also requested clarification that permanent shutdown may require additional NEPA review if decontamination and decommissioning activities are proposed. DOE agrees and notes the lack of a categorical exclusion for facility decommissioning, as well as the inclusion of decommissioning in several of the classes of actions found in appendix D to Subpart D of the rule, which normally require an EIS.

Proposed A1.45 Temporary Shutdown/ Restart of a Nuclear Reactor for Refueling (Final B81.14)

DOE has retained this categorical exclusion, but it is revised to focus on the refueling activity, while acknowledging that operations may be suspended and resumed for such activity.

Proposed A2.3 Establishment of/ Improvements to Warning Systems Monitors, Evacuation Routes (Final A12, B1.3, B2.2, and B2.5)

DOE has not included this proposed categorical exclusion in the final rule because DOE believes the actions are encompassed by proposed A2.2 (final B2.2), which addresses building instrumentation, and proposed A1.22, A1.26, and B2.1 (final A12, B1.3, and B2.5, respectively), which cover emergency evacuation road designation, repair, and improvement. DOE clarified the scope of B2.2 and A12 in the final rule.

Proposed A2.4 Promotion/ Maintenance of Employee Health (Final B2.3)

One commenter requested that radiation monitoring devices and fumehoods with associated collection and exhaust systems be added to the list of examples in this categorical exclusion and that a reference be made to applicable regulations. DOE has added the additional example to the categorical exclusion in the final rule (B2.3), but has not provided the requested reference to applicable regulations because there are no regulations specifically applicable to this categorical exclusion.

Proposed A3.1 Site Characterization/ Environmental Monitoring (Final B3.1)

Proposed B3.1 Siting/Construction/ Operation of Small-Scale Laboratory Building or Renovation of Room for Sample Analysis for Site Characterization/Environmental Monitoring (Final B3.1, B3.8, and B6.2)

In response to a comment, DOE has modified proposed A3.1 to clarify that site characterization and environmental monitoring activities for remedial investigation and feasibility studies are within the scope of the categorical exclusion.

Another commenter stated that proposed A3.1 should be limited to existing waste site cleanups and should not apply to site characterization for the construction of new facilities. DOE has not limited the categorical exclusion in this way because it believes that the environmental impacts of activities covered by this categorical exclusion are insignificant whether performed for possible restoration or construction. Site characterization may be necessary before formulating a proposal involving new construction and for which preparation of an EA or EIS is necessary, as the data may be needed for conceptual design and to evaluate impacts of construction, operation, and, as appropriate, eventual decommissioning. DOE believes that § 1021.410(b)(3), which clarifies that DOE's categorically excluded actions will not be connected to other actions with potentially significant impacts or otherwise be related to actions with cumulatively significant impacts, addresses the commenter's concern that the site characterization activities not establish a precedent for future actions with significant impacts or represent a decision in principle about a future consideration.

DOE has included the scope of activities of proposed B3.1 into proposed A3.1 (final B3.1), proposed B3.3 (final B3.8 and B6.2) and proposed B6.2 (final B6.2) to avoid inappropriate segmentation.

Proposed A3.2 Geochemical Surveys/ Geological Mapping/Geophysical Investigation (Final B3.1)

DOE has not included this categorical exclusion in the final rule because DOE believes the categorical exclusion is encompassed by proposed A3.1, which is B3.1 in the final rule. In the final rule, example (a) in B3.1 was modified accordingly to clarify the scope of that categorical exclusion.

Proposed A3.3 Archeological/Cultural Resource Identification (Final B3.1)

DOE has included this proposed categorical exclusion as an example of a site characterization activity in the final rule (B3.1(j)).

Proposed A3.5 Research Related to Conservation of Fish and Wildlife Conservation (Final B3.3)

In response to a comment that categorically excluded research should not significantly reduce the study populations of non-nuisance species, DOE has narrowed this proposed categorical exclusion. In the final rule, the categorical exclusion is limited to research activities that would involve only negligible population reduction.

Another commenter asserted that this categorical exclusion was inconsistent with 40 CFR 1506.1, proposed § 1021.410, and proposed appendix C2 to subpart D. In the final rule under § 1021.410(b)(3), all categorically excluded actions must meet the criteria in 40 CFR 1506.1 (limitations on actions during NEPA process). Because the categorically excluded research activities in this class of actions might directly involve fish and wildlife resources that are not environmentally sensitive (section 1021.410(b)(2)(ii) in the proposed rule, condition B.(4) in Appendix B in the final rule), the categorical exclusion emphasizes minimization of animal mortality, population reduction, or habitat destruction regardless of whether these resources are protected by other statutes. The class of actions in proposed C2 (Protection of fish and wildlife habitat), which is final C8, and in proposed B1.8 (Protect/restore/ improve fish and wildlife habitat), which is final B1.20, concern habitat modification, rather than research as in this categorical exclusion.

Proposed A3.8 Indoor Bench-Scale Research Projects/Conventional Operation (Final B3.6)

One commenter asserted that this proposed categorical exclusion might be used to exempt laboratory operations that are conducted with radioactive and hazardous materials as part of a larger development project. The commenter had specific concerns that categorically excluded research could lead to violations of National Pollutant Discharge Elimination System permits and larger programs with significant environmental impacts. DOE had proposed an eligibility criterion for categorical exclusions (section 1021.410(b)(1)(i) in the proposed rule) that the proposed actions would not threaten a violation of applicable permit requirements. In the final rule, DOE has revised this criterion to be condition B.(1), which is an integral element of all the classes of actions in appendix B. DOE has also added § 1021.410(b)(3) to this final rule to clarify that DOE's categorically excluded proposals will not involve segmentation. DOE believes that this type of laboratory work, even involving radioactive and hazardous materials, does not have potential for significant impact.

Another commenter suggested expanding the list of examples of conventional laboratory operations and adding the restriction that operations be in accordance with applicable requirements, permits, and DOE orders. This restriction was covered in DOE's proposed eligibility criteria at proposed § 1021.410(b)(1) and is in condition B.(1) in appendix B in the final rule. DOE does not believe it is necessary to augment the list of examples but has revised the categorical exclusion to explicitly state that the activities will be conducted within existing laboratory facilities. Establishing a laboratory facility is a separate action, for which DOE will prepare an EA or EIS to address, among other issues, overall wastewater treatment and pollution prevention and the impacts from discharges related to research performed therein.

Proposed A4.1 Contracts/Marketing Plans/Policies for the Short Term (Final B4.1)

Proposed A4.5 Power Marketing Services Within Normal Operating Limits (Final B4.4).

Proposed A4.8 Temporary Adjustments to River Operations (Final B4.5)

One commenter strongly objected to these categorical exclusions because of concern for cumulative impacts as well as immediate, direct effects from changes in the timing and flow of rivers. The commenter stated that marketing plans and contracts have the potential

for significant environmental effects and pointed out the ambiguity in timeframes in proposed A4.1. The same commenter thought that the use of hydropower resources to meet peak demands may tend to displace oil- and gas-fired thermal generation. Another commenter stated that proposed A4.1 should not apply when there is increased emissions from fossil-fueled powerplants or major changes in reservoir levels or streamflows.

After consideration of the comments, DOE has determined that the three proposed categorical exclusions do not individually or cumulatively have a significant effect on the human environment. Repeatedly and consistently, DOE has found no significant impacts associated with actions by the power marketing agencies that are within the existing constraints of a particular hydrosystem operation, including past decisions concerning actions that would be beyond the parameters of the proposed categorical exclusions.

DOE considers a five-year limit for categorical exclusion (proposed A4.1, final B4.1) of disposition, allocation, or acquisition of excess power appropriate because it is consistent with (1) the delineation of a "major" resource in the Northwest Power Act (that is, sections 3(12) and 6(c) of the act define resources of more than 50 average megawatts acquired for more than 5 years as "major" and impose special procedures for such acquisitions) and (2) the Bonneville Power Administration's normal multiyear planning process (promulgated, in accordance with the Pacific Northwest Coordination Agreement, to effect short-term marketing actions to optimize the system economically or short-term power acquisitions to avoid power shortages).

Excess power refers to nonfirm power or surplus firm power derived from existing resources. Proposed A4.1 (final B4.1) would not apply to transactions enabling the construction of new resources. (See the discussion of proposed C10, below.)

In response to the commenter's concern regarding the subjectivity of proposed A4.5 (final B4.4) and proposed A4.8 (final B4.5), including the use of such terms as "temporary" and "minor," DOE believes that the limitations within the final categorical exclusions, while not eliminating, will minimize the need for subjective judgment.

DOE agrees that the establishment of basic hydrosystem operating parameters is appropriately addressed through means other than categorical exclusions. (See discussion below under proposed C10.) The Bonneville Power Administration, for example, is preparing the Columbia River System Operation Review EIS to consider the balance of uses on the Columbia River.

One commenter indicated that the categorical exclusion for temporary river adjustments (proposed A4.8, final B4.5) should not be applied if the changes would reduce instream flows below minimum requirements. This categorical exclusion would not apply in this situation because such changes would exceed the existing constraints of a particular hydrosystem operation and would not be regarded as a minor change to reservoir levels or streamflows.

Proposed A4.2 Leasing of Existing Transmission Facilities (Final A7)

DOE has not included this categorical exclusion in the final rule. This categorical exclusion is unnecessary because the leasing of existing transmission facilities is encompassed by proposed A1.15, which is A7 in the final rule.

Proposed A4.6 Buffer Rights-of-Way at Existing Transmission Facilities (Not included in the final rule)

DOE has not included this categorical exclusion in the final rule. DOE recognizes that there is potential for significant impact from acquisition of rights-of-way because of possible changes in land use related to establishing buffer zones; therefore, a categorical exclusion is inappropriate. If land use in the buffer zone will not change, proposed A1.15 (A7 in the final rule) may apply to the action.

Proposed A4.7 Minor Substation Modifications/Expansions (Final B4.11)

In the final rule, DOE included the scope of this proposed categorical exclusion into the scope of proposed B4.4 (final B4.11), which concerns construction and modification of substations, to avoid segmentation.

Proposed A5.4 Removal of Oil Field Waste to Permitted Disposal Facility (Not Included in the Final Rule)

One commenter strongly objected to this categorical exclusion, stating that research conducted by EPA had indicated that there are significant environmental impacts from disposal practices used for oil field wastes. DOE reconsidered its proposal of this categorical exclusion and, because of uncertainty as to the potential for significant impacts, has not included it in the final rule.

Proposed A6.2 Umbrella Agreements for Cooperation in Energy Research and Development (Final A15)

DOE has not included phrase (b) in proposed A6.2 (that referred to categorically excluded projects and activities) in the categorical exclusion in the final rule (A15). The phrase was unnecessary because specific energy research and development projects that are categorically excluded are specified in Appendix B of the final rule.

Proposed B1.1 Siting/Construction/Operation of Support Structures (Final B1.15)

Proposed A1.27 Siting/Construction/Operation of Storage Area for Maintenance/Administrative Supplies, Equipment (Final B1.15 and B4.11)

One commenter stated that the scope of proposed B1.1 was too broad; it would essentially exempt all construction and operation of service and support buildings regardless of size, soil contamination, resuspended dust from construction, environmental and energy impacts of operation, and alternative designs and locations that could minimize impacts.

In response to the comment, DOE has narrowed the scope of proposed B1.1 in the final rule (B1.15). The siting and construction of structures covered by the categorical exclusion are limited to small-scale support buildings and structures within or contiguous to an already developed area where site utilities and roads are available. DOE has added a condition in the final rule, B.(3), that is an integral element of the classes of actions in appendix B: Construction activities that would disturb hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases would not be categorically excluded. (See additional discussion under section III F, above.)

In addition, DOE incorporated proposed A1.27 into this categorical exclusion for support buildings and structures as an example (as noted above in the discussion of proposed A1.27) because small-scale storage areas for maintenance and administrative supplies are support facilities.

In the final rule, DOE has added the phrase "and similar support purposes" to the list of support functions for which buildings and structures may be constructed because DOE believes that siting, construction, and operation of

any small-scale support structure will not individually or cumulatively have a significant impact on the human environment and that it is appropriate to categorically exclude these activities. DOE had not intended this categorical exclusion to be limited to only those support buildings and structures for the purposes listed in the proposed rule. DOE has also added the phrase "but excluding facilities for waste storage activities" to clarify that it does not consider these to be support activities for which construction may necessarily be categorically excluded except as provided in the final rule. (See the discussion of proposed B6.4 for categorically excluded waste storage facilities.)

Proposed B1.2 Removal of Contamination, Not Decommissioning Project (Final B1.3)

Two commenters suggested that this categorical exclusion be deleted because they did not believe that the only test for deciding whether to prepare an EA or EIS is whether the action is part of a decommissioning project. One of the commenters was concerned that certain activities at the Rocky Flats Plant and at the Portsmouth and Paducah Uranium Enrichment Plants might inappropriately come under this exclusion.

DOE intended the proposed categorical exclusion to cover routine actions where intact equipment (e.g., labware) and other materials (such as gloves) that are radioactive or otherwise contaminated are removed from a facility for disposal. The comment implied a much broader scope to the categorical exclusion than DOE intended. Therefore, DOE combined the categorical exclusion with proposed A1.35 as an example under routine maintenance (B1.3(o) in the final rule).

DOE is conducting a program to remove plutonium from contaminated ducts at the Rocky Flats Plant. The current activities include routine decontamination techniques commonly used to maintain facility operations (e.g., wiping with rags, vacuuming, and stripping with latex). These limited activities are encompassed within the existing routine maintenance categorical exclusion under DOE's NEPA guidelines (52 FR 47662, December 15, 1987) and would be encompassed by the categorical exclusion for routine maintenance in this final rule (B1.3). Removal of plutonium from ducts at the Rocky Flats Plant that are more difficult to access or are impossible to clean using routine maintenance techniques may require dismantling and replacement. DOE is currently preparing an EA to evaluate these types of proposed activities for the Rocky Flats Plant. Similarly, if DOE were to propose large equipment replacement actions, such as the Cascade Improvement and Cascade Upgrading Programs at the Paducah and Portsmouth Uranium Enrichment Plants in the 1970s to which the commenter referred, those large programs would not be categorically excluded.

Proposed B1.5 Construction/Operation of Additional/Replacement Water Supply Wells (Final B1.18)

One commenter stated that the proposed categorical exclusion should be limited to those circumstances where DOE can demonstrate that a steady-state drawdown occurs (i.e., the withdrawal from the supply wells is compensated by the recharge from the surrounding area). Another commenter was concerned that although the construction and operation of a few additional water supply wells might not be a major Federal action, construction and operation of a substantial well field could be. In response to these comments, DOE has added to the categorical exclusion in the final rule the additional stipulation that new wells must be within an existing well field and that there can be no resulting long-term decline of the water table. DOE has also added "siting" to the list of activities for completeness.

Proposed B1.6 Construction/Operation of Microwave/Radio Communication Towers (Final B1.19)

In response to a comment that construction of microwave or radio communications towers in areas considered to be of great visual value could have potential for significant impacts, the categorical exclusion in the final rule has been limited to areas that are not of great visual value. In the final rule, DOE did not include the restrictive phrase concerning prejudice of future site selection decisions for substations and other facilities that was in this categorical exclusion in the proposed rule because the final rule sets forth the restriction in § 1021.410(b)(3) that categorical exclusions may not involve inappropriate segmentation.

Proposed B1.9 Restart of Facility After Categorically Excluded Safety/Environmental Improvements (Not Included in the Final Rule)

Several commenters strongly objected to this categorical exclusion. One commenter viewed it as an attempt to allow DOE to "jump-start" problem-plagued facilities and stated that facilities that have been closed for modifications (particularly safety modifications) should be subject to an EA or EIS before restart. Another commenter noted that DOE has already had one court require an EIS for restart of a nuclear reactor at the Savannah River Site, and believed that the magnitude of DOE's work at the Rocky Flats Plant is also a major Federal action with significant impacts. A third commenter stated that the categorical exclusion was overly broad.

A fourth commenter said that this categorical exclusion was one of the most troubling of all the proposed categorical exclusions, stating that it conflicts directly with DOE decisions to prepare EISs on such facilities as the Savannah River reactors, the N Reactor, and the PUREX plant at Hanford and with various court decisions. The commenter stated that the effects of both accidental and routine releases from nuclear reactors or chemical processing plants are both highly controversial and involve uncertain risks (factors highlighted by the CEQ regulations as bearing on significance). The commenter asserted that the limitation in the proposed categorical exclusion (that restart would only be categorically excluded after categorically excluded improvements) was meaningless because virtually any improvement to a facility could fit into one of the other proposed categorical exclusions. This commenter noted the elaborate and complex standards and practices for the restart of reactors and chemical processing plants and that these warrant at least an EA. The commenter stated that DOE must eliminate this categorical exclusion and adopt a regulation requiring NEPA analysis of a reactor or chemical processing plant that has been shut down for safety/environmental modifications.

DOE has not included this categorical exclusion in the final rule. DOE recognizes that it inappropriately focused on the resumption of operations rather than the proposed action in proposing this categorical exclusion. DOE has not established a categorical exclusion for resumption of operations after shutdown for safety or environmental improvements, because DOE believes such shutdown is part of routine, ongoing operations.

Proposed B2.1 Improvement of a Facility, Replacement/Upgrade of Facility Components (Final B2.5)

One commenter stated that this categorical exclusion was much too broad; many DOE facilities require significant improvements to even

approach current design and operating parameters. Another commenter, referring to this categorical exclusion as "frightfully wide open," asserted that it could cover major initiatives aimed at rebuilding a nuclear reactor. This commenter referred to the CEQ regulations, which state that a significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial. The commenter stated that DOE must substantially narrow this categorical exclusion or eliminate it altogether. Another commenter asserted that given the age and condition of some DOE facilities, these actions have potential for significant impact. The commenter further stated that DOE cannot predetermine the degree of impacts because of the absence of current, adequate NEPA documentation.

DOE has narrowed the scope of this categorical exclusion in the final rule to emphasize that the activities cannot result in a substantial change in function of a facility and that the categorical exclusion does not apply to rebuilding or modifying substantial portions of a facility. These modifications, along with § 1021.410(b)(3) in the final rule, which addresses segmentation, should ensure that improvements with significant impacts (beneficial or adverse) are not categorically excluded. The categorical exclusion was also modified to acknowledge that operations may be suspended while the action takes place and then be resumed. In accordance with the CEQ regulations, DOE has procedures (section 1021.410(b)(2) in the final rule) for review of individual proposals to determine whether there are extraordinary circumstances that would indicate that a categorical exclusion is not appropriate.

DOE has added an example to this categorical exclusion for an environmental improvement (removal and replacement of underground storage tanks); DOE proposed the example as part of A1.26 (example (n)) but believes it is more appropriately considered as an upgrade. (See the discussion under proposed A1.26.)

Proposed B3.1 Siting/Construction/Operation of Small-Scale Laboratory Building or Renovation of Room for Sample Analysis for Site Characterization/Environmental Monitoring (Final B3.1, B3.8, and B6.2)

Proposed B3.3 Outdoor Ecological/Environmental Research Activities (Final B3.8 and B6.2)

In the final rule, DOE has incorporated the scope of activities in proposed B3.1 (construction and renovation activities related to sample analysis) into the scope of proposed A3.1 (final B3.1) (discussed above under proposed A3.1), proposed B3.3 (final B3.8), and proposed B6.2 (final B6.2) to avoid inappropriate segmentation.

DOE has narrowed the scope of proposed B3.3 in the final rule (final B3.8) to outdoor ecological and other environmental research activities, none of which could result in any permanent change to the ecosystem. Some environmental restoration experiments concerned with waste, originally in the scope of this categorical exclusion, are now included in the scope of proposed B6.2 (final B6.2) where they are limited by size (further discussion below under proposed B6.2). The restriction concerning release or movement of hazardous and other substances proposed as part of proposed B3.3 was not included in these categorical exclusions in the final rule because the condition that proposals not disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products such that there would be uncontrolled or unpermitted releases is now an integral element of the classes of actions in appendix B under condition B.(3). (See additional discussion under section III F, above.)

Proposed B3.5 Research and Development Activities/Small Scale Testing at Existing Facility, Preceding Demonstration (Final B3.10)

One commenter asserted that this categorical exclusion, because of the inadequacy of proposed eligibility criteria, would exempt activities that have the potential to establish a precedent for future actions with significant effects or that represent a decision in principle about a future consideration. In response to this comment (and similar comments on other categorical exclusions), DOE has added section 1021.410(b)(3) to the final rule that clarifies that the Department will not categorically exclude a proposal if it involves segmentation.

The commenter noted that DOE has prepared EAs for research and development projects involving nonradioactive and nonhazardous materials, and was concerned that this categorical exclusion represented a step backward for DOE. DOE has modified this categorical exclusion in the final rule (B3.10) to clarify its intent (i.e., to include small-scale research and development projects and small-scale pilot projects) and has also narrowed the scope of the categorical exclusion to projects generally less than two years in duration.

The commenter misinterpreted the example for research to improve the capability or efficiency of existing accelerators as applying to accelerator upgrades, for which DOE would prepare an EA or EIS. The commenter also requested a change in the example concerning accelerator beams with insufficient energy to produce reactions. DOE believes the broad examples were misleading and has deleted them.

Proposed B4.1 New Electricity Transmission Agreements, System Operation Within Normal Operation Limits (Final B4.8)

DOE has modified this categorical exclusion in the final rule to clarify that the use of a transmission facility of one system to transfer power of and for another system is the only scope for categorically excluded new or modified transmission agreements. DOE deleted the phrase referring to normal operating limits because it was not necessary, and comments on other categorical exclusions (proposed A4.5 and A4.8) indicated its subjectivity.

Proposed B6.1 CERCLA Removals/Similar Actions Under RCRA or Other Authorities (Final B6.1)

A commenter requested that this categorical exclusion be explicitly restricted to situations involving small-scale removal operations or where there is a threat of a release. The categorical exclusion in the final rule states that DOE's categorically excluded removal actions will meet CERCLA regulatory cost and time limits (currently $2 million or 1 year from the time activities begin on site) or will satisfy one of two regulatory exemptions. Neither CERCLA nor EPA has set cost or time limits for exempted actions.

The same commenter also recommended that DOE include a period of time (e.g., one year) within which some exposure is expected to occur to qualify for the categorical exclusion. DOE does not believe that the timing of potential exposure from a release is a measure of the significance of impacts expected from cleaning up the release. EPA's National Contingency Plan and written guidance for removal actions do not present a limitation based on the period of time within which some exposure is likely.

Two other commenters requested that DOE address in Subpart D the level of NEPA review required for final corrective or remedial actions and other typical restoration activities, such as waste packaging and repackaging, onsite waste stabilization/ treatment, and bioremediation techniques. As DOE

gains experience in remediation, DOE may propose additions to the listings in subpart D.

A commenter stated that the removal of underground storage tanks (example (c) in the proposed and final rule) should not be categorically excluded, except in the case of the threat of a release, because tank removals are typically large actions and tanks are often used to store petroleum and its byproducts, which are exempted from RCRA review. DOE believes that tank removal that meets the criteria for this categorical exclusion can be appropriately excluded. DOE believes that its phrase concerning reduction of "the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination" is essentially the same as removing "the threat of a release." DOE will review individual activities to determine whether they present extraordinary circumstances such that there is potential for significant impacts on the human environment. (The commenter noted that DOE had removed "tanks" from the list of excluded containers in proposed example (b) (removal of bulk containers); DOE removed "tanks" to avoid overlap and confusion with proposed example (c), not to limit the scope of the categorical exclusion. DOE has not changed this terminology in the final rule.) In the final rule, however, DOE has included citations of applicable statutory and regulatory requirements in this example in response to a comment.

DOE has moved proposed example (p) (transportation, treatment, recovery, storage, or disposal of wastes at existing facilities) to the lead statement of the categorical exclusion to emphasize that these activities (part of any removal action) must occur at existing facilities. DOE did not include transportation in the lead statement of the categorical exclusion because the Department considers it an activity necessary to and included in the categorical exclusion (as discussed under § 1021.410(d)). A commenter was confused by a phrase in this example that concerned reducing the likelihood of human, animal, or food chain exposure, thinking that there would either be only rare opportunities for applying this categorical exclusion, or DOE would have to perform more extensive investigation of the potential exposures from its activities to qualify for the exemption. DOE did not include this confusing and unnecessary phrase in the lead statement of the categorical exclusion in the final rule.

Proposed B6.2 Siting/Construction/Operation of Temporary Pilot-Scale Waste Collection/Treatment Facilities (Final B6.2)

DOE has modified this categorical exclusion in the final rule to include other temporary pilot-scale waste management systems (i.e., stabilization and containment) that were proposed in B3.3 of the proposed rule. This categorical exclusion in the final rule has a one acre size restriction, rather than five acres, as in proposed B3.3. DOE has also modified this categorical exclusion in the final rule to include the scope of activities in proposed B3.1 (construction or renovation of facilities for sample analysis) to avoid inappropriate segmentation. (Also see the discussion under proposed B3.3.)

Proposed B6.3 Improvements to Environmental Control Systems (Final B6.3)

In response to a comment requesting clarification on whether work on outdoor systems was within the scope of the categorical exclusion, DOE has rewritten this categorical exclusion in the final rule for clarity and in so doing included a reference to systems "of" an existing building or structure rather than "within" a building or structure. Categorically excluded activities could include work on piping or duct work leading to a building or structure, but could not include new construction.

Proposed B6.4 Siting/Construction/Operation of Waste Storage Facility (not Transuranic, High Level) (Final C16, B6.4, B6.5 and B6.6)

Proposed B6.5 Modification (not expansion) of Existing Transuranic Waste Storage Facility (Final B6.6)

A commenter was concerned about the potential for long-term storage of waste under proposed B6.4. Two other commenters believed that there was no reasonable basis for DOE's distinction between waste storage facilities for transuranic (TRU) and non-TRU waste (other than high-level waste or spent nuclear fuel). One commenter noted that there are very likely certain hazardous or non-TRU mixed wastes that pose equal or greater dangers than TRU or TRU-mixed wastes. The commenter urged DOE to eliminate this unprincipled distinction and to prepare an EA for storage facilities for all the wastes listed in proposed B6.4 as well as for TRU wastes.

In response to these comments and the general comments that appendix B categorical exclusions are too broad, DOE has included in the final rule two categorical exclusions for waste storage and staging activities that are smaller in scope and that represent subsets of the originally proposed categorical exclusion (i.e., 90-day hazardous waste storage (final B6.4) and characterizing and sorting previously packaged waste or overpacking waste (final B6.5)).

DOE believes that it is appropriate to analyze the environmental impacts from waste handling (mainly worker exposure), the deterioration of containers during extended storage (which could result in environmental releases), and the establishment of and increases in storage capacity (because of, for example, general radiation from a given volume of waste or the potential for release of hazardous fumes, including explosive fumes, especially if there are accidental releases). Therefore, DOE has categorically excluded only those activities that do not involve direct handling of waste (packaging waste or opening waste containers) or establishing or increasing storage capacity, unless the storage time is quite limited (e.g., 90 days) or the volume of waste generated is very small (e.g., less than 1,000 kilograms in a calendar month).

DOE has modified proposed B6.5 (final B6.6) to address modification of existing structures for storage of wastes proposed to be categorically excluded in proposed B6.4. DOE also has modified proposed C10 (final C7) to address new structures for storage of wastes that had been proposed to be categorically excluded in proposed B6.4.

DOE did not follow another commenter's suggestion that the definition of hazardous waste also refer to applicable state and local regulations because DOE's citation is to a definition or designation of hazardous waste, not to regulations applicable to handling the waste.

Proposed B6.7 Relocation/Demolition/Disposal of Buildings (Final B1.22)

In the final rule, DOE has moved this categorical exclusion to section B1.22 (categorical exclusions applicable to facility operation). This was in response to a request to clarify whether the scope of the categorical exclusion was limited to environmental restoration and waste management, although DOE's division of appendix B is only for purposes of organization and is not limiting. DOE narrowed the scope of the categorical exclusion in the final rule by restricting the relocation of buildings to an already developed area where site utilities and roads are available.

Proposed B7.2 Retransfers of source, special nuclear, and byproduct materials (Not Included in the Final Rule)

DOE has not included proposed B7.2 in the final rule. As proposed the categorical exclusion did not involve transport within the United States or its territorial seas, and therefore these NEPA regulations would not apply to the retransfer actions. DOE actions having environmental effects outside the United States, its territories or possessions are subject to, as set forth in § 1021.102 of the final rule, Executive Order 12114, DOE's guidelines implementing that Order, and Department of State procedures.

Appendix C to Subpart D—Classes of Actions That Normally Require EAs but Not Necessarily EISs

Appendix D to Subpart D—Classes of Actions That Normally Require EISs

A commenter suggested that an item be added relating to research on the conservation of endangered, threatened, or proposed to be listed species. Another commenter requested that DOE consider including chemical, thermal, and other types of process pilot plants in appendix C.

DOE had listed only those classes of actions that are typical classes of actions for DOE (i.e., DOE proposes the type of action frequently) and for which DOE has enough experience to be reasonably confident that an EA will normally be the required level of NEPA review. Therefore, DOE has not added typical classes of actions to appendix C for research on endangered species or for additional process pilot plants.

Substantial changes to proposed Appendix C involved three classes of actions, two of which were modified in response to comments (C10 and C14) and one of which was not included in the final rule (C15) (discussed above under proposed B6.4 and below under proposed C10 and C15). Other minor changes were made in response to comments (discussed below under proposed C8 and C9) or for clarity.

Substantial changes to proposed appendix D involved two classes of action, one of which was not included in the final rule (discussed below under proposed D11) and one of which is new (in response to comments, as discussed below under proposed C10).

C8 Implementation of System-wide vegetation management program (Power Marketing Administrations) (Final C5).

C9 Implementation of System-wide Erosion control program (Power Marketing Administrations) (Final C6).

In response to a commenter's request, DOE clarified that the term "system-wide" in these classes of actions in the final rule refers to a program of general application regarding all the facilities of a power marketing administration.

C10 Long-term allocation of power (Final C7 and D7).

One commenter believes that long-term (five years or longer) power marketing contracts, policies, marketing plans, or allocation plans should normally be subject to review in an EIS. The commenter noted that two courts that have addressed this issue have determined that EISs were indeed necessary before implementing long-term marketing plans for major river basins. The commenter noted wide-ranging effects, from direct riverine effects (resulting from peak power generation to meet capacity commitments) to indirect effects on air quality and greenhouse gas emissions (that may result from Federal hydropower displacement of different forms of thermal power generation). This commenter added that, because Federal hydropower is generally inexpensive, its availability can reduce incentives for energy conservation. The commenter noted that Federal hydropower dams are some of the largest sources of hydropower generation in the country, contributing substantially to the overall mix of power generation in some regions, and that the long-term marketing plans for these facilities are usually developed on a comprehensive basis for many facilities in an entire river basin.

In response to this comment and comments on proposed A4.1, DOE has added conditions to the various power marketing agreements (i.e., contracts, policies, marketing plans, or allocation plans) to distinguish those that would normally require EAs but not necessarily EISs (final C7) from those that would normally require EISs, and has added a class of actions that normally requires an EIS (final D7). DOE normally will prepare an EIS for long-term (five years or longer) contracts, policies, marketing plans, or allocation plans when the DOE proposal involves adding a major new generation resource or service to a major new load or causes major changes in the operating parameters of power generation resources; otherwise, DOE normally will prepare an EA.

DOE does not consider power marketing actions with durations of five years or longer appropriate for a categorical exclusion because such actions have a duration exceeding the Bonneville Power Administration's normal multiyear planning process (promulgated in accordance with the Pacific Northwest Coordination Agreement), and, in the case of resource acquisitions, they would be inconsistent with the delineation of a "major" resource in the Northwest Power Act (that is, sections 3(12) and 6(c) of the act define resources of more than 50 megawatts acquired for more than 5 years as "major" and impose special procedures for such acquisitions). The Northwest Power Act also contains a size limit (50 average megawatts) above which a resource acquisition would be considered "major" if acquired for more than five years. This size limit is what DOE determined should differentiate between an EA and EIS relative to resource acquisitions.

C15 Siting/construction/operation of waste disposal facility in contaminated area (not TRU or high-level waste) (Not included in the final rule).

D11 Siting/construction/expansion of waste disposal facility in uncontaminated area (not transuranic or high-level waste) (Not included in the final rule).

Four commenters did not understand how DOE distinguished between EA and EIS levels of review on the basis of the presence or absence of previous contamination. One commenter pointed out that a disposal facility located in a contaminated area may not only add to existing contamination but could actually exacerbate its spread through physical means or its toxicity through synergistic chemical reactions. This commenter noted that impacts from the actual construction of a disposal site in a contaminated area are far more likely to be significant than at an uncontaminated site. This commenter urged DOE to include all siting, construction, and operation of waste disposal sites in appendix D.

Another commenter stated that to proceed as suggested by DOE's proposed rule provides an unwarranted "credit" for prior DOE environmental degradation and does not permit a true evaluation of significant environmental impacts and alternatives of the proposed action. Another commenter believed that nonhazardous solid waste disposal should be a class of action normally requiring an EA but not necessarily an EIS.

DOE has withdrawn the proposed listings and will determine the level of NEPA review required (EA or EIS level) on a case-by-case basis. DOE recognizes that there are many action- and site-specific circumstances that raise questions about the reasonableness of general listings at this time.

IV. Revocation of Existing Guidelines and Replacement of Regulations

On the effective date of this rule, May 26, 1992, DOE revokes the existing DOE NEPA Guidelines and revises the existing regulations at 10 CFR part 1021 by striking the current text and replacing it with this rule.

V. Environmental Review

Section D of the DOE NEPA Guidelines categorically excludes "promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended." This rule establishes and clarifies procedures for considering the environmental effects of DOE actions within its decisionmaking process, thereby enhancing compliance with the letter and spirit of NEPA, and therefore fits within this categorical exclusion. DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. Consequently, neither an EIS nor an EA is required for this rule. DOE will continue to examine individual actions to determine the appropriate level of NEPA review.

VI. Review Under Executive Order 12291

This rule has been reviewed in accordance with Executive Order 12291, which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, individuals, public or private organizations, or state and local governments. The Executive Order also requires that a regulatory impact analysis be prepared for a "major rule." The Executive Order defines "major rule" as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule amends and codifies already existing policies and procedures for compliance with NEPA. The rule contains no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or other similar actions, which are the areas where one might anticipate an economic effect. Therefore, DOE has determined that the incremental effect of today's rule will not have the magnitude of effects on the economy to bring this rule within the definition of a "major rule."

Pursuant to the Executive Order, this rule was submitted to the Office of Management and Budget for regulatory review.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and local governments. If the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The rulemaking to revoke DOE's NEPA Guidelines and revise 10 CFR part 1021 will not have any substantial direct effects on state and local governments within the meaning of the Executive Order. It will, however, allow states the opportunity to play a more significant role in DOE's NEPA process. This final rule will affect Federal NEPA compliance procedures, which are not subject to state regulation.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub.L. 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. The requirement (which appears in section 603 of the act) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This rule modifies existing policies and procedural requirements for DOE compliance with NEPA. It makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

IX. List of Subjects in 10 CFR Part 1021

Environmental assessment, environmental impact assessment, National Environmental Policy Act.

Issued in Washington, DC, April 16, 1992.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

For reasons set out in the preamble, 10 CFR part 1021 is revised to read as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Subpart A—General

Sec.

Subpart B—DOE Decisionmaking

Subpart C—Implementing Procedures

Subpart D—Typical Classes of Actions

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

Subpart A—General

§ 1021.100 Purpose.

The purpose of this part is to establish procedures that the Department of Energy (DOE) shall use to comply with section 102(2) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). This part supplements, and is to be used in conjunction with, the CEQ Regulations.

§ 1021.101 Policy.

It is DOE's policy to follow the letter and spirit of NEPA; comply fully with the CEQ Regulations; and apply the NEPA review process early in the planning stages for DOE proposals.

§ 1021.102 Applicability.

(a) This part applies to all organizational elements of DOE except the Federal Energy Regulatory Commission.

(b) This part applies to any DOE action affecting the quality of the environment of the United States, its territories or possessions. DOE actions having environmental effects outside the United States, its territories or possessions are subject to the provisions of Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions" (3 CFR, 1979 Comp., p. 356; 44 FR 1957, January 4, 1979), DOE guidelines implementing that Executive Order (46 FR 1007, January 5, 1981), and the Department of State's "Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114" (44 FR 65560, November 13, 1979).

§ 1021.103 Adoption of CEQ NEPA Regulations.

DOE adopts the regulations for implementing NEPA published by CEQ at 40 CFR parts 1500 through 1508.

§ 1021.104 Definitions.

(a) The definitions set forth in 40 CFR part 1508 are referenced and used in this part.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

Action means a project, program, plan, or policy, as discussed at 40 CFR 1508.18, that is subject to DOE's control and responsibility. Not included within this definition are purely ministerial actions with regard to which DOE has no discretion. For example, ministerial actions to implement congressionally mandated funding for actions not proposed by DOE and as to which DOE has no discretion (i.e., statutorily mandated, congressionally initiated "passthroughs").

Advance NOI means a formal public notice of DOE's intent to prepare an EIS, which is published in advance of an NOI in order to facilitate public involvement in the NEPA process.

American Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska native entity, which is recognized as eligible for the special programs or services provided by the United States because of their status as Indians.

Categorical exclusion means a category of actions, as defined at 40 CFR 1508.4 and listed in appendix A or B to subpart D of this part, for which neither an EA nor an EIS is normally required.

CEQ means the Council on Environmental Quality as defined at 40 CFR 1508.6.

CEQ Regulations means the regulations issued by CEQ (40 CFR parts 1500–1508) to implement the procedural provisions of NEPA.

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

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

Day means a calendar day.

DOE means the U.S. Department of Energy.

DOE proposal (or *proposal*) means a proposal, as discussed at 40 CFR 1508.23 (whether initiated by DOE, another Federal agency, or an applicant), for an action, if the proposal requires a DOE decision.

EA means an environmental assessment as defined at 40 CFR 1508.9.

EIS means an environmental impact statement as defined at 40 CFR 1508.11, or, unless this part specifically provides otherwise, a Supplemental EIS.

EIS Implementation Plan means a document that explains and supports the scope, target schedule, and approach DOE will use to prepare an EIS.

EPA means the U.S. Environmental Protection Agency.

FONSI means a Finding of No Significant Impact as defined at 40 CFR 1508.13.

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

Host state means a state within whose boundaries DOE proposes an action at an existing facility or construction or operation of a new facility.

Host tribe means an American Indian tribe within whose tribal lands DOE proposes an action at an existing facility or construction or operation of a new facility. For purposes of this definition, "tribal lands" means the area of "Indian country," as defined in 18 U.S.C. 1151, that is under the tribe's jurisdiction. That section defines Indian country as:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Interim action means an action concerning a proposal that is the subject of an ongoing EIS and that DOE proposes to take before the ROD is issued, and that is permissible under 40 CFR 1506.1: Limitations on actions during the NEPA process.

Mitigation Action Plan means a document that describes the plan for implementing commitments made in a DOE EIS and its associated ROD, or, when appropriate, an EA or FONSI, to mitigate adverse environmental impacts associated with an action.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

NEPA document means a DOE NOI, EIS, ROD, EA, FONSI, or any other document prepared pursuant to a requirement of NEPA or the CEQ Regulations.

NEPA review means the process used to comply with section 102(2) of NEPA.

NOI means a Notice of Intent to prepare an EIS as defined at 40 CFR 1508.22.

Notice of Availability means a formal notice, published in the **Federal Register**, that announces the issuance and public availability of a draft or final EIS. The EPA Notice of Availability is the official public notification of an EIS; a DOE Notice of Availability is an optional notice used to provide information to the public.

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

Program means a sequence of connected or related DOE actions or projects as discussed at 40 CFR 1508.18(b)(3) and 1508.25(a).

Programmatic NEPA document means a broad-scope EIS or EA that identifies and assesses the environmental impacts of a DOE program; it may also refer to an associated NEPA document, such as an NOI, ROD, or FONSI.

Project means a specific DOE undertaking including actions approved by permit or other regulatory decision as well as Federal and federally assisted activities, which may include design, construction, and operation of an individual facility; research, development, demonstration, and testing for a process or product; funding for a facility, process, or product; or similar activities, as discussed at 40 CFR 1508.18(b)(4).

ROD means a Record of Decision as described at 40 CFR 1505.2.

Scoping means the process described at 40 CFR 1501.7; "public scoping process" refers to that portion of the scoping process where the public is invited to participate, as described at 40 CFR 1501.7 (a)(1) and (b)(4).

Site-wide NEPA document means a broad-scope EIS or EA that is programmatic in nature and identifies and assesses the individual and cumulative impacts of ongoing and reasonably foreseeable future actions at a DOE site; it may also refer to an associated NEPA document, such as an NOI, ROD, or FONSI.

Supplement Analysis means a DOE document used to determine whether a supplemental EIS should be prepared pursuant to 40 CFR 1502.9(c), or to support a decision to prepare a new EIS.

Supplemental EIS means an EIS prepared to supplement a prior EIS as provided at 40 CFR 1502.9(c).

The Secretary means the Secretary of Energy.

§ 1021.105 Oversight of Agency NEPA activities.

The Assistant Secretary for Environment, Safety and Health, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA process and the status of individual NEPA reviews may be obtained upon request from the Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Subpart B—DOE Decisionmaking

§ 1021.200 DOE planning.

(a) DOE shall provide for adequate and timely NEPA review of DOE proposals, including those for programs, policies, projects, regulations, orders, or legislation, in accordance with 40 CFR 1501.2 and this section. In its planning for each proposal, DOE shall include adequate time and funding for proper NEPA review and for preparation of anticipated NEPA documents.

(b) DOE shall begin its NEPA review as soon as possible after the time that DOE proposes an action or is presented with a proposal.

(c) DOE shall determine the level of NEPA review required for a proposal in accordance with § 1021.300 and subpart D of this part.

(d) During the development and consideration of a DOE proposal, DOE shall review any relevant planning and decisionmaking documents, whether prepared by DOE or another agency, to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, DOE shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR 1506.3.

§ 1021.210 DOE decisionmaking.

(a) For each DOE proposal, DOE shall coordinate its NEPA review with its decisionmaking. Sections 1021.211 through 1021.214 of this part specify how DOE will coordinate its NEPA review with decision points for certain types of proposals (40 CFR 1505.1(b)).

(b) DOE shall complete its NEPA review for each DOE proposal before making a decision on the proposal (e.g., normally in advance of, and for use in reaching, a decision to proceed with detailed design), except as provided in 40 CFR 1506.1 and §§ 1021.211 and 1021.216 of this part.

(c) During the decisionmaking process for each DOE proposal, DOE shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of its consideration of the proposal (40 CFR 1505.1(d)) and shall include such documents, comments, and responses as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS or EA is prepared for a DOE proposal, DOE shall consider the alternatives analyzed in that EIS or EA before rendering a decision on that proposal; the decision on the proposal shall be within the range of alternatives analyzed in the EA or EIS (40 CFR 1505.1(e)).

(e) When DOE uses a broad decision (such as one on a policy or program) as a basis for a subsequent narrower decision (such as one on a project or other site-specific proposal), DOE may use tiering (40 CFR 1502.20) and incorporation of material by reference (40 CFR 1502.21) in the NEPA review for the subsequent narrower proposal.

§ 1021.211 Interim actions: Limitations on actions during the NEPA process.

While DOE is preparing an EIS that is required under § 1021.300(a) of this part, DOE shall take no action concerning the proposal that is the subject of the EIS before issuing an ROD, except as provided at 40 CFR 1506.1. Actions that are covered by, or are a part of, a DOE proposal for which an EIS is being prepared shall not be categorically excluded under subpart D of these regulations unless they qualify as interim actions under 40 CFR 1506.1.

§ 1021.212 Research, development, demonstration, and testing.

(a) This section applies to the adoption and application of programs that involve research, development, demonstration, and testing for new technologies (40 CFR 1502.4(c)(3)). Adoption of such programs might also lead to commercialization or other broad-scale implementation by DOE or another entity.

(b) For any proposed program described in paragraph (a) of this section, DOE shall begin its NEPA review (if otherwise required by this part) as soon as environmental effects can be meaningfully evaluated, and before DOE has reached the level of investment or commitment likely to determine subsequent development or restrict later alternatives, as discussed at 40 CFR 1502.4(c)(3).

(c) For subsequent phases of development and application, DOE shall prepare one or more additional NEPA documents (if otherwise required by this part).

§ 1021.213 Rulemaking.

(a) This section applies to regulations promulgated by DOE.

(b) DOE shall begin its NEPA review of a proposed rule (if otherwise required by this part) while drafting the proposed regulation, and as soon as environmental effects can be meaningfully evaluated.

(c) DOE shall include any relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS is required, DOE will normally publish the draft EIS at the time it publishes the proposed rule (40 CFR 1502.5(d)). DOE will normally combine any public hearings required for a proposed rule with the public hearings required on the draft EIS under § 1021.313 of this part. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking that DOE may use to gather information during early stages of regulation development. When engaged in rulemaking for the purpose of protecting the public health and safety, DOE may issue the final rule simultaneously with publication of the EPA Notice of Availability of the final EIS in accordance with 40 CFR 1506.10(b).

(e) If an EA is required, DOE will normally complete the EA and issue any related FONSI prior to or simultaneously with issuance of the proposed rule; however, if the EA leads to preparation of an EIS, the provisions of paragraph (d) of this section shall apply.

§ 1021.214 Adjudicatory proceedings.

(a) This section applies to DOE proposed actions that involve DOE adjudicatory proceedings, excluding judicial or administrative civil or criminal enforcement actions.

(b) DOE shall complete its NEPA review (if otherwise required by this part) before rendering any final adjudicatory decision. If an EIS is required, the final EIS will normally be completed at the time of or before final staff recommendation, in accordance with 40 CFR 1502.5(c).

(c) DOE shall include any relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

§ 1021.215 Applicant process.

(a) This section applies to actions that involve application to DOE for a permit, license, exemption or allocation, or other similar actions, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) The applicant shall:

(1) Consult with DOE as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that DOE may require to be submitted as part of, or in support of, the application;

(2) Conduct studies that DOE deems necessary and appropriate to determine the environmental impacts of the proposed action;

(3) Consult with appropriate Federal, state, regional and local agencies, American Indian tribes and other potentially interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements;

(4) Notify DOE as early as possible of other Federal, state, regional, local or American Indian tribal actions required for project completion to allow DOE to coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2 regarding elimination of duplication with state and local procedures, as appropriate;

(5) Notify DOE of private entities and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2); and

(6) Notify DOE if, before DOE completes the environmental review, the applicant plans to take an action that is within DOE's jurisdiction that may have an adverse environmental impact or limit the choice of alternatives. If DOE determines that the action would have an adverse environmental impact or would limit the choice of reasonable alternatives under 40 CFR 1506.1(a), DOE will promptly notify the applicant that DOE will take appropriate action to ensure that the objectives and procedures of NEPA are achieved in accordance with 40 CFR 1506.1(b).

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide.

(d) DOE shall begin its NEPA review (if otherwise required by this part) as soon as possible after receiving an application described in paragraph (a) of this section, and shall independently evaluate and verify the accuracy of information received from an applicant in accordance with 40 CFR 1506.5(a). At DOE's option, an applicant may prepare an EA in accordance with 40 CFR 1506.5(b). If an EIS is prepared, the EIS shall be prepared by DOE or by a contractor that is selected by DOE and that may be funded by the applicant, in accordance with 40 CFR 1506.5(c). The contractor shall provide a disclosure statement in accordance with 40 CFR 1506.5(c), as discussed in § 1021.312(b)(4) of this part. DOE shall complete any NEPA documents (or evaluation of any EA prepared by the applicant) before rendering a final decision on the application and shall consider the NEPA document in reaching its decision, as provided in § 1021.210 of this part.

§ 1021.216 Procurement, Financial Assistance, and Joint Ventures.

(a) This section applies to DOE competitive and limited-source procurements, to awards of financial assistance by a competitive process, and to joint ventures entered into as a result of competitive solicitations, unless the action is categorically excluded from preparation of an EA or EIS under Subpart D of this part. Paragraphs (b), (c), and (i) of this section apply as well to DOE sole-source procurements of sites, systems, or processes, to noncompetitive awards of financial assistance, and to sole-source joint ventures, unless the action is categorically excluded from preparation of an EA or EIS under Subpart D of this part.

(b) When relevant in DOE's judgment, DOE shall require that offeror's submit environmental data and analyses as a discrete part of the offeror's proposal. DOE shall specify in its solicitation document the type of information and level of detail for environmental data and analyses so required. The data will be limited to those reasonably available to offerors.

(c) DOE shall independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(d) For offers in the competitive range, DOE shall prepare and consider an environmental critique before the selection.

(e) The environmental critique will be subject to the confidentiality requirements of the procurement process.

(f) The environmental critique will evaluate the environmental data and analyses submitted by offerors; it may also evaluate supplemental information developed by DOE as necessary for a reasoned decision.

(g) The environmental critique will focus on environmental issues that are

pertinent to a decision on proposals and will include:

(1) A brief discussion of the purpose of the procurement and each offer, including any site, system, or process variations among the offers having environmental implications;

(2) A discussion of the salient characteristics of each offeror's proposed site, system, or process as well as alternative sites, systems, or processes;

(3) A brief comparative evaluation of the potential environmental impacts of the offers, which will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects that cannot be avoided, areas where important environmental information is incomplete and unavailable, unresolved environmental issues and practicable mitigating measures not included in the offeror's proposal; and

(4) To the extent known for each offer, a list of Federal, Tribal, state, and local government permits, licenses, and approvals that must be obtained.

(h) DOE shall prepare a publicly available environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The synopsis will not contain business, confidential, trade secret or other information that DOE otherwise would not disclose pursuant to 18 U.S.C. 1905, the confidentiality requirements of the competitive procurement process, 5 U.S.C. 552(b) and 41 U.S.C. 423. To assure compliance with this requirement, the synopsis will not contain data or other information that may in any way reveal the identity of offerors. After a selection has been made, the environmental synopsis shall be filed with EPA, shall be made publicly available, and shall be incorporated in any NEPA document prepared under paragraph (i) of this section.

(i) If an EA or EIS is required, DOE shall prepare, consider and publish the EA or EIS in conformance with the CEQ Regulations and other provisions of this part before taking any action pursuant to the contract or award of financial assistance (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). If the NEPA process is not completed before the award of the contract, financial assistance, or joint venture, then the contract, financial assistance, or joint venture shall be contingent on completion of the NEPA process (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). DOE shall phase subsequent contract work to allow the NEPA review process to be completed in advance of a go/no-go decision.

Subpart C—Implementing Procedures

§ 1021.300 General requirements.

(a) DOE shall determine, under the procedures in the CEQ Regulations and this part, whether any DOE proposal:

(1) Requires preparation of an EIS;

(2) Requires preparation of an EA; or

(3) Is categorically excluded from preparation of either an EIS or an EA.

DOE shall prepare any pertinent documents as required by NEPA, the CEQ Regulations, or this part.

(b) Notwithstanding any other provision of these regulations, DOE may prepare a NEPA document for any DOE action at any time in order to further the purposes of NEPA. This may be done to analyze the consequences of ongoing activities, support DOE planning, assess the need for mitigation, fully disclose the potential environmental consequences of DOE actions, or for any other reason. Documents prepared under this paragraph shall be prepared in the same manner as DOE documents prepared under paragraph (a) of this section.

§ 1021.301 Agency review and public participation.

(a) DOE shall make its NEPA documents available to other Federal agencies, states, local governments, American Indian tribes, interested groups, and the general public, in accordance with 40 CFR 1506.6, except as provided in § 1021.340 of this part.

(b) Wherever feasible, DOE NEPA documents shall explain technical, scientific, or military terms or measurements using terms familiar to the general public, in accordance with 40 CFR 1502.8.

(c) DOE shall notify the host state and host tribe of a DOE determination to prepare an EA or EIS for a DOE proposal, and may notify any other state or American Indian tribe that, in DOE's judgment, may be affected by the proposal.

(d) DOE shall provide the host state and host tribe with an opportunity to review and comment on any DOE EA prior to DOE's approval of the EA. DOE may also provide any other state or American Indian tribe with the same opportunity if, in DOE's judgment, the state or tribe may be affected by the proposed action. At DOE's discretion, this review period shall be from 14 to 30 days. DOE shall consider all comments received from a state or tribe during the review period before approving or modifying the EA, as appropriate. If all states and tribes afforded this opportunity for preapproval review waive such opportunity, or provide a response before the end of the comment period, DOE may proceed to approve or take other appropriate action on the EA before the end of the review period.

(e) Paragraphs (c) and (d) of this section shall not apply to power marketing actions, such as rate-setting, in which a state or American Indian tribe is a customer, or to any other circumstances where DOE determines that such advance information could create a conflict of interest.

§ 1021.310 Environmental impact statements.

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart.

§ 1021.311 Notice of intent and scoping.

(a) DOE shall publish an NOI in the **Federal Register** in accordance with 40 CFR 1501.7 and containing the elements specified in 40 CFR 1508.22 as soon as practicable after a decision is made to prepare an EIS. However, if there will be a lengthy period of time between its decision to prepare an EIS and the time of actual preparation, DOE may defer publication of the NOI until a reasonable time before preparing the EIS, provided that DOE allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, DOE shall invite comments and suggestions on the scope of the EIS. DOE shall disseminate the NOI in accordance with 40 CFR 1506.6.

(b) If there will be a lengthy delay between the time DOE has decided to prepare an EIS and the beginning of the public scoping process, DOE may publish an Advance NOI in the **Federal Register** to provide an early opportunity to inform interested parties of the pending EIS or to solicit early public comments. This Advance NOI does not serve as a substitute for the NOI provided for in paragraph (a) of this section.

(c) Publication of the NOI in the **Federal Register** shall begin the public scoping process. The public scoping process for a DOE EIS shall allow a minimum of 30 days for the receipt of public comments.

(d) Except as provided in paragraph (g) of this section, DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. DOE shall announce the location, date, and time of public scoping meetings in the NOI or by other

appropriate means, such as additional notices in the **Federal Register**, news releases to the local media, or letters to affected parties. Public scoping meetings shall not be held until at least 15 days after public notification. Should DOE change the location, date, or time of a public scoping meeting, or schedule additional public scoping meetings, DOE shall publicize these changes in the **Federal Register** or in other ways as appropriate.

(e) In determining the scope of the EIS, DOE shall consider all comments received during the announced comment period held as part of the public scoping process. DOE may also consider comments received after the close of the announced comment period.

(f) The results of the scoping process shall be documented in the EIS Implementation Plan as provided in § 1021.312 of this part.

(g) A public scoping process is optional for DOE supplemental EISs (40 CFR 1502.9(c)(4)). If DOE initiates a public scoping process for a supplemental EIS, the provisions of paragraphs (a) through (f) of this section shall apply.

§ 1021.312 EIS implementation plan.

(a) DOE shall prepare an EIS Implementation Plan to provide guidance for the preparation of an EIS and record the results of the scoping process. DOE shall complete the EIS Implementation Plan as soon as possible after the close of the public scoping process, but in any event before issuing the draft EIS. DOE may amend the EIS Implementation Plan to incorporate changes in schedules, alternatives, or other content.

(b) The EIS Implementation Plan shall include:

(1) A statement of the planned scope and content of the EIS;

(2) The purpose and need for the proposed action;

(3) A description of the scoping process and the results (as needed to document DOE compliance with 40 CFR 1501.7), including a summary of comments received and their disposition;

(4) Target schedules;

(5) Anticipated consultation with other agencies; and

(6) A disclosure statement executed by any contractor (or subcontractor) under contract with DOE to prepare the EIS document in accordance with 40 CFR 1506.5(c).

(c) At DOE's option, the Implementation Plan may include target page limits for the EIS, planned work assignments, anticipated consultation with other organizations, or any other information to support the approach to be used in preparing the EIS.

(d) DOE shall make the EIS Implementation Plan and any formal revisions available to the public for information. DOE shall make copies available for inspection in the appropriate DOE public reading room(s) or other appropriate location(s) for a reasonable time. Copies of these documents shall also be provided upon written request.

§ 1021.313 Public review of environmental impact statements.

(a) The public review and comment period on a DOE draft EIS shall be no less than 45 days (40 CFR 1506.10(c)). The public comment period begins when EPA publishes a Notice of Availability of the document in the **Federal Register**.

(b) DOE shall hold at least one public hearing on DOE draft EISs. Such public hearings shall be announced at least 15 days in advance. The announcement shall identify the subject of the draft EIS and include the location, date, and time of the public hearings.

(c) DOE shall prepare a final EIS following the public comment period and hearings on the draft EIS. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided at 40 CFR 1503.4. In addition to the requirements at 40 CFR 1502.9(b), a DOE final EIS shall include any Statement of Findings required by 10 CFR part 1022, "Compliance with Floodplain/Wetlands Environmental Review Requirements."

(d) DOE shall use appropriate means to publicize the availability of draft and final EISs and the time and place for public hearings on a draft EIS. The methods chosen should focus on reaching persons who may be interested in or affected by the proposal and may include the methods listed in 40 CFR 1506.6(b)(3).

§ 1021.314 Supplemental environmental impact statements.

(a) DOE shall prepare a supplemental EIS if there are substantial changes to the proposal or significant new circumstances or information relevant to environmental concerns, as discussed in 40 CFR 1502.9(c)(1).

(b) DOE may supplement a draft EIS or final EIS at any time, to further the purposes of NEPA, in accordance with 40 CFR 1502.9(c)(2).

(c) When it is unclear whether or not an EIS supplement is required, DOE shall prepare a Supplement Analysis.

(1) The Supplement Analysis shall discuss the circumstances that are pertinent to deciding whether to prepare a supplemental EIS, pursuant to 40 CFR 1502.9(c).

(2) The Supplement Analysis shall contain sufficient information for DOE to determine whether:

(i) An existing EIS should be supplemented;

(ii) A new EIS should be prepared; or

(iii) No further NEPA documentation is required.

(3) DOE shall make the determination and the related Supplement Analysis available to the public for information. Copies of the determination and Supplement Analysis shall be provided upon written request. DOE shall make copies available for inspection in the appropriate DOE public reading room(s) or other appropriate location(s) for a reasonable time.

(d) DOE shall prepare, circulate, and file a supplement to a draft or final EIS in the same manner as any other draft and final EISs, except that scoping is optional for a supplement. If DOE decides to take action on a proposal covered by a supplemental EIS, DOE shall prepare a ROD in accordance with the provisions of § 1021.315 of this part.

(e) When applicable, DOE will incorporate an EIS supplement, or the determination and supporting Supplement Analysis made under paragraph (c) of this section, into any related formal administrative record on the action that is the subject of the EIS supplement or determination (40 CFR 1502.9(c)(3)).

§ 1021.315 Records of decision.

(a) No decision may be made on a proposal covered by an EIS during a 30-day "waiting period" following completion of the final EIS, except as provided at 40 CFR 1506.1 and 1506.10(b) and § 1021.211 of this part. The 30-day period starts when the EPA Notice of Availability for the final EIS is published in the **Federal Register**.

(b) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). No action shall be taken until the decision has been made public.

(c) DOE RODs shall be published in the **Federal Register** and made available to the public as specified in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c) and § 1021.340 of this part.

(d) DOE may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD is subject to the provisions of paragraphs (b) and (c) of this section.

§ 1021.320 Environmental assessments.

DOE shall prepare and circulate EAs and related FONSIs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart.

§ 1021.321 Requirements for environmental assessments.

(a) *When to prepare an EA.* As required by 40 CFR 1501.4(b), DOE shall prepare an EA for a proposed DOE action that is described in the classes of actions listed in appendix C to subpart D of this part, and for a proposed DOE action that is not described in any of the classes of actions listed in appendices A, B, or D to subpart D, except that an EA is not required if DOE has decided to prepare an EIS. DOE may prepare an EA on any action at any time in order to assist agency planning and decisionmaking.

(b) *Purposes.* A DOE EA shall serve the purposes identified in 40 CFR 1508.9(a), which include providing sufficient evidence and analysis for determining whether to prepare an EIS or to issue a FONSI. If appropriate, a DOE EA shall also include any floodplain/wetlands assessment prepared under 10 CFR part 1022 and may include analyses needed for other environmental determinations.

(c) *Content.* A DOE EA shall comply with the requirements found at 40 CFR 1508.9. In addition to any other alternatives, DOE shall assess the no action alternative in an EA, even when the proposed action is specifically required by legislation or a court order.

§ 1021.322 Findings of no significant impact.

(a) DOE shall prepare a FONSI only if the related EA supports the finding that the proposed action will not have a significant effect on the human environment. If a required DOE EA does not support a FONSI, DOE shall prepare an EIS and issue a ROD before taking action on the proposal addressed by the EA, except as permitted under 40 CFR 1506.1 and § 1021.211 of this part.

(b) In addition to the requirements found at 40 CFR 1508.13, a DOE FONSI shall include the following:

(1) A summary of the supporting EA, including a brief description of the proposed action and alternatives considered in the EA, environmental factors considered, and projected impacts;

(2) Any commitments to mitigations that are essential to render the impacts of the proposed action not significant, beyond those mitigations that are integral elements of the proposed action, and a reference to the Mitigation Action Plan prepared under § 1021.331 of this part;

(3) Any "Statement of Findings" required by 10 CFR Part 1022, "Compliance with Floodplain/Wetlands Environmental Review Requirements";

(4) The date of issuance; and

(5) The signature of the DOE approving official.

(c) DOE shall make FONSIs available to the public as provided at 40 CFR 1501.4(e)(1) and 1506.6; DOE shall make copies available for inspection in the appropriate DOE public reading room(s) or other appropriate location(s) for a reasonable time.

(d) DOE shall issue a proposed FONSI for public review and comment before making a final determination on the FONSI if required by 40 CFR 1501.4(e)(2); DOE may issue a proposed FONSI for public review and comment in other situations as well.

(e) Upon issuance of the FONSI, DOE may proceed with the proposed action subject to any mitigation commitments expressed in the FONSI that are essential to render the impacts of the proposed action not significant.

(f) DOE may revise a FONSI at any time, so long as the revision is supported by an existing EA. A revised FONSI is subject to all provisions of paragraph (d) of this section.

§ 1021.330 Programmatic (including Site-wide) NEPA documents

(a) When required to support a DOE programmatic decision (40 CFR 1508.18(b)(3)), DOE shall prepare a programmatic EIS or EA (40 CFR 1502.4). DOE may also prepare a programmatic EIS or EA at any time to further the purposes of NEPA.

(b) A DOE programmatic NEPA document shall be prepared, issued, and circulated in accordance with the requirements for any other NEPA document, as established by the CEQ Regulations and this part.

(c) As a matter of policy when not otherwise required, DOE shall prepare site-wide EISs for certain large, multiple-facility DOE sites; DOE may prepare EISs or EAs for other sites to assess the impacts of all or selected functions at those sites.

(d) DOE shall evaluate site wide NEPA documents prepared under § 1021.330(c) at least every five years. DOE shall evaluate site-wide EISs by means of a Supplement Analysis, as provided in § 1021.314. Based on the Supplement Analysis, DOE shall determine whether the existing EIS remains adequate or whether to prepare a new site-wide EIS or supplement the existing EIS, as appropriate. The determination and supporting analysis shall be made available in the appropriate DOE public reading room(s) or in other appropriate location(s) for a reasonable time.

(e) DOE shall evaluate site-wide EAs by means of an analysis similar to the Supplement Analysis to determine whether the existing site-wide EA remains adequate, whether to prepare a new site-wide EA, revise the FONSI, or prepare a site wide EIS, as appropriate. The determination and supporting analysis shall be made available in the appropriate DOE public reading room(s) or in other appropriate location(s) for a reasonable time.

§ 1021.331 Mitigation action plans.

(a) Following completion of each EIS and its associated ROD, DOE shall prepare a Mitigation Action Plan that addresses mitigation commitments expressed in the ROD. The Mitigation Action Plan shall explain how the corresponding mitigation measures, designed to mitigate adverse environmental impacts associated with the course of action directed by the ROD, will be planned and implemented. The Mitigation Action Plan shall be prepared before DOE takes any action directed by the ROD that is the subject of a mitigation commitment.

(b) In certain circumstances, as specified in § 1021.322(b)(2), DOE shall also prepare a Mitigation Action Plan for commitments to mitigations that are essential to render the impacts of the proposed action not significant. The Mitigation Action Plan shall address all commitments to such necessary mitigations and explain how mitigation will be planned and implemented. The Mitigation Action Plan shall be prepared before the FONSI is issued and shall be referenced therein.

(c) Each Mitigation Action Plan shall be as complete as possible, commensurate with the information available regarding the course of action either directed by the ROD or the action to be covered by the FONSI, as appropriate. DOE may revise the Plan as more specific and detailed information becomes available.

(d) DOE shall make copies of the Mitigation Action Plans available for inspection in the appropriate DOE public reading room(s) or other appropriate location(s) for a reasonable time. Copies of the Mitigation Action Plans shall also be available upon written request.

§ 1021.340 Classified, confidential, and otherwise exempt information.

(a) Notwithstanding other sections of this part, DOE shall not disclose

classified, confidential, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552) and 10 CFR 1004.10(b) of DOE's regulations implementing the FOIA, except as provided by 40 CFR 1506.6(f).

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

(c) If exempt information cannot be segregated, or if segregation would leave essentially meaningless material, DOE shall withhold the entire NEPA document from the public; however, DOE shall prepare the NEPA document, in accordance with the CEQ Regulations and this part, and use it in DOE decisionmaking.

§ 1021.341 Coordination with other environmental review requirements.

(a) In accordance with 40 CFR 1500.4(k) and (o), 1502.25, and 1506.4, DOE shall integrate the NEPA process and coordinate NEPA compliance with other environmental review requirements to the fullest extent possible.

(b) To the extent possible, DOE shall determine the applicability of other environmental requirements early in the planning process, in consultation with other agencies when necessary or appropriate, to ensure compliance and to avoid delays, and shall incorporate any relevant requirements as early in the NEPA review process as possible.

§ 1021.342 Interagency cooperation.

For DOE programs that involve another Federal agency or agencies in related decisions subject to NEPA, DOE will comply with the requirements of 40 CFR 1501.5 and 1501.6. As part of this process, DOE shall cooperate with the other agencies in developing environmental information and in determining whether a proposal requires preparation of an EIS or EA, or can be categorically excluded from preparation of either. Further, where appropriate and acceptable to the other agencies, DOE shall develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

§ 1021.343 Variances.

(a) *Emergency Actions.* DOE may take an action without observing all provisions of this part or the CEQ Regulations, in accordance with 40 CFR 1506.11, in emergency situations that demand immediate action. DOE shall consult with CEQ as soon as possible regarding alternative arrangements for emergency actions having significant environmental impacts. DOE shall document, including publishing a notice in the **Federal Register**, emergency actions covered by this paragraph within 30 days after such action occurs; this documentation shall identify any adverse impacts from the actions taken, further mitigation necessary, and any NEPA documents that may be required.

(b) *Reduction of Time Periods.* On a case-by-case basis, DOE may reduce time periods established in this part that are not required by the CEQ Regulations. If DOE determines that such reduction is necessary, DOE shall publish a notice in the **Federal Register** specifying the revised time periods and the rationale for the reduction.

(c) *Other.* Any variance from the requirements of this part, other than as provided by paragraphs (a) and (b) of this section, must be soundly based on the interests of national security or the public health, safety, or welfare and must have the advance written approval of the Secretary; however, the Secretary is not authorized to waive or grant a variance from any requirement of the CEQ Regulations (except as provided for in those regulations). If the Secretary determines that a variance from the requirements of this part is within his/her authority to grant and is necessary, DOE shall publish a notice in the **Federal Register** specifying the variance granted and the reasons.

Subpart D—Typical Classes of Actions

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document) (appendices A and B to this subpart D);

(2) Require preparation of an EA, but not necessarily an EIS (appendix C to this subpart D); or

(3) Require preparation of an EIS (appendix D to this subpart D).

(b) Any completed, valid NEPA review does not have to be repeated, and no completed NEPA documents need to be redone by reasons of these regulations, except as provided in § 1021.314.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless there are extraordinary circumstances related to the specific proposal that may affect the significance of the environmental effects of the proposal.

(d) If a DOE proposal is not encompassed within the classes of actions listed in the appendices to this subpart D, or if there are extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal, DOE shall either:

(1) Prepare an EA and, on the basis of that EA, determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) The actions listed in appendices A and B to this subpart D are classes of actions that DOE has determined do not individually or cumulatively have a significant effect on the human environment (categorical exclusions).

(b) To find that a proposal is categorically excluded, DOE shall determine the following:

(1) The proposal fits within a class of actions that is listed in appendix A or B to this subpart D;

(2) There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Extraordinary circumstances are unique situations presented by specific proposals, such as scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; or unresolved conflicts concerning alternate uses of available resources within the meaning of section 102(2)(E) of NEPA; and

(3) The proposal is not "connected" (40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts, is not related to other proposed actions with cumulatively significant impacts (40 CFR 1508.25(a)(2)), and is not precluded by 40 CFR 1506.1 or § 1021.211 of this part.

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

(d) A class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as associated transportation activities and award of implementing grants and contracts).

Appendix A to Subpart D—Categorical Exclusions Applicable to General Agency Actions

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A1 Routine actions necessary to support the normal conduct of agency business, such as administrative, financial, and personnel actions.

A2 Contract interpretations, amendments, and modifications that are clarifying or administrative in nature.

A3 Adjustments, exceptions, exemptions, appeals, and stays, modifications, or rescissions of orders issued by the Office of Hearings and Appeals.

A4 Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

A5 Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

A6 Rulemakings that are strictly procedural, such as rulemaking (under 48 CFR part 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.

A7 Transfer, lease, disposition, or acquisition of interests in property, if property use is to remain unchanged.

A8 Award of contracts for technical support services, management and operation of a government-owned facility, and personal services.

A9 Information gathering (including, but not limited to, literature surveys, inventories, audits), data analysis (including computer modelling), document preparation (such as conceptual design or feasibility studies, analytical energy supply and demand studies), and dissemination (including, but not limited to, document mailings, publication, and distribution; and classroom training and informational programs), but not including site characterization or environmental monitoring. (Also see B3.1.)

A10 Reports or recommendations on legislation or rulemaking that is not proposed by DOE.

A11 Technical advice and planning assistance to international, national, state, and local organizations.

A12 Emergency preparedness planning activities, including the designation of onsite evacuation routes.

A13 Administrative, organizational, or procedural Orders, Notices, and guidelines.

A14 Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations, including, but not limited to, assistance in identifying and analyzing another country's energy resources, needs and options.

A15 Approval of DOE participation in international "umbrella" agreements for cooperation in energy research and development activities that would not commit the U.S. to any specific projects or activities.

Appendix B to Subpart D—Categorical Exclusions Applicable to Specific Agency Actions

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B4.8 New electricity transmission agreements for transfer of power
B4.9 Multiple use of DOE transmission line rights-of-way
B4.10 Dismantling and removal of transmission lines
B4.11 Construction or modification of substations
B4.12 Construction of tap lines (less than 10 miles in length), not integrating major new sources
B4.13 Minor relocations of existing transmission lines (less than 10 miles in length)
B5 Categorical exclusions applicable to conservation, fossil, and renewable energy activities
B5.1 Actions to conserve energy
B5.2 Modifications to oil/gas/geothermal pumps and piping
B5.3 Modification (not expansion)/abandonment of oil storage access/brine injection/geothermal wells, not part of site closure
B5.4 Repair/replacement of sections of pipeline within maintenance provisions
B5.5 Construction/operation of short crude oil/geothermal pipeline segments
B5.6 Oil spill cleanup operations
B5.7 Import/export natural gas, no new construction
B5.8 Import/export natural gas, new cogeneration powerplant
B5.9 Temporary exemption for electric powerplant, fuel-burning installation
B5.10 Certain permanent exemptions for electric powerplant, fuel-burning installation
B5.11 Permanent exemption for mixed natural gas and petroleum
B5.12 Permanent exemption for new peak-load powerplant
B5.13 Permanent exemption for emergency operations
B5.14 Permanent exemption for meeting scheduled equipment outages
B5.15 Permanent exemption due to lack of alternative fuel supply
B5.16 Permanent exemption for new cogeneration powerplant
B6 Categorical exclusions applicable to environmental restoration and waste management activities
B6.1 CERCLA removals/similar actions under RCRA or other authorities, meeting CERCLA cost/time limits or exemptions
B6.2 Siting/construction/operation of pilot-scale waste collection/treatment/stabilization/containment facilities
B6.3 Improvements to environmental control systems
B6.4 Siting/construction/operation/decommissioning of facility for storing packaged hazardous waste for 90 days or less
B6.5 Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste (not high-level, spent nuclear fuel)
B6.6 Modification of facility for storing, packaging, repacking waste (not high-level, spent nuclear fuel)
B6.7 Granting/denying petitions for allocation of commercial disposal capacity
B6.8 Modifications for waste minimization/reuse of materials
B7 Categorical exclusions applicable to international activities
B7.1 Emergency measures under the International Energy Program
B7.2 Import/export of special nuclear or isotopic materials

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

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

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, and groundwater);

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or

(4) Adversely affect environmentally sensitive resources. An action may be categorically excluded if, although sensitive resources are present on a site, the action would not adversely affect those resources (e.g., construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally- proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat;

(iii) Floodplains and wetlands;

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

(v) Prime agricultural lands;

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

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

B1. *Categorical Exclusions Applicable to Facility Operation*

B1.1 Rate increases for products or services marketed by parts of DOE other than Power Marketing Administrations and approval of rate increases for non-DOE entities that do not exceed the change in the overall price level in the economy (inflation), as measured by the Gross National Product (GNP) fixed weight price index published by the Department of Commerce, during the period since the last rate increase. (Also see B4.3.)

B1.2 Training exercises and simulations (including, but not limited to, firing-range training, emergency response training, fire fighter and rescue training, and spill cleanup training).

B1.3 Routine maintenance activities and custodial services for buildings, structures, infrastructures (e.g., roads), and equipment, during which operations may be suspended and resumed. Custodial services are activities to preserve facility appearance, working conditions, and sanitation, such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal. Routine maintenance activities, corrective (that is, repair), preventive, and predictive (as defined in DOE Order 4330.4, "Maintenance Management"), are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that the replacement is in kind and is not a substantial upgrade or improvement. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

(a) Repair of facility equipment, such as lathes, mills, pumps, and presses;

(b) Door and window repair or replacement;

(c) Wall, ceiling, or floor repair;

(d) Reroofing;

(e) Plumbing, electrical utility, and telephone service repair;

(f) Routine replacement of high-efficiency particulate air filters;

(g) Inspection and/or treatment of currently installed utility poles;

(h) Repair of road embankments;

(i) Repair or replacement of fire protection sprinkler systems;

(j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing;

(k) Erosion control and soil stabilization measures (such as reseeding and revegetation);

(l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 5820.2, "Radioactive Waste Management";

(m) Repair and maintenance of transmission facilities, including replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed transmission lines, in accordance, where appropriate, with 40 CFR Part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions);

(n) Routine testing and calibration of facility components, subsystems, or portable

equipment (including but not limited to, control valves, in-core monitoring devices, transformers, capacitors); and

(o) Routine decontamination of spot or minor contamination on the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming) and removal of contaminated intact equipment (labware) and other materials (e.g., gloves and other clothing).

B1.4 Installation or modification of air conditioning systems required for temperature control for operation of existing equipment.

B1.5 Minor improvements to cooling water systems within an existing building or structure if the improvements would not: (1) Create new sources of water or involve new receiving waters; (2) adversely affect water withdrawals or the temperature of discharged water; or (3) increase introductions of or involve new introductions of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products.

B1.6 Installation or modification of retention tanks or small (normally under one acre) basins and associated piping and pumps for existing operations to control runoff or spills (such as under 40 CFR part 112). Modifications include, but are not limited to, installing liners or covers.

B1.7 Acquisition, installation, operation, and removal of communication systems, data processing equipment, and similar electronic equipment.

B1.8 Modifications to screened water intake structures that result in intake velocities and volumes that are within existing permit limits.

B1.9 Placement of airway safety markings and painting (but excluding lighting) of existing electrical transmission lines and antenna structures in accordance with Federal Aviation Administration standards.

B1.10 Routine, onsite storage at an existing facility of activated equipment and material (including lead) used at that facility, to allow reuse after decay of radioisotopes with short half-lives.

B1.11 Installation of fencing, including that for border marking, that will not adversely affect wildlife movements or surface water flow.

B1.12 Detonation or burning of explosives or propellants that failed in outdoor tests (i.e., duds) or were damaged in outdoor tests (e.g., by fracturing) in outdoor areas designated and routinely used for explosive detonation or burning under an existing permit issued by state or local authorities.

B1.13 Acquisition or minor relocation of existing access roads serving existing facilities if the traffic they are to carry will not change substantially.

B1.14 Refueling of an operating nuclear reactor, during which operations may be suspended and then resumed.

B1.15 Siting, construction, and operation of small-scale support buildings and support structures (including prefabricated buildings and trailers) and/or small-scale modifications of existing buildings or structures, within or contiguous to an already developed area (where site utilities and roads are available). Covered support buildings and structures (and/or modifications) include those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; employee health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (including security posts); fire protection; and similar support purposes, but excluding facilities for waste storage activities, except as provided in other parts of this appendix.

B1.16 Removal of asbestos-containing materials from buildings in accordance with 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants), subpart M (National Emission Standard for Asbestos); 40 CFR part 763 (Asbestos), subpart G (Asbestos Abatement Projects); 29 CFR part 1910, subpart I (Personal Protective Equipment), § 1910.134 (Respiratory Protection); subpart Z (Toxic and Hazardous Substances), § 1910.1001 (Asbestos, tremolite, anthophyllite and actinolite); and 29 CFR part 1926 (Safety and Health Regulations for Construction), subpart D (Occupational Health and Environmental Controls), § 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite), other appropriate Occupational Safety and Health Administration standards in title 29, chapter XVII of the CFR, and appropriate state and local requirements, including certification of removal contractors and technicians.

B1.17 Removal of polychlorinated biphenyl (PCB)-containing items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other aboveground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).

B1.18 Siting, construction, and operation of additional water supply wells (or replacement wells), within an existing well field, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement wells.

B1.19 Siting, construction, and operation of microwave and radio communication towers and associated facilities, if the towers and associated facilities would not be in an area of great visual value.

B1.20 Small-scale activities undertaken to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders or minor diversion channels), or fisheries.

B1.21 Minor noise abatement measures, such as construction of noise barriers and installation of noise control materials.

B1.22 Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area where site utilities and roads are available and demolition and subsequent disposal of buildings and support structures (including, but not limited to, smoke stacks and parking lot surfaces).

B2. *Categorical Exclusions Applicable to Safety and Health*

B2.1 Modifications of an existing structure to enhance workplace habitability (including, but not limited to: improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation; and noise reduction).

B2.2 Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, remote control panels, remote monitoring capability, alarm and surveillance systems, control systems to provide automatic shutdown, fire detection and protection systems, announcement and emergency warning systems, criticality and radiation monitors and alarms, and safeguards and security equipment).

B2.3 Installation of, or improvements to, equipment for personnel safety and health, including, but not limited to, eye washes, safety showers, radiation monitoring devices, and fumehoods and associated collection and exhaust systems, provided that emissions would not increase.

B2.4 Development and implementation of Equipment Qualification Programs (under DOE Order 5480.6, "Safety of DOE-owned Nuclear Reactors") to augment information on safety-related system components or to improve systems reliability.

B2.5 Safety and environmental improvements of a facility, including replacement and upgrade of facility components, that do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed. Improvements may include, but are not limited to: Replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping if there is no evidence of leakage, based on testing that meets performance requirements in 40 CFR part 280, subpart D (40 CFR part 280.40). This includes activities taken under RCRA, subtitle I; 40 CFR part 265, subpart J; 40 CFR part 280, subparts B, C, and D; and other applicable state, Federal and local requirements for underground storage tanks. These actions do not include rebuilding or modifying substantial portions of a facility, such as replacing a reactor vessel.

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

B3.1 Site characterization and environmental monitoring, including siting, construction, operation, and dismantlement or closing (abandonment) of characterization and monitoring devices and siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis. Activities covered include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. Specific activities include, but are not limited to:

(a) Geological, geophysical (such as gravity, magnetic, electrical, seismic, and radar), geochemical, and engineering surveys and mapping, including the establishment of survey marks;

(b) Installation and operation of field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools;

(c) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells;

(d) Aquifer response testing;

(e) Installation and operation of ambient air monitoring equipment;

(f) Sampling and characterization of water, soil, rock, or contaminants;

(g) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(h) Installation and operation of meteorological towers and associated activities, including assessment of potential wind energy resources;

(i) Sampling of flora or fauna; and

(j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7.

B3.2 Aviation activities for survey, monitoring, or security purposes that comply with Federal Aviation Administration regulations.

B3.3 Research, inventory, and information collection activities that are directly related to the conservation of fish and wildlife resources and that involve only negligible animal mortality, habitat destruction, or population reduction.

B3.4 Drop, puncture, water-immersion, thermal, and fire tests of transport packaging for radioactive or hazardous materials to certify that designs meet the requirements of 49 CFR §§ 173.411 and 173.412 and requirements of severe accident conditions as specified in 10 CFR § 71.73.

B3.5 Tank car tests under 49 CFR part 179 (including, but not limited to, tests of safety relief devices, pressure regulators, and thermal protection systems).

B3.6 Indoor bench-scale research projects and conventional laboratory operations (for example, preparation of chemical standards and sample analysis) within existing laboratory facilities.

B3.7 Siting, construction, and operation of new infill exploratory and experimental (test) oil, gas, and geothermal wells, which are to be drilled in a geological formation that has existing operating wells.

B3.8 Outdoor ecological and other environmental research (including siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis) in a small area (generally less than five acres) that would not result in any permanent change to the ecosystem.

B3.9 Demonstration actions proposed under the Clean Coal Technology Demonstration Program, if the actions would not increase the quantity or rate of air emissions. These demonstration actions include, but are not limited to:

(a) Test treatment of 20 percent or less of the throughput product (solid, liquid, or gas) generated at an existing and fully operational coal combustion or coal utilization facility;

(b) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that requires only minor modification to the existing structures at an existing coal combustion or coal utilization facility for which the existing use remains unchanged; and

(c) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that involves no permanent change in the quantity or quality of coal being burned or used and involves no permanent change in the capacity factor of the coal combustion or coal utilization facility, other than for demonstration purposes of two years or less in duration.

B3.10 Small-scale research and development projects and small-scale pilot projects conducted (for generally less than two years) to verify a concept before demonstration actions, performed in an existing structure not requiring major modification.

B3.11 Outdoor tests and experiments for the development, quality assurance, or reliability of materials and equipment (including, but not limited to, weapon system components), under controlled conditions that would not involve source, special nuclear, or byproduct materials. Covered activities may include, but are not limited to, burn tests (such as tests of electric cable fire resistance or the combustion characteristics of fuels), impact tests (such as pneumatic ejector tests using earthen embankments or concrete slabs designated and routinely used for that purpose), or drop, puncture, water-immersion, or thermal tests.

B4. *Categorical Exclusions Applicable to Power Marketing Administrations and to all of DOE with Regard to Power Resources*

B4.1 Establishment and implementation of short-term contracts, marketing plans, policies, annual operating plans, allocation plans, or acquisition of excess power, the terms of any of which do not exceed five years and would not cause changes in the normal operating limits of generating projects, and if transmission would occur over existing transmission systems.

B4.2 Export of electricity over existing transmission lines as provided by section 202(e) of the Federal Power Act.

B4.3 Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements that does not exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate adjustment for that product or service or, if the rate change does exceed the change in the GNP fixed weight price index, the rate change would have no potential for affecting the operation of power generation resources.

B4.4 Power marketing services, including storage, load shaping, seasonal exchanges, or other similar activities if the operations of generating projects would remain within normal operating limits.

B4.5 Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events if the adjustments would occur within the existing operating constraints of the particular hydrosystem operation.

B4.6 Additions or modifications to transmission facilities that would not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, and replacement of poles, circuit breakers, transformers, and crossarms.

B4.7 Adding fiber optic cable to transmission structures or burying fiber optic cable in existing transmission line rights-of-way.

B4.8 New electricity transmission agreements, and modifications to existing transmission arrangements, to use a transmission facility of one system to transfer power of and for another system, if no new generation projects would be involved and no physical changes in the transmission system would be made beyond the previously developed facility area.

B4.9 Grant or denial of requests for multiple use of a transmission facility rights-of-way, such as grazing permits and crossing agreements, including electric lines, water lines, and drainage culverts.

B4.10 Dismantling and removal of transmission lines and right-of-way abandonment.

B4.11 Construction or modification of substations (including switching stations) with power delivery at 230 kV or below and/or support facilities, that would not involve the construction or relocation of more than 10 miles of transmission lines or the integration of a major new resource.

B4.12 Construction of tap lines (less than 10 miles in length) that are not for the integration of major new sources of generation into a main transmission system.

B4.13 Minor relocations of existing transmission lines (less than 10 miles in length) made to enhance existing environmental and land use conditions. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

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

B5.1 Actions to conserve energy, demonstrate potential energy conservation, and promote energy-efficiency that do not increase the indoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, designers), organizations (such as utilities), and state and local governments. Covered actions include, but are not limited to: programmed

lowering of thermostat settings, placement of timers on hot water heaters, installation of solar hot water systems, installation of efficient lighting, improvements in generator efficiency and appliance efficiency ratings, development of energy-efficient manufacturing or industrial practices, and small-scale conservation and renewable energy research and development and pilot projects. The actions could involve building renovations or new structures in commercial, residential, agricultural, or industrial sectors. These actions do not include rulemakings, standard-settings, or proposed DOE legislation.

B5.2 Modifications to oil, gas, and geothermal facility pump and piping configurations, manifolds, metering systems, and other instrumentation that would not change design process flow rates or affect permitted air emissions.

B5.3 Modification (but not expansion) or abandonment (including plugging), which is not part of site closure, of crude oil storage access wells, brine injection wells, or geothermal wells.

B5.4 Repair or replacement of sections of a crude oil, produced water, brine, or geothermal pipeline, if the actions are determined by the Army Corps of Engineers to be within the maintenance provisions of a DOE permit under section 404 of the Clean Water Act.

B5.5 Construction and subsequent operation of short offsite crude oil or geothermal pipeline segments between DOE facilities and existing commercial crude oil transportation, storage, or refining facilities, or geothermal transportation or storage facilities, within a single industrial complex, if the pipeline segments are within existing rights-of-way.

B5.6 Removal of oil and contaminated materials recovered in oil spill cleanup operations in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and disposed of in accordance with local contingency plans in accordance with the NCP.

B5.7 Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act that does not involve new construction and only requires operational changes, such as an increase in natural gas throughput, change in transportation, or change in storage operations.

B5.8 Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act involving a new cogeneration powerplant (as defined in the Powerplant and Industrial Fuel Use Act) within or adjacent to an existing industrial complex and requiring less than 10 miles of new gas pipeline.

B5.9 The grant or denial of any temporary exemption under the Powerplant and Industrial Fuel Use Act of 1978 for any electric powerplant or major fuel-burning installation.

B5.10 The grant or denial of any permanent exemption under the Powerplant and Industrial Fuel Use Act of 1978 of any existing electric powerplant or major fuel-burning installation, other than an exemption under (1) section 312(c) relating to cogeneration, (2) section 312(1) relating to scheduled equipment outages, (3) section 312(b) relating to certain state or local requirements, and (4) section 312(g) relating to certain intermediate load powerplants.

B5.11 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant or major fuel-burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new peak-load powerplant.

B5.13 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant or major fuel-burning installation to permit operation for emergency purposes only.

B5.14 The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Powerplant and Industrial Fuel Use Act of 1978 for any new or existing major fuel-burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period.

B5.15 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new major fuel-burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year.

B5.16 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new cogeneration powerplant.

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

B6.1 Removal actions under CERCLA (including those taken as final response actions and those taken before remedial action) and removal-type actions similar in scope under RCRA and other authorities (including those taken as partial closure actions and those taken before corrective action), including treatment (e.g., incineration), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the removal action. These actions will meet the CERCLA regulatory cost and time limits or satisfy either of the two regulatory exemptions from those cost and time limits (National Contingency Plan, 40 CFR part 300). These actions include, but are not limited to:

(a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, if surface water or groundwater would not collect and if such actions would reduce the spread of, or direct contact with, the contamination;

(b) Removal of bulk containers (for example, drums, barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(c) Removal of an underground storage tank including its associated piping and underlying containment systems in compliance with RCRA, subtitle I; 40 CFR part 265, subpart J; and 40 CFR part 280, subparts F and G if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(d) Repair or replacement of leaking containers;

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

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

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

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

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

(j) Segregation of wastes that react with one another to result in adverse environmental impacts;

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

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

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

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

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

B6.2 The siting, construction, and operation of temporary (generally less than 2 years) pilot-scale waste collection and

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

B6.3 Improvements to environmental monitoring and control systems of an existing building or structure (for example, changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems) if during subsequent operations (1) any substance collected by the environmental control systems would be recycled, released, or disposed of within existing permitted facilities and (2) there are applicable statutory or regulatory requirements or permit conditions for disposal, release, or recycling of any hazardous substance or CERCLA-excluded petroleum natural gas products that are collected or released in increased quantity or that were not previously collected or released.

B6.4 Siting, construction (or modification or expansion), operation, and decommissioning of an onsite facility for storing packaged hazardous waste (as designated in 40 CFR part 261) for 90 days or less or for longer periods as provided in 40 CFR part 262.34 (d), (e), or (f) (e.g., accumulation or satellite areas).

B6.5 Siting, construction (or modification or expansion), operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste or spent nuclear fuel, if operations do not involve unpacking waste. These actions do not include waste storage (covered under C16).

B6.6 Modification (excluding increases in capacity) of an existing structure used for storing, packaging, or repacking waste other than high-level radioactive waste or spent nuclear fuel, to handle the same class of waste as currently handled at that structure.

B6.7 Under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (5(c)(5)), granting of a petition qualified under 10 CFR part 730.6 for allocation of commercial disposal capacity for an unusual or unexpected volume of commercial low-level radioactive waste or denying such a petition when adequate storage capacity exists at the petitioner's facility.

B6.8 Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include, but are not limited to, adding filtration and recycle piping to allow reuse of machining oil, setting up a sorting area to improve process efficiency, and segregating two waste streams previously mingled and assigning new identification codes to the two resulting wastes.

B7. Categorical Exclusions Applicable to International Activities

B7.1 Planning and implementation of emergency measures pursuant to the International Energy Program.

B7.2 Approval of import or export of small quantities of special nuclear materials or isotopic materials in accordance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non Proliferation Act of 1978" (43 FR 25326, June 9, 1978).

Appendix C to Subpart D—Classes of Actions that Normally Require EAs But Not Necessarily EISs

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C1 Major Projects, as designated by DOE Order 4240.1, "Designation of Major System Acquisitions and Major Projects."

C2 Rate increases for products or services marketed by DOE, except for electric power, power transmission, and other products or services provided by the Power Marketing Administrations, and approval of rate increases for non-DOE entities, that exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate increase for that product or service.

C3 Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements that exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate change for that power or service and have potential for affecting the operation of power generation resources.

C4 Upgrading (reconstructing) an existing transmission line.

C5 Implementation of a Power Marketing Administration system-wide vegetation management program.

C6 Implementation of a Power Marketing Administration system-wide erosion control program.

C7 Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the allocation of power for periods of five years or longer that do not involve (1) the addition of major (greater than 50 average megawatts) new generation resources, (2) service to discrete major (10 average megawatts or more over a 12 month period) new loads, or (3) major changes in the operating parameters of power generation resources.

C8 Protection, restoration, or improvement of fish and wildlife habitat, fish passage facilities, and fish hatcheries if the proposed action may adversely affect an environmentally sensitive resource.

C9 Field demonstration projects for wetlands mitigation, creation, and restoration.

C10 Siting, construction (or major modification), operation, and decommissioning of a synchrotron radiation (light source) accelerator facility (or other electron beam accelerators) and associated particle storage rings and colliders.

C11 Siting, construction (or major modification), operation, and decommissioning of a low- or medium-energy particle acceleration facility and associated particle storage rings and colliders.

C12 Siting, construction, and operation of energy system prototypes including, but not limited to, wind resource, hydropower, geothermal, fossil fuel, biomass, and solar energy pilot projects.

C13 Approval or disapproval of an application to import/export natural gas under section 3 of the Natural Gas Act involving minor new construction (other than a cogeneration powerplant), such as adding new connections, looping, or compression to an existing natural gas pipeline or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way.

C14 Siting, construction (or expansion), and operation of water treatment facilities, including facilities for wastewater, potable water, and sewage.

C15 Siting, construction (or expansion), and operation of research and development incinerators for any type of waste and of any other incinerators that would treat nonhazardous solid waste (as designated in 40 CFR Part 261.4(b)).

C16 Siting, construction (including modification to increase capacity), operation, and decommissioning of onsite storage

facilities and/or packaging and unpacking facilities (that may include characterization operations) for all waste other than high-level waste or spent nuclear fuel (except for storage of packaged hazardous waste for 90 days or less or for longer periods as provided for in 40 CFR part 262.34 (d), (e), or (f). (Refer to B6.4; also see B6.5 and B6.6.)

Appendix D to Subpart D—Classes of Actions That Normally Require EISs

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D1 Major System Acquisitions, as designated by DOE Order 4240.1, "Designation of Major System Acquisitions and Major Projects."

D2 Siting, construction, operation, and decommissioning of nuclear fuel reprocessing facilities.

D3 Siting, construction, operation, and decommissioning of uranium enrichment facilities.

D4 Siting, construction, operation, and decommissioning of power reactors, nuclear material production reactors, and test and research reactors.

D5 Main transmission system additions (that is, additions of new transmission lines) to a Power Marketing Administration's main transmission grid.

D6 Integrating transmission facilities (that is, transmission system additions for integrating major new sources of generation into a Power Marketing Administration's main grid).

D7 Establishment and implementation of contracts, policies, marketing plans, or allocation plans for periods of five years or longer that involve (1) the addition of major (greater than 50 average megawatts) new generation resources, (2) service to discrete, major (10 average megawatts or more over a 12 month period) new loads, or (3) major changes in the operating parameters of power generation resources.

D8 Approval or disapproval of an application to import/export natural gas under section 3 of the Natural Gas Act involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities, or a significant expansion of an existing pipeline or related facility or LNG terminal, regasification, or storage facility.

D9 Approval or disapproval of an application to import/export natural gas under section 3 of the Natural Gas Act involving a significant operational change, such as a major increase in the quantity of liquid natural gas imported or exported.

D10 Siting, construction, operation, and decommissioning of major treatment, storage, and/or disposal facilities for high-level waste and/or spent nuclear fuel, such as spent fuel storage facilities and geologic repositories.

D11 Siting, construction (or expansion), and operation of a disposal facility for transuranic (TRU) waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

D12 Siting, construction, and operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR part 261.4(b)).

[FR Doc. 92-9245 Filed 4-23-92; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

National Environmental Policy Act Guidelines, Revocation

AGENCY: Department of Energy.

ACTION: Notice of Revocation.

SUMMARY: The Department of Energy (DOE) revokes its National Environmental Policy Act (NEPA) Guidelines, as amended, as a technical, conforming change to take effect May 26, 1992 when new regulations codifying a modified version of the NEPA Guidelines take effect. The new regulations are published today in the "Rules" section of the **Federal Register.**

DATES: The revocation of the DOE NEPA Guidelines shall be effective May 26, 1992.

FOR FURTHER INFORMATION CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE originally published its NEPA Guidelines on March 28, 1980, at 45 FR 20694. These Guidelines implemented the procedural provisions of the NEPA as required by the Council on Environmental Quality regulations, 40 CFR parts 1500–1508. The NEPA Guidelines were subsequently revised a number of times and were republished in their entirety on December 15, 1987, at 52 FR 47662. The Guidelines were further amended on March 27, 1989, at 54 FR 12474 and on September 7, 1990, at 55 FR 37174.

On November 2, 1990, DOE proposed to codify a modified version of the Guidelines as regulations, 55 FR 46444. A final rule based on that proposal is published today in the "Rules" section of this **Federal Register** to take effect [insert 30 days from publication]. On November 15, 1990 (55 FR 47792), DOE proposed to revoke the existing Guidelines in order to terminate their prospective legal effect as of the date that the new regulations take effect. Public comments on the proposed rulemaking and the proposed revocation of the Guidelines were invited through December 17, 1990, and a public hearing was held on December 5, 1990. No comments were received on the proposed revocation of the Guidelines.

Issued in Washington, DC, April 16, 1992.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

The DOE NEPA Guidelines, as amended, 52 FR 47662 (December 15, 1987), 54 FR 12474 (March 27, 1989), and 55 FR 37174 (September 7, 1990), are hereby revoked, effective May 26, 1992.

[FR Doc. 92–9246 Filed 4–23–92; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

10 CFR Part 1021

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE or the Department) proposes to amend its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The proposed amendments are based upon three years of experience with the existing regulations and are intended to maintain quality while improving DOE's efficiency in implementing NEPA requirements by reducing costs and preparation time. In addition, because DOE's missions, programs, and policies have evolved in response to changing national priorities since the current regulations were issued in 1992, corresponding changes in the Department's NEPA procedures are needed.

The Department is proposing changes in subparts A, C and D of the existing regulations. Among the proposed changes are various revisions to the lists of ''typical classes of actions'' (appendices A, B, C, and D to subpart D), including the addition of new categorical exclusions, modifications that expand or remove existing categorical exclusions, and clarifications. Other proposed changes pertain to the DOE requirement for an implementation plan for each environmental impact statement and DOE's required content for findings of no significant impact. DOE also proposes to clarify its public notification requirements for records of decision.

DATES: Comments must be received by April 5, 1996, to ensure consideration. Late comments will be considered to the extent practicable. DOE is not scheduling any public meetings on the proposed amendments, but will arrange a public meeting if the public expresses sufficient interest.

ADDRESSES: Comments on the proposed rule should be addressed to Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C., 20585–0119. Comments may be hand-delivered to the same address on workdays between the hours of 8:00 a.m. and 4:30 p.m. Comments may also be sent by electronic mail to the following internet address: neparule@spok.eh.doe.gov.

FOR FURTHER INFORMATION CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, at the above address; telephone (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires that Federal agencies prepare environmental impact statements for major Federal actions that may ''significantly affect the quality of the human environment.'' NEPA also created the President's Council on Environmental Quality, which issued regulations in 1978 implementing the procedural provisions of NEPA. Among other requirements, the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500—1508) require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations. DOE's implementing procedures (regulations) are codified at 10 CFR Part 1021.

II. Purpose of the Proposed Amendments

The proposed amendments are intended to maintain quality while improving the efficiency of DOE's implementation of NEPA by clarifying and streamlining certain DOE requirements, thereby reducing implementation costs and time. This approach is consistent with the DOE Secretarial Policy Statement on NEPA (June 1994), which encourages actions to streamline the NEPA process and make the process more useful to decision makers and the public without sacrificing quality. Full compliance with the letter and spirit of NEPA is an essential priority for DOE. In addition, DOE's missions, programs, and policies have evolved in response to changing national priorities since the current DOE NEPA regulations were issued in 1992, and DOE needs to make conforming changes in its NEPA regulations.

III. Description of the Proposed Amendments

This section describes and explains the proposed amendments to the existing DOE NEPA regulations at 10 CFR Part 1021. The proposed changes reflect DOE's three years of experience with the existing regulations. DOE has consulted with the Council on Environmental Quality regarding these proposed amendments to the regulations, in accordance with 40 CFR 1507.3.

A. Proposed Amendments to Subpart A—General

Subpart A contains, among other provisions, the definitions of terms that are used in the regulations and assigns responsibility for overall review of DOE NEPA compliance. DOE proposes to remove the definition of ''EIS Implementation Plan'' in section 1021.104, to be consistent with a proposed change to subpart C, section 1021.312 that is explained below. DOE also proposes to update the name and address of its Office of NEPA Policy and Assistance in section 1021.105.

B. Proposed Amendments to Subpart C—Implementing Procedures

DOE proposes to remove two requirements and clarify a third requirement in subpart C. DOE proposes to remove the requirements to (1) prepare an implementation plan for an environmental impact statement, and (2) summarize an environmental assessment in a finding of no significant impact. DOE also proposes to modify its procedures regarding public notice of its records of decision. Each of the proposed changes is consistent with the Council on Environmental Quality NEPA regulations. The reasons for these proposed deletions and modifications are presented below.

Environmental Impact Statement Implementation Plan

The existing DOE NEPA regulations require DOE to prepare an implementation plan for each environmental impact statement (section 1021.312) to guide the preparation of the environmental impact statement and to record the results of the scoping process. The plan must be completed as soon as possible after the close of the public scoping process, but in any event before issuing the draft environmental impact statement. A DOE implementation plan must include: a statement of the planned scope and content of the environmental impact statement; the purpose and need for action; a description of the scoping process and the results, including a summary of comments received and their disposition; target schedules; anticipated consultations with other agencies; and a disclosure statement (as required at 40 CFR 1506.5(c)) executed by any contractors assisting in the preparation of the environmental impact statement. DOE must make implementation plans (and any revisions) available in public reading rooms and other appropriate locations for inspection, and provide copies upon written request. DOE appears to be the

only Federal agency that requires the preparation of an environmental impact statement implementation plan.

To simplify the DOE NEPA process, DOE proposes to eliminate the requirement to prepare an implementation plan for an environmental impact statement, which would have the effect of making such plans optional. DOE believes that eliminating the implementation plan requirement would result in cost and time savings, without meaningfully reducing public involvement in the DOE environmental impact statement process.

The requirement to prepare an environmental impact statement implementation plan has been part of DOE's NEPA procedures since 1979. Implementation plans can serve useful functions in DOE's environmental impact statement planning and in documenting public concerns before issuing the draft environmental impact statement. In practice, however, implementation plans often have contained more detail than was originally envisioned, and have diverted resources from the more important task of preparing the environmental impact statement itself.

With the Department's emphasis on improving its NEPA process by cutting process time (among other measures put forth in the Secretarial Policy Statement on NEPA), the formal implementation plan requirements have in some cases hindered rather than facilitated progress toward the prompt issuance of an environmental impact statement. Under the proposed amendment, DOE would continue to encourage its managers to use brief implementation plans as internal management tools, particularly for complex or broad proposed actions, but would not require that such plans be prepared for all environmental impact statements as a matter of rule. The proposed amendment would not preclude the Department from implementing, as part of its internal procedures, other options for environmental impact statement planning.

Elimination of the requirement for an implementation plan would not diminish the requirement to consider public comments received during scoping. DOE would continue to conduct public scoping activities before preparing draft environmental impact statements, and provide transcripts or notes of the public scoping meetings in public reading rooms. DOE would fully consider public comments and factor them into preparation of the draft environmental impact statement as appropriate, and would execute contractor disclosure statements in accordance with 40 CFR 1506.5(c).

Record of Decision

DOE proposes to revise section 1021.315(c) in two respects concerning public notification procedures for records of decision. First, to reduce **Federal Register** publication costs, DOE proposes to amend the current requirement to publish all records of decision in the **Federal Register** in favor of an option to publish only a notice that provides a summary of the record of decision and an announcement of the availability of the full record of decision. Copies of the full record of decision containing all the information required under the Council on Environmental Quality's regulations (specifically, 40 CFR 1502.2) would remain available upon request. Second, DOE proposes to clarify that, if the decision has been publicized by other means (e.g., press releases or announcements in local media), DOE need not defer taking action until its record of decision or the notice has been published in the **Federal Register**. This clarification as to when DOE may take an action does not reflect any change in DOE's current practices, but simply reduces the chance that the meaning of the current section 1021.315(c) could be misinterpreted.

Finding of No Significant Impact

DOE proposes to remove the current § 1021.322(b)(1) relating to the requirement that a DOE finding of no significant impact must summarize the supporting environmental assessment, including a brief description of the proposed action and alternatives considered, environmental factors considered, and projected impacts. Instead, on a case-by-case basis and in accordance with 40 CFR 1508.13, DOE would either incorporate the environmental assessment by reference into the finding of no significant impact and attach the environmental assessment to the finding of no significant impact, or summarize the environmental assessment in the finding. The elimination of the requirement for a summary would give DOE flexibility, with potential for time and cost savings, in preparing findings of no significant impact.

C. Proposed Amendments to Subpart D—Typical Classes of Action

Four appendices to subpart D set forth the classes of DOE actions that normally would be categorically excluded (appendices A and B), that normally would require preparation of an environmental assessment but not necessarily an environmental impact statement (appendix C), and that normally would require preparation of an environmental impact statement (appendix D). A categorical exclusion is defined as a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor environmental impact statement is required.

Proposed changes in appendices A through D of subpart D are intended to adjust normal levels of DOE's NEPA review and to add, modify (expand or remove), and clarify classes of actions based on DOE experience under the existing regulations. In considering the proposed revisions, reviewers should bear in mind that listing a class of actions in these appendices does not constitute a conclusive determination regarding the appropriate level of NEPA review for a proposed action. Rather, the listing creates a presumption that the defined level of review is appropriate for the listed actions. As indicated in § 1021.400(c), that presumption does not apply when there are extraordinary circumstances related to the proposed action that may affect the significance of the environmental effects of the action.

The following conversion table shows the relation of listings in the existing Appendices to the proposed revisions. The conversion table shows whether listings have been modified, clarified, removed, or added. The numbering of some categorical exclusions would change due to the deletion or consolidation of existing categorical exclusions and, in one case, the division of one current categorical exclusion into two separate exclusions. The numbers of deleted categorical exclusions would be reused. Any existing categorical exclusions not listed are not affected by any proposed changes.

Conversion Table

Existing	Proposed	
A.7	A.7	Clarified.
B1.3	B1.3	Clarified.
B1.8	B1.8	Modified.
B1.13	B1.13	Modified.
B1.15	B1.15	Modified.
B1.18	B1.18	Modified.
B1.21	B1.21	Modified.
B1.22	B1.22 & B1.23	Clarified.
	B1.24–B1.33	Added.
	B2.6	Added.
B3.1	B3.1	Clarified.
B3.3	B3.3	Clarified.
B3.6	B3.6	Modified.
B3.10	B3.6	Modified.
	B3.10	Added.
	B3.12–B3.13	Added.
B4.1	B4.1	Modified.

Conversion Table—Continued

Existing	Proposed	
B4.2	B4.2	Modified.
B4.3	B4.3	Modified.
B4.6	B4.6	Clarified.
B4.10–B4.13	B4.10–B4.13	Modified.
B5.3	B5.3	Modified.
B5.5	B5.5	Modified.
B5.9–B5.11	B5.9–B5.11	Clarified.
B5.12–B5.16		Removed.
	B5.12	Added.
B6.1	B6.1	Modified.
B6.4		Removed.
	B6.4	Added.
B6.5	B6.5	Clarified.
	B6.9	Added.
C1	C1	Reserved.
C4	C4	Modified.
C7	C7	Modified.
C9	C9	Modified.
C10	C10	Reserved.
C11	C11	Modified.
C14	C14	Modified.
C16	C16	Modified.
D1	D1	Modified.
D7	D7	Modified.
D10	D10	Modified.

Most of the proposed changes in appendices A through D relate to categorical exclusions. Reviewers should evaluate these proposed changes in the full context of the DOE regulations for categorical exclusions. Under the regulations, before a proposed action may be categorically excluded, DOE must determine in accordance with § 1021.410(b) that: (1) The proposed action fits within a class of actions listed in appendix A or B to subpart D, (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the action, and (3) there are no connected or related actions with cumulatively significant impacts and, as appropriate, the proposed action is a permissible interim action. In addition, to fit within a class of actions that is normally categorically excluded, a proposed action must include certain conditions as integral elements (appendix B, paragraphs B(1) through (4)). Briefly, these conditions ensure that an excluded action will not: Threaten violation of applicable requirements, require siting and construction of waste management facilities, disturb hazardous substances such that there would be uncontrolled or unpermitted releases, or adversely affect environmentally sensitive resources.

DOE believes that the proposed amendments to appendices A and B constitute classes of action that do not individually or cumulatively have a significant effect on the human environment. After DOE considers public comments on the proposals, any such final categorical exclusions that are codified in the NEPA regulations would be covered by a finding to that effect in section 1021.410(a).

Classes of Actions Listed in Appendix A

The only proposed amendment to appendix A is a clarification of paragraph A7.

• Proposed Clarification A7—Transfer of property, use unchanged.

DOE is proposing to clarify the meaning of ''property'' in paragraph A7 by explicitly including both personal property (e.g., equipment and materials) and real property (e.g., permanent structures and land), and to clarify that the intent has always been that the impacts would remain essentially the same after the transfer.

Classes of Actions Listed in Appendix B

The proposed amendments to appendix B are of three types: (1) New categorical exclusions, (2) modifications (expansion or removal) of categorical exclusions, and (3) clarifications of categorical exclusions.

(1) New Categorical Exclusions

Seventeen new categorical exclusions are proposed for sections B1, B2, B3, B5, and B6, as described below. In three cases, the number designating a current categorical exclusion (B3.10, B5.12, and B6.4) is used for a proposed categorical exclusion. The current B3.10 would be incorporated into proposed B3.6. The current B5.12 and B6.4 would be replaced with new categorical exclusions.

• Proposed B1.24—Transfer of property/residential, commercial, industrial use.

This proposed categorical exclusion applies to the transfer, lease, disposition, or acquisition of interests in uncontaminated facilities (and accompanying land); that is, the facilities and accompanying land do not contain contaminants at a level or in a form that would pose a threat to public health or the environment. Unlike under categorical exclusion A7, the use of the facilities may change, but the new use must result in generally similar environmental impacts and must not result in greater environmental discharges. That is, there may not be decreases in quality, or increases in the volumes, concentrations, or discharge rates of wastes, air emissions, or water effluents compared to those before the transfer, lease, disposition, or acquisition of interests. Based on DOE's experience, these types of actions normally would not have the potential for significant impact.

• Proposed B1.25—Transfer of property/habitat preservation, wildlife management.

This proposed categorical exclusion applies to the transfer, lease, disposition, or acquisition of interests in uncontaminated land for habitat preservation or wildlife management. DOE has engaged in many habitat preservation and wildlife management actions. In DOE's judgment, these types of actions normally would not have the potential for significant impact. Any action that would change the habitat would be subject to NEPA analysis.

• Proposed B1.26—Siting/construction/operation/decommissioning of small water treatment facilities, generally less than 250,000 gallons per day capacity.

This proposed categorical exclusion applies to small wastewater, potable water, surface water, and sewage treatment facilities that generally do not exceed 250,000 gallons per day capacity. DOE's experience with siting and construction (including expansion, modification and replacement) of small-scale water treatment projects shows that they are often associated with environmental improvements at DOE sites and that they normally have no potential for significant impacts. The Department is also proposing to categorically exclude temporary groundwater contaminant containment measures that could include the small-scale construction of water treatment facilities (proposed paragraph B6.9).

• Proposed B1.27—Facility deactivation.

This proposed categorical exclusion applies to facility deactivation, specifically the disconnection of utilities such as water, steam, telecommunications, and electrical power. DOE has extensive experience in facility deactivation and believes that such activities normally do not have the potential for significant impact.

• Proposed B1.28—Minor activities to place a facility in an environmentally safe condition, no proposed uses.

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

DOE's experience with such environmentally beneficial activities indicates that the activities normally do not pose a potential for significant environmental impact.

• Proposed B1.29—Siting/construction/operation/decommissioning of onsite disposal facility for construction and demolition waste.

This proposed categorical exclusion applies to establishing and operating a small (generally less than 10-acre) disposal site for uncontaminated construction and demolition waste as defined in the Environmental Protection Agency's regulations under the Resource Conservation and Recovery Act at 40 CFR 243.101. In DOE's experience and judgment, small-scale disposal of such materials normally would pose no potential for significant impacts.

• Proposed B1.30—Transfer actions.

This proposed categorical exclusion applies to transfer actions, in which materials, equipment, or wastes are moved to a new location. The categorical exclusion would apply to actions in which transportation is the predominant proposed activity and the amount and type of relocated materials, equipment, or waste is incidental to the amount of that material, equipment, or waste that is already a part of operations at the receiving site. The transfers that would be categorically excluded are not regularly scheduled as part of routine operations, and could include, for example, moving a few drums of waste to an authorized disposal facility, or moving replacement equipment or supplies. DOE's experience indicates that transportation activities under DOE's standard practices pose no potential for significant impacts.

• Proposed B1.31—Relocation/operation of machinery and equipment.

The proposed categorical exclusion applies to the relocation and subsequent operation of machinery and equipment including, but not limited to, analytical laboratory apparatus, electronic hardware, maintenance equipment, and health and safety equipment, where use of the relocated items is similar to their former use, and consistent with the missions of the receiving facility. In DOE's experience, there is no material change in the environmental status quo and no potential for significant impact from use of relocated machinery and equipment.

• Proposed B1.32—Restoration, creation, or enhancement of small wetlands.

The proposed categorical exclusion applies to the restoration, creation, or enhancement of small wetlands, but only when the action does not adversely affect any other environmental resources. In addition, the Department would coordinate the action with cognizant Federal and State regulators to assure compliance with other land use plans and to benefit from their advice. In DOE's judgment, the restoration, creation, or enhancement of a small wetland as described, which is normally considered to be an environmentally beneficial measure, is inherently unlikely to pose the potential for significant environmental impact. (Also see the proposed modification to C9 below.)

• Proposed B1.33—Traffic flow adjustments, existing roads.

This proposed categorical exclusion applies to traffic flow adjustments on existing roads at DOE sites, such as installation of stop signs or traffic lights and changes in traffic direction (e.g., changing a two-way street to a one-way street.) Such an action normally would not pose the potential for significant environmental impacts.

• Proposed B2.6—Packaging/transportation/storage of radioactive sources upon request by the Nuclear Regulatory Commission or other cognizant agency.

This proposed categorical exclusion applies to the exercise of DOE's responsibilities under the Atomic Energy Act relating to certain requests by the Nuclear Regulatory Commission or other cognizant agencies in the interest of protecting the public from exposure to radiation. For example, on occasion, the Nuclear Regulatory Commission has requested that DOE retrieve discrete radioactive sources from a Commission-licensed private person or company that would not or could not safely manage the material. The categorical exclusion applies to all types of radioactive materials that the Nuclear Regulatory Commission categorically excludes for possession and use by its licensees. DOE believes that for radioactive materials that the Nuclear Regulatory Commission has determined not to require an environmental assessment or environmental impact statement for its licensees' possession and use, DOE's packaging, transportation, and storage of such materials also may normally be categorically excluded. DOE's experience with discrete radioactive sources in responding to Nuclear Regulatory Commission requests clearly supports this conclusion.

• Proposed B3.10—Siting/construction/operation/decommissioning of particle accelerators, including electron beam accelerators, primary beam energy generally less than 100 MeV.

The proposed categorical exclusion applies to siting, construction, operation, and decommissioning of particle accelerators with primary beam energy generally less than 100 MeV that would be used for research and medical purposes. DOE's experience indicates that construction and operation (or modification) and subsequent decommissioning of such devices normally pose no potential for significant environmental impacts. The categorical exclusion also applies to internal modifications of any accelerators regardless of energy that do not increase primary beam energy or current. Experience has shown that internal modifications to accelerators of any size that do not increase primary beam energy or current pose no potential for significant impacts.

• Proposed B3.12—Siting/construction/operation/decommissioning of microbiological and biomedical facilities.

DOE has performed numerous analyses of the environmental impacts of the siting, construction, operation, and any necessary decommissioning of microbiological and biomedical diagnostic, treatment and research facilities within or contiguous to an already developed area and has found that such activities normally pose no potential for significant environmental impacts. These laboratories generally do not handle extremely dangerous materials. More generally, laboratories that are rated Biosafety Level-1 or Biosafety Level-2 (reference: Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers of Disease Control and Prevention, and the National Institutes of Health; (HHS Publication No. (CDC) 93–8395)) would similarly not pose potential for significant environmental impacts.

• Proposed B3.13—Magnetic fusion experiments, no tritium fuel use.

The proposed categorical exclusion applies to magnetic fusion experiments performed at existing facilities that do not use tritium as fuel, including necessary modifications to the facilities. Analysis of environmental impacts of several such experimental regimens indicates that they normally pose no potential for significant environmental impacts.

• Proposed B5.12—Workover of existing oil/gas/geothermal well.

The proposed categorical exclusion applies to workover (operations to restore production, such as deepening, plugging back, pulling and resetting

lines, and squeeze cementing) of all types of oil, gas, and geothermal wells where the work would be conducted on the existing wellpad and would not disturb adjacent habitat. DOE's experience is that such actions do not pose the potential for significant environmental impacts.

• Proposed B6.4—Siting/construction/operation/decommissioning of small waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

This proposed categorical exclusion applies to siting, construction (or modification), operation and decommissioning of small onsite storage facilities for waste, other than high-level radioactive waste, that is generated onsite or results from activities connected to site operation. The categorical exclusion would not apply to storage of spent nuclear fuel. This categorical exclusion would apply to small facilities, generally up to 50,000 square feet in area, within or contiguous to an already developed area. DOE's evaluations of many such facilities show that they normally pose no potential for significant environmental impacts.

• Proposed B6.9—Small-scale temporary measures to reduce migration of contaminated groundwater.

This proposed categorical exclusion reflects DOE's experience with many small-scale temporary construction actions to reduce the migration of contaminated groundwater, by such means as pumping, treating, storing, and reinjecting water and installing underground barriers. DOE has found that these actions normally have very local and environmentally beneficial effects and pose no potential for significant environmental impacts. The Department is also proposing to categorically exclude the siting, construction, and operation of small water treatment facilities (proposed B1.26).

(2) Modification (Expansion or Removal) of Categorical Exclusions

Proposed modifications to integral elements B(1), B(2) and B(4)(iii) and sections B1, B3, B4, B5, and B6 include 2 modifications to integral elements, expansion of 16 categorical exclusions, and removal of 6 categorical exclusions.

• Proposed Modification B(1).

DOE proposes to add Executive Orders to integral element B(1) for completeness.

• Proposed Modification B(2).

The integral element B(2), which sets the condition that a categorically excluded action may not require siting, construction, or major expansion of waste storage, disposal, recovery, or treatment facilities, would be modified to provide an exception for such actions that are themselves categorically excluded. Such actions proposed in this rulemaking include certain water treatment and waste storage facilities. (See discussions above for proposed B1.26, B1.29, B6.4, and B6.9).

• Proposed Modification B(4)(iii).

Floodplains and wetlands are listed as an example of environmentally sensitive resources in integral element B(4)(iii). DOE proposes to revise this example to apply to wetlands determined by using the methodology that the U.S. Army Corps of Engineers applies in implementing section 404 of the Clean Water Act, except that it will not apply to wetlands affected by proposed actions covered by a general permit under 33 CFR Part 330. However, one such general permit, #23, covers ''Approved Categorical Exclusions''. It is not appropriate to use general permit #23 to avoid applying the integral element for DOE categorical exclusions.

• Proposed Modification B1.8—Modifications to screened water intake/outflow structures.

The proposed modification would expand the original categorical exclusion to include outflow structures. In DOE's experience, modifying outflow structures, such that water effluent quality and volumes are consistent with existing permit limits, normally has no potential for significant impact.

• Proposed Modification B1.13—Construction/acquisition/relocation of onsite pathways, spur or access roads/railroads.

The proposed modification would expand the original categorical exclusion that applies to acquisition or minor relocation of access roads to include construction of onsite pathways and onsite spur or access roads and railroads. Such an action would not affect general traffic or rail patterns and, in view of the conditions that are integral elements of the categorical exclusion, such an action normally would not pose the potential for significant environmental impacts.

• Proposed Modification B1.15—Siting/construction/operation of support buildings/support structures.

The proposed modification would no longer restrict this categorical exclusion to ''small-scale'' support structures. DOE has found that significant environmental impacts would not normally occur when DOE support structures of any size are constructed ''within or contiguous to an already developed area.''

• Proposed Modification B1.18—Siting/construction/operation of additional/replacement water supply wells.

The proposed modification would expand the original categorical exclusion to include modifications of an existing water supply well to restore production. The impact of modifying an existing water supply well to restore production is equivalent to or less than that of developing additional or replacement water supply wells. DOE's experience is that such actions, meeting the conditions set forth in the categorical exclusion, normally have no potential for significant impact.

• Proposed Modification B1.21—Noise abatement.

The proposed modification would remove the restriction that the existing categorical exclusion applies to only ''minor'' noise abatement measures. Based on DOE's experience, noise abatement measures normally would not have a significant environmental impact.

• Proposed Modification B3.6—Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects.

The proposed modification would combine the current paragraphs B3.6 (Indoor bench-scale research projects/conventional laboratory operation) and B3.10 (Small-scale research and development/small-scale pilot projects, at existing facility, preceding demonstration) and expand the scope to include siting, construction, operation, and decommissioning of the facilities in which the research activities would occur. The construction of facilities for the types of research activities addressed normally would not cause any significant environmental effects as long as the integral elements were met and construction occurred within or contiguous to an already developed area.

• Proposed Modification B4.1—Contracts/marketing plans/policies for excess electric power.

The proposed modification, which applies to power marketing administrations, would emphasize limits based on the characteristics of a project rather than the duration of a contract or other agreement. The existing categorical exclusion indirectly limits the potential impacts in part by restricting its application to contracts and other agreements that do not exceed 5 years duration. DOE's project evaluation experience has shown that the potential for environmental impacts is more directly related to market responses, such as changes in generation resources, transmission

systems, and operating limits than to the duration of contracts, policies, marketing plans, or allocations of power. This proposed modification is related to proposed modifications for C7 and D7, discussed below.

• Proposed Modification B4.2—Export of electric energy.

The proposed expansion would allow DOE to issue permits for the export of electric energy over existing transmission systems or by changing a system in ways that are themselves categorically excluded. Such changes may typically be needed to connect two systems and would involve constructing short segments (generally less than a mile long) of powerline and a substation.

• Proposed Modification B4.3—Electric power marketing rate changes.

The proposed modification would change the method for determining categorically excluded rate changes. The limits in the modified categorical exclusion focus directly on the power system activities, rather than indirectly on economics. The existing categorical exclusion applies to rate changes that do not exceed inflation. The proposed modification would instead categorically exclude rate changes in which the operations of generation projects would remain within normal operating limits.

• Proposed Modification B4.10—Deactivation, dismantling and removal of electric powerlines and substations.

The proposed modification would categorically exclude dismantling of substations, switching stations, and other transmission facilities, the construction of which is already categorically excluded. The modification also would categorically exclude the dismantling of all electric powerlines (i.e., both tap lines and transmission lines), because the impacts of removing various types of powerlines are essentially the same. The proposed modification would clarify categorically excludable actions by including deactivation (i.e., shutting off power flowing through existing electric powerlines).

• Proposed Modification B4.11—Construction or modification of electric power substations.

The proposed changes would expand categorically excluded modification activities to substations of any voltage, provided that the modification does not increase the existing voltage. DOE has found that such modifications normally do not have potential for significant environmental impacts. The proposed changes also would categorically exclude new electric powerline construction of generally less than 10 miles or relocation of generally less than 20 miles of existing electric powerlines to conform with the proposed modification to B4.12 and B4.13, as discussed below.

• Proposed Modification B4.12—Construction of electric powerlines (generally less than 10 miles in length), not integrating major new sources.

The existing categorical exclusion applies to construction and operation only of tap lines. DOE has found that the physical impacts of constructing and operating short segments (generally less than 10 miles in length) of all powerlines are similar and normally are environmentally insignificant when the integral elements are met.

• Proposed Modification B4.13—Reconstruction and minor relocation of existing electric powerlines (generally less than 20 miles in length).

The proposed modification would increase the length of powerlines that can be categorically excluded from 10 miles, as indicated in the existing categorical exclusion, to 20 miles. The categorical exclusion would also include reconstruction within existing corridors. Based on DOE's experience, there is no potential for significant impact when the integral elements are met. Most relocations are proposed to mitigate existing impacts and improve existing environmental conditions. This amendment would require a conforming revision of C4 (discussed below).

• Proposed Modification B5.3—Modification (not expansion)/abandonment of oil storage access/brine injection/gas/geothermal wells, not part of site closure.

The proposed modification would add gas wells to those wells for which modifications may be categorically excluded. Gas resources normally occur in conjunction with oil resources, and the existing categorical exclusion effectively already applies to gas wells. In general, the environmental impacts of modifying gas wells should be no more than the impacts of modifying other types of wells.

• Proposed Modification B5.5—Construction/operation of short crude oil/gas/steam/geothermal pipeline segments.

The proposed modification adds natural gas and steam pipelines to those pipelines that may be constructed and operated between facilities within a single industrial complex within existing rights of way. These kinds of actions are minor when they are consistent with the conditions (integral elements) of the categorical exclusion. The proposed modification also removes the characterization of the connected facilities as ''crude oil'' facilities or ''geothermal'' facilities because potential impacts of constructing and operating connecting pipeline segments are independent of the end point facilities. In addition, the term ''offsite'' would be deleted to clarify that the action includes construction and operation of onsite pipelines as connectors to the offsite segments, as DOE originally intended.

• Proposed Modifications (Removals).

B5.12—Permanent exemption for new peakload powerplant.

B5.13—Permanent exemption for emergency operations.

B5.14—Permanent exemption for meeting scheduled equipment outages.

B5.15—Permanent exemption due to lack of alternative fuel supply.

B5.16—Permanent exemption for new cogeneration powerplant.

The Powerplant and Industrial Fuel Use Act of 1978 was enacted to preserve oil and gas for certain uses for which alternative fuels could not easily be substituted, to increase use of domestic oil reserves, and to reduce the nation's dependence on imported oil. In order to achieve these goals, the act prohibited the use of oil and gas as primary fuels in new electric power plants and major fuel burning installations, required that new powerplants be constructed so as to be capable of burning coal, and required the conversion of existing powerplants to coal or another alternative to oil and gas fuel by 1990. The statute was amended in 1987 because its impact on fuel choices by both existing and new facilities was less significant than originally expected and because significant reductions in utility and industrial consumption of oil and gas had been achieved. The purpose of the 1987 amendments was, among other things, to repeal the prohibition on the use of oil and natural gas as primary fuels for electric powerplants and major fuel burning installations.

Categorical exclusions B5.12, B5.13, and B5.16 are proposed for removal because the Powerplant and Industrial Fuel Use Act of 1978 now only applies to base load power plants. Therefore, the Act is not applicable to powerplants for peak-load and emergency purposes, or to cogeneration powerplants.

Categorical exclusions B5.14 and B5.15 are proposed for removal because they relate only to major fuel-burning facilities, which are no longer covered by the Powerplant and Industrial Fuel Use Act of 1978.

• Proposed Modification B6.1—Small-scale, short-term cleanup actions under RCRA, Atomic Energy Act, or other authorities.

The proposed revision to B6.1 would delete the current reference to ''removal

actions under CERCLA'' and would no longer define the scope of excludable actions in terms of the regulatory cost and time limits for CERCLA removal actions (currently $2 million and 12 months from the time action begins onsite, unless regulatory exemptions are satisfied). Under the Secretarial Policy Statement on NEPA, DOE is generally relying on the CERCLA process (rather than the NEPA process) for review of actions to be taken under CERCLA. The focus of the current paragraph B6.1 on CERCLA removal activities is somewhat confusing in the context of the Secretarial Policy Statement.

Notwithstanding the general approach of relying generally on the CERCLA process for environmental review of CERCLA actions, there may be specific instances in which DOE will choose, after consultation with stakeholders and as a matter of policy, to integrate the NEPA and CERCLA processes. The proposed revised paragraph B6.1 is broad enough to categorically exclude small-scale CERCLA actions as well as similar actions performed under RCRA, the Atomic Energy Act, or other authorities.

Although the regulatory cost and time limits for CERCLA removal actions apply only to fund-financed removals and therefore do not apply to DOE and other Federal agencies that undertake a removal action using the authority delegated to Heads of Federal Agencies by Executive Order 12580, DOE has used the limits as a benchmark for the time and cost of the cleanup actions it normally may categorically exclude. DOE has found, however, that cleanup actions that pose no potential for significant environmental impact often cost more and take more time to complete. Thus, DOE proposes to expand the limits of the categorical exclusion to actions generally costing up to $5 million over as many as 5 years.

The proposed revision to example B6.1(b) would clarify that the designation of hazardous waste may be based on Environmental Protection Agency regulations (as already indicated in the example) or applicable state requirements. The proposed revision to example B6.1(j) would clarify that segregation of wastes may be categorically excluded when DOE believes, but may not be certain, that the wastes, if not segregated, might react or form a mixture that could result in adverse environmental impacts.

- Proposed Modification (Removal) B6.4—Siting/construction/operation/decommissioning of facility for storing packaged hazardous waste for 90 days or less.

The current categorical exclusion B6.4 is proposed for removal because a more general categorical exclusion for waste storage is proposed (discussed above) that would encompass the activities to which the current B6.4 now applies. DOE believes the scope of the proposed more general categorical exclusion is too broad to be considered a modification of the current B6.4. The proposed waste storage categorical exclusion, however, would also be designated B6.4.

(3) Clarifications of Existing Categorical Exclusions

DOE is proposing certain clarifications to 9 categorical exclusions in sections B1, B3, B4, B5 and B6. To clarify the scope of one categorical exclusion (i.e., B1.22), DOE proposes to divide it into two separate categorical exclusions.

- Proposed Clarification B1.3—Routine maintenance/custodial services for buildings, structures, infrastructures, equipment.

The proposed revisions would clarify the existing B1.3 by providing additional description of the types of areas and improvements (e.g., rights-of-way, pathways, and railroads) and activities (e.g., localized vegetation and pest control) to which the categorical exclusion applies. A sentence would be added to clarify ''in-kind replacement,'' acknowledging that some equipment in older facilities cannot literally be replaced in kind because the equipment is no longer made. A revision to the example B1.3(n) would clarify that this categorical exclusion applies to certain other facility components, such as monitoring wells, lysimeters, weather stations, and flumes. A revision to the example B1.3(o) would clarify that DOE considers all routine surface decontamination, not just ''spot'' decontamination, as routine maintenance.

- Proposed Clarification B1.22—Relocation of buildings.
  B1.23—Demolition/disposal of buildings.

DOE proposes to divide the existing B1.22 (Relocation/demolition/disposal of buildings) into two categorical exclusions to clarify that the two actions included in the existing class of action (building relocations and building demolition and subsequent disposal) are not connected actions.

- Proposed Clarification B3.1—Site characterization/environmental monitoring.

The proposed revision would clarify that this categorical exclusion applies to site characterization and monitoring activities that occur both onsite and off-site, and includes associated small-scale laboratory buildings and modification of characterization and monitoring devices.

- Proposed Clarification B3.3—Research related to conservation of fish and wildlife.

The proposed revision would clarify that this categorical exclusion includes both field and laboratory research.

- Proposed Clarification B4.6—Additions/modifications to electric power transmission facilities within previously developed area.

The proposed revision would clarify the existing B4.6 by providing additional examples of transmission facility projects (e.g., switchyard grounding upgrades, secondary containment projects, paving projects, and seismic upgrades) to which this categorical exclusion applies.

- Proposed Clarifications
  B5.9—Temporary exemption for any electric powerplant.
  B5.10—Certain permanent exemptions for any existing electric powerplant.
  B5.11—Permanent exemption for mixed natural gas and petroleum.

The proposed clarifications of B5.9, B5.10, and B5.11 would remove references to ''major fuel-burning installation'' in order to make these categorical exclusions consistent with the Powerplant and Industrial Fuel Act of 1978, which no longer applies to ''major fuel-burning installations.'' (See discussion above under Proposed Modifications, B5.12 through B5.16.)

- Proposed Clarification B6.5—Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste (not high-level radioactive waste, spent nuclear fuel).

For internal consistency, a reference to B6.4 and B6.6 would be added to this categorical exclusion.

Appendix C

The Department is proposing to amend eight classes of action in appendix C, classes of actions that normally require environmental assessments but not necessarily environmental impact statements, primarily to ensure consistency with changes made to appendix B.

- Proposed Modification (Removal) C1—Major projects.

This class of actions is proposed for removal because DOE no longer uses the designation of ''Major Project'' in its project management system and has not replaced that designation with a comparable term.

- Proposed Modification C4—Upgrading and constructing electric powerlines.

This revision would be a conforming change necessitated by the proposed change to B4.13, discussed above.

• Proposed Modification C7—Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads.

The proposed modification reflects DOE's project evaluation experience, which has shown that the potential for environmental impacts is more directly related to market responses, such as changes in generation resources, transmission systems, and operating limits, than to the duration of contracts, policies, marketing plans, or allocations of power. This revision also would clarify that this class of action applies not only to DOE power marketing operations but also to other DOE activities as well, and that the impacts of taking the action are independent of the administrative method by which the arrangements are made (e.g., contract, policy, plan, or funding) and of site ownership (e.g., DOE or other). This class of action is related to proposed modification of B4.1 (discussed above) and D7 (discussed below).

• Proposed Modification C9—Restoration, creation, or enhancement of large wetlands.

This proposed revision would conform to proposed B1.32 as discussed above, under which small-scale wetlands projects that do not affect other environmental resources would be categorically excluded.

• Proposed Modification (Removal) C10—Siting/construction/operation/decommissioning of synchrotron radiation accelerator facility.

• Proposed Modification C11—Siting/construction/operation/decommissioning of low- or medium-energy particle acceleration facility with primary beam energy generally greater than 100 MeV.

This revision would be a conforming change to make C11 consistent with the proposed categorical exclusion B3.10, as discussed above, and would consolidate C10 and C11 for clarity.

• Proposed Modification C14—Siting/construction/operation of water treatment facilities generally greater than 250,000 gallons per day capacity.

This proposed revision would be a conforming change to make C14 consistent with the proposed categorical exclusion B1.26. Construction and operation of small facilities, those with capacity generally less than 250,000 gallons per day, normally would be categorically excluded; larger facilities normally would need at least an environmental assessment level of review.

• Proposed Modification C16—Siting/construction/operation/decommissioning of large waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

This proposed revision would be a conforming change to make C16 consistent with the proposed categorical exclusion B6.4 and to clarify the meaning of the term onsite.

Appendix D

The Department is proposing to amend three classes of action in appendix D, classes of actions that normally require an environmental impact statement, as described below.

• Proposed Modification D1—Strategic systems.

This class of actions is revised to reflect changes in DOE's project management system. DOE has replaced the designation ''Major Systems Acquisition'' with ''Strategic System'' to describe a project that is a single, stand-alone effort within a program mission area and is regarded by the Department as a primary means to advance the Department's strategic goals. Strategic Systems are designated by the Secretary based on cost, risk factors, international implications, stakeholder interest, or national security.

• Proposed Modification D7—Allocation of electric power, major new generation resources/major changes in operation of power generation resources/major loads.

The proposed modification reflects DOE's project evaluation experience, which has shown that the potential for environmental impacts is more directly related to market responses, such as changes in generation resources, transmission systems, and operating limits than to the duration of contracts, policies, marketing plans, or allocations of power. The proposed revision also would clarify that this class of action applies not only to DOE power marketing operations but to other DOE activities as well, and that the impacts of taking that action are independent of the administrative method by which the arrangements are made (e.g., contract, policy, plan, or funding) and of site ownership (e.g., DOE or other). This class of action is related to proposed modifications of B4.1 and C7, discussed above.

• Proposed Modification D10—Siting/construction/operation/decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel.

The current paragraph D10 includes certain activities regarding spent nuclear fuel storage facilities within the scope of actions that normally require an environmental impact statement. Under the proposed modification, DOE would not presume that an EIS is the appropriate level of NEPA review for siting, constructing, operating and decommissioning replacement storage facilities or upgrading storage facilities for spent nuclear fuel. DOE proposals for siting, constructing, operating and decommissioning (or upgrading) spent nuclear fuel storage facilities have varied too widely to support a general conclusion that such proposals normally require an environmental impact statement or normally require an environmental assessment. For example, DOE proposals may range from major new facilities that would store most of the nation's commercial spent nuclear fuel (for which an environmental impact statement clearly would be appropriate), to minor new facilities or upgrades for storing very much smaller quantities of spent fuel that are already in storage at several DOE sites. In addition, this modification is appropriate in light of substantial DOE analyses and experience that show that, even when considered in conjunction with other nuclear-related activities at DOE sites, the environmental impacts of siting, constructing, operating and decommissioning spent nuclear fuel storage facilities at DOE sites generally would be small. The U.S. Nuclear Regulatory Commission and cognizant foreign authorities have reached similar conclusions with respect to spent nuclear fuel storage within their respective jurisdictions. Therefore, DOE believes it may often be appropriate to prepare an environmental assessment rather than an environmental impact statement for replacement spent nuclear fuel storage facilities.

IV. Procedural Review Requirements

A. Environmental Review Under the National Environmental Policy Act

These proposed amendments establish, modify, and clarify procedures for considering the environmental effects of DOE actions within the Department's decision making process, thereby enhancing compliance with the letter and spirit of NEPA. Subpart D, Appendix A6, of the DOE NEPA regulations categorically excludes ''rulemakings that are strictly procedural,'' and applies to these proposed amendments. Therefore, DOE has determined that promulgation of these amendments is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental impact statement or an environmental

assessment. DOE will continue to examine individual proposed actions to determine the appropriate level of review.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96–345 (5 U.S.C. 601–612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' This proposed rule would modify existing policies and procedural requirements for DOE compliance with NEPA. It makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that this rule, if promulgated, would not have a ''significant economic impact on a substantial number of small entities.''

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by these amendments. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, ''Federalism,'' requires that regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The final amendments will affect Federal NEPA compliance procedures, which are not subject to state regulation. The proposed amendments to DOE's NEPA regulations will not have any substantial direct effects on states and local governments within the meaning of the Executive Order.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778, ''Civil Justice Reform'' (October 23, 1991), instructs Federal agencies to adhere to certain requirements when promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulations specify clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describe any administrative proceedings to be available before judicial review and any revisions for the exhaustion of such administrative proceedings; and define key terms. DOE certifies that these proposed amendments to DOE's NEPA regulations meet the requirements of sections 2(a) and 2(b)(2) of Executive Order 12778.

F. Review Under Executive Order 12866

The proposed amendments were reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' which requires a Federal agency to prepare a regulatory assessment, including the potential costs and benefits, of any ''significant regulatory action.'' The order defines ''significant regulatory action'' as any regulatory action that may have an annual effect on the economy of $100 million or more and may adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments in a material way, create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or raise novel legal or policy issues arising out of legal mandates (section 3(f)).

This proposal would amend already existing policies and procedures for compliance with NEPA. The amendments contain no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or similar actions, which are the areas in which one might anticipate an economic effect. Therefore, DOE has determined that the incremental effect of these amendments to the DOE NEPA regulations will not have the magnitude of effects on the economy, or any other adverse effects, to bring this proposal within the definition of a ''significant regulatory action.'' Pursuant to the Executive Order, the proposed amendments were submitted to the Office of Management and Budget for regulatory review.

G. Review under the Unfunded Mandates Reform Act

Under section 205 of the Unfunded Mandates Reform Act of 1995, Federal agencies are required to prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Because the DOE NEPA regulations affect only DOE and do not create obligations on the part of any other person or government agency, neither state, local or tribal governments nor the private sector will be affected by amendments to these regulations. Thus, further review by DOE under the Unfunded Mandates Reform Act is not required.

V. Public Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting information, views, suggestions, or arguments with respect to the proposed regulatory amendments set forth in this Notice. Comments should be submitted to the address indicated in the **ADDRESSES** section of this Notice and identified (on the outside of the envelope and on the comment documents) with the designation ''NEPA Rulemaking.'' DOE will consider all comments received by the date indicated in the **DATES** section before taking final action on the proposed amendments. Late comments will be considered to the extent practicable.

List of Subjects in 10 CFR Part 1021

Environmental impact statement.

Issued in Washington, D.C., February 9, 1996.

Peter Brush,

Acting Assistant Secretary, Environment, Safety and Health.

For reasons set out in the preamble, 10 CFR Part 1021 is proposed to be amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for Part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

§ 1021.104 [Amended]

2. In section 1021.104(b), the definition for *EIS Implementation Plan* is removed.

3. Section 1021.105 is revised to read as follows:

§ 1021.105 Oversight of Agency NEPA Activities.

The Assistant Secretary for Environment, Safety and Health, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA process and the status of individual NEPA reviews may be obtained upon request from the Office of NEPA Policy and Assistance, US. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119.

§ 1021.312 [Removed and reserved]

4. Section 1021.312 is removed and reserved.

5. Section 1021.315(c) is revised to read as follows:

§ 1021.315 Records of Decision.

* * * * *

(c) In addition to any other public announcements, DOE RODs, or notices of their availability that provide a brief summary of the RODs, shall be published in the **Federal Register** and the RODs shall be made available to the public as specified in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c) and section 1021.340 of this part. DOE may implement the decision before the ROD, or notice of its availability, is published in the **Federal Register** if the decision has been made public by other means (e.g., press releases, announcements in local media).

* * * * *

§ 1021.322 [Amended]

6. Section 1021.322 is amended to remove (b)(1), and (b)(2) through (b)(5) are redesignated (b)(1) through (b)(4), respectively.

7. Appendix A, paragraph A7, is revised to read as follows:

Appendix A to Subpart D—Categorical Exclusions Applicable to General Agency Actions

* * * * *

A7 Transfer, lease, disposition, or acquisition of interests in personal property (e.g., equipment and materials) or real property (e.g., permanent structures and land), if property use is to remain unchanged; i.e., the type and magnitude of impacts would remain essentially the same.

* * * * *

8. Appendix B, is amended to revise the Table of Contents entries for B1.8, B1.13, B1.22, B3.6, B3.10, B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12, B4.13, B5.3, B5.5, B5.9, B5.10, B5.12, B6.1, B6.4, and B6.5; add B1.23 through B1.33, B2.6, B3.12, B3.13, and B6.9; and remove B5.13 through B5.16, to read as follows:

Appendix B to Subpart D—Categorical Exclusions Applicable to Specific Agency Actions

* * * * *

B1.8 Modifications to screened water intake/outflow structures.

* * * * *

B1.13 Construction/acquisition/relocation of onsite pathways, spur or access roads/railroads.

* * * * *

B1.22 Relocation of buildings.

B1.23 Demolition/disposal of buildings.

B1.24 Transfer of property/residential, commercial, industrial use.

B1.25 Transfer of property/habitat preservation, wildlife management.

B1.26 Siting/construction/operation/decommissioning of small water treatment facilities, generally less than 250,000 gallons per day capacity.

B1.27 Facility deactivation

B1.28 Minor activities to place a facility in an environmentally safe condition, no proposed uses.

B1.29 Siting/construction/operation/decommissioning of onsite disposal facility for construction and demolition waste.

B1.30 Transfer actions

B1.31 Relocation/operation of machinery and equipment.

B1.32 Restoration, creation, or enhancement of small wetlands.

B1.33 Traffic flow adjustments, existing roads.

* * * * *

B2.6 Packaging/transportation/storage of radioactive sources upon request by the Nuclear Regulatory Commission or other cognizant agency.

* * * * *

B3.6 Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects.

* * * * *

B3.10 Siting/construction/operation/decommissioning of particle accelerators, including electron beam accelerators, primary beam energy generally less than 100 MeV.

* * * * *

B3.12 Siting/construction/operation/decommissioning of microbiological and biomedical facilities.

B3.13 Magnetic fusion experiments, no tritium fuel use.

* * * * *

B4.1 Contracts/marketing plans/policies for excess electric power.

B4.2 Export of electric energy.

B4.3 Electric power marketing rate changes.

* * * * *

B4.6 Additions/modifications to electric power transmission facilities within previously developed area.

* * * * *

B4.10 Deactivation, dismantling and removal of electric powerlines and substations.

B4.11 Construction or modification of electric power substations.

B4.12 Construction of electric powerlines (generally less than 10 miles in length), not integrating major new sources.

B4.13 Reconstruction and minor relocation of existing electric powerlines (generally less than 20 miles in length).

* * * * *

B5.3 Modification (not expansion)/abandonment of oil storage access/brine injection/gas/geothermal wells, not part of site closure.

* * * * *

B5.5 Construction/operation of short crude oil/gas/steam/geothermal pipeline segments.

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B5.9 Temporary exemption for any electric powerplant.

B5.10 Certain permanent exemptions for any existing electric powerplant.

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B5.12 Workover of existing oil/gas/geothermal well.

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B6.1 Small-scale, short-term cleanup actions under RCRA, Atomic Energy Act, or other authorities.

* * * * *

B6.4 Siting/construction/operation/decommissioning of small waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

B6.5 Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste (not high-level radioactive waste, spent nuclear fuel).

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater.

* * * * *

9. Appendix B, section B is amended by revising paragraphs B(1), B(2), B(4)(iii) to read as follows:

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

* * * * *

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders.

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators) unless these actions are themselves categorically excluded.

* * * * *

(4) * * *

(iii) Wetlands, as determined by using the methodology that the U.S. Army Corps of Engineers applies in implementing section 404 of the Clean Water Act, except for wetlands affected by proposed actions covered by a general permit under 33 CFR Part 330 (other than Permit #23, ''Approved Categorical Exclusions''), and floodplains;

* * * * *

10. Appendix B, section B1, is amended by revising the introductory text to paragraph B1.3, paragraphs B1.3(n) & (o), B1.8, B1.13, B1.15, B1.18, B1.21, and B1.22, and adding paragraphs B1.23 through B1.33, to read as follows:

B1. Categorical Exclusions Applicable to Facility Operation.

* * * * *

B1.3 Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (e.g., pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed. Custodial services are activities to preserve facility appearance, working conditions, and sanitation, such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal. Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that replacement is in kind and is not a substantial upgrade or improvement. In kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

* * * * *

(n) Routine testing and calibration of facility components, subsystems, or portable equipment (including but not limited to, control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes); and

(o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), including removal of contaminated intact equipment and other materials (other than spent nuclear fuel or special nuclear material in nuclear reactors).

* * * * *

B1.8 Modifications to screened water intake and outflow structures such that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits

* * * * *

B1.13 Construction, acquisition, and relocation of onsite pathways and onsite spur or access roads and railways.

* * * * *

B1.15 Siting, construction (or modification), and operation of support buildings and support structures (including prefabricated buildings and trailers) within or contiguous to an already developed area (where site utilities and roads are available). Covered support buildings and structures include those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; employee health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (including security posts); fire protection; and similar support purposes, but excluding facilities for waste storage activities, except as provided in other parts of this appendix.

* * * * *

B1.18 Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well.

* * * * *

B1.21 Noise abatement measures, such as construction of noise barriers and installation of noise control materials.

B1.22 Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area where site utilities and roads are available.

B1.23 Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces).

B1.24 Transfer, lease, disposition or acquisition of interests in uncontaminated real property (e.g., facilities, support structures and accompanying land) for residential, commercial, or industrial uses (including, but not limited to, office space, warehouses, equipment storage facilities) that do not involve any lessening in quality, or increases in volumes, concentrations, or discharge rates, of wastes, air emissions, or water effluents and that, under reasonably foreseeable uses, would have generally similar environmental impacts compared to those before the transfer, lease, disposition, or acquisition of interests.

B1.25 Transfer, lease, disposition or acquisition of interests in uncontaminated real property (e.g., land and associated buildings) for habitat preservation or wildlife management, but not including any habitat alteration.

B1.26 Siting, construction (including expansion, modification, and replacement), operation, and decommissioning of small water treatment facilities, including facilities for wastewater, potable water, surface water, and sewage, with a total capacity that generally does not exceed 250,000 gallons per day. (Also see B6.9).

B1.27 Activities that are required to deactivate a facility; i.e., disconnect utilities such as water, steam, telecommunications, and electrical power.

B1.28 Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste, such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste. These activities would not include conditioning, treatment or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Siting, construction, operation, and decommissioning of a small (generally less than 10 acres in area) onsite disposal facility for uncontaminated construction and demolition waste. These wastes, as defined in the Environmental Protection Agency's regulations under the Resource Conservation and Recovery Act, specifically 40 CFR 243.101, include building materials, packaging, and rubble.

B1.30 Transfer actions, in which the predominant activity is transportation, and in which the amount and type of materials, equipment or waste to be moved is incidental to the amount of such materials, equipment, or waste that is already a part of ongoing operations at the receiving site. Such transfers are not regularly scheduled as part of ongoing routine operations.

B1.31 Relocation of machinery and equipment, such as analytical laboratory apparatus, electronic hardware, maintenance equipment, and health and safety equipment, including minor construction necessary for removal and installation, where uses of the relocated items will be similar to their former uses and consistent with the general missions of the receiving structure.

B1.32 Restoration, creation, or enhancement of small wetlands in coordination with the cognizant Federal or State regulators, and where other environmental resources are not adversely affected.

B1.33 Traffic flow adjustments to existing roads at DOE sites (including, but not limited to, stop sign or traffic light installation, and adjusting direction of traffic flow).

11. Appendix B, section B2, is amended by adding B2.6, to read as follows:

B2. Categorical Exclusions Applicable to Safety and Health.

* * * * *

B2.6 Packaging, transportation, and storage of radioactive materials from the public domain, in accordance with the Atomic Energy Act upon a request by the Nuclear Regulatory Commission or other cognizant agency. Covered materials are those for which possession and use by Nuclear Regulatory Commission licensees has been categorically excluded under 10 CFR 51.22(14) or its successors. Examples of these radioactive materials (which may contain source, byproduct or special nuclear materials) are density gauges, therapeutic medical devices, generators, reagent kits, irradiators, analytical instruments, well monitoring equipment, uranium shielding material, depleted uranium military munitions, and packaged radioactive waste not exceeding 50 curies.

12. Appendix B, section B3, is amended to revise the introductory text to paragraph B3.1, B3.3, B3.6, and B3.10, and add new paragraphs B3.12 and B3.13, to read as follows:

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

B3.1 Onsite and offsite site characterization and environmental monitoring, including siting, construction (or modification), operation, and dismantlement or closing (abandonment) of characterization and monitoring devices and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis. Activities covered include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. Specific activities include, but are not limited to:

* * * * *

B3.3 Field and laboratory research, inventory, and information collection activities that are directly related to the conservation of fish or wildlife resources and that involve only negligible habitat destruction or population reduction.

* * * * *

B3.6 Siting, construction (or modification), operation, and decommissioning of facilities for indoor bench-scale research projects, conventional laboratory operations (for example, preparation of chemical standards and sample analysis); small-scale research and development projects; and small-scale pilot projects to verify a concept before demonstration actions. Construction (or modification) will be within or contiguous to an already developed area (where site utilities and roads are available).

* * * * *

B3.10 Siting, construction, operation, and decommissioning of a particle accelerator, including electron beam accelerator with primary beam energy generally less than 100 MeV, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to an already developed area (where site utilities and roads are available), or internal modification of any accelerator facility regardless of energy that does not increase primary beam energy or current.

* * * * *

B3.12 Siting, construction (including modification), operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4; reference: Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers of Disease Control and Prevention, and the National Institutes of Health (HHS Publication No. (CDC) 93–8395)) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to an already developed area (where utilities and roads are available). Operation may include the purchase, installation, and operation of biomedical equipment, such as commercially available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation.

B3.13 Performing magnetic fusion experiments that do not use tritium as fuel, with existing facilities (including necessary modifications).

13. Appendix B, section B4, is amended to revise paragraphs B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12 and B4.13, to read as follows:

B4. Categorical Exclusions Applicable to Power Marketing Administrations and to all of DOE with Regard to Power Resources.

B4.1 Establishment and implementation of contracts, marketing plans, policies, allocation plans, or acquisition of excess electric power that does not involve: (1) the integration of a new generation resource, (2) physical changes in the transmission system beyond the previously developed facility area, unless the changes are themselves categorically excluded, or (3) changes in the normal operating limits of generation resources.

B4.2 Export of electric energy as provided by section 202(e) of the Federal Power Act over existing transmission systems or using transmission system changes that are themselves categorically excluded.

B4.3 Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits.

* * * * *

B4.6 Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.

* * * * *

B4.10 Deactivation, dismantling, and removal of electric powerlines, substations, switching stations, and other transmission facilities, and right-of-way abandonment.

B4.11 Construction of electric power substations (including switching stations and support facilities) with power delivery at 230 kV or below, or modification (other than voltage increases) of existing substations and support facilities, that generally would not involve the construction of more than 10 miles of new or relocation of more than 20 miles of existing electric powerlines or the integration of a major new resource.

B4.12 Construction of electric powerlines (less than 10 miles in length) that are not for the integration of major new sources of generation into a main transmission system.

B4.13 Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric powerlines less than 20 miles in length to enhance environmental and land use values. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

14. Appendix B, section B5, is amended to revise paragraphs B5.3, B5.5, and B5.9 through B5.12 and remove B5.13 through B5.16, to read as follows:

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

* * * * *

B5.3 Modification (but not expansion) or abandonment (including plugging), which is not part of site closure, of crude oil storage access wells, brine injection wells, geothermal wells, and gas wells.

* * * * *

B5.5 Construction and subsequent operation of short crude oil, steam, geothermal, or natural gas pipeline segments between DOE facilities and existing transportation, storage, or refining facilities within a single industrial complex, if the pipeline segments are within existing rights-of-way.

* * * * *

B5.9 The grant or denial of any temporary exemption under the Powerplant and Industrial Fuel Use Act of 1978 for any electric powerplant.

B5.10 The grant or denial of any permanent exemption under the Powerplant and Industrial Fuel Use Act of 1978 of any existing electric powerplant other than an exemption under (1) section 312(c) relating to cogeneration, (2) section 312(l) relating to scheduled equipment outages, (3) section 312(b) relating to certain state or local requirements, and (4) section 312(g) relating to certain intermediate load powerplants.

B5.11 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 Workover (operations to restore production, such as deepening, plugging back, pulling and resetting lines, and squeeze cementing) of an existing oil, gas, or geothermal well to restore production when workover operations will be restricted to the existing wellpad and not involve any new site preparation or earth work that would disturb adjacent habitat.

15. Appendix B, section B6, is amended to revise the introductory text to paragraph B6.1, paragraph B6.1(b) & (j), B6.4, and B6.5 and add paragraph B6.9, to read as follows:

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

B6.1 Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, generally less than 5 million dollars in cost and 5 years duration,

to reduce risk to human health or the environment from the release or threat of release of a hazardous substance, including treatment (e.g., incineration), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

* * * * *

(b) Removal of bulk containers (for example, drums, barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR Part 261 or applicable state requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

* * * * *

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

* * * * *

B6.4 Siting, construction (including modification), operation, and decommissioning of a small facility (generally not to exceed an area of 50,000 square feet) within or contiguous to an already developed area (where site utilities and roads are developed) for storage of waste, other than high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include the storage of spent nuclear fuel.

B6.5 Siting, construction (or modification or expansion), operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, if operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6 and C16) or the handling of spent nuclear fuel.

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water and installing underground barriers. (Also see B1.26.)

16. Appendix C is amended by revising the Table of Contents entries C1, C4, C7, C9, C10, C11, C14 and C16 to read as follows:

Appendix C to Subpart D of Part 1021–Classes of Actions That Normally Require EAs But Not Necessarily EISs

C1 [Reserved]

* * * * *

C4 Upgrading and constructing electric powerlines

* * * * *

C7 Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads

* * * * *

C9 Restoration, creation, or enhancement of large wetlands.

C10 [Reserved]

C11 Siting/construction/operation/decommissioning of low- or medium-energy particle acceleration facility with primary beam energy generally greater than 100 MeV.

* * * * *

C14 Siting/construction/operation of water treatment facilities generally greater than 250,000 gallons per day capacity

* * * * *

C16 Siting/construction/operation/decommissioning of large waste storage facilities (not high-level radioactive waste, spent nuclear fuel)

17. Appendix C to Subpart D of Part 1021 is amended by removing and reserving paragraphs C1 & C10 and by revising C4, C7, C9, C11, C14 and C16, to read as follows:

C1 [Removed and Reserved]

* * * * *

C4 Upgrading (reconstructing) an existing electric powerline generally more than 20 miles in length or constructing a new electric powerline generally more than 10 miles in length.

* * * * *

C7 Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the allocation of electric power that do not involve (1) the addition of new generation resources greater than 50 average megawatts, (2) major changes in the operating limits of generation resources greater than 50 average megawatts, or (3) service to discrete new loads of 10 average megawatts or more over a 12 month period. This applies to power marketing operations and to siting, construction, and operation of power generating facilities at DOE sites.

* * * * *

C9 Restoration, creation, or enhancement of large wetlands, or small wetlands where these actions may adversely affect other environmental resources.

C10 [Removed and Reserved]

C11 Siting, construction (or major modification), operation, and decommissioning of a low- or medium-energy (but greater than 100 MeV primary beam energy) particle acceleration facility, including electron beam acceleration facilities, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to an already developed area (where site utilities and roads are available).

* * * * *

C14 Siting, construction (or expansion), and operation of water treatment facilities generally exceeding 250,000 gallons per day, including facilities for wastewater, potable water, and sewage.

* * * * *

C16 Siting, construction (including modification to increase capacity), operation, and decommissioning of packaging and unpacking facilities (that may include characterization operations) and large storage facilities (generally greater than 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage, packaging, or unpacking of spent nuclear fuel. [Also see B6.4, B6.5, and B6.6.]

18. Appendix D is amended to revise the Table of Contents entries for D1, D7, and D10 to read as follows:

Appendix D to Subpart D of Part 1021–Classes of Actions That Normally Require EISs

D1 Strategic Systems

* * * * *

D7 Allocation of electric power, major new generation resources/major changes in operation of generation resources/major loads

* * * * *

D10 Siting/construction/operation/decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel

* * * * *

19. Appendix D to Subpart D of Part 1021 is amended by revising paragraphs D1, D7 and D10, to read as follows:

D1 Strategic Systems, as defined in DOE Order 430.1, ''Life-Cycle Asset Management,'' and designated by the Secretary.

* * * * *

D7 Establishment and implementation of contracts, policies, marketing plans or allocation plans for the allocation of electric power that involve (1) the addition of new generation resources greater than 50 average megawatts, (2) major changes in the operating limits of generation resources greater than 50 average megawatts, or (3) service to discrete new loads of 10 average megawatts or more over a 12 month period. This applies to power marketing operations and to siting construction, and operation of power generating facilities at DOE sites.

* * * * *

D10 Siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel, including geologic repositories, but not including onsite replacement or upgrades of storage facilities for spent nuclear fuel at DOE sites.

* * * * *

[FR Doc. 96–3631 Filed 2–16–96; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 1021

RIN 1901–AA67

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The amendments incorporate changes that improve DOE's efficiency in implementing NEPA requirements by reducing costs and preparation time while maintaining quality, consistent with the DOE Secretarial Policy Statement on NEPA issued in June 1994. These amendments also incorporate changes necessary to conform to recent changes in DOE's missions, programs, and policies that have evolved in response to changing national priorities since the current regulations were issued in 1992.

EFFECTIVE DATE: These amendments to the rule will become effective August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The National Environmental Policy Act of 1969 (42 USC 4321 *et seq.*) requires that Federal agencies prepare environmental impact statements for major Federal actions that may "significantly affect the quality of the human environment." NEPA also created the President's Council on Environmental Quality (CEQ), which issued regulations in 1978 implementing the procedural provisions of NEPA. Among other requirements, the CEQ NEPA regulations (40 CFR parts 1500–1508) require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations. DOE's current NEPA implementing regulations were promulgated in 1992 (57 FR 15122, April 24, 1992) and are codified at 10 CFR part 1021.

On February 20, 1996, DOE published a proposed rulemaking that would revise its existing NEPA implementing regulations (61 FR 6414). Publication of the Notice of Proposed Rulemaking began a 45-day public comment period that originally ended on April 5, 1996. In response to requests, the comment period was subsequently reopened on April 19, 1996 (61 FR 17257), and extended until May 10, 1996. As part of the notice and comment process and also in response to requests, DOE held a public hearing on the proposed amendments on May 6, 1996. Comments were received from approximately 39 sources, including Federal and state agencies, public interest groups, other organizations, and individuals. Seven commenters also spoke at the public hearing. Copies of all written comments and the transcript of the public hearing have been provided to CEQ and are available for public inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

The amendments revise subparts A, C and D of the existing regulations. Among the changes are various revisions to the lists of "typical classes of actions" (appendices A, B, C, and D to subpart D), including the addition of new categorical exclusions, modifications that expand or remove existing categorical exclusions, and clarifications. Other changes pertain to the DOE requirement for an implementation plan for each environmental impact statement and DOE's required content for findings of no significant impact. DOE is also clarifying its public notification requirements for records of decisions.

DOE is continuing to consider its proposed amendments to subpart D that relate to the Federal power marketing administrations. Accordingly, as described in a separate Notice published elsewhere in this issue, DOE will reopen the public comment period on the proposed amendments to subpart D that apply primarily to power marketing activities (B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12, B4.13, C4, C7, and D7). This final rule addresses the remainder of the proposed amendments.

This Notice adopts the amendments proposed in the Notice of Proposed Rulemaking (except for the power marketing classes of actions listed above), with certain changes discussed below, and amends the existing regulations at 10 CFR Part 1021. Copies of the final amendments to the rule are available upon request from the information contact listed above.

In accordance with the CEQ NEPA regulations, 40 CFR 1507.3, DOE has consulted with CEQ regarding these final amendments to the DOE NEPA rule. CEQ has found that the amendments conform with NEPA and the CEQ regulations and has no objection to their promulgation.

II. Statement of Purpose

The amendments to the DOE NEPA regulations are intended to improve the efficiency of DOE's implementation of NEPA by clarifying and streamlining certain DOE requirements, thereby reducing implementation costs and time. This goal is consistent with the DOE Secretarial Policy Statement on NEPA (June 1994), which encourages actions to streamline the NEPA process without sacrificing quality and to make the process more useful to decision makers and the public. Full compliance with the letter and spirit of NEPA is an essential priority for DOE. In addition, DOE's missions, programs, and policies have evolved in response to changing national priorities since the current DOE NEPA regulations were issued in 1992, and DOE needs to make conforming changes in its NEPA regulations, e.g., to provide efficient NEPA procedures for waste management and property transfer actions, which are occurring with increasing frequency.

III. Comments Received and DOE's Responses

DOE has considered and evaluated the comments received during the public comment period. Many revisions suggested in these comments have been incorporated into the final amendments to the rule. The following discussion describes the comments received, provides DOE's responses to the comments, and describes any resulting changes to the proposed amendments. As a result of changes made in response to comments, several number designations of classes of actions have been changed in the final rule; section references, unless otherwise indicated, are to those in the proposed amendments.

Several commenters expressed overall support for DOE's efforts to increase efficiency and reduce NEPA compliance costs. One Federal agency (the Food and Drug Administration) and one state agency (the Virginia Department of Environmental Quality) stated that they had no objections to DOE's proposed amendments. No comments or only positive comments were received on the following proposed amendments to subpart D of the rule: Integral element B(1), B1.8, B1.18, B1.21, B1.31, B3.3, and D1. These proposed amendments, therefore, remain unchanged in the final rulemaking, and are not discussed further.

A. Procedural Comments

A few commenters addressed procedural aspects of this rulemaking. Specifically, one commenter stated that public Notice of Proposed Rulemaking was inadequate. DOE notes that the Notice of Proposed Rulemaking was published in the Federal Register on February 20, 1996. In addition, the Notice was mailed to more than 400 stakeholders and was made available for review and comment through the World Wide Web at DOE's NEPA Web Site. DOE believes that its effort to notify the public of its proposed rulemaking was sufficient.

In addition, two commenters requested that DOE hold public hearings on the proposed rulemaking at locations in close proximity to various DOE facilities and a reopening of the comment period until 90 days after publication of the schedule for public hearings. Other commenters also asked that the comment period be reopened.

In response, DOE reopened the comment period from April 19, 1996, through May 10, 1996. Further, as described in a separate Notice published elsewhere in this issue, DOE will again reopen the comment period, but only on the proposals to modify the typical classes of actions pertaining primarily to power marketing activities. DOE also held a public hearing in Washington, DC., on May 6, 1996, with accommodations for commenters who wished to present their views by conference telephone call from DOE regional offices throughout the United States.

DOE has fully considered all oral and written comments received through May 10, 1996. DOE believes that it has provided sufficient and appropriate public participation opportunities in its proposed rulemaking, and does not believe that additional hearings or an additional 90-day comment period on the entire proposed rulemaking is necessary.

Two commenters questioned the procedures DOE followed in determining that the proposed new and modified categorical exclusions would result in no significant impact, and indicated the need for documentation of this finding for each categorical exclusion in addition to the statement that appears in the preamble to the proposed rulemaking. In accordance with the CEQ regulations (40 CFR 1508.4), DOE initiated this rulemaking, in part, to define those classes of actions that DOE has found to have no significant effect on the human environment, either individually or cumulatively. DOE is not required by the CEQ regulations to set forth in the preamble a detailed, individualized explanation for its finding of no significant impact for each of the classes of actions in appendices A and B, but provides an overall finding in Section III.F, below.

One commenter requested that DOE prepare an environmental impact statement addressing the cumulative impacts of the proposed amendments. Two other commenters stated that an environmental assessment was necessary to determine whether the proposed amendments constituted a major Federal action.

DOE believes that its proposal to amend its NEPA implementing regulations falls within the categorical exclusion for procedural rulemaking (10 CFR part 1021, appendix A to subpart D, categorical exclusion A6). DOE's NEPA regulations prescribe the process under which the Department examines the environmental impacts of its proposed actions. The regulations do not set out substantive criteria for reaching a decision on a particular action, and thus are procedural only. For this reason, these amendments to the DOE NEPA regulations are properly excluded from NEPA documentation requirements. See also Section IV.A.

One commenter requested that DOE impose a moratorium on privatization pending completion of public hearings and an environmental impact statement on the proposed amendments. This request is outside the scope of this rulemaking, and DOE does not believe that the scope, which is restricted to DOE's proposed changes to 10 CFR part 1021, should be expanded. Any moratorium on privatization activities should be determined on the basis of the particular facts and circumstances and not in this rulemaking.

A commenter disagreed with DOE's statement in the preamble to the proposed rule that a review under the Unfunded Mandates Reform Act was not required because the DOE NEPA regulations affect only DOE. The commenter stated that many DOE facilities and actions have profound effects on other government agencies and the private sector. While DOE recognizes that its activities do affect other government agencies and the private sector, its regulations to implement the procedural provisions of NEPA impose obligations only on DOE, not on any state, local, or tribal government or on the private sector. Thus, further review by DOE under the Unfunded Mandates Reform Act is not required, and DOE is reiterating in this final rule its previous finding in the proposed rule. See Section IV.G.

B. General Comments on Proposed Amendments

Comments on Public Involvement Opportunities

Many commenters stated that the proposals regarding implementation plans, records of decision, and additions and modifications to the list of categorical exclusions would have the effect of reducing the public's knowledge of, and opportunities to participate in, DOE's decision making process. One commenter expressed concern that new and modified categorical exclusions would reduce the range of DOE actions subject to meaningful environmental review.

In proposing certain streamlining amendments to subpart C, DOE carefully weighed the benefits of improved efficiency against the acknowledged reduction in public information. DOE has reconsidered each such proposal in light of public comments and made some adjustments, as described below in Section III.D.

However, with regard to categorical exclusions, while the CEQ regulations encourage public participation in the NEPA process, they also direct agencies to use categorical exclusions (which, by definition, have no significant impact on the environment, either individually or cumulatively) to reduce paperwork (40 CFR 1500.4(p)) and delays (40 CFR 1500.5(k)). Consistent with this streamlining approach, the CEQ regulations do not provide for public participation in an agency's determination that a particular proposed action is categorically excluded.

DOE is amending its list of categorical exclusions by adding certain DOE classes of actions and modifying or clarifying other classes of actions currently on its list of categorical exclusions. In doing so, DOE has determined that these classes of actions do not have significant impacts on the environment, either individually or cumulatively. See Section III.F below. Thus, for these particular classes of actions, the environmental review that the commenter requested would not be meaningful in terms of evaluating significant impacts to the environment. DOE believes that it will serve environmental concerns and the public's interest best by focusing its efforts on the careful analysis of those actions that actually have the potential for significant impact.

DOE has considered comments on the merits of each proposed categorical exclusion amendment as discussed in Section III.F, but has decided generally to proceed with listing and modifying categorical exclusions, with the

knowledge that in some respects doing so would diminish opportunities for public involvement or information sharing.

Comments Outside the Scope of Proposed Rulemaking

DOE proposed changes to specific sections of its NEPA implementing procedures. DOE considers any comments received regarding the proposed changes to be within the scope of this rulemaking and has addressed such comments in this final rulemaking.

DOE received several comments that it considers to be outside the scope of this rulemaking. These include suggested modifications to provisions of the existing DOE NEPA regulations other than those DOE is proposing to modify or expand, suggestions for additional categorical exclusions, suggestions for broad changes to the DOE NEPA process, and comments on particular DOE proposed actions and DOE policies or procedures not related to DOE's NEPA regulations. Such comments are briefly discussed below.

Suggested Changes to Other Provisions of Existing DOE NEPA Regulations

Some commenters suggested changes to provisions of existing DOE NEPA regulations in addition to provisions that DOE proposed to modify or expand. These commenters sought changes to §§ 1021.216 (Procurement, financial assistance, and joint ventures), 1021.301 (Agency review and public participation), 1021.410 (Application of categorical exclusions (classes of actions that normally do not require EAs or EISs)), and B3.11 (Outdoor tests and experiments on materials and equipment components). While DOE is not considering such changes to its NEPA regulations at this time, DOE is taking these suggestions under advisement and may address them in a future rulemaking.

Suggestions for Additional Categorical Exclusions

A few commenters offered suggestions for additional categorical exclusions to cover facility deactivation activities; onsite transportation of packaged spent nuclear fuel or transuranic waste; onsite transportation of hazardous, mixed, and radioactive waste; relocation or reconfiguration of existing facilities, buildings, and operations within and between DOE sites; replacement of existing facilities in kind and in place; and treatment or disposal of hazardous waste at an existing offsite permitted facility. To the extent that these suggestions were not addressed in DOE's proposed additions and modifications to its list of typical classes of action, DOE considers them to be outside the scope of this rulemaking. DOE is taking these suggestions under advisement and may address them in a future rulemaking.

Suggested Changes to DOE's NEPA Process

Other commenters offered general suggestions for what they considered to be improvements to the DOE NEPA process; topics included the codification of DOE's enhanced public involvement procedures, improvement of DOE's notification procedures, the timing of NEPA actions, page limits for DOE environmental impact statements, coordination with state historic preservation officers, actions taken under consent orders, defining when the choice of reasonable alternatives becomes limited, use of "worst case" scenarios in NEPA documents, and delegation of decision making authority. One commenter requested that DOE ensure that its implementing rules and related policies, orders, and procedures are not applied unnecessarily to actions that are not "major Federal actions." Although these comments are outside the scope of DOE's proposed rulemaking, DOE may consider these suggestions in a future rulemaking.

Comments Not Related to NEPA Regulations

A few commenters offered comments that are related to particular DOE proposed actions or other DOE policies and procedures. These include comments regarding whistleblower protection, privatization of DOE facilities, hearings on the Multi-Purpose Canister Environmental Impact Statement, management of spent nuclear fuel, cleanup of contaminated sites, Federal Acquisition Regulations, the Waste Management Programmatic Environmental Impact Statement, and contractor oversight. Because these comments relate to specific DOE actions and not to DOE's procedures for NEPA compliance, DOE finds these comments to be outside the scope of this rulemaking. Accordingly, they were not considered in developing the final rule.

Other Comments

One commenter stated that DOE should provide language in the rule that requires all DOE NEPA documents to substantiate compliance with all applicable environmental laws, Executive Orders, and other similar requirements. DOE notes that it must comply with all applicable environmental laws, Executive Orders, and similar requirements. With respect to the application of the categorical exclusions in appendix B to subpart D, DOE's NEPA regulations currently require that a proposed action must be one that would not "[t]hreaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health" in order to fit within a categorical exclusion (appendix B to subpart D, integral element B(1)).

One commenter objected to documenting the application of categorical exclusions to each and every activity that DOE undertakes; on the other hand, several commenters suggested the need for documentation to ensure that the integral elements (appendix B, B (1) through B(4) to subpart D of DOE's NEPA regulations) were properly considered and cumulative impacts would not result. DOE notes that neither the CEQ nor DOE NEPA regulations, nor DOE's internal NEPA procedures, require documenting the application of categorical exclusions (DOE Order 451.1, Section 5(d)(2)). The appropriate NEPA Compliance Officer is responsible for the proper application of categorical exclusions.

Another commenter stated that DOE should regularly prepare a list of the actions to which categorical exclusions were applied and make that list available to the public. DOE recognizes the value in informing the interested and affected public around DOE sites of its activities at those sites. However, a requirement for the periodic publication of a list of activities that have been categorically excluded would tend to undermine CEQ's strategy of using categorical exclusions to streamline the NEPA process.

One commenter stated that DOE's environmental review processes for compliance with NEPA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) should be integrated. Another commenter expressed concern that the proposed amendments did not adequately address DOE's current policy on compliance with NEPA for CERCLA actions, as set forth in the Secretarial Policy Statement on NEPA (June 1994).

Under the current policy, DOE will rely on the CERCLA process for review of actions to be taken under CERCLA and will address NEPA values and public involvement procedures in its CERCLA processes to the extent practicable. DOE may choose, however, after consultation with stakeholders and as a matter of policy, to integrate the NEPA and CERCLA processes for specific proposed actions. The CERCLA/NEPA policy is applied on a case-by-

case basis, and DOE is satisfied that the new approach is clear and working adequately as a matter of policy that does not warrant codification in the regulations.

One commenter asked whether DOE should consider NEPA to be sufficiently specific and detailed to warrant the commitment to the "letter" of NEPA that DOE stated in its preamble to the proposed amendments. The commenter stated that such a commitment can create unnecessary concerns about the degree to which the responsibility for decision making can be delegated and justify unnecessarily restrictive and arbitrary decisions. While DOE agrees that the statute itself imposes few specific requirements, DOE believes that it is important to stress its commitment to complying with the express requirements, as well as with the intent of the statute to preserve, protect, and enhance the environment.

C. Comments on Amendments to Subpart A—General

Section 1021.105 Oversight of Agency NEPA Activities

One commenter expressed concern that the Office of NEPA Policy and Assistance was being eliminated and that the amendment proposed that oversight of DOE NEPA activities would be assumed by the Assistant Secretary for Environment, Safety and Health.

The oversight of DOE's NEPA activities has been and continues to be conducted by the Assistant Secretary for Environment, Safety and Health. On December 18, 1994, the office under the Assistant Secretary with specific responsibility for NEPA activities was renamed the Office of NEPA Policy and Assistance (formerly the Office of NEPA Oversight). The only modification to this section is a conforming change to incorporate the new name for the office.

D. Comments on Amendments to Subpart C—Implementing Procedures

Section 1021.312 EIS Implementation Plan

DOE received several comments supporting and several comments opposing the proposal to eliminate the requirement to prepare an implementation plan for every environmental impact statement.

Several commenters expressed concern that the public's opportunity for involvement would be reduced if an implementation plan were not prepared for every environmental impact statement. They stated that implementation plans provide an opportunity for the public to see how scoping comments will be addressed in the environmental impact statement, to formulate options and comments, to review contractor disclosure statements, and to keep the environmental impact statement on track. One commenter stated that the public has valuable insight to provide. Another commenter suggested that implementation plans are useful educational tools and an excellent introduction to the DOE NEPA process.

As discussed above in Section III.B, DOE weighed the benefits of improved efficiency from eliminating the implementation plan requirement against the acknowledged reduction in publicly available information. After considering all the comments received, DOE determined that because the public has the opportunity to provide comments on the scope of an environmental impact statement and can see how scoping comments were addressed and considered in the draft environmental impact statement, the value to the public and DOE of continuing the requirement for an implementation plan does not justify the cost, time, and resources required in preparing an implementation plan for every environmental impact statement.

With respect to contractor disclosure statements, DOE stated in the preamble to the proposed amendments that it would continue to prepare and require the execution of such statements by contractors, as required by 40 CFR 1506.5(c) of the CEQ regulations. In response to comments, however, DOE will include the contractor disclosure statements in draft and final environmental impact statements, and has modified 10 CFR 1021.310 accordingly.

One commenter stated that eliminating the implementation plan requirement will preclude requests from interested parties for environmental assessments and environmental impact statements before the agency proceeds with actions. Because an implementation plan is prepared after a decision has been made to prepare an environmental impact statement, and is not prepared at all for environmental assessments, DOE believes that eliminating the implementation plan requirement will not have any effect on the public's ability to request an environmental impact statement or an environmental assessment.

While some commenters supported eliminating the implementation plan requirement, they requested that notes from public scoping meetings be made available in public reading rooms or that DOE prepare a detailed administrative record of the disposition of public scoping comments and make it available to the public upon request. Another commenter, although supportive of the proposed amendment, suggested that DOE include a response to public scoping comments in the draft environmental impact statement.

DOE believes that the purpose in eliminating the implementation plan requirement (i.e., to achieve cost and time savings without meaningfully reducing public involvement in the DOE environmental impact statement process) would not be served by adopting the alternative suggestions (preparing a detailed administrative record or including a response to public scoping comments in a draft environmental impact statement) in place of the implementation plan requirement. The public scoping process under DOE's amended rule fully complies with the CEQ NEPA regulations, which require only that draft environmental impact statements be prepared in accordance with the scope decided upon in the scoping process (40 CFR 1502.9(a)).

One commenter stated that the environmental impact statement implementation plan should be optional. DOE agrees and intends for the elimination of the implementation plan requirement to have the effect of making such plans optional.

Finally, in its proposal to eliminate the requirement to prepare an implementation plan for an environmental impact statement, DOE inadvertently omitted making a corresponding change to § 1021.311(f), which included a reference to the EIS implementation plan. Section 1021.311(f) has now been removed from the final rule; paragraph (g) has been redesignated accordingly.

Section 1021.315 Records of Decision

Section 1021.315(c). Commenters opposed two aspects of this proposed amendment. First, some commenters expressed concern that DOE's proposal to allow publication in the Federal Register of a brief summary and notice of availability of a record of decision, rather than the full text, would shift to the public the cost of obtaining copies of a record of decision, and would not assure timely availability of the record of decision. Another commenter suggested that any savings achieved from not publishing the full text of a record of decision in the Federal Register would not be sufficient to justify the public's increased burden in seeking a record of decision. DOE has reconsidered the proposal in light of the commenters' concerns, and has decided that the cost-savings do not justify the burden associated with the proposed

change. Therefore, DOE will continue to publish the full text of records of decision in the Federal Register.

Second, commenters also expressed concern about the proposed clarification to § 1021.315(c) that, if a decision has been publicized by other means (e.g., press release or announcement in local media), DOE need not defer taking action until its record of decision has been published in the Federal Register. The commenters suggested that these other means of communication were not as reliable, accurate, easily available, or effective as the Federal Register.

This amendment is a clarification, not a substantive change, to DOE's regulations. Section 1021.315(b) currently states that "No action shall be taken until the decision has been made public." One way to make a decision public is to publish the record of decision in the Federal Register, but decisions can be made public in other ways, such as through press releases or announcements in local media. DOE's proposed amendment merely clarifies the practice that DOE has followed previously under which DOE may proceed with an action after its decision has been made public but before that decision is published in the Federal Register. DOE needs to retain the ability to implement an action after making the record of decision public, but before publication of that decision in the Federal Register, in those instances when timing is critical.

One commenter questioned whether DOE was proposing to implement an action before the decision is articulated in writing and signed. DOE is not making such a proposal. To clarify this point, DOE has modified the final language in a new § 1021.315(d) by indicating that DOE may implement a decision if the record of decision has been signed and the decision and the availability of the record of decision have been made public.

Another commenter indicated confusion over DOE's proposal to modify § 1021.315(c) rather than § 1021.315(b). In response, and to provide further clarification, DOE has moved the second sentence from current § 1021.315(b) to begin a new § 1021.315(d), and added to the new subsection (d) the language previously proposed for § 1021.315(c), as modified above. Section 1021.315(c) remains as in the current regulation, and current § 1021.315(d) is now § 1021.315(e). Pertinent sections of § 1021.315 are now changed as follows:

(a) (no change)

(b) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

(c) (no change)

(d) No action shall be taken until the decision has been made public. DOE may implement the decision before the ROD is published in the Federal Register if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media).

(e) DOE may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD is subject to the provisions of paragraphs (b), (c), and (d) of this section.

Section 1021.322 Findings of No Significant Impact

Section 1021.322(b)(1). Under the proposed amendment, and in accordance with 40 CFR 1508.13, DOE would either incorporate the environmental assessment by reference in a finding of no significant impact and attach the environmental assessment, or summarize the environmental assessment in the finding. A few commenters supported the proposal to remove the requirement to summarize the environmental assessment in the finding of no significant impact in all cases. Others expressed concern that DOE was proposing to eliminate information that is currently being provided to the public.

This proposal is intended to eliminate redundancy by requiring either the attachment of an environmental assessment to the related finding of no significant impact or the inclusion of a summary of an environmental assessment in the related finding of no significant impact, but not both. This would change DOE's current practice of summarizing the environmental assessment in each finding of no significant impact and also attaching the environmental assessment to the finding of no significant impact. For a finding of no significant impact published in the Federal Register, it would be necessary to summarize the environmental assessment in the finding of no significant impact, because the environmental assessment would not be published in the Federal Register.

E. General Comments on Subpart D—Typical Classes of Actions

Many of the commenters suggested, both generally and with regard to specific proposed amendments to classes of actions in subpart D, that DOE's terminology was too vague or subjective to adequately define classes of actions. For example, commenters objected to DOE's use of such terms as "small-scale," "short-term," "minor," and "generally," among others, as being too imprecise. On the other hand, where DOE had proposed using specific quantities to aid in defining a class of actions (e.g., 50,000 square feet of area and 100 MeV (million electron-volts) of energy), commenters asked why DOE had picked the proposed value rather than any other, and how DOE could justify such apparent precision.

DOE has considered all such comments in the context of the individual proposed amendments to subpart D classes of actions presented in Section III.F, below. To provide additional information and to simplify the more specific discussions, DOE is providing the following general response.

DOE formulates subpart D classes of actions based on DOE's experience, other agencies' experience as reflected in their NEPA procedures, technical judgments regarding impacts from actions, and public comments on a proposed rule. To minimize subjectivity in interpretation, DOE uses both numerical values of quantities (which have clear meaning) and descriptive words such as "minor" and "small-scale," which suggest the smaller actions in a class, not the larger. DOE also uses examples, both to clarify that the class of actions includes the specific examples cited, and to suggest the nature of actions that may be included.

With regard to DOE's use of specific quantities in several of the proposed classes of actions, commenters had two general objections. First, they noted correctly that using "generally" in defining a class of actions (e.g., proposed B1.26 and B3.10) could allow the class to be applied to proposed actions that would otherwise not even approximately fit the definition. Second, commenters questioned the justification for the specific quantity values chosen and even whether any specific value could be justified.

DOE's intention with respect to both issues is better expressed by the concept of "approximately" rather than "generally," and the classes of actions in the final rule have been changed accordingly. By using "approximately," DOE is indicating that the numerical values used in defining classes of actions are to be interpreted flexibly rather than with unwarranted precision. For example, DOE proposed to categorically exclude construction of small accelerators and decided that it could express the class of actions as including accelerators less than 100 MeV in energy. DOE acknowledges that judgment is involved and that it could

have chosen numbers somewhat greater than 100 MeV to limit the categorical exclusion. DOE believes, however, that the phrase "less than approximately 100 MeV in energy" provides appropriate flexibility and represents the best overall resolution of the matter.

One commenter expressed concern that DOE had not taken the opportunity to decrease the level of prescription and detail in the DOE NEPA regulations. The commenter expressed particular concern that DOE had proposed 17 new classes of actions, many of which the commenter believed would add little or no value to DOE's NEPA process. Similarly, another commenter stated that DOE should make existing categorical exclusions more comprehensive whenever possible, rather than simply expand the list of categorical exclusions.

In proposing amendments to the DOE NEPA rule, DOE considered making the list of categorical exclusions shorter by combining certain actions and making the list more comprehensive by broadening the categories. DOE declined to pursue such a course of action generally in this rulemaking, although it proposed to combine two classes of actions. DOE's extensive list of categorical exclusions results primarily from the fact that DOE is engaged in many different types of activities.

One commenter requested that DOE define the phrase "already developed area" that is used in several proposed new or amended categorical exclusions (e.g., B1.15, B1.22, B3.6, B3.10, B3.12, and B6.4). The commenter expressed concern that DOE may consider portions of wildlife management areas surrounding DOE facilities to be "developed" merely because of DOE ownership or because of the existence of abandoned DOE facilities. In the existing and proposed regulations, DOE used the parenthetical phrase "where site utilities and roads are available" to help define "an already developed area" in the classes of actions in the final rule. For further clarity, DOE has modified the parenthetical phrase to read "where active utilities and currently used roads are readily accessible." DOE does not intend to include wildlife areas and abandoned facilities in its definition of "an already developed area."

Finally, several commenters noted that DOE defined categorical exclusions as classes of actions that "normally" do not require environmental assessments or environmental impact statements. One of these commenters suggested that "normally" should mean 99 percent of the time, and this commenter and others stated that there should be provisions for extraordinary circumstances under which a proposed action listed in appendices A or B should not be categorically excluded.

DOE's use of the term "normally" in the context of categorical exclusions is consistent with the use of this term in the CEQ regulations, which state that an agency's NEPA implementing procedures for categorical exclusions "shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect" (40 CFR 1508.4). See also 40 CFR 1507.3(b)(2)(ii), in which CEQ directs agencies to identify classes of actions "which normally do not require either an environmental impact statement or an environmental assessment." DOE believes that its categorical exclusions comply with CEQ's regulations, i.e., to be eligible for categorical exclusion, a class of actions must not have significant effects on the human environment except in extraordinary circumstances that may affect the significance of the environmental effects of a specific proposed action. DOE's existing regulations (10 CFR 1021.410(b)(2)) describe the nature of extraordinary circumstances under which a categorical exclusion should not be applied, and explicitly require (§ 1021.400(d)) an environmental assessment or environmental impact statement for a proposed action that presents such circumstances. Therefore, DOE does not believe any changes are needed to address the use or interpretation of the word "normally" in DOE's description of categorical exclusions or the manner in which DOE provides for extraordinary circumstances.

F. Comments on Appendices of Subpart D—Typical Classes of Actions

Several commenters objected to many categorical exclusions on the grounds of cumulative effects, connected actions, or extraordinary circumstances, but without explanation as to their specific objection. A categorical exclusion is a class of actions that, individually or cumulatively, do not have significant environmental impacts. If there are extraordinary circumstances associated with a proposed action, or if the proposal is connected to other actions with potentially significant impacts or related to other proposed actions with cumulatively significant impacts, then a categorical exclusion would not apply under § 1021.410(b).

Another commenter noted that several of the proposed categorical exclusions referred to "siting, construction, operation, and decommissioning" of various DOE activities and questioned whether such activities would also need state permits. DOE notes that while new construction could require state or local permits, one of the integral elements for all appendix B categorical exclusions is that the proposed action "does not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health." Any DOE action would be required to comply with applicable state and local requirements, independent of the level of NEPA review appropriate under DOE's NEPA regulations.

In general, the following responses to comments regarding specific categorical exclusions should be read in the full context of the DOE regulations for categorical exclusions. Under the current regulations, before a proposed action may be categorically excluded, DOE must determine in accordance with § 1021.410(b) that (1) the proposed action fits within a class of actions listed in appendix A or B to subpart D, (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the action, and (3) there are no connected or related actions with cumulatively significant impacts and, where appropriate, the proposed action is a permissible interim action. In addition, to fit within a class of actions that is normally categorically excluded under appendix B, a proposed action must include certain integral elements (appendix B, paragraphs B (1) through (4)). These conditions ensure that an excluded action will not threaten a violation of applicable requirements, require siting and construction of waste management facilities, disturb hazardous substances such that there would be uncontrolled or unpermitted releases, or adversely affect environmentally sensitive resources.

The headings below are those used in the table of contents of the appendices in the proposed amendments. The conversion table below shows which classes of actions have been included in the final amendments to the rule. There were a few numbering changes between the proposed and final amendments because some classes of actions were added or removed. Specifically, the proposed B1.32 was removed, and the proposed B1.33 was renumbered as B1.32; existing B6.4, which had been proposed for revision, was retained without change, and a new B6.10 was added to incorporate some of the changes proposed for B6.4; and the proposed modification to C9 was withdrawn. These changes are explained more fully in the following discussion.

CONVERSION TABLE

Existing rule	Final amendments	
A.7	A.7	Clarified.
B(1)	B(1)	Modified.
B(2)	B(2)	Do.
B1.3	B1.3	Clarified.
B1.8	B1.8	Modified.
B1.13	B1.13	Do.
B1.15	B1.15	Do.
B1.18	B1.18	Do.
B1.21	B1.21	Do.
B1.22	B1.22 & B1.23	Clarified.
	B1.24—B1.32	Added.
	B2.6	Do.
B3.1	B3.1	Clarified.
B3.3	B3.3	Do.
B3.6	B3.6	Modified.
B3.10	B3.6	Do.
	B3.10	Added.
	B3.12–B3.13	Do.
B5.3	B5.3	Modified.
B5.5	B5.5	Do.
B5.9–B5.11	B5.9–B5.11	Clarified.
B5.12–B5.16	Removed.	
	B5.12	Added.
B6.1	B6.1	Modified.
B6.5	B6.5	Clarified.
	B6.9–B6.10	Added.
C1	C1	Reserved.
C10	C10	Do.
C11	C11	Modified.
C14	C14	Do.
C16	C16	Do.
D1	D1	Do.
D10	D10	Do.

Finally, after considering all public comments on the proposed amendments, DOE has determined that the final amendments to appendices A and B constitute classes of actions that do not individually or cumulatively have a significant effect on the human environment, and are covered by a finding to that effect in § 1021.410(a). In making this finding, DOE has considered, among other things, its own experience with these classes of actions, other agencies' experience as reflected in their NEPA procedures, DOE's technical judgment, and the comments received on the proposed amendments.

• Proposed Clarification A7 Transfer of property, use unchanged.

One commenter stated that DOE cannot assume that transfer of property will not result in short- and long-term changes in impacts. DOE proposed to amend paragraph A7 only to clarify the meaning of property by explicitly including both personal property (e.g., equipment and material) and real property (e.g., permanent structures and land). DOE did not propose to amend the requirement regarding property use remaining unchanged. The categorical exclusion may only be applied when the impacts would remain essentially the same after the transfer as before. See also the discussion of B1.24 and B1.25.

Classes of Actions Listed in Appendix B

• Proposed Modification to Integral Element B(2).

DOE proposed to modify integral element B(2)—which sets the condition that a categorically excluded action may not require siting, construction, or major expansion of waste storage, disposal, recovery, or treatment facilities—to provide an exception for such actions that are themselves categorically excluded. DOE proposed this change to conform to simultaneously proposed changes (B1.26, B1.29, B6.4, and B6.9) that would categorically exclude certain water treatment and waste storage facilities.

Two commenters objected to the change, apparently as an extension of their objections to the proposed categorical exclusion amendments that prompted DOE's proposal to modify B(2). Another commenter expressed concern that the proposed B(2) would imply that "major" expansion of waste facilities might be categorically excluded. This interpretation was unintended and the language has been modified. In other respects, however, DOE has retained the B(2) amendment as necessary to conform to certain final categorical exclusions (B1.26, B1.29, B6.9, and B6.10). As finally revised, B(2) reads as follows: "To fit within the classes of actions (in appendix B), a proposal must be one that would not . . . require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions."

• Proposed Modification to Integral Element B(4)(iii).

DOE intended to modify this integral element to allow the categorical exclusion of actions listed in appendix B despite their having an adverse impact on small, low quality wetlands. DOE anticipated that activities in such areas would not have a significant environmental impact, either individually or cumulatively. While several commenters supported the proposed change, others expressed concern about the potential cumulative impacts, the institution of a threshold size, the meaning of "covered" by a general permit, and the difference between a "general" permit and a "Nationwide" permit.

In consideration of the comments and after consultation with staff of the U.S. Army Corps of Engineers (Corps), DOE has revised B(4)(iii) to allow the categorical exclusion of actions in wetland areas not considered waters of the United States and thus not regulated under the Clean Water Act. This includes certain drainage and irrigation ditches, artificial lakes and ponds, and borrow pits, as discussed below.

The Corps generally does not consider the following areas to be waters of the United States: (a) Non-tidal drainage and irrigation ditches excavated on dry land; (b) artificially irrigated areas which would revert to upland if the irrigation ceased (for DOE this would include areas "irrigated" by leaking pipes, tanks, or ditches); (c) artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing; (d) artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons; (e) waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States under 33 CFR 328.3(a). See 51 FR 41206, 41217 (November 13, 1986). The Corps reserves the right, however, on a case-by-case basis to determine that a particular water body within these categories fits within the definition of waters of the United States. The U.S. Environmental Protection Agency (EPA) also has the right to determine on a case-by-case basis if any of these areas are waters of the United States. Note that some of these areas could become waters of the United States and subject to regulation. This may occur if the area no longer meets the above criteria, e.g., the area is no longer used for the purpose for which it was constructed or is abandoned. In such cases, a categorical exclusion could not be applied.

The wording of B(4)(iii) has been modified from the proposed rule as follows: "Wetlands regulated under the Clean Water Act (33 USC 1344) and floodplains."

• Proposed Clarification B1.3 Routine maintenance/custodial services for buildings, structures, infrastructures, equipment.

One commenter asked for clarification of "in kind replacement." The commenter stated that, with regard to older facilities, certain equipment used in the facilities is no longer made or its installation at this time would be

contrary to code or good management practices. The commenter asked if replacing equipment in older facilities with modern components is considered "in kind replacement."

DOE recognizes that the equipment used in many of its facilities cannot be replaced literally "in kind" for the reasons the commenter states. DOE believes, however, that the description of "in kind replacement" presented in the proposed clarification for B1.3 (i.e., in kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility) adequately addresses the commenter's request.

B1.3(n). One commenter suggested that instead of adding additional examples of testing and calibration of facility components to B1.3, that the word "maintenance" be added to B3.1. DOE has chosen to address routine maintenance under a separate categorical exclusion rather than adding it to other categorical exclusions where it might apply.

B1.3(o). One commenter thought that the term "routine decontamination" needed additional clarification. DOE uses "routine" to mean a recurring action that is done easily and is well understood, such as wiping with rags, using strippable latex, and minor vacuuming. B1.3(o) is intended to categorically exclude contamination-cleanup activities of a routine nature.

• Proposed Modification B1.13 Construction/acquisition/relocation of onsite pathways, spur or access roads/ railroads.

DOE proposed to expand existing B1.13 (Acquisition or minor relocation of existing access roads serving existing facilities if the traffic they are to carry will not change substantially) by adding construction and spur roads, pathways and railroads, and by deleting the phrase "serving existing facilities if the traffic they will carry will not change substantially." One commenter questioned the definition of "spur" and "access" roads. Another commenter suggested more restrictive language for B1.13 so that it would be applied only in instances to improve safety, and only if the total traffic volume would not substantially change. A third commenter expressed concern that applying the categorical exclusion could eliminate valuable input from natural resource agencies and cause potential significant impacts to wildlife, including loss of habitat, habitat fragmentation, and degradation of adjacent habitat. Another commenter stated that the actions proposed to be categorically excluded should be subject to public review.

In response to the concerns raised by these commenters, DOE has made two changes to the proposed modification to B1.13. First, DOE has deleted the reference to "spur roads" because the term "access roads" adequately encompasses the intended purpose. Second, DOE has revised the categorical exclusion to apply only to the construction of "short" access roads and access railroads. DOE acknowledges that the construction of onsite access roads could result in adverse environmental impacts. DOE believes, however, that the general restrictions on the application of categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), will provide adequate safeguards to ensure that this class of actions is not applied to activities that could result in significant effects. Also, it is DOE's intention that the inclusion of the term "short" will further clarify the length of access roads and railroads that DOE intended to be constructed under this categorical exclusion (i.e., no more than a few miles in length). The categorical exclusion B1.13 now reads: "Construction, acquisition, and relocation of onsite pathways and short onsite access roads and railroads." DOE does not believe that actions qualifying under this categorical exclusion warrant public review. See Section III.B, above.

• Proposed Modification B1.15 Siting/construction/operation of support buildings/support structures.

One commenter suggested that the categorical exclusion be expanded to include deactivation and demolition of the same structures. Such expansion is not necessary because these activities are included under proposed categorical exclusion B1.23.

Two commenters suggested that the phrase "but not limited to" be inserted between "including" and "prefabricated buildings and trailers." DOE has incorporated the suggestion, as well as reversing the order of "prefabricated buildings" and "trailers," to be consistent with B1.22.

One commenter stated that actions covered by this categorical exclusion should be subject to public review. For the reasons stated in Section III.B, DOE believes that public review is not appropriate.

One commenter asked for a definition of an "already developed area," a phrase used in the existing regulations. The phrase in the proposed B1.15, "where site utilities and roads are available," was intended to define the term. For clarification, DOE has modified this phrase to read "where active utilities and currently used roads are readily accessible." See the discussion of "already developed area" in Section III.E.

• Proposed Clarification B1.23 Demolition/disposal of buildings.

DOE proposed to divide the existing categorical exclusion B1.22 into two categorical exclusions to clarify that the two actions included in the existing class of actions—relocation of buildings (proposed B1.22) and demolition and subsequent disposal of buildings, equipment, and support structures (proposed B1.23)—are not connected actions (i.e., actions that are closely related and therefore needed to be considered in the same NEPA review).

DOE received three comments on B1.23, none of which directly related to the proposed clarification. One commenter suggested that the categorical exclusion should be applicable to contaminated buildings that, after demolition, could be entombed in place. Another commenter questioned whether DOE was mandating disposal of construction debris in landfills. Apparently, this commenter's concern is based on DOE's intended clarification that building relocation actions are separate from building demolition and disposal. In any event, DOE is not mandating the disposal of construction debris in landfills. The third commenter objected to the categorical exclusion on the grounds of cumulative effects, connected actions, or extraordinary circumstances. DOE has responded to this objection, which was also expressed by other commenters in regard to other categorical exclusions, in Section III.F.

DOE does not intend for proposed categorical exclusion B1.23 to apply to in-place entombment of demolished structures. However, this categorical exclusion could be applied to the demolition and disposal of contaminated structures if releases are controlled or permitted and other conditions for application of the categorical exclusion are met.

• Proposed B1.24 Transfer of property/residential, commercial, industrial use; and

• Proposed B1.25 Transfer of property/habitat preservation, wildlife management.

DOE received several comments on these two proposed categorical exclusions. One commenter, noting that proposed B1.24 and B1.25 were similar, suggested combining them. Based on this comment and other comments that expressed concern about the broad scope of the categorical exclusions as proposed, DOE has retained both

categorical exclusions, but changed their wording to clarify DOE's intentions for their scopes and the differences between them. Categorical exclusion B1.24 as now revised refers to transfer, lease, disposition, or acquisition of interests in structures and equipment, and only land that is necessary for use of the transferred structures and equipment. Proposed B1.25 as revised refers to transfer of interests in land for purposes of habitat preservation or wildlife management, and only buildings that support those purposes.

One commenter questioned the meaning of "uncontaminated." DOE has added a definition to each of these two proposed categorical exclusions that states that "uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment." This definition is based on the definition of contaminant in CERCLA § 101(33). DOE already has defined "contaminant" in § 1021.104 of its existing NEPA regulations as "a substance identified within the definition of contaminant in Section 101(33) of CERCLA (42 USC 9601.101(33))."

Several commenters questioned the feasibility of making a determination about potential releases and impacts that could occur after the transfer, as required by the categorical exclusions, without some formal environmental analysis (e.g., an environmental assessment). With regard to proposed B1.24, one of the commenters questioned how DOE would know if contaminant releases increase after transfer, stating that private operators, unlike DOE, are under no obligation to provide records of types, volumes, and pathways of contaminants released into the environment. In applying these two categorical exclusions (as in applying any other categorical exclusion), DOE will consider reasonably foreseeable circumstances, but will not attempt to speculate on all possible circumstances that the future could present. DOE believes that it will be able to determine whether a proposed post-transfer use is similar enough to the existing use to meet the conditions of the categorical exclusion, i.e., no decrease in environmental quality, no increased discharges, and generally similar environmental impacts. If DOE cannot make these judgments without environmental analysis, DOE will prepare at least an environmental assessment.

One commenter stated that the proposed categorical exclusion B1.24 was a positive step, but thought DOE had unduly limited its application. Another commenter stated that proposed categorical exclusion B1.24 was an improvement in that property transfers that could be categorically excluded would not be limited to those where use remains the same. This commenter wanted to expand the proposed categorical exclusion B1.24 to include transfers to other Federal agencies without restrictions on environmental parameters, because other Federal agencies must conduct their own NEPA review for future uses of the property. DOE believes that it must conduct the proper level of NEPA review for its actions, and that a NEPA review for the transfer, lease, disposition, or acquisition of property must consider reasonably foreseeable uses and conditions of those uses, regardless of whether the transfer would be to another Federal agency.

Two commenters expressed concern about eliminating community involvement in DOE's decisions about future land use. One commenter stated that the transfer of potentially contaminated land without environmental analysis would be inconsistent with DOE's openness policy. DOE does not intend to categorically exclude the transfer of contaminated property. However, DOE recognizes that in listing these classes of actions as categorical exclusions, the sharing of public information will be diminished in some instances, as discussed in Section III.B.

One commenter questioned whether categorical exclusion B1.24 would apply to a facility that had been idle (and thus not discharging any pollutants into the environment), allowing the facility to resume operations and resulting in pollutant discharges. If the facility to be transferred has not been in operation and transfer of the facility would result in the resumption of operation, then greater environmental discharges would result, making this proposed activity ineligible for this categorical exclusion.

With regard to proposed B1.25, one commenter suggested that the preamble was unclear because the categorical exclusion deals with the transfer, lease, and disposition of habitat lands and not a change to the habitat. The commenter also stated that a habitat improvement that supported the existing species of plants and animals, although a change, would not have the potential for significant impact and therefore could be categorically excluded.

There are three categorical exclusions related to the transfer of property: A7, where the use will remain the same; B1.24, where the use may change but the environmental impacts are similar; and B1.25, where the use will be habitat preservation or wildlife management. Small-scale improvements to fish and wildlife habitat are included under existing categorical exclusion B1.20. A large-scale habitat improvement project may have significant environmental effects, albeit beneficial, and would not be categorically excluded.

A commenter suggested that DOE should not assume that significant environmental and socioeconomic impacts will not result from the transfer of uncontaminated lands for habitat preservation and wildlife management, because DOE cannot reasonably predict the types of uses that private interests, conservation groups, or local and state agencies might allow for these lands. DOE agrees that it cannot project with certainty all future activities that might be allowed on any land that it transfers, leases, or disposes. However, categorical exclusion B1.25 is intended for application in those cases where the circumstances of the property transaction create a reasonable expectation that the property will be used for habitat preservation and wildlife management for the reasonably foreseeable future.

- Proposed B1.26 Siting/construction/operation/decommissioning of small water treatment facilities, generally less than 250,000 gallons per day capacity.

Several commenters recommended that DOE not categorically exclude water treatment facilities that would involve highly toxic substances, regardless of the limited rate at which water could be processed. Some commenters stated that the 250,000 gallon criterion was not necessarily the relevant factor regarding environmental impacts. The commenters also expressed concern that cumulatively significant effects would occur from repeated applications of this proposed categorical exclusion. DOE believes that the adverse environmental effects of concern to many of the commenters are highly unlikely. DOE chose to categorically exclude treatment facilities with less than about 250,000 gallons capacity because such small plants have little potential for significant impacts, especially in light of the safeguards afforded by the integral elements. For example, a DOE categorical exclusion may not be applied where the proposed action could adversely affect an environmentally sensitive resource (10 CFR part 1021, subpart D, appendix B, B(4)). Regarding cumulative effects, appendix B listings are not applicable to a proposed action that is connected to other actions with potentially significant impacts or related to other

proposed actions with cumulatively significant impacts (10 CFR 1021.410(b)(3)). Nevertheless, DOE has modified the proposal as one commenter suggested, so that, in addition to small potable water and sewer facilities, only those small wastewater and surface water treatment facilities whose liquid discharges are subject to external regulation would be categorically excluded. See also the discussion regarding the use of the word "generally" and numerical values in Section III.B.

• Proposed B1.27 Facility deactivation.

One commenter expressed concern that the categorical exclusion would apply to any facility and that deactivation is not clearly defined. The commenter suggested that if DOE intended the categorical exclusion to apply only to the disconnection of utilities, then it should be rewritten as: "The disconnection of utilities such as water, steam, telecommunications, and electrical power after it has been determined that the continued operation of these systems is not needed for safety." DOE agrees and has rewritten the categorical exclusion as suggested. The term deactivation is no longer included in the categorical exclusion.

Another commenter suggested that the categorical exclusion be clarified to include provisions for partial disconnections and utility modifications where equipment may be required to remain operational at a reduced level. DOE believes that this categorical exclusion encompasses such disconnections and modifications.

One commenter stated that the risk posed by surplus facilities varies greatly and that DOE should be cautious in presuming NEPA documentation is not required. DOE agrees that the risks posed by particular facilities can vary, but believes that merely disconnecting the utilities of such facilities will not cause significant environmental impacts.

Another commenter questioned whether DOE intended to deactivate nuclear electrical utility facilities under this categorical exclusion, and suggested that such activities would require consultation and cooperation with other state and federal agencies and full public notice and participation. The proposed categorical exclusion would apply only to DOE facilities and not to the commercial nuclear power industry or other commercial powerplants.

• Proposed B1.28 Minor activities to place a facility in an environmentally safe condition, no proposed uses.

Several commenters questioned the scope of the categorical exclusion and generally expressed concern with the use of the word "minor." Several commenters suggested that DOE more narrowly define what it intended to cover in this categorical exclusion (e.g., the meaning of "adequate treatment, storage, or disposal facilities" and "no proposed use"). Other commenters stated that such activities could be carried out on a large scale at a particular site and that there could be cumulative impacts associated with waste management activities.

As discussed in Section III.E, DOE believes that the word "minor" is useful in describing the types of activities contemplated by the categorical exclusion, particularly when combined with examples and exclusions. DOE intends this categorical exclusion to apply to activities needed to place a surplus facility (one that will no longer be used by DOE for any purpose, including storage) in an environmentally safe condition, where there are existing treatment, storage, or disposal facilities with existing capacity to manage the resulting waste (including low-level radioactive waste). These activities include the final defueling of a reactor, as stated in the example in the proposed rule. DOE emphasizes that this categorical exclusion, like all other categorical exclusions, may not be applied in situations involving extraordinary circumstances (such as uncertain effects or effects involving unique or unknown risks) or where the proposal is connected to other actions with potentially significant impacts (see § 1021.410(b) (2) and (3)). Thus, if a proposal involved a mode of decontamination with potentially significant environmental effects or if it posed serious potential risks to workers, the public, or the environment, then the proposed activity would not be eligible for a categorical exclusion. DOE believes that the language of the proposed categorical exclusion, together with the general restrictions on the application of categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), provide adequate safeguards to ensure that this categorical exclusion is not applied to activities that could result in significant environmental effects.

One commenter asked that the relationship of this categorical exclusion to CERCLA and the Resource Conservation and Recovery Act (RCRA) procedures be clarified. DOE's CERCLA/NEPA policy is discussed in Section III.B. Although DOE's RCRA procedures are outside the scope of this rulemaking, DOE notes that its application of this categorical exclusion would have no effect on its compliance with RCRA.

Another commenter recommended that the categorical exclusion be broadened to include removal of contaminated equipment, material, and waste and include activities such as size reduction and placement of wastes in storage containers if done in the same building. DOE intends the categorical exclusion, as proposed, to include these activities.

• Proposed B1.29 Siting/construction/operation/decommissioning of onsite disposal facility for construction and demolition waste.

Several commenters objected to this categorical exclusion. One commenter expressed concern that new disposal facilities for construction and demolition waste could be sited and constructed in environmentally sensitive areas, such as priority shrub steppe habitat, with adverse impacts on wildlife. This commenter also expressed concern about cumulative impacts from multiple facilities. DOE believes that integral element B(4), which states that an action proposed for categorical exclusion must not adversely affect environmentally sensitive areas, would preclude use of the proposed categorical exclusion for construction of disposal facilities in priority shrub steppe habitat. Also, under § 1021.410(b)(3) of its NEPA implementing regulations, DOE may not categorically exclude a proposed action that may be connected to other actions with potentially significant impacts, or related to other proposed actions with cumulatively significant impacts.

Another commenter expressed concern that a 10-acre disposal facility could pose major health and safety risks to workers and members of the public in adjacent communities, noting in particular the potential for adverse impacts on air quality. By limiting this categorical exclusion to disposal of uncontaminated materials, DOE believes there would be no harmful releases of contaminants and no increased health impact to workers or the nearby public. DOE has revised the language in this categorical exclusion in the final amendments by inserting the phrase "which would not release substances at a level, or in a form, that would pose a threat to public health or the environment" to explain the term "uncontaminated." This new language corresponds to the definition of "contaminant" in DOE's NEPA regulations, which in turn is based on CERCLA § 101(33). In addition, DOE employs standard industrial practices, such as water spraying to control dust, in operating any of its facilities, and DOE believes that any particulate

emissions would be adequately controlled to protect workers and the public. To correspond to other changes in the final amendments, DOE has changed the phrase "generally less than 10 acres in area," to "less than approximately 10 acres." See also the discussion in Section III.E.

Another commenter stated that the scope of the categorical exclusion was so broad that the host community, state and local officials, and interested citizens could be excluded from participating in decisions that may have significant environmental and socioeconomic impacts. DOE believes that this class of actions normally does not have potential for significant impacts and has decided to list it as a categorical exclusion in the final amendments. See also the discussion of public involvement and information sharing opportunities in Section III.B.

One commenter requested that the proposed categorical exclusion be expanded to include on-site disposal facilities for all uncontaminated waste, including office and cafeteria waste. This comment is outside the scope of this rulemaking, but DOE may consider the suggestion in a future rulemaking.

• Proposed B1.30 Transfer actions.

Several commenters objected to this proposed categorical exclusion as too broad and open ended, some noting potential for adverse impacts. Some commenters requested that it be deleted; others requested that limits be provided on the quantity and types of materials and wastes that could be transported. Other commenters sought additional clarification.

In contrast, two commenters stated that the proposed categorical exclusion was too limited in scope and suggested broadening the categorical exclusion to include routine transportation of materials, equipment, and wastes that are managed in accordance with regulatory requirements. One of these commenters noted DOE's statement in the preamble to the proposed rulemaking that "transportation activities under DOE's standard practices pose no potential for significant impacts."

All DOE proposed actions must comply with applicable regulatory requirements, although some actions nevertheless may have significant impacts. DOE will continue to include analysis of transportation impacts in environmental assessments and environmental impact statements where the scope of the proposed actions presents potential for significant impact.

DOE has revised the language of the categorical exclusion to characterize the amount of materials, equipment, or waste to be transferred as "small" in addition to being incidental to the amount at the receiving site. This revision addresses the concerns expressed by several commenters that DOE had proposed to limit the amount of material or waste that could be transported, not by the impacts that might occur by transport of the material or waste, but by the amount of material or waste at the receiving site.

One of these commenters stated that the proposed categorical exclusion could be applied to the transport of thousands of containers of materials or waste to a site that had yet larger amounts. Another commenter stated that the baseline for determining the amount of waste or material that could be received at a site, under the proposed categorical exclusion, would continually increase as waste or materials were transferred to the site. The revision reinforces DOE's intention that use of the categorical exclusion should not add significantly to what may already be significant amounts of waste or materials at a site.

Several commenters stated that transportation of radioactive materials and waste is likely to be a key or controversial issue to local communities. One commenter stated that unscheduled transportation of waste would generate considerable community interest, and another expressed concern that the host community, state and local officials, and interested citizens could be excluded from participating in decisions that may result in significant environmental and socioeconomic impacts. DOE believes that this class of actions normally does not have potential for significant impacts and has decided to list it, as revised, as a categorical exclusion in the final amendment. See also the discussion of public involvement opportunities in Section III.B.

One commenter suggested that the proposed categorical exclusion would be more appropriately placed as a clarifying statement elsewhere in the regulations, to note that transportation may be an implicit part of any action that is eligible for a categorical exclusion or to require, as an integral element of any categorical exclusion, that transportation be conducted in accordance with applicable regulatory requirements. Other commenters stated that transportation is a connected activity and should not be considered independently.

DOE's NEPA regulations currently state that a categorically excluded class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions and provides "associated transportation activities" as one of two examples (§ 1021.410(d)). Categorical exclusion B1.30, however, applies to transfer actions where the predominant activity is transportation.

DOE's existing NEPA regulations (appendix B(1)) also contain an integral element for categorical exclusions requiring that, in order to be categorically excluded, an action not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE orders.

One commenter asked DOE to clarify whether this categorical exclusion could be applied to the transfer of waste from a DOE site to an offsite, non-DOE facility that treats that type of waste. DOE believes that B1.30 does cover these types of transfer actions, as long as all the conditions of the categorical exclusion, including the integral elements, are satisfied and there are no extraordinary circumstances.

• Proposed B1.32 Restoration, creation, or enhancement of small wetlands.

One commenter supported DOE's strategy, stated in the preamble to the proposed rule, to coordinate activities in wetlands with state and federal agencies to assure compliance with other land use plans. The commenter suggested that wetland creation should address the impacts of attracting migratory wildlife, especially types of wildlife that are likely to be hunted for human consumption. Other commenters questioned how the terms "small" and "large" were defined and how size would be used to determine whether wetland restoration, creation, or enhancement would have significant impacts. Other commenters stated that this categorical exclusion should include compliance with all appropriate Federal environmental laws and regulations and that DOE should consider limiting the number of such projects to reduce the potential for cumulative adverse impacts.

DOE has reconsidered its proposal to categorically exclude restoration, creation, or enhancement of a small wetland. Actions typically taken by DOE to restore, enhance, or create a wetland normally would be performed as mitigation to compensate for loss or degradation of other wetlands as a result of a DOE proposed action. As such, wetland mitigation is not a separate or distinct action and should be considered as an integral part of the proposed action. Further, in those rare situations where DOE would undertake specific actions to restore, enhance, or create wetlands (e.g., development of

wetlands as part of wetland banking), the existing class of actions C9, which normally requires preparation of an environmental assessment, provides opportunity for other agency and public review and input into decisions regarding how the action should be undertaken. Accordingly, DOE is withdrawing its proposal to categorically exclude restoration, creation, or enhancement of a small wetland, as well as its proposal to make a conforming language change in C9.

• Proposed B1.33 (Final B1.32). Traffic flow adjustments, existing roads.

One commenter questioned whether DOE would extend the categorical exclusion to include road adjustments. This categorical exclusion is limited to DOE sites and applies only to adjustments of traffic flow, such as installation of traffic signs, signal lights, and turning lanes. It does not apply to general road adjustments, such as road widening and realignment. In order to clarify this point, DOE has modified this categorical exclusion to include turning lanes as an example of a categorically excluded action, and to specifically exclude general road adjustments.

The commenter also stated that increased traffic flow could result in increased risk of exposure to the public. DOE believes traffic flow adjustments could not, by their nature, alter traffic patterns in such a manner as to produce significantly increased public exposures. In response to a comment that commercial trucking terminals should be excluded, DOE notes that it does not operate commercial trucking terminals.

One commenter suggested adding this activity to B1.3 on routine maintenance. DOE does not consider traffic flow adjustments to constitute routine maintenance.

• Proposed B2.6 Packaging/transportation/storage of radioactive sources upon request by the Nuclear Regulatory Commission or other cognizant agency.

In response to several comments, DOE has clarified that "other cognizant agency" would include a state that regulates radioactive materials under an agreement with the Nuclear Regulatory Commission (Commission). In addition, DOE intends to include other agencies that may, under perhaps unusual circumstances, have responsibilities regarding the materials that are included in the categorical exclusion.

One commenter expressed concern that this categorical exclusion could apply to a wide variety of actions that private parties might conduct. DOE's NEPA implementing procedures, however, apply only to actions that DOE would conduct.

Another commenter expressed concern about cumulative effects from applying this categorical exclusion repeatedly. Because DOE is requested to perform the actions covered under B2.6 only occasionally—e.g., when a Commission licensee cannot or will not safely manage the material—DOE does not expect these activities to have significant cumulative effects. This commenter also stated that the justification for one of the examples cited in the proposed categorical exclusion—"packaged radioactive waste not exceeding 50 curies"—was not apparent and undefined as to impact. DOE possesses all the skills and equipment required to handle, transport, and store such materials safely, and would be involved in such activities only occasionally. Moreover, the Commission has found that its licensees normally possess and manage such materials without significant impacts. For these reasons, DOE believes it is appropriate to categorically exclude its activities regarding all of the materials the Commission has listed in 10 CFR 51.22(14).

Finally, a commenter suggested that DOE should apply the categorical exclusion to packaging, transportation, and storage of DOE's own radioactive materials that are the same kind as listed in the Commission's categorical exclusion. DOE is taking this suggestion under advisement and may consider it in a future rulemaking.

• Proposed Modification B3.6 Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects.

DOE proposed to modify B3.6 (indoor bench-scale research projects) by combining it with B3.10 (small-scale research and development projects and small-scale pilot projects) and to include the siting, construction, operation, and decommissioning of facilities to house such projects. DOE also proposed to delete the descriptive phrase "for generally less than two years" in reference to the length of time a categorically excluded pilot project typically could be conducted.

One commenter stated that this categorical exclusion as proposed may be susceptible to abuse, e.g., by permitting a pilot project to evolve into a full-scale operation without public environmental review. DOE believes that this example would be a misapplication of the categorical exclusion. To clarify the meaning of "pilot project," DOE is inserting the descriptive phrase "generally less than two years." Thus, as revised, the only modification DOE is making to the existing categorical exclusions is combining B3.6 and B3.10, and expanding the combined categorical exclusion to include the siting, construction, operation, and decommissioning of facilities that would house the indoor bench-scale research, conventional laboratory operations, small-scale research and development, and small-scale pilot projects. DOE received no comments on these aspects of the proposed modification.

Several commenters questioned the definition of "small-scale" and "pilot projects." One commenter questioned whether "bench-scale" includes the use of large pieces of equipment. The meaning of these terms is not changing from the existing regulations. DOE notes, however, that scale refers to the magnitude of the activity, e.g., the amount of materials consumed, waste produced, air emissions, and effluents. Further, the size of the equipment would be relevant in this context only if it affected the input of material and output of waste, so as to produce potentially significant physical impacts. See also the discussion of "small-scale" in Section III.E.

Another commenter expressed concern that the nature of research activities could involve new and untried processes. If a proposed research action had the potential to involve unique or unknown risks, then it would trigger the "extraordinary circumstances" provision in § 1021.410(b)(2), and thus would not be eligible for a categorical exclusion.

One commenter stated that there is an apparent conflict between B3.6 and C12. DOE notes that B3.6 specifically covers "small-scale pilot projects (generally less than two years)," constructed in an already developed area. C12, however, refers to larger scale, longer term projects that are not restricted to an already developed area. DOE is adding a specific reference to C12 in B3.6 to call attention to the differences between them.

• Proposed B3.10 Siting/construction/operation/decommissioning of particle accelerators, including electron beam accelerators, primary beam energy generally less than 100 MeV.

Two commenters recommended that DOE remove the word "generally" from the phrase "generally less than 100 MeV," stating that the proposed language would permit categorically excluding much higher energy machines than 100 MeV (million electron-volts).

DOE has restated the condition to read "less than approximately 100 MeV," which better reflects DOE's intention and addresses the commenters' concerns. See also the discussion in Section III.E.

Another commenter welcomed the proposed amendment and recommended adding to this proposed categorical exclusion "maintenance and remedial actions [involving particle and electron beam accelerators] which have the incidental effect of improving machine performance within design criteria." DOE intends that the language of B3.10, as proposed, covers such actions as long as there is no increase in primary beam energy or current.

Finally, a commenter requested that the proposed categorical exclusion be restated in terms that relate to impacts such as land requirements and radioactive emissions rather than beam energy (i.e., 100 MeV) as proposed, stating that the proposed formulation would not be very meaningful to the public. Accelerators fitting this class of actions typically are room-size and often are installed in existing buildings at hospitals and universities. On the basis of its experience, the language of this proposed amendment, and the general restrictions on the application for categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), DOE believes that the covered actions will not present any significant land use or radiation effects issues.

• Proposed B3.12 Siting/construction/operation/decommissioning of microbiological and biomedical facilities.

Several commenters expressed concern about the potential environmental, health, and socioeconomic impacts of microbiological and biomedical facilities and the lack of opportunity for public involvement. One commenter sought clarification regarding DOE's statement in the preamble to the proposed rulemaking that these facilities generally do not handle "extremely dangerous materials." Another commenter urged DOE not to categorically exclude laboratories that are rated Biosafety Level 1 through 4.

All microbiological laboratories are rated Biosafety Level 1 through 4. Level 1 handles the least dangerous agents. To clarify what is intended by Biosafety Levels 1 and 2, the following definitions were extracted from Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers for Disease Control and Prevention, and the National Institutes of Health: Publication No. (CDC) 93–8395. Biosafety Level 1 is assigned to facilities in which work is done with defined and characterized strains of viable microorganisms not known to cause disease in healthy adult humans (e.g., *Bacillus subtilis, Naeleria gruberi,* and infectious canine hepatitis). This designation represents a basic level of containment that relies on standard microbiological practices with no special primary or secondary barriers recommended, other than a sink for handwashing. Biosafety Level 2 is assigned to facilities in which work is done with the broad spectrum of indigenous moderate-risk agents present in the community and associated with human disease of varying severity (e.g., Hepatitis B virus, salmonellae and *Toxoplasma* spp.). This designation requires the use of splash shields, face protection, gowns and gloves, as appropriate, and the availability of secondary barriers such as handwashing facilities and laboratory waste decontamination facilities. Given these controls, DOE believes that it is appropriate to categorically exclude Biosafety Level 1 and 2 laboratories from further NEPA review, provided that all of the integral elements of a categorical exclusion (appendix B, B(1)–B(4)) are met.

Another commenter asked for a clarification of "an already developed area." In particular, this commenter asked if it referred to a metropolitan area, residential area, commercially developed area, or existing biomedical facility. As discussed previously, "an already developed area" refers to an area "where active utilities and currently used roads are readily accessible." DOE has clarified the categorical exclusion accordingly. Facilities that would be eligible for this categorical exclusion could be sited in a metropolitan, residential, or commercially developed area or in an existing biomedical facility, as long as the area is already developed.

• Proposed B3.13 Magnetic fusion experiments, no tritium fuel use.

A commenter asked whether DOE intends to conduct new magnetic fusion experiments at existing facilities under this proposed categorical exclusion, and indicated that an environmental assessment or environmental impact statement is required to protect the public and worker health and safety in light of impacts from exposure to electromagnetic fields. DOE intends to categorically exclude such experiments at existing facilities. Based on its experience with such activities, DOE believes that magnetic fusion experiments do not pose an electromagnetic field or other hazard to the public. DOE routinely provides workers with adequate training and controlled conditions to conduct such work safely.

• Proposed Modification B5.3 Modification (not expansion)/abandonment of oil storage access/brine injection/gas/geothermal wells, not part of site closure.

DOE proposed to add gas wells to this categorical exclusion, and one commenter stated that DOE should consider possible risks to public health and safety before doing so. This categorical exclusion applies only to the modification (e.g., installation of different chokes and other wellhead equipment) or abandonment of existing wells and does not include workover (see proposed B5.12) or expansion. Therefore, the inclusion of gas will not result in any significant impacts.

• Proposed Modification B5.5 Construction/operation of short crude oil/gas/steam/geothermal pipeline segments.

DOE proposed to add natural gas and steam pipelines and to remove references to the specific existing facilities to which the pipelines would be connected. One commenter expressed concern about the end point facilities of the pipeline segments and how such facilities would affect the impacts. The commenter stated that connecting pipeline segments without regard to the impacts of the end point facilities is comparable to approval of a sewer pipe without knowledge of the discharge point. DOE notes that this categorical exclusion applies to the construction and operation of short segments of pipelines between existing DOE facilities and existing transportation, storage, or refining facilities within a single industrial complex and within existing rights-of-way. Because both end points must be existing facilities, DOE believes that the potential impacts of constructing and operating short pipeline segments between such facilities do not depend on the type of facility and will not cause significant environmental impacts. There would be no discharges to the environment from these pipelines.

• Proposed Clarification B5.9. Temporary exemption for any electric powerplant;

• Proposed Clarification B5.10 Certain permanent exemptions for any existing electric powerplant;

• Proposed Clarification B5.11 Permanent exemption for mixed natural gas and petroleum;

- Proposed Modification (Removal) B5.12 Permanent exemption for new peakload powerplant;
- Proposed Modification (Removal) B5.13 Permanent exemption for emergency operations;
- Proposed Modification (Removal) B5.14 Permanent exemption for meeting scheduled equipment outages;
- Proposed Modification (Removal) B5.15 Permanent exemption due to lack of alternative fuel supply; and
- Proposed Modification (Removal) B5.16 Permanent exemption for new cogeneration powerplant.

DOE proposed to clarify or modify (i.e., remove) these categorical exclusions because they involve the grant or denial by DOE of certain exemptions under the Power Plant and Industrial Fuel Use Act of 1978 (PIFUA), which was amended by Congress and now applies only to base load power plants. It no longer applies to other types of power plants or to major fuel-burning installations. Some commenters opposed the retention of B5.9, B5.10, and B5.11 in their modified state on the basis that they appear to exempt multiple actions from an environmental assessment or environmental impact statement under the guise of energy conservation or expressed concerns about cumulative impacts, connected actions, or extraordinary circumstances. DOE believes that the original rationale for these categorical exclusions, based on experience with actual cases, remains valid and thus believes that they should be retained for situations where the law provides for exemptions (i.e., base load power plants). Another commenter expressed concern regarding the proposed removal of existing B5.12 through B5.16. While DOE acknowledges this concern, it is nonetheless appropriate for DOE to conform its NEPA regulations to changes in the law. These categorical exclusions are being clarified or removed from appendix B because under PIFUA, as amended, DOE no longer has authority to grant or deny PIFUA exemptions except in cases involving base load power plants.

- Proposed B5.12 Workover of existing oil/gas/geothermal well.

DOE proposed a new categorical exclusion covering the workover of existing oil, gas, or geothermal wells on existing wellpads where the work "would not disturb adjacent habitat." One commenter requested that the word "endanger" be included in the proposed categorical exclusion. DOE believes that the words "disturb" and "endanger" are both subject to various interpretations. DOE is therefore modifying the categorical exclusion to use instead "adversely affect," which reflects DOE's original intent and is consistent with language elsewhere in the DOE NEPA rule.

- Proposed Modification B6.1 Small-scale, short-term cleanup actions under RCRA, Atomic Energy Act, or other authorities.

DOE proposed to change the way in which it defines the scope of the categorical exclusion from "removal actions under CERCLA * * * and removal-type actions similar in scope" to "small-scale, short-term cleanup actions under RCRA, the Atomic Energy Act, or other authorities" without naming CERCLA. This proposal reflects DOE's policy (see Section III.B) of relying on the CERCLA process for review of actions to be taken under CERCLA. DOE believes that the reference in the current regulations to CERCLA removal actions is confusing in the context of this policy. DOE also proposed to expand the limits of the categorical exclusion to actions generally costing up to $5 million over as many as 5 years.

One commenter supported the modification to clarify application to RCRA cleanup actions and to increase the cost and time limitations. Another commenter stated that DOE should integrate the CERCLA and NEPA processes. As discussed in Section III.B, DOE's CERCLA/NEPA policy allows for case-by-case integration of the CERCLA and NEPA processes. Therefore, although CERCLA is not referenced in the new categorical exclusion, DOE may apply categorical exclusion B6.1 to certain CERCLA actions. DOE has not changed its proposed modification to the categorical exclusion based on this comment.

This commenter also requested that DOE retain the time and cost limits in the existing categorical exclusion (i.e., the CERCLA regulatory cost and time limits of $2 million and 12 months), but requested that if DOE does expand the limits to $5 million and 5 years as proposed, the language of the categorical exclusion should read "expand the limits to" and that the categorical exclusion's limits be stated as maximum cut off points. As discussed in Section III.E, DOE's use of numerical quantities are intended to provide a reasonable degree of flexibility and should not be applied as absolute limits. DOE has retained the proposed cost and time factors in the final categorical exclusion.

Another commenter stated that the applicability of a categorical exclusion to an action should be based on the site-specific conditions of the action, not on its cost or duration. The cost and time descriptions in the proposed categorical exclusion are simply indicators of the size and type of actions DOE intends to categorically exclude, not definitions of the actions themselves. Categorical exclusions listed in appendix B include integral elements that are site specific, and categorical exclusions will be applied based on site-specific factors, such as the existence of any extraordinary circumstances, rather than on the cost or duration of the action.

One commenter expressed concern that the use of terms "small-scale," "short-term," and "generally" are too subjective. The use of such descriptive terms is discussed in Section III.E.

One commenter requested that DOE state in example B6.1(b) that it would use the definition of hazardous waste from whichever regulatory agency (e.g., EPA or a state agency) provided the more protective definition for purposes of protecting public health and safety, or had greater authority to regulate hazardous waste. DOE proposed to revise the example to reflect the fact that hazardous waste is defined under one of two possible regulatory authorities, either 40 CFR Part 261 or applicable state requirements, depending on whether EPA or a state exercises primary regulatory authority. DOE does not have a choice as to which definition it must abide by. DOE is retaining the proposed language in the final categorical exclusion.

This commenter also stated that DOE did not specifically exempt high-level radioactive waste, transuranic waste, spent nuclear fuel, waste from reprocessing spent nuclear fuel, and uranium mill tailings in its language pertaining to waste cleanup and storage and requested clarification on the scope of the categorical exclusions in this regard. DOE agrees that it should clarify the scope of the categorical exclusion and has added the phrase "other than high-level radioactive waste and spent nuclear fuel" to the categorical exclusion. DOE believes that it can appropriately apply the categorical exclusion to cleanup activities involving transuranic waste and uranium mill tailings.

This commenter also expressed concern that this categorical exclusion allowed more discretionary authority to DOE for its waste management actions with less public notification, involvement, and accountability. DOE's response to comments relating to the reduction of public involvement opportunities is in Section III.B.

See also the discussion of categorical exclusion B6.9 for a modification of example B6.1(g).

• Proposed Modification (Removal) B6.4 Siting/construction/operation/decommissioning of facility for storing packaged hazardous waste for 90 days or less.

DOE proposed to replace the existing B6.4, which covers a very narrow class of waste storage actions, with a new and broader B6.4 that would have encompassed the activities to which the existing B6.4 applies. In response to comments on the proposed new B6.4, however, DOE has decided to narrow its scope in such a manner that retaining the existing B6.4 is necessary. Therefore, DOE is retaining the existing B6.4, and will list a new class of actions covering waste storage facilities (i.e., a "reduced-scope" version of the proposed B6.4) as B6.10. See the further discussion below.

• Proposed B6.4 (FinalB6.10) Siting/construction/operation/decommissioning of small waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

Several commenters expressed concern that this proposed categorical exclusion could apply to actions that individually may have significant impacts and especially would have significant cumulative impacts if a number of such facilities were built. Commenters also expressed concern regarding the location of the facility, type of waste, and the nature of the surrounding environment. On the other hand, a commenter who supported the proposal suggested that DOE clarify that an unlimited number of 50,000 square-foot facilities could be built under the categorical exclusion.

DOE generally agrees with the commenters who stated that the proposal was too broad. However, DOE notes that significant new waste-producing activities and significant transfers of waste among sites are subject to NEPA analysis and would not be categorically excluded. Provisions for storing such waste would be within the scope of such analyses (or reviewed under CERCLA, if the waste would result from CERCLA environmental restoration activities), and storage impacts and alternatives would be appropriately assessed.

In light of the comments, DOE has decided to limit the applicability of proposed categorical exclusion B6.4 (final B6.10) to upgrades or replacement of storage facilities for waste that is already present at a DOE site at the time the storage capacity is to be provided. Providing new or upgraded storage facilities for existing wastes under this categorical exclusion would only improve upon previous storage conditions. Further, because the storage changes would not be associated with changes in waste type or waste quantity, providing new storage facilities or upgrades would not likely have cumulatively significant impacts. Storage facilities for newly generated waste from ongoing operations would not be categorically excluded, and any associated cumulative impacts would be considered in an appropriate NEPA analysis.

Several commenters questioned the basis for DOE's proposal to categorically exclude a particular size of storage facility, namely approximately 50,000 square feet or less. In recent years DOE has evaluated and constructed a variety of new waste storage facilities. These are typically uncomplicated light-weight buildings on a concrete pad floor that provide open floor storage space for waste packages. They are designed, and waste is emplaced, with safety as a priority. DOE chose 50,000 square feet as a representative size of such facilities, intending not to categorically exclude facilities that might be unusually large.

In response to commenters' objections regarding the word "generally" in the proposed phrase "generally not to exceed an area of 50,000 square feet," DOE has changed the phrase to read "less than approximately 50,000 square feet in area," which more accurately conveys DOE's original intent. See also the discussion in Section III.E.

As proposed, the categorical exclusion would not apply to storage of high-level radioactive waste or spent nuclear fuel. Several commenters questioned whether the categorical exclusion would apply to other types of waste. One commenter suggested that DOE not apply this categorical exclusion to transuranic wastes, fissile materials, and all other materials for which DOE is largely self-regulating. The commenter did not explain why self-regulation would be important to the determination at issue, and DOE believes that it is not. DOE has concluded, however, that storage facilities for wastes that require special precautions to prevent nuclear criticality should not be categorically excluded, and DOE is modifying the proposed categorical exclusion accordingly. For example, certain transuranic wastes that contain fissile materials may pose such concerns.

Finally, DOE has clarified its original intent to include under this categorical exclusion only storage facilities located at DOE sites, and also has deleted reference to "activities connected to site operations," as commenters requested.

• Proposed Clarification B6.5 Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste (not high-level radioactive waste, spent nuclear fuel).

DOE proposed to clarify the existing B6.5 merely by adding cross-references to B6.4 and B6.6, not to change it substantively. A commenter, however, suggested that B6.5 should be expanded to include activities in which waste would be unpacked for purposes of characterization. DOE considers the comment to be outside the scope of this rulemaking, but may consider the suggestion in an appropriate future rulemaking.

• Proposed B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater.

Several commenters expressed concern that, in effect, this categorical exclusion would reduce opportunities for review by other agencies and the public, and that it might be applied to actions that could have adverse effects on public health and the environment. One commenter stated that contamination of groundwater is a potentially significant risk to public health and that DOE should not exclude such contamination issues from public participation opportunities and NEPA documentation requirements. One commenter expressed concern that application of this categorical exclusion would eliminate valuable input from natural resource agencies regarding effects from actions of this type on state-designated priority habitats. A related comment expressed concern that actions categorically excluded under B6.9 could be detrimental to valuable habitat or cultural resources.

As noted in the preamble to the proposed rulemaking, DOE has found that these actions normally have very local and environmentally beneficial effects and pose no potential for significant environmental impacts. With regard to potential impacts to sensitive environmental resources (such as priority habitat and cultural resources), DOE believes that integral condition B(4) in appendix B, which states that an action proposed for categorical exclusion must not adversely affect environmentally sensitive areas, would preclude use of this categorical exclusion when priority habitat and cultural resources may be adversely affected. Public involvement opportunities are discussed in Section III.B.

One commenter stated that it was unclear why the proposed categorical exclusion was not within the scope of B6.1, an existing categorical exclusion for small-scale cleanup actions (see modification of B6.1 above). DOE believes that certain groundwater

cleanup actions could indeed be categorically excluded under B6.1, if the proposed actions met the conditions of that categorical exclusion, i.e., there were existing facilities to treat the water and the proposed activities were to be completed in about 5 years or less. DOE believes it is also appropriate, however, to categorically exclude the siting, construction, and longer term operation of groundwater treatment and containment facilities and therefore proposed a separate categorical exclusion (i.e., B6.9) to define and cover those activities. DOE intends that the categorical exclusion would include mobile pumping and treatment facilities or pumping and treatment facilities that might be built and then removed when the action was stopped, and DOE used the phrase "small-scale temporary measure" to characterize these possibilities. DOE has added these facility descriptions to the examples in the final categorical exclusion. DOE agrees that the example of "installing underground barriers" in the proposed categorical exclusion is more appropriately considered as an action under B6.1. For this reason, DOE is adding "underground barriers" to the existing example B6.1(g) and is deleting it from proposed B6.9.

Another commenter stated that the meaning of "small-scale temporary measure" was vague. DOE's use of terms such as "small-scale" is discussed in Section III.E.

Classes of Actions Listed in Appendix C

- Proposed Modification (Removal) C1 Major projects.

One commenter expressed concern that DOE's proposal to remove "Major Projects, as designated by DOE Order 4240.1" from appendix C would result in the categorical exclusion of proposed actions currently requiring an environmental assessment or environmental impact statement.

The term "Major Project" was defined in DOE Order 4240.1, based primarily on cost characteristics. DOE no longer uses the term "Major Project," and thus the existing C1 is no longer meaningful. Accordingly, DOE is removing C1. DOE will continue to prepare environmental impact statements, however, for "major Federal actions significantly affecting the quality of the human environment" as required under NEPA § 102(2)(C). Also, although DOE has eliminated the designation of "Major Projects" from the proposed actions for which an environmental assessment would normally be prepared, DOE will continue to prepare environmental assessments for the types of proposed actions formerly included within the definition of "Major Projects."

- Proposed Modification C9 Restoration, creation, or enhancement of large wetlands.

DOE originally proposed to amend this category to conform to proposed B1.32, i.e., to distinguish NEPA review for large versus small wetlands. As noted in the discussion on B1.32, DOE is withdrawing its proposal to categorically exclude restoration, creation, or enhancement of a small wetland. Similarly, DOE is also withdrawing its proposal to make a conforming language change in C9.

- Proposed Modification (Removal) C10 Siting/construction/operation/ decommissioning of synchrotron radiation accelerator facility; and
- Proposed Modification C11 Siting/construction/operation/ decommissioning of low- or medium-energy particle acceleration facility with primary beam energy generally greater than 100 MeV.

DOE proposed to consolidate the existing C10 and C11 into C11 (reserving C10), and make the resulting C11 applicable for low to medium energy particle accelerators, consistent with the proposed categorical exclusion B3.10 for accelerators with energy less than approximately 100 MeV. One commenter stated that the existing regulations would have required an environmental impact statement under existing C1, which covers "Major Projects," and DOE proposed to eliminate C1. The commenter is mistaken because "Major Projects" would normally have required an environmental assessment under C1, not an environmental impact statement. As noted above, DOE is removing C1. See previous discussion under C1.

- Proposed Modification C14 Siting/construction/operation of water treatment facilities generally greater than 250,000 gallons per day capacity.

DOE proposed to modify C14 to conform to proposed B1.26. A commenter objected to use of the word "generally" in both listings. DOE has replaced the phrase "generally exceeding" with "greater than approximately," which reduces the agency's discretion, as the commenter requested, conforms with changes to proposed B1.26 discussed above, and better expresses DOE's original intent. DOE also revised C14 to include small wastewater and surface water treatment facilities, whose liquid discharges are not subject to external regulation, to conform with changes to proposed B1.26 made in response to comments. See also the discussion in Section III.E.

- Proposed Modification C16 Siting/construction/operation/ decommissioning of large waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

DOE's proposed amendments were intended to clarify the meaning of "onsite" in the existing C16, and to make C16 consistent with proposed B6.4 (now final B6.10), under which a subset of small-scale actions included in existing C16 would be categorically excluded. DOE does not agree with a commenter's statements to the effect that this proposal would eliminate public participation for the siting of centralized and regional treatment and storage facilities and protect its contractors and itself at the expense of the public. DOE provides for appropriate public involvement in its environmental assessment process. In accordance with another commenter's suggestion, DOE is providing clearer direction by replacing the phrase "generally greater than" with "greater than approximately," which also better expresses DOE's original intent. See also the discussion in Section III.E.

Classes of Actions Listed in Appendix D

- Proposed Modification D10 Siting/construction/operation/ decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel.

DOE proposed to amend D10 so that there would be no presumption that an EIS would be prepared for siting, constructing, operating, and decommissioning of onsite replacement storage facilities or upgrading storage facilities for spent nuclear fuel. DOE proposals for these types of facilities have varied too widely to support a general conclusion that such proposed actions normally require the preparation of an environmental impact statement. Thus, under DOE's proposal, onsite replacement or upgrade of storage facilities for spent nuclear fuel would no longer require the preparation of an environmental impact statement; rather, DOE would decide on a case-by-case basis (i.e., based on the particular project, site, and circumstances) whether to prepare an environmental assessment or an environmental impact statement. Contrary to one commenter's presumption, DOE's decision not to assign a particular level of NEPA documentation to onsite replacement or upgrading of storage facilities for spent nuclear fuel would never result in such activities being categorically excluded.

While one commenter supported the proposed modification, several others opposed it. Some commenters stated

that the use of the term "major" in D10 already provided DOE with the flexibility to prepare an environmental assessment in certain circumstances. In response, DOE notes that the term "major" refers to the size and/or cost of a particular project, not to whether its impacts will be significant. Thus, it is possible to have a large, costly DOE project that, because of its location or technical characteristics, is not likely to have significant environmental effects. In that case (such as replacement or upgrade of a spent nuclear fuel storage facility), DOE believes it is more appropriate to prepare an environmental assessment. Two commenters expressed concern that replacement or upgrade of spent nuclear fuel storage facilities could result in expanded spent nuclear fuel storage capacity and that existing storage sites may become long-term storage sites in the absence of a permanent repository. DOE did not intend to permit expanded storage under this exclusion and has modified its proposal to add "where such replacement or upgrade will not result in increased storage capacity." Whether the storage of spent nuclear fuel may in fact become long-term storage is outside the scope of this rulemaking.

Another commenter stated that D10 must not be replaced by any less stringent process for public input and involvement. DOE will prepare either an environmental assessment or an environmental impact statement for replacement or upgrades of spent nuclear fuel storage facilities, depending on the circumstances. DOE provides for public involvement in both its environmental assessment and environmental impact statement processes.

Other commenters contended that DOE had proposed that an environmental assessment would be applicable for handling high-level waste. DOE's proposed modification deals with replacement and upgrades of storage facilities for spent nuclear fuel, not high-level waste. Under the original D10 and as amended, DOE would normally prepare an environmental impact statement for the siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste.

One commenter questioned why replacement or upgrades of high-level waste storage facilities are not treated the same as similar facilities for spent nuclear fuel, and whether DOE's proposed modification was designed to justify the preparation of an environmental assessment for a particular spent nuclear fuel facility at the Idaho National Engineering Laboratory, rather than an environmental impact statement. DOE's approach to formulating typical classes of actions for listing in subpart D is described in Section III.E, above. DOE does not formulate such classes of actions, or proposed additions and modifications, with the intention of securing coverage for a specific future or past action under a particular class of actions.

IV. Procedural Review Requirements

A. Environmental Review Under the National Environmental Policy Act

These amendments to the DOE NEPA rule establish, modify, and clarify procedures for considering the environmental effects of DOE actions within the Department's decision making process. Implementation of this rule will not affect the substantive requirements imposed on DOE or on applicants for DOE licenses, permits, and financial assistance, and this rule will not result in environmental impacts. Therefore, DOE has determined that this rule is covered by the categorical exclusion found at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to procedural rulemaking. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 USC 601 et seq.) requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" (5 USC 603). The rule modifies existing policies and procedural requirements for DOE compliance with NEPA. The rule makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that the rule will not have a "significant economic impact on a substantial number of small entities."

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by these amendments. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 USC 3501 et seq.).

D. Review Under Executive Order 12612

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987) requires that regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. These amendments will affect Federal NEPA compliance procedures, which are not subject to state regulation. The amendments will not have any substantial direct effects on states and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform" 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 12866

The final amendments were reviewed in accordance with Executive Order

12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993), which requires a Federal agency to prepare a regulatory assessment, including the potential costs and benefits, of any "significant regulatory action." The order defines "significant regulatory action" as any regulatory action that may have an annual effect on the economy of $100 million or more and may adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments in a material way; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; or raise novel legal or policy issues arising out of legal mandates (section 3(f)).

These amendments will modify already existing policies and procedures for compliance with NEPA. The amendments contain no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or similar actions. Therefore, DOE has determined that the incremental effect of these amendments to the DOE NEPA regulations will not have the magnitude of effects on the economy, or any other adverse effects, to bring this proposal within the definition of a "significant regulatory action."

G. Review Under the Unfunded Mandates Reform Act

Under section 205 of the Unfunded Mandates Reform Act of 1995 (2 USC 1533), Federal agencies are required to prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Because the DOE NEPA regulations affect only DOE and do not create obligations on the part of any other person or government agency, neither state, local or tribal governments nor the private sector will be affected by amendments to these regulations. Therefore, DOE has determined that further review under the Unfunded Mandates Reform Act is not required.

H. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of Small Business Regulatory Enforcement Fairness Act of 1996 (Act) (5 USC 801). The Office of Management and Budget has determined that the final regulations do not constitute a "major rule" under the Act (5 USC 804). DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

List of Subjects in 10 CFR Part 1021

Environmental impact statement.

Issued in Washington, DC, June 28, 1996.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

For reasons set out in the preamble, 10 CFR part 1021 is amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 et seq.

§ 1021.104 [Amended]

2. In § 1021.104(b), the definition for *EIS Implementation Plan* is removed.

3. Section 1021.105 is revised to read as follows:

§ 1021.105 Oversight of Agency NEPA activities.

The Assistant Secretary for Environment, Safety and Health, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA process and the status of individual NEPA reviews may be obtained upon request from the Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119.

4. Section 1021.310 is revised to read as follows:

§ 1021.310 Environmental impact statements.

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart. DOE shall include in draft and final EISs a disclosure statement executed by any contractor (or subcontractor) under contract with DOE to prepare the EIS document, in accordance with 40 CFR 1506.5(c).

§ 1021.311 [Amended]

5. Section 1021.311 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

* * * * *

§ 1021.312 [Removed and reserved]

6. Section 1021.312 is removed and reserved.

7. In § 1021.315 paragraphs (b) and (d) are revised and (e) is added to read as follows:

§ 1021.315 Records of decision.

* * * * *

(b) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

* * * * *

(d) No action shall be taken until the decision has been made public. DOE may implement the decision before the ROD is published in the Federal Register if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media).

(e) DOE may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD is subject to the provisions of paragraphs (b), (c), and (d) of this section.

§ 1021.322 [Amended]

8. Section 1021.322 is amended by removing paragraph (b)(1), and redesignating paragraphs (b)(2) through (b)(5) as paragraphs (b)(1) through (b)(4).

9. Appendix A to Subpart D, paragraph A7, is revised to read as follows:

Appendix A to Subpart D to Part 1021—Categorical Exclusions Applicable to General Agency Actions

* * * * *

A7 Transfer, lease, disposition, or acquisition of interests in personal property (e.g., equipment and materials) or real property (e.g., permanent structures and land), if property use is to remain unchanged; i.e., the type and magnitude of impacts would remain essentially the same.

* * * * *

10. Appendix B to Subpart D, is amended to revise the Table of Contents entries for B1.8, B1.13, B1.22, B3.6, B3.10, B5.3, B5.5, B5.9, B5.10, B5.12, B6.1, and B6.5; add B1.23 through B1.32, B2.6, B3.12, B3.13, B6.9, and B6.10; and remove B5.13 through B5.16, to read as follows:

Appendix B to Subpart D to Part 1021–Categorical Exclusions Applicable to Specific Agency Actions

Table of Contents

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B1.8 Modifications to screened water intake/outflow structures

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B1.13 Construction/acquisition/relocation of onsite pathways, short onsite access roads/railroads

* * * * *

B1.22 Relocation of buildings

B1.23 Demolition/disposal of buildings

B1.24 Transfer of structures/residential, commercial, industrial use

B1.25 Transfer of land/habitat preservation, wildlife management

B1.26 Siting/construction/operation/decommissioning of small water treatment facilities, less than approximately 250,000 gallons per day capacity

B1.27 Disconnection of utilities

B1.28 Minor activities to place a facility in an environmentally safe condition, no proposed uses

B1.29 Siting/construction/operation/decommissioning of small onsite disposal facility for construction and demolition waste

B1.30 Transfer actions

B1.31 Relocation/operation of machinery and equipment

B1.32 Traffic flow adjustments, existing roads

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B2.6 Packaging/transportation/storage of radioactive sources upon request by the Nuclear Regulatory Commission or other cognizant agency

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B3.6 Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects

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B3.10 Siting/construction/operation/decommissioning of particle accelerators, including electron beam accelerators, primary beam energy less than approximately 100 MeV

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B3.12 Siting/construction/operation/decommissioning of microbiological and biomedical facilities

B3.13 Magnetic fusion experiments, no tritium fuel use

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B5.3 Modification (not expansion)/abandonment of oil storage access/brine injection/gas/geothermal wells, not part of site closure

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B5.5 Construction/operation of short crude oil/gas/steam/geothermal pipeline segments

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B5.9 Temporary exemption for any electric powerplant

B5.10 Certain permanent exemptions for any existing electric powerplant

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B5.12 Workover of existing oil/gas/geothermal well

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B6.1 Small-scale, short-term cleanup actions under RCRA, Atomic Energy Act, or other authorities

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B6.5 Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater

B6.10 Siting/construction/operation/decommissioning of small upgraded or replacement waste storage facilities

* * * * *

11. Appendix B to Subpart D, section B is amended by revising paragraphs B(1), B(2), and B(4)(iii) to read as follows:

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

* * * * *

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders.

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions.

* * * * *

(4) * * *

(iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;

* * * * *

12. Appendix B to Subpart D, section B1, is amended by revising the introductory text to paragraph B1.3, paragraphs B1.3(n) and (o), B1.8, B1.13, B1.15, B1.18, B1.21, and B1.22, and adding paragraphs B1.23 through B1.32, to read as follows:

B1. Categorical Exclusions Applicable to Facility Operation

* * * * *

B1.3 Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (e.g., pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed. Custodial services are activities to preserve facility appearance, working conditions, and sanitation, such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal. Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that replacement is in kind and is not a substantial upgrade or improvement. In kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

* * * * *

(n) Routine testing and calibration of facility components, subsystems, or portable equipment (including but not limited to, control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes); and

(o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), including removal of contaminated intact equipment and other materials (other than spent nuclear fuel or special nuclear material in nuclear reactors).

* * * * *

B1.8 Modifications to screened water intake and outflow structures such that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits.

* * * * *

B1.13 Construction, acquisition, and relocation of onsite pathways and short onsite access roads and railroads.

* * * * *

B1.15 Siting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; employee health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (including security posts); fire protection; and similar support purposes, but excluding facilities for waste storage activities, except as provided in other parts of this appendix.

* * * * *

B1.18 Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, if there would be no drawdown other than in the immediate vicinity of the pumping well, no

resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well.

* * * * *

B1.21 Noise abatement measures, such as construction of noise barriers and installation of noise control materials.

B1.22 Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area (where active utilities and currently used roads are readily accessible).

B1.23 Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces).

B1.24 Transfer, lease, disposition or acquisition of interests in uncontaminated permanent or temporary structures, equipment therein, and only land that is necessary for use of the transferred structures and equipment, for residential, commercial, or industrial uses (including, but not limited to, office space, warehouses, equipment storage facilities) where, under reasonably foreseeable uses, there would not be any lessening in quality, or increases in volumes, concentrations, or discharge rates, of wastes, air emissions, or water effluents, and environmental impacts would generally be similar to those before the transfer, lease, disposition, or acquisition of interests. Uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.

B1.25 Transfer, lease, disposition or acquisition of interests in uncontaminated land for habitat preservation or wildlife management, and only associated buildings that support these purposes. Uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.

B1.26 Siting, construction (or expansion, modification, or replacement), operation, and decommissioning of small (total capacity less than approximately 250,000 gallons per day) wastewater and surface water treatment facilities whose liquid discharges are externally regulated, and small potable water and sewage treatment facilities.

B1.27 Activities that are required for the disconnection of utility services such as water, steam, telecommunications, and electrical power after it has been determined that the continued operation of these systems is not needed for safety.

B1.28 Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste, such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste. These activities would not include conditioning, treatment, or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Siting, construction, operation, and decommissioning of a small (less than approximately 10 acres) onsite disposal facility for construction and demolition waste which would not release substances at a level, or in a form, that would pose a threat to public health or the environment. These wastes, as defined in the Environmental Protection Agency's regulations under the Resource Conservation and Recovery Act, specifically 40 CFR 243.101, include building materials, packaging, and rubble.

B1.30 Transfer actions, in which the predominant activity is transportation, and in which the amount and type of materials, equipment or waste to be moved is small and incidental to the amount of such materials, equipment, or waste that is already a part of ongoing operations at the receiving site. Such transfers are not regularly scheduled as part of ongoing routine operations.

B1.31 Relocation of machinery and equipment, such as analytical laboratory apparatus, electronic hardware, maintenance equipment, and health and safety equipment, including minor construction necessary for removal and installation, where uses of the relocated items will be similar to their former uses and consistent with the general missions of the receiving structure.

B1.32 Traffic flow adjustments to existing roads at DOE sites (including, but not limited to, stop sign or traffic light installation, adjusting direction of traffic flow, and adding turning lanes). Road adjustments such as widening or realignment are not included.

13. Appendix B to Subpart D, section B2, is amended by adding B2.6, to read as follows:

B2. Categorical Exclusions Applicable to Safety and Health

* * * * *

B2.6 Packaging, transportation, and storage of radioactive materials from the public domain, in accordance with the Atomic Energy Act upon a request by the Nuclear Regulatory Commission or other cognizant agency, which would include a State that regulates radioactive materials under an agreement with the Nuclear Regulatory Commission or other agencies that may, under unusual circumstances, have responsibilities regarding the materials that are included in the categorical exclusion. Covered materials are those for which possession and use by Nuclear Regulatory Commission licensees has been categorically excluded under 10 CFR 51.22(14) or its successors. Examples of these radioactive materials (which may contain source, byproduct or special nuclear materials) are density gauges, therapeutic medical devices, generators, reagent kits, irradiators, analytical instruments, well monitoring equipment, uranium shielding material, depleted uranium military munitions, and packaged radioactive waste not exceeding 50 curies.

14. Appendix B to Subpart D, section B3, is amended by revising the introductory text to paragraph B3.1, B3.3, B3.6, and B3.10, and adding new paragraphs B3.12 and B3.13, to read as follows:

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

B3.1 Onsite and offsite site characterization and environmental monitoring, including siting, construction (or modification), operation, and dismantlement or closing (abandonment) of characterization and monitoring devices and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis. Activities covered include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. Specific activities include, but are not limited to:

* * * * *

B3.3 Field and laboratory research, inventory, and information collection activities that are directly related to the conservation of fish or wildlife resources and that involve only negligible habitat destruction or population reduction.

* * * * *

B3.6 Siting, construction (or modification), operation, and decommissioning of facilities for indoor bench-scale research projects and conventional laboratory operations (for example, preparation of chemical standards and sample analysis); small-scale research and development projects; and small-scale pilot projects (generally less than two years) conducted to verify a concept before demonstration actions. Construction (or modification) will be within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). See also C12.

* * * * *

B3.10 Siting, construction, operation, and decommissioning of a particle accelerator, including electron beam accelerator with primary beam energy less than approximately 100 MeV, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible), or internal modification of any accelerator facility regardless of energy that does not increase primary beam energy or current.

* * * * *

B3.12 Siting, construction (or modification), operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4; reference: Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers of Disease Control and Prevention, and the National Institutes of Health (HHS Publication No. (CDC) 93-8395)) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Operation may include the purchase, installation, and operation of biomedical equipment, such as commercially

available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation.

B3.13 Performing magnetic fusion experiments that do not use tritium as fuel, with existing facilities (including necessary modifications).

15. Appendix B to Subpart D, section B5, is amended by revising paragraphs B5.3, B5.5 and B5.9 through B5.12 and removing B5.13 through B5.16, to read as follows:

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

* * * * *

B5.3 Modification (but not expansion) or abandonment (including plugging), which is not part of site closure, of crude oil storage access wells, brine injection wells, geothermal wells, and gas wells.

* * * * *

B5.5 Construction and subsequent operation of short crude oil, steam, geothermal, or natural gas pipeline segments between DOE facilities and existing transportation, storage, or refining facilities within a single industrial complex, if the pipeline segments are within existing rights-of-way.

* * * * *

B5.9 The grant or denial of any temporary exemption under the Powerplant and Industrial Fuel Use Act of 1978 for any electric powerplant.

B5.10 The grant or denial of any permanent exemption under the Powerplant and Industrial Fuel Use Act of 1978 of any existing electric powerplant other than an exemption under (1) section 312(c) relating to cogeneration, (2) section 312(l) relating to scheduled equipment outages, (3) section 312(b) relating to certain state or local requirements, and (4) section 312(g) relating to certain intermediate load powerplants.

B5.11 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 Workover (operations to restore production, such as deepening, plugging back, pulling and resetting lines, and squeeze cementing) of an existing oil, gas, or geothermal well to restore production when workover operations will be restricted to the existing wellpad and not involve any new site preparation or earth work that would adversely affect adjacent habitat.

16. Appendix B to Subpart D, section B6, is amended by revising the introductory text to paragraph B6.1, paragraph B6.1 (b), (g), and (j), B6.5, and adding paragraphs B6.9 and B6.10, to read as follows:

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

B6.1 Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, less than approximately 5 million dollars in cost and 5 years duration, to reduce risk to human health or the environment from the release or threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (e.g., incineration), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

* * * * *

(b) Removal of bulk containers (for example, drums, barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261 or applicable state requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

* * * * *

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

* * * * *

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

* * * * *

B6.5 Siting, construction (or modification or expansion), operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, if operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10, and C16) or the handling of spent nuclear fuel.

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water, by mobile units or facilities that are built and then removed at the end of the action.

B6.10 Siting, construction (or modification), operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) at a DOE site within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. See also B6.4, B6.5, B6.6, and C16.

17. Appendix C to Subpart D is amended in the Table of Contents by removing and reserving the entries for C1 and C10 and by revising the entries for C11, C14 and C16 to read as follows:

Appendix C to Subpart D to Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

Table of Contents

18. Appendix C to Subpart D to Part 1021 is amended by removing and reserving paragraphs C1 and C10 and by revising C11, C14 and C16, to read as follows:

C1 [Removed and reserved].

* * * * *

C10 [Removed and reserved].

C11 Siting, construction (or modification), operation, and decommissioning of a low- or medium-energy (but greater than approximately 100 MeV primary beam energy) particle acceleration facility, including electron beam acceleration facilities, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible).

* * * * *

C14 Siting, construction (or expansion), operation, and decommissioning of wastewater, surface water, potable water, and sewage treatment facilities with a total capacity greater than approximately 250,000 gallons per day, and of lower capacity wastewater and surface water treatment facilities whose liquid discharges are not subject to external regulation.

* * * * *

C16 Siting, construction (or modification to increase capacity), operation, and decommissioning of packaging and unpacking facilities (that may include characterization operations) and large storage facilities (greater than approximately 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage, packaging, or unpacking of spent nuclear fuel. See also B6.4, B6.5, B6.6, and B6.10.

19. Appendix D to Subpart D is amended to revise the Table of Contents

entries for D1 and D10 to read as follows:

Appendix D to Subpart D to Part 1021—Classes of Actions That Normally Require EISs

Table of Contents

D1 Strategic Systems

* * * * *

D10 Siting/construction/operation/decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel

* * * * *

20. Appendix D to subpart D to part 1021 is amended by revising paragraphs D1 and D10, to read as follows:

D1 Strategic Systems, as defined in DOE Order 430.1, "Life-Cycle Asset Management," and designated by the Secretary.

* * * * *

D10 Siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel, including geologic repositories, but not including onsite replacement or upgrades of storage facilities for spent nuclear fuel at DOE sites where such replacement or upgrade will not result in increased storage capacity.

* * * * *

[FR Doc. 96–17285 Filed 7–8–96; 8:45 am]
BILLING CODE 6450–01–P

PART 94–RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding the words ''Czech Republic,'' immediately after the words ''Costa Rica,'' and by adding the word ''Italy,'' immediately after the word ''Ireland,''.

§ 94.11 [Amended]

3. In § 94.11, the first sentence in paragraph (a) would be amended by adding the words ''Czech Republic,'' immediately after the word ''Chile,'' and by adding the word ''Italy,'' immediately after the word ''Hungary,''.

Done in Washington, DC, this 2nd day of July 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17440 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Parts 301, 318, 320, and 381

[Docket No. 95–033E]

RIN 0583–AB94

Performance Standards for the Production of Certain Cooked Meat and Poultry Products—Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, ''Performance Standards for the Production of Certain Cooked Meat and Poultry Products'' (61 FR 19564, May 2, 1996) for 60 days.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #95–033P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, 1400 Independence Ave., SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Associate Deputy Administrator, Science and Technology; (202) 205–0699.

Done in Washington, DC, July 2, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–17360 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–DM–P

9 CFR Parts 304, 308, and 381

[Docket No. 95–032E]

RIN 0583–AB93

Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs—Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, ''Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs'' (61 FR 19578, May 2, 1996) for 60 days.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #95–032P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, 1400 Independence Ave., SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Associate Deputy Administrator, Science and Technology; (202) 205–0699.

Done in Washington, DC, July 2, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–17361 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Part 1021

RIN 1901–AA67

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Proposed rule; limited reopening of the comment period.

SUMMARY: This Notice announces a limited reopening of the comment period with respect to the proposed rule on implementation of the National Environmental Policy Act (NEPA). DOE has decided to solicit further input on certain proposed amendments that pertain primarily to Federal power marketing activities. In a related document published elsewhere in this issue, DOE is publishing final amendments to 10 CFR 1021 not affected by this limited reopening of the comment period.

DATES: The limited reopening of the comment period will end August 8, 1996. Comments must be received by that date to ensure consideration. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be addressed to Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119. Comments may be hand-delivered to room 3E–080 at the Forrestal Building on workdays between the hours of 8:00 a.m. and 4:30 p.m. Comments may also be sent by facsimile to (202) 586–7031 or by electronic mail to the following Internet address: neparule@spok.eh.doe.gov. All comments will be available for public inspection at the U.S. Department of Energy Freedom of Information Reading room, 1E–110 Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. 20585–0119, phone (202) 586–6020.

FOR FURTHER INFORMATION CONTACT: John Pulliam, Office of NEPA Policy and Assistance, at the above address, or telephone (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: On February 20, 1996 (61 FR 6414), the Department of Energy (DOE) published a Notice of Proposed Rulemaking to amend its implementing procedures under the National Environmental Policy Act (NEPA) (10 CFR part 1021). Publication of the proposed rulemaking began a 45-day public comment period that originally ended on April 5, 1996.

In response to public requests, the comment period was reopened on April 19 and extended until May 10, 1996. A public hearing was also held in Washington, D.C. on May 6, 1996. DOE has decided to solicit further input, especially from state and Federal agencies that have responsibility for environmental review of comparable non-Federal utility projects in the Pacific Northwest, on the following proposed amendments to Subpart D, typical Classes of Action primarily affecting power marketing activities: B4.1, Contracts/marketing plans/policies for excess electric power; B4.2, Export of electric energy; B4.3, Electric power marketing rate changes; B4.6, Additions/modifications to electric power transmission facilities within previously developed area; B4.10, Deactivation, dismantling and removal of electric powerlines and substations; B4.11, Construction or modification of electric power substations; B4.12, Construction of electric powerlines (generally less than 10 miles in length), not integrating major new sources; B4.13, Reconstruction and minor relocation of existing electric powerlines (generally less than 20 miles in length); C4, Upgrading and constructing electric powerlines; C7, Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads; and D7, Allocation of electric power, major new generation resources/major changes in operation of generation resources/major loads. DOE is reopening the comment period on these proposed amendments only. The final rule on all of the proposed amendments other than those that pertain to power marketing activities is being published separately.

In response to a request, DOE is providing further clarification of the rationale for two of the proposed amendments: B4.1, Contracts/marketing plans/policies for excess electric power, and B4.3, Electric power marketing rate changes. For ease of comparison, the current B4.1 and B4.3 as they now appear in the DOE NEPA regulations (57 FR 15122, 1992) are reprinted below, followed by the amended language from the February 1996 proposed rule, and the clarified rationale for the amendment.

Current B4.1

Establishment and implementation of short-term contracts, marketing plans, policies, annual operating plans, allocation plans or acquisition of excess power, the terms of any of which do not exceed five years and would not cause changes in the normal operating limits of generating projects, and if transmission would occur over existing transmission systems.

Proposed B4.1

Establishment and implementation of contracts, marketing plans, policies, allocation plans or acquisition of excess electric power that does not involve: (1) The integration of a new generation resource, (2) physical changes in the transmission system beyond the previously developed facility area, unless the changes are themselves categorically excluded, or (3) changes in the normal operating limits of generation resources.

Rationale for Amendment

The existing five-year term limit was proposed for elimination from this categorical exclusion because past experience has demonstrated that the mere length of a contract, policy, or plan does not have the potential for environmental impacts. Rather, the development or integration of new generating resources, changes in the operation of existing generation resources, or construction of transmission facilities, are the types of activities that have shown the potential for environmental impacts. By not allowing these changes in generation, operation or transmission, the proposed categorical exclusion would ensure that only those actions which have no potential for environmental impact would be categorically excluded. Those contracts, plans, and policies that do not satisfy the proposed criteria would require further NEPA analysis to ascertain the associated environmental impacts.

Current B4.3

Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements that does not exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate adjustment for that product or service or, if the rate change does exceed the change in the GNP fixed weight price index, the rate change would have no potential for affecting the operation of power generation resources.

Proposed B4.3

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

Rationale for Amendment

The proposed change would eliminate the existing restriction that, in order to be categorically excluded, a proposed rate change must not exceed the rate of inflation, a condition that DOE has found is not relevant to the action's potential for environmental impacts. Any environmental impacts resulting from rate changes would be caused only if the rate change involved associated changes in generation resources. This categorical exclusion would only apply to those rate changes that would not affect the operation of generation projects. Those rate changes that could affect the operation of generation projects would require further NEPA analysis.

Issued in Washington, D.C., June 28, 1996.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 96–17286 Filed 7–8–96; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–13]

Proposed Revision of Class E Airspace; Russellville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Russellville, AR. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 25 at Russellville Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 25 at Russellville Municipal Airport, Russellville, AR.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–13, Fort Worth, TX 76193–0530. The official docket may be examined in

ending October 15, 1996. Two comments were received.

The Board commented that it supports the rule, in part, but it requested that the Department reconsider allowing the application of interest and late payment charges on assessments delinquent prior to the effective date of the final rule. The Board commented that the proposed rule ignored the industry's recommendations with regard to assessments which are delinquent prior to the effective date of the final rule and no one should be allowed to benefit from a "free ride" at the expense of other handlers. The Board believes that allowing handlers a short period of notice, such as 60 days, before imposing interest and late payment charges after the final rule is effective would give handlers ample opportunity to become current with all assessments past due. Those that do not become current during the notice period should be subject to interest and late payment charges, the Board believes. The Board further states that it believes this is consistent with the order language.

The Department does not believe that the Board's recommendation would be consistent with the order language. The amended order language states that assessments not paid within the prescribed period of time "subsequent" to approval by the Secretary shall be subject to interest or late payment charges. This language clearly indicates that only after the authority is implemented by a final rule should assessments be subject to interest and late payment charges. Although the Board may disagree with the Department's position that the order authorizes it to charge interest and late payment charges only on handlers who fail to pay assessments accrued and billed after the effective date of the final rule, the Department believes that the clear language and the intent of the order amendment is being met with this action and the long term benefits of this final rule will be significant to the effective administration of the order. For the above stated reasons, no change is being made to the rule in response to the Board's comment.

The second comment was submitted by an attorney on behalf of an almond handler. This commenter requested clarification on the portion of the rule which states that no interest or late payment charges will accrue prior to the effective date of the rule and that interest and late payment charges will only be applicable to assessments accrued and billed after the effective date of the rule. As an example, he asked if a handler could be charged interest or late payment charges for assessments accrued in 1993. The commenter's interpretation of this language was that it would not. The commenter is correct. Only those assessments accrued and billed after the effective date of this final rule will be subject to interest and late payment charges.

The commenter also asked if a handler has filed a petition in good faith under section 608 15(a) of the Act, challenging the constitutionality of any or all portions of the almond marketing order, and withholds assessments pending the outcome of this action, is the handler subject to interest and late payment charges from the time the assessments were originally accrued and billed? The commenter stated that interest and late payment charges should not apply during the pendency of a 15(a) proceeding because the Department will not stipulate to a refund of assessments in the event the handler prevails. The commenter proposed an exemption from interest and late payment charges for those assessments owed for promotion and advertising programs if the handler has filed a 15(a) petition. The handler would maintain such assessments in an interest bearing account and the funds would ultimately be the property of the prevailing party.

It is the Department's position that filing a 15(a) petition does not relieve a handler from complying with marketing order requirements. If a handler prevails in a legal proceeding challenging the validity of marketing order provisions, the Department would comply with any final unappealable order granting relief to petitioners. Petitioners have the opportunity to argue relief remedies in the appropriate legal forum. For the foregoing reasons, no change is being made to the rule in response to this comment.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because this rule should be implemented as soon as possible so that the Board will be in a position to implement an incentive for handlers to make timely assessment payments. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 981.481 is added to read as follows:

§ 981.481 Interest and late payment charges.

(a) Pursuant to § 981.481, the Board shall impose an interest charge on any handler whose assessment payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date shown on the handler's statement. The interest charge shall be a rate of one and one half percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30 day payment period.

(b) In addition to the interest charge specified in paragraph (a) of this section, the Board shall impose a late payment charge on any handler whose payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The late payment charge shall be 10 percent of the unpaid balance.

Dated: December 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–31027 Filed 12–5–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 1021

RIN 1901–AA67

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) is amending its regulations governing compliance with the National Environmental Policy Act (NEPA). These amendments incorporate changes primarily related to DOE's power marketing activities, based on DOE's experience in applying the current NEPA regulations. The revised regulations are intended to improve DOE's efficiency in implementing NEPA requirements by reducing costs and preparation time, while maintaining quality, consistent with the DOE Secretarial Policy Statement on NEPA issued in June 1994.

EFFECTIVE DATE: This rule will become effective January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The National Environmental Policy Act of 1969 (42 USC 4321 et seq.) requires that Federal agencies prepare environmental impact statements for major Federal actions that may "significantly affect the quality of the human environment." NEPA also created the President's Council on Environmental Quality (CEQ), which issued regulations in 1978 implementing the procedural provisions of NEPA. Among other requirements, the CEQ NEPA regulations (40 CFR Parts 1500–1508) require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations. DOE's NEPA implementing regulations were promulgated in 1992 (57 FR 15122, April 24, 1992) and are codified at 10 CFR Part 1021.

On February 20, 1996, DOE published a proposed rulemaking to revise the 1992 NEPA implementing regulations (61 FR 6414). Publication of the Notice of Proposed Rulemaking began a 45-day public comment period that originally ended on April 5, 1996. In response to requests, the comment period was subsequently reopened on April 19, 1996 (61 FR 17257), and extended until May 10, 1996. As part of the notice and comment process and also in response to requests, DOE held a public hearing on the proposed amendments on May 6, 1996. The final rule on all of the proposed amendments, other than those that pertain to power marketing activities, was published on July 9, 1996 (61 FR 36222). Regarding the power marketing activities, DOE decided to solicit further input, especially from state and Federal agencies that have responsibility for environmental review of comparable non-federal utility projects in the Pacific Northwest. Therefore, in the same issue of the Federal Register as noted above (July 9, 1996), DOE published a notice of limited reopening of the comment period on the following proposed amendments to Subpart D—Typical Classes of Actions, which primarily affect power marketing activities: B4.1–B4.3, B4.6, B4.10–B4.13, C4, C7, and D7 (61 FR 35990). In response to a request, DOE also provided further clarification of the rationale for two of the proposed amendments: B4.1, Contracts/marketing plans/policies for excess electric power, and B4.3, Electric power marketing rate changes. The comment period was extended until August 8, 1996.

Copies of all written comments and the transcript of the public hearing held on May 6, 1996, have been provided to CEQ and are available for public inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

The following amendments relating primarily to power marketing activities revise subpart D of the existing regulations by expanding or clarifying existing classes of actions. This final rule adopts the amendments proposed in the Notice of Proposed Rulemaking for the power marketing classes of actions listed above, with certain changes discussed below, and amends the existing regulations at 10 CFR Part 1021. Copies of the final amendments to the rule are available upon request from the information contact listed above.

In accordance with the CEQ NEPA regulations, 40 CFR 1507.3, DOE has consulted with CEQ regarding these final amendments to the DOE NEPA rule. CEQ has found that the amendments conform with NEPA and the CEQ regulations and has no objection to their promulgation.

II. Statement of Purpose

The amendments to the DOE NEPA regulations are intended to improve the efficiency of DOE's implementation of NEPA by expanding or clarifying certain classes of actions, primarily related to power marketing activities, thereby reducing implementation costs and time. This goal is consistent with the DOE Secretarial Policy Statement on NEPA (June 1994), which encourages actions to streamline the NEPA process without sacrificing quality and to make the process more useful to decision makers and the public. Full compliance with the letter and spirit of NEPA is an essential priority for DOE. In addition, DOE's experience in applying the DOE NEPA regulations since they were issued in 1992 suggested the need for DOE to make changes to its NEPA regulations.

III. Comments Received and DOE's Responses

DOE has considered and evaluated the comments on the proposed rulemaking concerning power marketing activities received during the public comment periods. Minor revisions suggested in these comments have been incorporated into the final amendments to the rule. The following discussion describes the comments received, provides DOE's responses to the comments, and describes any resulting changes to the proposed amendments. Section references and headings below are identical to those in the proposed amendments.

A. Procedural Comments

One commenter requested that no action be taken to adopt any of the proposed power marketing administration amendments until additional information could be obtained from relevant state and Federal agencies (e.g., state environmental review procedures for comparable non-federal utility projects). In response, the final rule published on July 9, 1996 (61 FR 36222) excluded the proposed amendments pertaining primarily to power marketing activities, and the comment period for the proposed amendments pertaining to power marketing activities was reopened from July 9, 1996 through August 8, 1996 (61 FR 35990, July 9, 1996). As explained below, DOE received one set of new comments during this reopened comment period.

B. Comments on Appendices of Subpart D—Typical Classes of Actions

Two commenters objected to several categorical exclusions (B4.1, B4.10–B4.13) on the grounds of cumulative effects, connected actions, or extraordinary circumstances. Another commenter objected to a number of categorical exclusions (B4.1, B4.2, B4.6, B4.10–B4.13) on the grounds that they appear to expand substantially the universe of power marketing administration actions that would no longer require an environmental impact statement or perhaps an environmental assessment.

Under the current regulations, before a proposed action may be categorically excluded, DOE must determine in accordance with § 1021.410(b) that: (1) The proposed action fits within a class of actions listed in appendix A or B to subpart D; (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the action; and (3) there are no connected or related actions with cumulatively significant impacts and, where appropriate, the proposed action is a permissible interim action. In addition, to fit within a class of actions that is normally categorically excluded under appendix B, a proposed action must include certain integral elements (appendix B, paragraphs B(1) through (4)). These conditions are intended to ensure that an excluded action will not threaten a violation of applicable requirements, require siting and construction of waste management facilities, disturb hazardous substances such that there would be uncontrolled or unpermitted releases, or adversely affect environmentally sensitive resources. DOE believes that the general restrictions on the application of categorical exclusions will provide adequate safeguards to ensure that they are not applied to activities that could result in significant effects. For actions that do not satisfy these conditions, an environmental impact statement or an environmental assessment would be prepared. DOE believes that it will serve environmental concerns and the public's interest best by focusing its efforts on the careful analysis of those actions that actually have the potential for significant impact.

Finally, after considering all public comments on the proposed amendments, DOE has determined that the final amendments to appendix B constitute classes of actions that do not individually or cumulatively have a significant effect on the human environment, and are covered by a finding to that effect in Section 1021.410(a). In making this finding, DOE has considered, among other things, its own experience with these classes of actions, other agencies' experience as reflected in their NEPA procedures, DOE's technical judgment, and the comments received on the proposed amendments.

Classes of Actions Listed in Appendix B

• Proposed Clarification B4.1—Contracts/marketing plans/policies for excess electric power.

One commenter requested explanation of the rationale for the proposed clarification of B4.1. The existing categorical exclusion is for the establishment and implementation of contracts, plans, and policies, the terms of which do not exceed five years, would not cause changes in normal operating limits, and any related transmission would occur over existing transmission systems. The existing five-year term limit was proposed for elimination from this categorical exclusion because experience has demonstrated that the mere length of a contract, policy, or plan does not have the potential for environmental impacts. Rather, the development or integration of new generating resources, changes in the operation of existing generation resources, or construction of transmission facilities, are the types of activities that have shown the potential for environmental impacts. By not including these changes in generation, operation or transmission, the categorical exclusion ensures that only those actions that have no potential for environmental impact would be categorically excluded. Those contracts, plans, and policies that do not fit within this categorical exclusion would require further NEPA analysis to ascertain the associated environmental impacts.

• Proposed Modification B4.2—Export of electric energy.

DOE proposed to modify the existing categorical exclusion for the export of electric energy over existing transmission systems to also apply to exports over transmission system changes that are themselves categorically excluded (e.g., short powerline segments, substations). One commenter stated that DOE should consider the social and economic impacts on U.S. utility ratepayers caused by selling power to foreign countries. DOE believes that the potential for physical impacts of such a proposed action are very slight and notes that socioeconomic impacts alone do not require the preparation of an environmental impact statement (40 CFR 1508.14).

• Proposed Modification B4.3—Electric power marketing rate changes.

The proposed modification would eliminate the existing restriction that, in order to be categorically excluded, a proposed rate change must not exceed the rate of inflation, a condition that DOE has found is not relevant to the action's potential for environmental impacts. Any environmental impacts resulting from rate changes would be caused only if the rate change involved associated changes in the operation of generation resources. Therefore, this categorical exclusion would only apply to those rate changes that would not affect the operation of generation projects. The term "changes in rates," as in the proposed rule, was changed to "rate changes" to be consistent with C3.

One commenter expressed concern regarding the economic impact to domestic utility customers of allowing electric power marketing rate changes to be raised more than the rate of inflation, and of the unrestrained sale of electricity to the highest bidder, whether foreign or domestic. Federal Power Marketing Administrations market their power resources at cost. Existing law prevents Federal electric power from being sold at a profit, and further prohibits customers from reselling Federal power for profit. Federal Power Marketing Administrations are not allowed to sell power to the highest bidder, but rather must recover all costs associated with the power. DOE believes that there is no potential for environmental impacts from rate changes based on revenue requirements where, as the categorical exclusion requires, the operations of generation projects would remain within normal operating limits.

• Proposed Modification B4.10—Deactivation, dismantling and removal of electric powerlines and substations.

DOE proposed to add deactivation to the categorical exclusion for dismantling and removal of transmission lines and to add substations, switching stations and other transmission facilities. One commenter suggested that this categorical exclusion applies to deactivation of power plants and that such actions should include public participation. Deactivation under this categorical exclusion, however, would not apply to power plants, but only to transmission facilities.

• Proposed Modification B4.11—Construction or modification of electric power substations.

• Proposed Modification B4.12—Construction of electric powerlines (generally less than 10 miles in length), not integrating major new sources.

• Proposed Modification B4.13—Reconstruction and minor relocation of existing electric powerlines (generally less than 20 miles in length).

The proposed amendments include: (1) expanding categorically excluded modification activities to substations of any voltage, provided that the modification does not increase the existing voltage (B4.11); (2) expanding the construction of tap lines to include all electric powerlines not integrating major new sources (B4.12); and (3) increasing the length of powerlines that can be reconstructed from 10 miles to 20 miles (B4.13).

One commenter noted correctly that the word "generally" as applied to the

length of electric powerlines in proposed modifications to B4.11 could allow the class of actions to be applied to proposed actions that would otherwise not even approximately fit the definition. Second, commenters questioned the justification for the specific quantity values chosen and even whether any specific value could be justified.

DOE's intention with respect to both issues is better expressed by the concept of "approximately" rather than "generally," and the class of actions in the final rule has been changed accordingly. By using "approximately," DOE is indicating that the numerical values used in defining the class of actions are to be interpreted flexibly rather than with unwarranted precision. DOE has also changed the phrases in B4.11 and B4.12 to be consistent in wording. In addition, for consistency DOE has changed the phrase "major new resource" in B4.11 and "major new sources of generation into a main transmission system" in B4.12, as in the proposed rule, to read "major new generation resources into a main transmission system" in both B4.11 and B4.12.

Two commenters stated that the proposed modifications to these three categorical exclusions would exempt a wide array of power marketing administration electric power transmission line construction, reconstruction and/or relocation from the requirements of an environmental assessment or environmental impact statement, possibly resulting in a lower standard of environmental review than is imposed by relevant state agencies, on comparable projects undertaken by non-federal utilities, or those imposed by other Federal agencies on non-federal entities, or even those adopted by other Federal agencies for their own actions. In response to this concern, in conjunction with the second reopened comment period, DOE asked the appropriate state agencies for their views on the proposed modifications to the classes of actions primarily related to power marketing, and on how the environmental review that would result for Federal power marketing administration projects would compare with the review those state agencies require for comparable non-federal utility projects. Similarly, the Department solicited the views of other Federal agencies that may engage in comparable activities or issue permits to non-federal entities conducting comparable activities.

Of the states and Federal agencies that DOE contacted, one commenter responded to this initiative. The commenter was concerned about exempting facilities of this magnitude from meaningful environmental review given the level of controversy and the potential environmental consequences typically associated with the construction of new transmission lines. In response to this general concern regarding environmental review, DOE notes that the exemption could only be applied if there were no extraordinary circumstances, connected actions with cumulatively significant impacts, or violation of the integral elements, as discussed above under Section III.B. For example, any proposed action with potential impacts on a sensitive resource, or involving scientific controversy about the environmental effects of the proposal would constitute a violation of the integral elements or extraordinary circumstances and thus would not be categorically excluded. Similarly, if the electric powerline or substation was "a connected action" with regard to a facility not covered by a categorical exclusion (such as a power plant), the appropriate level of NEPA review would be conducted, i.e., environmental assessment or environmental impact statement. Therefore, the expansion of these categorical exclusions will not reduce the meaningful environmental review of Federal proposals with significant controversy or potential environmental consequences, as compared to non-federal proposals.

This commenter previously provided a similar comment regarding specific concerns about all three proposed modifications stemming, in part, from the nature of the transmission grid owned and operated by the Bonneville Power Administration (BPA) in the Pacific Northwest. The commenter noted that, unlike other Federal Power Marketing Administrations, BPA is the predominant owner and operator of major transmission lines in the Pacific Northwest. Because of the ubiquity of BPA's lines in this area, the commenter stated that the proposed categorical exclusions could permit BPA to build substantial facilities in the Northwest, including facilities in major metropolitan areas, without being subject to meaningful environmental scrutiny. For the reasons stated immediately above, DOE does not believe that the circumstance described in the comment could occur.

The commenter suggested that these proposed amendments to the 1992 DOE NEPA regulations would supplant a Memorandum of Understanding (MOU) between the commenter and BPA. The NEPA regulations have no effect on the MOU; it remains in effect as agreed upon by the two parties. The commenter also incorrectly implied that the proposed categorical exclusions are new. However, these categorical exclusions have existed since 1992. Under B4.11, the proposal would allow the modification of substations at any voltage, as opposed to those at a power delivery of 230 kV, as long as there is no voltage increase. Under B4.12, the proposal would allow the construction of any electric powerline, not just "tap" lines. Under B4.13, the length of existing electric powerlines that could be reconstructed would be increased from 10 to 20 miles. DOE notes, however, that this reconstruction and/or minor relocation under B4.13 is only for existing electric powerlines and only to enhance environmental and land use values.

Classes of Actions Listed in Appendix C

- Modification C3—Electric Power Marketing Rate Changes, not Within Normal Operating Limits.

As discussed above in reference to exclusion B4.3, DOE has determined that inflation is not relevant to an action's potential for environmental impact. Consistent with that determination, and as a necessary conforming change, DOE has modified paragraph C3 of Appendix C. This modification bases the application of the class of actions on the effect on the operation of generation projects, rather than on the rate of inflation.

- Proposed Modification C4—Upgrading and constructing electric power lines.

There were no comments on the proposed modification to this class of actions; however, to be consistent with language in categorical exclusions B4.11, B4.12, and B4.13, DOE is changing "powerline" to "powerlines" and "upgrading (reconstructing)" to "reconstructing (upgrading and rebuilding)."

- Proposed Modification C7—Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads.

DOE proposed amending this class of actions to be consistent with B4.1 and D7 and to focus on market responses to the action rather than the duration of the contract. One commenter expressed concern that DOE was privatizing its energy resources. This class of actions does not address privatization or sale of facilities, but rather the marketing or allocation of power by the power marketing administrations and the associated changes in generation resources, operating limits, or new loads.

Classes of Actions Listed in Appendix D

• Proposed Modification D7—Allocation of electric power, major new generation resources/major changes in operation of power generation resources/major loads.

DOE proposed amending this class of actions to be consistent with B4.1 and C7 to focus on market responses to the change in allocation or operation rather than duration of the underlying contract. One commenter questioned the use of the word "major," referencing "Major Projects" as used in the previous C1 class of action which was removed by the recent final rule (61 FR 36222). The word "major" in this class of actions is used as an adjective with its normal usage, in this case modifying the terms generation resources, changes, and loads.

IV. Procedural Review Requirements

A. Environmental Review Under the National Environmental Policy Act

These amendments to the DOE NEPA rule establish, modify, and clarify procedures for considering the environmental effects of DOE actions within the Department's decision making process. Implementation of this rule will not affect the substantive requirements imposed on DOE or on applicants for DOE licenses, permits, and financial assistance, and this rule will not result in environmental impacts. Therefore, DOE has determined that this rule is covered by the categorical exclusion found at paragraph A6 of appendix A to subpart D, 10 CFR Part 1021, which applies to procedural rulemaking. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 USC 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" (5 USC 603). The rule modifies existing policies and procedural requirements for DOE compliance with NEPA. The rule makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that the rule will not have a "significant economic impact on a substantial number of small entities."

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by these amendments. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987) requires that regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. These amendments will affect Federal NEPA compliance procedures, which are not subject to state regulation. The amendments will not have any substantial direct effects on states and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform" 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 12866

The final amendments were reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993), which requires a Federal agency to prepare a regulatory assessment, including the potential costs and benefits, of any "significant regulatory action." The order defines "significant regulatory action" as any regulatory action that may have an annual effect on the economy of $100 million or more and may adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments in a material way; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; or raise novel legal or policy issues arising out of legal mandates (section 3(f)).

These amendments will modify already existing policies and procedures for compliance with NEPA. The amendments contain no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or similar actions. Therefore, DOE has determined that the incremental effect of these amendments to the DOE NEPA regulations will not have the magnitude of effects on the economy, or any other adverse effects, to bring this proposal within the definition of a "significant regulatory action."

G. Review Under the Unfunded Mandates Reform Act

Under Section 205 of the Unfunded Mandates Reform Act of 1995 (2 USC 1533), Federal agencies are required to prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Because the DOE NEPA regulations affect only DOE and do not create obligations on the part of any other person or government agency, neither state, local or tribal governments nor the private sector will be affected by amendments to these regulations. Therefore, DOE has determined that further review under the Unfunded Mandates Reform Act is not required.

H. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of Small Business Regulatory Enforcement Fairness Act of 1996 (Act) (5 USC 801). The Office of Management and Budget has determined that the final regulations do not constitute a "major rule" under the Act (5 USC 804). DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Issued in Washington, D.C., November 27, 1996.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

For reasons set out in the preamble, 10 CFR Part 1021 is amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for Part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

2. Appendix B to Subpart D, is amended to revise the Table of Contents entries for B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12, and B4.13 to read as follows:

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

Table of Contents

* * * * *

B4.1 Contracts/marketing plans/policies for excess electric power.

B4.2 Export of electric energy.

B4.3 Electric power marketing rate changes, within normal operating limits.

* * * * *

B4.6 Additions/modifications to electric power transmission facilities within previously developed area.

* * * * *

B4.10 Deactivation, dismantling and removal of electric powerlines and substations.

B4.11 Construction or modification of electric power substations.

B4.12 Construction of electric powerlines approximately 10 miles in length or less, not integrating major new sources.

B4.13 Reconstruction and minor relocation of existing electric powerlines approximately 20 miles in length or less.

3. Appendix B to Subpart D, section B4, is amended to revise paragraphs B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12 and B4.13, to read as follows:

B4. Categorical Exclusions Applicable to Power Marketing Administrations and to all of DOE with Regard to Power Resources.

B4.1 Establishment and implementation of contracts, marketing plans, policies, allocation plans, or acquisition of excess electric power that does not involve: (1) the integration of a new generation resource, (2) physical changes in the transmission system beyond the previously developed facility area, unless the changes are themselves categorically excluded, or (3) changes in the normal operating limits of generation resources.

B4.2 Export of electric energy as provided by Section 202(e) of the Federal Power Act over existing transmission systems or using transmission system changes that are themselves categorically excluded.

B4.3 Rate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits.

* * * * *

B4.6 Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.

* * * * *

B4.10 Deactivation, dismantling, and removal of electric powerlines, substations, switching stations, and other transmission facilities, and right-of-way abandonment.

B4.11 Construction of electric power substations (including switching stations and support facilities) with power delivery at 230 kV or below, or modification (other than voltage increases) of existing substations and support facilities, that could involve the construction of electric powerlines approximately 10 miles in length or less, or relocation of existing electric powerlines approximately 20 miles in length or less, but not the integration of major new generation resources into a main transmission system.

B4.12 Construction of electric powerlines approximately 10 miles in length or less that are not for the integration of major new generation resources into a main transmission system.

B4.13 Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric powerlines approximately 20 miles in length or less to enhance environmental and land use values. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

4. Appendix C to Subpart D is amended to revise the Table of Contents entries for C3, C4, and C7 to read as follows:

Appendix C to Subpart D to Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

Table of Contents

* * * * *

C3 Electric power marketing rate changes, not within normal operating limits.

C4 Reconstructing and constructing electric powerlines.

* * * * *

C7 Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads.

* * * * *

5. Appendix C to Subpart D to Part 1021 is amended to revise paragraphs C3, C4, and C7 to read as follows:

* * * * *

C3 Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements if the operations of generation projects would not remain within normal operating limits.

C4 Reconstructing (upgrading or rebuilding) existing electric powerlines more than approximately 20 miles in length or constructing new electric powerlines more than approximately 10 miles in length.

* * * * *

C7 Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the allocation of electric power that do not involve (1) the addition of new generation resources greater than 50 average megawatts, (2) major changes in the operating limits of generation resources greater than 50 average megawatts, or (3) service to discrete new loads of 10 average megawatts or more over a 12 month period. This applies to power marketing operations and to siting, construction, and operation of power generating facilities at DOE sites.

* * * * *

6. Appendix D to Subpart D is amended to revise the Table of Contents entry for D7 to read as follows:

Appendix D to Subpart D to Part 1021—Classes of Actions That Normally Require EISs

Table of Contents

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D7 Allocation of electric power, major new generation resources/major changes in operation of generation resources/major loads.

* * * * *

7. Appendix D to Subpart D to Part 1021 is amended to revise paragraph D7 to read as follows:

D7 Establishment and implementation of contracts, policies, marketing plans or allocation plans for the allocation of electric power that involve (1) the addition of new generation resources greater than 50 average megawatts, (2) major changes in the operating limits of generation resources greater than 50 average megawatts, or (3) service to discrete

new loads of 10 average megawatts or more over a 12 month period. This applies to power marketing operations and to siting construction, and operation of power generating facilities at DOE sites.

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[FR Doc. 96-31064 Filed 12-5-96; 8:45 am]

BILLING CODE 6450-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

Assessments; Continuation of Adjusted Rate Schedule for BIF-Assessable Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Continuation of adjusted rate schedule.

SUMMARY: On November 26, 1996, the Board of Directors of the FDIC (Board) adopted a resolution to continue in effect the current downward adjustment to the assessment rate schedule applicable to deposits assessable by the Bank Insurance Fund (BIF). The continuation of the downward adjustment will apply to the semiannual assessment period beginning January 1, 1997. As a result, the BIF assessment rates will continue to range from 0 to 27 basis points. The only difference between the existing adjustment and the continuing adjustment adopted by the Board is that the continuing schedule will no longer include a reference to a minimum assessment amount. This change results from recent legislation that eliminates a statutorily-imposed minimum assessment amount. With this modification, the adjusted rate schedule will result in an estimated average annual assessment rate of approximately 0.17 basis points; the estimated annual revenue produced by this rate schedule will be $43 million. In connection with the elimination of the mandatory assessment amount, the Board has also decided to refund minimum assessment payments made to BIF with respect to that portion of the current semiannual assessment period remaining after enactment of the amending legislation.

EFFECTIVE DATE: January 1, 1997, through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Steven Ledbetter, Chief, Assessment Evaluation Section, Division of Insurance, (202) 898-8658; James R. McFadyen, Senior Financial Analyst, Division of Research and Statistics, (202) 898-7027; Martha Coulter, Counsel, Legal Division, (202) 898-7348; Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C., 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

This announcement pertains to deposit insurance assessments to be paid for the semiannual assessment period beginning January 1, 1997, by insured depository institutions on deposits assessable by the Bank Insurance Fund (BIF). Invoices reflecting these assessments will be sent to BIF member institutions around December 11, 1996.[1]

These invoices will also bill for assessments to be paid to the Financing Corporation (FICO). As a result of recently-enacted legislation, BIF-assessable deposits are now also subject to assessment by FICO. As it has in the past, the FDIC will continue to collect FICO assessments on FICO's behalf.

In providing for the FICO-assessability of BIF-assessable deposits, section 2703 of the Deposit Insurance Funds Act of 1996 (DIFA)[2] further provided that the assessments imposed by FICO on insured depository institutions with respect to BIF-assessable deposits will be at a rate equal to one-fifth the assessment rate applicable to deposits assessable by the Savings Association Insurance Fund (SAIF). Thus, the upcoming FDIC assessment invoice is expected to reflect a FICO rate for BIF-assessable deposits of approximately 1.3 basis points, which is one-fifth the FICO rate of approximately 6.4 basis points anticipated for SAIF-assessable deposits.

The remainder of this announcement pertains solely to deposit insurance assessments and does not further address FICO assessments.

II. Continuation of Adjustment to BIF Rate Schedule 2

Section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b), provides that the Board shall set semiannual deposit insurance assessments for insured depository institutions. On August 8, 1995, the Board adopted a new assessment rate schedule for deposits subject to assessment by BIF. 60 FR 42680 (August 16, 1995). The new schedule was codified as Rate Schedule 2 at 12 CFR 327.9(a). This schedule provided for an assessment-rate range of 4 to 31 basis points and became effective retroactively on June 1, 1995, the beginning of the month following the month in which the BIF reached its designated reserve ratio (DRR) of 1.25 percent of total estimated insured deposits.

In adopting Rate Schedule 2, the Board also amended the FDIC's assessment regulations to permit the Board to make limited adjustments to the schedule without notice-and-comment rulemaking. Any such adjustments can be made as the Board deems necessary to maintain the BIF reserve ratio at the DRR and can be accomplished by Board resolution. Under this provision, codified at 12 CFR 327.9(b), any such adjustment must not exceed an increase or decrease of 5 basis points and must be uniform across the rate schedule.

The amount of an adjustment adopted by the Board under 12 CFR 327.9(b) is to be determined by the following considerations: (1) The amount of assessment revenue necessary to maintain the reserve ratio at the DRR; and (2) the assessment schedule that would generate such amount of assessment revenue considering the risk profile of BIF members. In determining the relevant amount of assessment revenue, the Board is to consider BIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on BIF members' earnings and capital, and any other factors the Board may deem appropriate.

Having considered all of these factors, the Board decided on November 14, 1995, to adopt an adjustment factor of 4 basis points for the semiannual assessment period beginning January 1, 1996, with a resulting adjusted schedule ranging from 0 to 27 basis points. 60 FR 63400 (December 11, 1995). The Board continued the same adjustment for the semiannual period beginning July 1, 1996. 61 FR 26078 (May 24, 1996).

Until now, the adjusted schedule has included a reference to a statutory requirement in section 7(b)(2)(A)(iii) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(2)(A)(iii), that each insured depository institution pay a minimum assessment amount of $2,000 annually. However, that requirement

[1] Normally, invoices are sent approximately one month prior to collection date, which would be December 3 for the January 2 collection date. However, in this instance the invoices are being delayed approximately one week in order to permit the FDIC to include any reduction in Savings Association Insurance Fund (SAIF) rates adopted by the Board in early December for the upcoming semiannual assessment period. The Board has decided to delay all invoices, not just invoices for SAIF-member institutions, because of the large number of BIF members with SAIF-assessable deposits and SAIF members with BIF-assessable deposits. The Board is concerned that sending bifurcated invoices approximately one week apart would result in significant confusion and additional burden for such institutions that can be avoided by a delayed, combined invoice.

[2] DIFA is Subtitle G of Title II of Pub. L. 104-208, which was enacted on September 30, 1996.

Proposed Rules

Federal Register
Vol. 67, No. 222
Monday, November 18, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 1021 and 1022

RIN 1901–AA94

Compliance With Floodplain and Wetland Environmental Review Requirements

AGENCY: Department of Energy.

ACTION: Proposed rule; opportunity for public comment.

SUMMARY: This proposed rule would revise the Department of Energy's (DOE's) floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens by: Simplifying DOE public notification procedures for proposed floodplain and wetland actions; exempting additional actions from the floodplain and wetland assessment provisions of these regulations; providing for immediate action in an emergency; expanding the existing list of sources that may be used in determining the location of floodplains and wetlands; and allowing floodplain and wetland assessments for actions proposed to be taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to be coordinated with the CERCLA environmental review process rather than the National Environmental Policy Act (NEPA) process. In addition, the proposed revisions would make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer necessary. The proposed revisions would streamline existing procedures and add no new or additional requirements. This proposed revision also would provide a conforming change to 10 CFR part 1021 to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

DATES: Interested persons should submit comments by January 14, 2003.

ADDRESSES: You should address written comments on the proposed revisions to Carolyn Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance, 1000 Independence Avenue SW., Washington, DC 20585–0119. You also may e-mail written comments to: *carolyn.osborne@eh.doe.gov* or submit them by facsimile to (202) 586–7031.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or these proposed revisions, contact Carolyn Osborne at the above address. Telephone (202) 586–4600 or leave a message at (800) 472–2756.

For information on DOE's NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background

We published our regulations entitled ''Compliance with Floodplain/Wetlands Environmental Review Requirements'' (10 CFR Part 1022) on March 7, 1979 (44 FR 12596) to implement the requirements of Executive Order 11988, ''Floodplain Management'' (42 FR 2951, May 24, 1977), and Executive Order 11990, ''Protection of Wetlands'' (42 FR 26961, May 24, 1977).

A. Executive Orders 11988 and 11990

Executive Orders 11988 and 11990 direct Federal agencies to consider and protect the beneficial values of floodplains and wetlands, and Executive Order 11988 also requires Federal agencies to consider, and implement protection from, the risk of loss from floods. The Executive Orders direct that Federal agencies evaluate the potential impacts of, and look for alternatives to, actions proposed in a floodplain or wetland. The Executive Orders also direct that agencies locate any new development outside floodplains and any new construction outside wetlands whenever there is a practicable alternative for doing so. When the action must proceed in a floodplain or wetland, the responsible agency is to implement steps to mitigate any potential harm. The assessment process under the Executive Orders is to include an opportunity for public review, and the Executive Orders are to be implemented through existing procedures, including those used to comply with NEPA, to the extent possible. The Executive Orders contain other informational requirements, including that Federal agencies notify the White House Office of Management and Budget (OMB) when new budget requests involve actions proposed to be in a floodplain or wetland and that Federal agencies provide certain information during transfers of property to non-Federal parties.

While this basic framework is the same in both Executive Orders, they differ in three important ways. First, Executive Order 11988 requires an assessment for any action proposed in a floodplain, whereas Executive Order 11990 only requires an assessment for new construction in a wetland. Second, Executive Order 11988 directs that if an agency finds that there is no practicable alternative to undertaking the action in a floodplain, then the agency will circulate a brief notice explaining the basis for its finding. Executive Order 11990 contains no similar provision for actions in wetlands. Finally, Executive Order 11988 requires the use of certain building standards and related measures for development in a floodplain. There is nothing comparable in Executive

Order 11990 related to construction in a wetland.

B. 10 CFR Part 1022

Central to our implementation of Executive Orders 11988 and 11990 are the floodplain and wetland assessment processes contained in subpart B of 10 CFR part 1022. The assessments ensure that we fulfill the substantive provisions of the Executive Orders to examine alternatives to undertaking actions in a floodplain or wetland, potential impacts on the beneficial values of floodplains and wetlands, and possible mitigation measures. As required by the Executive Orders, we look for practicable alternatives to locating a proposed action in a floodplain or wetland and only conduct a floodplain or wetland assessment when no alternative location is practicable. Our processes also ensure that we fulfill the procedural provisions of the Executive Orders to allow early public review of our proposals for certain activities in a floodplain or wetland, provide notice of a finding that there are no practicable alternatives to undertaking an action in a floodplain, and make use of existing processes, including those used to implement NEPA.

Our floodplain and wetland assessment process has five steps. First, we determine early in the planning process for all proposals if a floodplain or wetland assessment is required, based on the location of the proposed action and the applicability provisions in our regulation, which are taken from the Executive Orders. As noted above, Executive Order 11988 requires an assessment for a broader set of actions proposed in a floodplain than Executive Order 11990 requires for actions proposed in a wetland. Our requirements in part 1022 reflect this difference. When an action is proposed in a wetland that is located in a floodplain, we apply the more encompassing requirements for an action proposed in a floodplain.

Second, if a floodplain or wetland assessment is required, we provide public notice and allow at least 15 days for public review of our proposal. If we are preparing an EIS for the proposal, then we may incorporate this announcement into the EIS notice of intent required under applicable NEPA regulations. Otherwise, we announce the opportunity for early public review through a public notice that describes the proposed action and its location and is published in the **Federal Register** as soon as practicable after we determine that an assessment is required. The public review process itself is integrated with the NEPA process to the extent possible or else conducted separately.

Third, we prepare the floodplain or wetland assessment. If we are also preparing an EIS or environmental assessment (EA), then we usually incorporate the floodplain or wetland assessment into the NEPA documentation. Otherwise, we separately document the floodplain or wetland assessment. In either case, we describe the proposed action and include a map showing the location of the proposed action with respect to the floodplain or wetland. We discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain or wetland. For actions proposed in a floodplain, the assessment evaluates effects of the proposed action on lives and property and evaluates natural and beneficial floodplain values. For actions proposed in a wetland, the assessment evaluates effects on the survival, quality, and natural and beneficial values of the wetland. The floodplain or wetland assessment also considers alternatives that may avoid adverse effects and incompatible development in floodplains or wetlands and addresses mitigation measures.

Fourth, we determine whether there are any practicable alternatives to locating the proposed action in a floodplain or wetland. If we find that there are not, then before taking action in a floodplain we publish a brief statement of findings describing the proposed action, explaining why the action is proposed in a floodplain, listing alternatives considered, stating whether the action conforms to state or local floodplain protection standards, and describing steps to be taken to minimize potential harm to or within the floodplain. The statement of findings may be incorporated into the finding of no significant impact (FONSI) or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, we publish the statement of findings in the **Federal Register** and distribute copies to appropriate government agencies and to those who commented during the public review of our proposal. We endeavor to allow at least 15 days of public review of the statement of findings before implementing a proposed action in a floodplain. There is no similar format or procedure for findings regarding whether there are any practicable alternatives to locating a proposed action in a wetland.

Fifth, we follow up decisions to locate actions in a floodplain or wetland through methods appropriate for the circumstances of each action.

The current rule contains one exemption from the requirement to prepare a floodplain or wetland assessment, which is for routine maintenance of existing facilities and structures on DOE property within a floodplain or wetland. By routine maintenance, we mean those activities needed as a normal part of operations to maintain and preserve facilities and structures in a condition suitable for continued use for their designated purpose. Routine maintenance does not include upgrades, improvements, or replacements that significantly extend the originally intended useful life of a facility or structure or that change its purpose. Where unusual circumstances indicate the possibility of adverse impacts on a floodplain or wetland, though, we will consider the need for a floodplain or wetland assessment even for routine maintenance activities.

Other requirements in 10 CFR part 1022 that implement aspects of Executive Orders 11988 and 11990 address building standards, providing floodplain and wetland information to external parties, property management, and budget requests. Although these requirements are designed to promote awareness of the values of floodplains and wetlands and the risks of flood loss, they are not part of the floodplain and wetland assessment process.

II. Purpose of the Revisions to 10 CFR Parts 1021 and 1022

The Secretary of Energy has approved issuance and publication of this notice of proposed rulemaking.

We propose to revise 10 CFR part 1022 to add flexibility to our implementation of the Executive Orders, remove unnecessary procedural burdens, and make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer needed. These changes stem from our experience implementing the existing requirements over the past 20 years. We expect these changes to improve our ability to meet our goals for floodplain and wetland protection in a timely and cost-effective manner. We propose to revise 10 CFR part 1021 to allow floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we propose would: (1) Simplify our public notification procedures for proposed floodplain and wetland actions by emphasizing local publication as opposed to publication in the **Federal Register**, (2) exempt additional actions from the floodplain and wetland

assessment provisions of these regulations, (3) provide for immediate action in an emergency with documentation to follow, (4) expand the existing list of credible sources that may be used in determining the location of floodplains and wetlands, and (5) allow floodplain and wetland assessments for actions proposed to be taken under CERCLA to be coordinated with the CERCLA environmental review process rather than the NEPA process. The proposed revisions would make the rule easier to use by reordering sections to parallel the assessment process, clarifying requirements (such as the differences between floodplain and wetland actions and their respective assessment requirements), and simplifying the rule by deleting provisions that are no longer applicable. The proposed revisions would streamline existing procedures and add no new requirements.

Rather than require publication in the **Federal Register** of every public notice announcing a proposed action in a floodplain or wetland or describing the findings of our floodplain assessment, we propose to allow case-by-case decisions on how to issue notices to best meet local needs (in proposed sections 1022.12 and 1022.14). We would continue to integrate our floodplain and wetland notices with other public notices related to the proposed action, such as a notice of intent to prepare an EIS on the proposal. We also would continue to distribute notices directly to interested parties, such as government and non-government agencies, as appropriate. We would, however, only require publication of a notice and a floodplain statement of findings in the **Federal Register** if our proposal may result in effects of national concern on a floodplain or wetland. A hypothetical example of an action that could have effects of national concern because of its national prominence and ecological function and the potential environmental effects of such a proposal would be a proposal for a project in the Everglades.

As noted above, part 1022 currently does not ordinarily require a floodplain or wetland assessment for routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland. We propose to exempt four additional classes of floodplain and wetland actions from subpart B, Procedures for Floodplain and Wetland Reviews. At proposed section 1022.5(d)(2), we would add exemptions for three similar classes of activities (site characterization, environmental monitoring, and environmental research activities) on DOE or non-DOE property in a floodplain or wetland, unless the activities would involve building a structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem. At proposed section 1022.5(d)(3), we would add an exemption for minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions, unless the modification would result in a significant change in the expected useful life of the facility or structure or would involve building a structure or draining, dredging, channelizing, filling, diking, impounding, or related activities. Our experience with these classes of actions is that they are of short duration with very small intrusion in a floodplain or wetland and have very small or no adverse impact on a floodplain or wetland. Additionally, these classes of actions typically lead to improved environmental protection or public and worker safety. For each of these exemptions, if unusual circumstances arise, we would consider the need for a floodplain or wetland assessment in order to consider any unusual circumstances associated with a particular proposal that indicate the possibility of adverse impact on a floodplain or wetland (proposed section 1022.5(e)).

We propose to clarify our provision for immediate action in the event of an emergency (proposed section 1022.16(a)). The existing rule allows minimum time periods prior to implementation of a proposal to be waived in response to emergency circumstances. We propose that action may be taken during an emergency without complying with provisions of these regulations. We also propose, however, that after taking action, we would assess the environmental impacts of our emergency actions and consider potential mitigation in conjunction with our NEPA regulations for emergency actions (10 CFR 1021.343(a)) or our CERCLA procedures.

The existing rule establishes a 15-day waiting period between issuance of the notice of proposed floodplain action and issuance of the floodplain statement of findings, and another 15-day waiting period after issuance of the floodplain statement of findings before implementing the proposed floodplain action. For a proposed wetland action, the existing rule requires a 15-day waiting period after issuance of the notice of proposed action before implementing the action. In the event of statutory deadlines or overriding considerations of program or project expense or effectiveness, the existing rule provides for waiving any of the waiting periods except the 15-day period between issuing a notice of proposed floodplain action and the floodplain statement of findings. We propose to add a provision allowing the waiver of all minimum waiting periods under the same exigent circumstances (*i.e.*, in the event of statutory deadlines or overriding considerations of program or project expense or effectiveness) (proposed section 1022.16(b)). This change would allow us additional flexibility when a floodplain assessment is not being prepared as part of a NEPA or CERCLA review. The waiver of a waiting period under this rule would not affect timing requirements of our NEPA regulations or of CERCLA procedures.

We propose to expand the existing list of sources that may be used in determining the location of floodplains and wetlands (proposed sections 1022.11(b) and (c)). For floodplain determinations we have relied upon Flood Insurance Rate Maps, Flood Hazard Boundary Maps, and information from the relevant land administering agency or from agencies with floodplain determination expertise. We propose to also use information in safety basis documents as defined at 10 CFR part 830 and in DOE environmental documents, *e.g.*, NEPA and CERCLA documents. For wetland determinations, we have relied upon the U.S. Fish and Wildlife Service National Wetlands Inventory, other government-sponsored wetland or land-use inventories, U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps, and U.S. Geological Survey Topographic Maps. We propose to also use the U.S. Army Corps of Engineers ''Wetlands Delineation Manual'' (Wetlands Research Program Technical Report Y–87–1, January 1987) or successor document and DOE environmental documents, *e.g.,* NEPA and CERCLA documents. These changes would allow us to take advantage of information sources that were not available when this regulation was first promulgated and to use better the considerable research and documentation completed for safety, planning, and other purposes at DOE sites. When there are differences among these information sources, we will use the most authoritative information available relative to site conditions.

We propose adding provisions acknowledging that floodplain and wetland assessments for actions proposed to be taken under CERCLA would be coordinated with the CERCLA

environmental review process, not the NEPA process (proposed sections 1022.2(b), 1022.11(a), and 1022.13(c)). As we first promulgated our 10 CFR Part 1022 requirements approximately two years before CERCLA became law, this change would update the rule to be consistent with our current policy and practice regarding environmental reviews under CERCLA.

To make the rule simpler and easier to use, we propose to reorder sections, add clarifications, delete text, and make numerous stylistic changes. These proposed changes would not alter applicable requirements. The existing rule has two subparts, A and B. We propose reordering sections in Subpart B to only address provisions associated with floodplain and wetland assessment processes. All other requirements currently in Subpart B would be moved to a proposed new subpart (Subpart C, Other Requirements).

We propose to clarify how this regulation applies differently to actions proposed in a floodplain, and actions proposed in a wetland but not in a floodplain, consistent with provisions in Executive Orders 11988 and 11990 and our existing regulation. We would not change any requirements in this regard; rather we propose to revise definitions of floodplain, floodplain action, and wetland action (proposed section 1022.4) to better describe our intent and the way we implement this regulation. These changes, and related changes to maintain consistency throughout the regulation, clarify that we treat a proposal that would be located in both a wetland and a floodplain as we would any other action proposed to be located in a floodplain.

We propose to delete text that is repeated between sections in the existing rule, and in one case, we would delete an entire section (existing section 1022.21) that specifies we will periodically review these regulations and make revisions. Existing section 1022.21 is not required for us to propose additional changes to this rule at a future date, and therefore, we propose deleting it as unnecessary. We also propose to delete language that was needed to transition the rule into effect but that is no longer needed (proposed section 1022.5).

The details of these and other proposed changes are described below in section III, Description of Proposed Revisions to the Existing Rule. Because we often reference our existing rule to describe our proposed changes, you may want to refer to it. Our existing 10 CFR Part 1022 regulations are available on the Internet at *http://tis.eh.doe.gov/nepa/tools/tools.htm* under the heading ''NEPA Regulations'' or you may request a copy from Carolyn Osborne at either of the telephone numbers listed above under **FOR FURTHER INFORMATION CONTACT.**

III. Description of Proposed Revisions to the Existing Rules

A. Proposed Changes to 10 CFR Part 1021

We propose to revise section 1021.313 to make it consistent with our proposed new section 1022.14(c), as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, and below. Currently, section 1021.313(c) requires a DOE final EIS to include any floodplain statement of findings required by Part 1022. This requirement is overly prescriptive and is inconsistent with the flexibility afforded under existing section 1022.15 and proposed section 1022.14(c) to include a floodplain statement of findings in a final EIS or to issue the statement of findings separately. Under our proposal, section 1021.313(c) would track the language at the new section 1022.14(c).

B. Proposed changes to 10 CFR 1022 Subpart A—General

Section 1022.1 Background

To provide guidance on implementing Executive Order 11988, Floodplain Management, we propose adding a reference to the Federal Interagency Floodplain Management Taskforce document, ''A Unified National Program for Floodplain Management'' (FEMA 248, June 1994). We also propose adding words from Executive Orders 11988 and 11990 emphasizing two purposes of the regulation: That Federal agencies are to avoid development in a floodplain or new construction in a wetland wherever there is a practicable alternative and to ensure the evaluation of potential impacts associated with proposed new construction in wetlands. These changes would add no new requirements.

Section 1022.2 Purpose and Scope

As described above in section II, we propose identifying the CERCLA review process as an alternative mechanism for implementing the regulation. Sections 1022.11(a) and 1022.13(c) (detailed below) would be revised to reflect this additional flexibility.

Section 1022.3 Policy

To better group floodplain and wetland policy statements, we propose reordering paragraphs within this section. We also propose updating the reference to construction requirements in proposed paragraph (a)(4) from ''regulations promulgated by the Federal Insurance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*'' to ''the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program building standards.'' Also, we propose moving a requirement concerning transactions to a new section 1022.21(b) in a new Subpart C, Other Requirements, discussed below, so that proposed paragraph (a)(6) would only state policy: ''Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain.''

Section 1022.4 Definitions

We propose to change our definition of ''action'' to clarify that it includes any activity necessary to carry out DOE's responsibilities for the tasks listed in Executive Orders 11988 and 11990, rather than that it includes any activity ''including, but not limited to,'' those tasks listed in the Executive Orders. This proposed language more closely parallels the Executive Orders.

We propose deleting the definition of ''base flood'' and incorporating it into the definition of ''base floodplain.''

We propose to revise the definitions of ''environmental assessment,'' ''environmental impact statement,'' and ''finding of no significant impact'' to reference the Council on Environmental Quality's (CEQ's) and DOE's NEPA regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021, respectively. Our NEPA regulations were not in place when 10 CFR part 1022 was promulgated.

We propose to simplify the definition of ''floodplain'' by creating separate definitions for ''base floodplain'' and ''critical action floodplain.'' We also propose to define the critical action floodplain as, at a minimum, the 500-year floodplain. While for most proposed actions, we prepare a floodplain assessment if the action would be located in the 100-year floodplain, for a proposed critical action (*i.e.*, an action for which even a slight chance of flooding poses an unacceptable risk) we prepare a floodplain assessment if it would be located in the critical action floodplain. We normally define the critical action floodplain in terms of the estimated 500-year flood for an area. We would add the option to define the critical action floodplain in terms of a less frequent (and therefore more severe) flood when another requirement applicable to the proposal requires consideration of the less frequent flood event. For example, if the hazard

assessment for a proposal considers the consequences of a less frequent flood (*e.g.*, the 10,000-year flood), then we would use that less frequent flood to define the critical action floodplain for the proposal.

We propose to clarify the definition of ''floodplain action'' by adding ''including any DOE action in a wetland that is also within the floodplain.''

We propose to add a definition for ''floodplain and wetland values'' to describe the range of issues to be addressed in a floodplain or wetland assessment under the existing section 1022.12(a)(2) and proposed section 1022.13(a)(2). We adapted the proposed definition from that used by FEMA (44 CFR 9.4) and terms used in Executive Orders 11988 and 11990.

We propose to delete the definition of ''floodproofing,'' because the term is not used in the rule.

We propose simplifying our definition of ''new construction'' by deleting the reference to October 1, 1977, as the starting point for applicability of the definition. That clause appropriately exempted certain actions underway before Executive Order 11990 became effective, but it is no longer necessary.

We propose to change the name and definition of ''public notice.'' We would call the notice a ''notice of proposed floodplain action'' or a ''notice of proposed wetland action'' to better reflect its purpose to announce that a proposed action would be in a floodplain or wetland, respectively, the location of the floodplain or wetland, and the opportunity for public review. We also propose to delete any requirements on how to issue the notice from the definition and instead to include such requirements in proposed section 1022.12, Notice of proposed action.

We propose to change the name ''statement of findings'' to ''floodplain statement of findings'' and to delete any requirements from the definition and instead to include such requirements in proposed section 1022.14, Findings.

We propose changing our definition of ''wetland'' to make it consistent with the Clean Water Act implementing regulations of both the U.S. Army Corps of Engineers (33 CFR 328.3(b)) and the U.S. Environmental Protection Agency (40 CFR 230.41(a)(1)), as the definition in the existing rule was taken from Executive Order 11990. This proposed revision would involve deleting the examples of ''similar areas such as sloughs, potholes, wet meadows, river outflow, mudflats and natural ponds.'' An important note about the proposed definition is that it is more broadly defined than the wetlands over which the U.S. Army Corps of Engineers has regulatory jurisdiction (33 CFR 328.3(a) and 328.4). The broader definition we use for this rule is consistent with Executive Order 11990 in order to ensure that we apply appropriate protections to valuable wetlands that might not qualify as wetlands subject to the Corps' jurisdiction (*e.g.,* some wet meadows, forested wetlands, playas, Carolina bays).

We propose to modify the definition of ''wetland action'' to specify that it applies to any DOE action ''related to new construction'' that takes place in a wetland not located in a floodplain. This change would make the definition consistent with Executive Order 11990, which requires a wetland assessment only for activities related to new construction in a wetland.

Section 1022.5 Applicability

We propose deleting a significant portion of text from the existing section 1022.5 because it is outdated or redundant of other sections of the rule. The result would be a more concise section, reduced from eight to four paragraphs, which is easier to read. We propose deleting text from existing paragraphs (b) and (c) that exempts actions that were underway when the rule was issued. Any such actions have since been completed, and the text is no longer necessary. We would delete text from existing paragraphs (d), (e), and (f) that repeats parts of the definition of ''action'' (proposed section 1022.4); this results in deletion of the entirety of paragraph (f). We would also delete existing paragraph (h) since it is repetitive of the definition of floodplain action (proposed section 1022.4).

We propose relocating requirements regarding license, easement, lease, transfer, or disposal of property to non-Federal public or private parties from existing section 1022.5(d) to proposed section 1022.21(a), Property management, in a new Subpart C, Other Requirements. From existing section 1022.5(e), we propose moving the requirements for applicants for assistance into proposed section 1022.23, Applicant responsibilities (proposed redesignation from existing section 1022.13), described below.

We propose adding four exemptions from the requirements for preparing a floodplain or wetland assessment to paragraph (d). These proposed exemptions are described above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

Section 1022.6 Public Inquiries

We propose moving this section from Subpart B (where it had been designated section 1022.20) to Subpart A because it is more appropriately a part of general statements related to this rule. We also propose updating the contact to which inquiries may be directed from the Assistant Secretary for Environment to the Office of NEPA Policy and Compliance.

C. Proposed Changes to 10 CFR 1022 Subpart B—Procedures for Floodplain and Wetland Reviews

We propose reordering the sections in this subpart to better reflect the sequence of events in our process for preparing a floodplain or wetland assessment and to relocate to subparts A and C those requirements not directly related to the preparation of a floodplain or wetland assessment. The particular changes are described below for each section in proposed subpart B.

Section 1022.11 Floodplain or Wetland Determination

We propose to change section 1022.11(a) by adding a reference to environmental review requirements under the CERCLA process to conform to the proposed change in section 1022.2(b), discussed above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

As also discussed above in section II, we propose to expand the list of information sources that may be used to determine if a proposed action would be located in a floodplain or wetland (proposed sections 1022.11(b) and (c)). We also propose to update references to two information sources. FEMA, rather than the Federal Insurance Administration of the Department of Housing and Urban Development, would be cited because FEMA currently maintains primary responsibility for interagency planning to address Federal floodplain management requirements (proposed section 1022.11(b)). We also propose to change the existing reference to the Soil Conservation Service to the Natural Resources Conservation Service to reflect the agency's current name (proposed sections 1022.11(b) and (c)).

We propose to add a new section (proposed 1022.11(d)) that would specify whether a floodplain or wetland assessment is required based on the location of the proposed action. This paragraph would clarify existing requirements by associating the determination made pursuant to sections 1022.11(b) and (c) with the definitions of critical action, floodplain action, and wetland action.

Section 1022.12 Notice of Proposed Action (Proposed Redesignation From Section 1022.14 Public Review)

We propose to change, in proposed section 1022.12 and throughout the rule, all references to ''public notice'' to ''notice of proposed floodplain action'' or ''notice of proposed wetland action'' to better reflect the purpose of the notice.

We propose to change existing sections 1022.14(b) and (c) by deleting the requirement that DOE always publish a notice in the **Federal Register** for floodplain or wetland actions for which no EIS is required. This proposal is explained above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022. We also propose to move the requirement regarding timing for issuance of a notice of proposed action from existing section 1022.14(b) to proposed section 1022.15, Timing. This would consolidate requirements related to timing of steps in the floodplain and wetland assessment processes, as discussed below.

Section 1022.13 Floodplain or Wetland Assessment (Proposed Redesignation From Existing Section 1022.12)

We propose emphasizing in proposed paragraph (a)(2) that the assessment shall incorporate floodplain and wetland values that are appropriate to the location under evaluation. This would underscore the need to focus only on those values most appropriate to local conditions and also to clarify that when evaluating a proposal for an action within a wetland located in a floodplain, we consider both floodplain and wetland values, as appropriate. This proposed revision would reference a new definition of floodplain and wetland values (described above for proposed section 1022.4) that lists several topics that might be included in the assessment. Although these changes do not add any new requirement, they do add further guidance about how the assessment should be performed.

We propose adding to proposed paragraph (c) that when an EA or EIS is not being prepared for the proposed floodplain or wetland action, the assessment ''shall be prepared separately or incorporated when appropriate into another environmental review process (*e.g.*, CERCLA).'' This revision highlights our flexibility to incorporate compliance with these regulations within processes other than NEPA, as appropriate and as discussed in other sections above.

Section 1022.14 Findings (Proposed Redesignation From Section 1022.15 Notification of Decision)

We propose a new section (1022.14(c)) to describe how to issue a statement of findings for floodplain actions for which no EA or EIS is being prepared. For these floodplain actions, we would distribute copies of the floodplain statement of findings to government agencies and to others who submitted comments on the proposed action. We propose to publish the floodplain statement of findings in the **Federal Register** only when the proposed floodplain action may result in effects of national concern to a floodplain or wetland or both. The proposed change would parallel the process described in the CEQ regulations on Public Involvement (40 CFR 1506.6(b)(2)) and is reflected in the proposed changes to section 1022.4. We also propose that when a floodplain statement of findings is published in the **Federal Register** the statement does not need to contain a map (as otherwise required) but that the statement should indicate where a location map is available. A wetland finding may be prepared and distributed at DOE's discretion.

We also propose a new section (1022.14(d)) regarding the distribution of floodplain statements of findings to state governments. We propose to update the existing reference to Office of Management and Budget Circular A–95 (from the existing section 1022.15) and refer instead to Executive Order 12372, Intergovernmental Review of Federal Programs, and DOE's implementing regulations at 10 CFR part 1005, Intergovernmental Review of *Department of Energy Programs.* Executive Order 12372 directs Federal agencies to rely on state and local processes for state and local government coordination and for review of proposed Federal financial assistance and direct Federal development.

Section 1022.15 Timing (Proposed Redesignation From Section 1022.18 Timing of Floodplain/Wetlands Actions)

We propose to relocate the requirements regarding timing in sections 1022.14(c) and 1022.18 of the existing rule to proposed section 1022.15. This would consolidate references to the time periods for DOE to consider public comments after issuing a notice of proposed floodplain action or a notice of proposed wetland action or a floodplain statement of findings.

Section 1022.16 Variances

We propose to add a section providing a variance for emergency actions (proposed section 1022.16(a)) that would, as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, reflect provisions in our NEPA procedures (10 CFR 1021.343(a)). We also propose to incorporate into this section as paragraph (b) the existing variance (1022.18(c) in the existing rule) that allows abbreviated schedules in some circumstances and to broaden the applicability of this variance as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022. We also propose to add a section 1022.16(c) requiring consultation with the Office of NEPA Policy and Compliance whenever this section is being implemented.

Subpart C—Other Requirements

We propose adding a new subpart to consolidate requirements that are not general policy (subpart A) nor a part of the floodplain and wetland assessment processes (subpart B).

Section 1022.21 Property Management

We propose a new section that would consolidate existing requirements from sections 1022.5(d) and 1022.3(b)(8) of the existing rule. These sections address property in a floodplain or wetland that is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties and any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain. There are no substantive changes in this new consolidated section.

Section 1022.22 Requests for Authorizations or Appropriations (Proposed Redesignation From Section 1022.16)

We propose to move this section into Subpart C, Other Requirements, for the reasons stated above.

Section 1022.23 Applicant Responsibilities (Proposed Redesignated From Section 1022.13)

We propose revising this section to allow flexibility in what information we request of applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland. The section currently states that DOE may require the applicant to prepare a report that satisfies the floodplain or

wetland assessment provisions of this regulation. We propose revising this section to state that we may require applicants to provide information necessary for DOE to comply with the requirements of this regulation. This change emphasizes that we will ask for that information necessary and appropriate for us to comply with the requirements of this regulation relative to each particular application.

Section 1022.24 Interagency Cooperation (Proposed Redesignation From

Section 1022.19 Selection of a Lead Agency and Consultation Among Participating Agencies)

No substantive changes to this section are proposed.

IV. Procedural Review Requirements

A. Review Under Executive Order 12866

Today's proposed regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, today's proposed regulatory action would not be subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Assistant Secretary for Environment, Safety and Health has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 13132

Today's regulatory action has been determined not to be a ''policy that has federalism implications,'' that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no ''federalism summary impact statement'' was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''tribal implications'' and imposes substantial direct compliance costs on Indian tribal governments. DOE's Assistant Secretary for Environment, Safety and Health has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

E. Reviews Under the Regulatory Flexibility Act

The proposed revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The Act requires preparation of an initial regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. Today's proposed revisions to 10 CFR Parts 1021 and 1022 would amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed actions would neither increase the incidence of floodplain and wetland assessments nor increase burdens associated with carrying out such an assessment. Therefore, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

F. Review Under the Paperwork Reduction Act

No additional information or recordkeeping requirements are imposed by this proposed rulemaking. The proposed changes would actually reduce paperwork requirements by eliminating a requirement that public notices always be published in the **Federal Register** and by adding to the number of exemptions from requirements for preparing a floodplain or wetland assessment. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these proposed revisions to existing regulations falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the proposed revisions to 10 CFR parts 1021 and 1022 would amend DOE's policies to streamline and simplify existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed regulations are covered under the categorical exclusion in paragraph A6, ''Rulemakings, Procedural'' (rulemakings that are strictly procedural) to Appendix A to Subpart D, 10 CFR part 1021. Accordingly, neither an EA nor an EIS is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE

has determined that the proposed revisions to 10 CFR parts 1021 and 1022 published today do not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs in the Office of Management and Budget a Statement of Energy Effects for any significant energy action. Today's proposed rule is not a significant energy action, as that term is defined in the Executive Order. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any proposed rule that may affect family well-being. The proposed rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE's Assistant Secretary for Environment, Safety and Health has concluded that it is not necessary to prepare a Family Policymaking Assessment.

V. Public Comment Procedures

You should submit comments by January 17, 2003, but we will consider comments received after that date to the extent practicable. We continue to experience occasional mail delays due to extra processing required for the delivery of mail to Federal agencies, and we will take this into consideration. However, you are encouraged to submit comments electronically or via a service offering a guaranteed delivery date. Comments should be submitted to the street address, e-mail address, or fax number indicated in the **ADDRESSES** section of this notice. Written comments should be identified on the documents themselves and on the outside of the envelope, on the fax cover page, or in the e-mail message with the designation ''Compliance with Floodplain and Wetland Environmental Review Requirements.'' We are not scheduling any public meetings on the proposed revisions, but we will arrange a public meeting if the public expresses sufficient interest. Comments will not be accepted on provisions of 10 CFR part 1021 that are not subject to change by this revision.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Office Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. The Department is responsible for the final determination with regard to disclosure or non-disclosure of the information and for treating it accordingly under the Freedom of Information Act section on ''Handling Information of a Private Business, Foreign Government, or an International Organization'' (10 CFR 1004.11).

List of Subjects in 10 CFR Part 1022

Flood plains, Wetlands.

Issued in Washington, DC, on November 12, 2002.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

For the reasons set forth in the preamble, parts 1021 and 1022 of chapter III of title 10, Code of Federal Regulations are proposed to be amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

§ 1021.313 [Amended]

2. In § 1021.313, paragraph (c), the last sentence is amended as follows:

a. Remove the word ''shall'' and insert in its place the word ''may''.

b. Remove the period and add the words '', or may be issued separately.'' at the end of the sentence.

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

3. Part 1022 is revised to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Subpart B—Procedures for Floodplain and Wetland Reviews

Subpart C—Other Requirements

Authority: E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

Subpart A—General

§ 1022.1 Background.

(a) Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977) directs each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the E.O. is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 FR 6030, February 10, 1978) and in ''A Unified National Program for Floodplain Management'' prepared by the Federal Interagency Floodplain Management Taskforce (Federal Emergency Management Agency, FEMA 248, June 1994). E.O. 11990—Protection of Wetlands (May 24, 1977) directs all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking and to ensure the evaluation of the potential impacts of any new construction proposed in a wetland.

(b) It is the intent of the E.O.s that Federal agencies implement both the floodplain and the wetland provisions through existing procedures such as those established to implement the National Environmental Policy Act

(NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In those instances where the impacts of the proposed action are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain or wetland evaluation procedures are to be established. As stated in the E.O.s, Federal agencies are to avoid direct or indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities under E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain and wetland factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in a floodplain or wetland, providing opportunity for early public review of such proposed actions, preparing floodplain or wetland assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE shall accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures or, when appropriate, the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with FEMA National Flood Insurance Program building standards;

(5) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property that has suffered flood damage or is in an identified floodplain and that is used by the general public;

(6) Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain;

(7) Minimize the destruction, loss, or degradation of wetlands; and

(8) Preserve and enhance the natural and beneficial values of wetlands.

(b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.

(c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

(d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.

(e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

§ 1022.4 Definitions.

The following definitions apply to this part:

Action means any DOE activity necessary to carry out its responsibilities for:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing DOE-undertaken, -financed, or -assisted construction and improvements; and

(3) Conducting activities and programs affecting land use, including but not limited to water- and related land-resources planning, regulating, and licensing activities.

Base floodplain means the 100-year floodplain that is a floodplain with a 1.0 percent chance of flooding in any given year.

Critical action means any DOE action for which even a slight chance of flooding would be too great. Such actions may include, but are not limited to, the storage of highly volatile, toxic, or water reactive materials.

Critical action floodplain means, at a minimum, the 500-year floodplain that is a floodplain with a 0.2 percent chance of flooding in any given year.

Environmental assessment (EA) means a document prepared in accordance with the requirements of 40 CFR 1501.4(b), 40 CFR 1508.9, 10 CFR 1021.320, and 10 CFR 1021.321.

Environmental impact statement means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA and its implementing regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021.

Facility means any human-made or -placed item other than a structure.

FEMA means the Federal Emergency Management Agency.

Finding of no significant impact means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322 that briefly presents the reasons why an action will not have a significant effect on the human environment and for which an EIS therefore will not be prepared.

Flood or flooding means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands including, at a minimum, that area inundated by a 1.0 percent or greater chance flood in any given year.

Floodplain action means any DOE action that takes place in a floodplain, including any DOE action in a wetland that is also within the floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

Floodplain and wetland values means the qualities of or functions served by floodplains and wetlands that can include, but are not limited to, water resource values (*e.g.*, natural moderation of floods, water quality maintenance, groundwater recharge), living resource values (*e.g.*, conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability), cultural resource values (*e.g.*, open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation), and cultivated resource values (*e.g.*, agriculture, aquaculture, forestry).

Floodplain or wetland assessment means an evaluation consisting of a description of a proposed action, a discussion of its potential effects on the floodplain or wetland, and consideration of alternatives.

Floodplain statement of findings means a brief document issued pursuant to section 1022.14(b) and (c) of this part that describes the results of a floodplain assessment.

High-hazard areas means those portions of riverine and coastal floodplains nearest the source of flooding that are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

Minimize means to reduce to the smallest degree practicable.

New construction, for the purpose of compliance with E.O. 11990 and this part, means the building of any structures or facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

Notice of proposed floodplain action and notice of proposed wetland action mean a brief notice that describes a proposed floodplain or wetland action, respectively, and its location and that affords the opportunity for public review.

Practicable means capable of being accomplished within existing constraints, depending on the situation and including consideration of many factors, such as the existing environment, cost, technology, and implementation time.

Preserve means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain or wetland can again operate.

Structure means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

Wetland means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

Wetland action means any DOE action related to new construction that takes place in a wetland not located in a floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

§ 1022.5 Applicability.

(a) This part applies to all organizational units of DOE, including the National Nuclear Security Administration, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part applies to all proposed floodplain or wetland actions, including those sponsored jointly with other agencies.

(c) This part does not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving a wetland that are located on non-Federal property.

(d) Subject to paragraph (e) of this section, subpart B of this part does not apply to:

(1) Routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland;

(2) Site characterization, environmental monitoring, or environmental research activities in a floodplain or wetland, unless these activities would involve building any structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem; and

(3) Minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would result in a significant change in the expected useful life of the facility or structure or involve building any structure or draining, dredging, channelizing, filling, diking, impounding, or related activities.

(e) Although the actions listed in paragraphs (d)(1), (d)(2), and (d)(3) of this section normally have very small or no adverse impact on a floodplain or wetland, where unusual circumstances indicate the possibility of adverse impact on a floodplain or wetland, DOE shall determine the need for a floodplain or wetland assessment.

§ 1022.6 Public inquiries.

Inquiries regarding DOE's floodplain and wetland environmental review requirements may be directed to the Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, or a message may be left at 1–800–472–2756, toll free.

Subpart B—Procedures for Floodplain and Wetland Reviews

§ 1022.11 Floodplain or wetland determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA or CERCLA process requirements, DOE shall determine the applicability of the floodplain management and wetland protection requirements of this part.

(b) DOE shall determine whether a proposed action would be located within a base or critical action floodplain consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by FEMA;

(2) Information from a land-administering agency (*e.g.*, Bureau of Land Management, Natural Resources Conservation Service) or from other government agencies with floodplain-determination expertise (*e.g.*, U.S. Army Corps of Engineers);

(3) Information contained in safety basis documents as defined at 10 CFR part 830; and

(4) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(c) DOE shall determine whether a proposed action would be located within a wetland consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) U.S. Army Corps of Engineers ''Wetlands Delineation Manual,'' Wetlands Research Program Technical Report Y–87–1, January 1987, or successor document;

(2) U.S. Fish and Wildlife Service National Wetlands Inventory or other government-sponsored wetland or land-use inventories;

(3) U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps;

(4) U.S. Geological Survey Topographic Maps; and

(5) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(d) Pursuant to § 1022.5 of this part and paragraphs (b) and (c) of this section, DOE shall prepare:

(1) A floodplain assessment for any proposed floodplain action in the base floodplain or for any proposed floodplain action that is a critical action located in the critical action floodplain; or

(2) A wetland assessment for any proposed wetland action.

§ 1022.12 Notice of proposed action.

(a) For a proposed floodplain or wetland action for which an EIS is required, DOE shall use applicable NEPA procedures to provide the opportunity for early public review of the proposed action. A notice of intent to prepare the EIS may be used to satisfy the requirement for DOE to publish a notice of proposed floodplain or wetland action.

(b) For a proposed floodplain or wetland action for which no EIS is required, DOE shall take appropriate steps to send a notice of proposed floodplain or wetland action to appropriate government agencies and to persons or groups known to be interested in or potentially affected by the proposed floodplain or wetland action. DOE also shall distribute the notice in the area where the proposed action is to be located (*e.g.*, by publication in local newspapers, through public service announcements,

by posting on- and off-site). In addition, for a proposed floodplain or wetland action that may result in effects of national concern to the floodplain or wetland or both, DOE shall publish the notice in the **Federal Register**.

§ 1022.13 Floodplain or wetland assessment.

(a) A floodplain or wetland assessment shall contain the following information:

(1) *Project Description.* This section shall describe the proposed action and shall include a map showing its location with respect to the floodplain and/or wetland. For actions located in a floodplain, the nature and extent of the flood hazard shall be described, including the nature and extent of hazards associated with any high-hazard areas.

(2) *Floodplain or Wetland Impacts.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetland. This section shall include impacts on the natural and beneficial floodplain and wetland values (§ 1022.4) appropriate to the location under evaluation. In addition, the effects of a proposed floodplain action on lives and property shall be evaluated. For an action proposed in a wetland, the effects on the survival, quality, and function of the wetland shall be evaluated.

(3) *Alternatives.* DOE shall consider alternatives to the proposed action that avoid adverse impacts and incompatible development in the floodplain and/or wetland, including alternate sites, alternate actions, and no action. DOE shall evaluate measures that mitigate the adverse effects of actions in a floodplain and/or wetland including, but not limited to, minimum grading requirements, runoff controls, design and construction constraints, and protection of ecologically-sensitive areas.

(b) For proposed floodplain or wetland actions for which an EA or EIS is required, DOE shall prepare the floodplain or wetland assessment concurrent with and included in the appropriate NEPA document.

(c) For floodplain or wetland actions for which neither an EA nor an EIS is prepared, DOE shall prepare the floodplain or wetland assessment separately or incorporated when appropriate into another environmental review process (*e.g.*, CERCLA).

§ 1022.14 Findings.

(a) If DOE finds that no practicable alternative to locating or conducting the action in the floodplain or wetland is available, then before taking action DOE shall design or modify its action in order to minimize potential harm to or within the floodplain or wetland, consistent with the policies set forth in E.O. 11988 and E.O. 11990.

(b) For actions that will be located in a floodplain, DOE shall issue a floodplain statement of findings, normally not to exceed three pages, that contains:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

(c) For floodplain actions that require preparation of an EA or EIS, DOE may incorporate the floodplain statement of findings into the finding of no significant impact or final EIS, as appropriate, or issue such statement separately.

(d) DOE shall send copies of the floodplain statement of findings to appropriate government agencies and to others who submitted comments on the proposed floodplain action.

(e) For proposed floodplain actions that may result in effects of national concern, DOE shall publish the floodplain statement of findings in the **Federal Register**, describing the location of the action and stating where a map is available.

(f) For floodplain actions subject to E.O. 12372—Intergovernmental Review of Federal Programs (July 14, 1982, 47 FR 30959), DOE shall send the floodplain statement of findings to the State in accordance with 10 CFR Part 1005—Intergovernmental Review of Department of Energy Programs and Activities.

§ 1022.15 Timing.

(a) For a proposed floodplain action, DOE shall allow 15 days for public comment following issuance of a notice of proposed floodplain action. DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received, after the close of the public comment period and before issuing a floodplain statement of findings. After issuing a floodplain statement of findings, DOE shall endeavor to allow at least 15 days of public review before implementing a proposed floodplain action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

(b) For a proposed wetland action, DOE shall allow 15 days for public comment following issuance of a notice of proposed wetland action. After the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed wetland action and the mitigating measures, taking into account all substantive comments received, before implementing a proposed wetland action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

§ 1022.16 Variances.

(a) *Emergency actions.* DOE may take actions without observing all provisions of this part in emergency situations that demand immediate action. To the extent practicable prior to taking an emergency action, or as soon as possible after taking such an action, DOE shall document the emergency actions in accordance with NEPA procedures at 10 CFR 1021.343(a) or CERCLA procedures in order to identify any adverse impacts from the actions taken and any further necessary mitigation.

(b) *Timing.* If statutory deadlines or overriding considerations of program or project expense or effectiveness exist, DOE may waive the minimum time periods in § 1022.15 of this subpart.

(c) *Consultation.* To the extent practicable prior to taking an action pursuant to paragraphs (a) or (b) of this section, or as soon as possible after taking such an action, the cognizant DOE program or project manager shall consult with the Office of NEPA Policy and Compliance.

§ 1022.17 Follow-up.

For those DOE actions taken in a floodplain or wetland, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigation measures, is proceeding as described in the floodplain or wetland assessment and the floodplain statement of findings.

Subpart C—Other Requirements

§ 1022.21 Property management.

(a) If property in a floodplain or wetland is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties, DOE shall:

(1) Identify those uses that are restricted under applicable floodplain or wetland regulations and attach other

appropriate restrictions to the uses of the property; or

(2) Withhold the property from conveyance.

(b) Before completing any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain, DOE shall inform any private party participating in the transaction of the hazards associated with locating facilities or structures in the floodplain.

§ 1022.22 Requests for authorizations or appropriations.

It is DOE policy to indicate in any requests for new authorizations or appropriations transmitted to the White House Office of Management and Budget, if a proposed action is located in a floodplain or wetland and whether the proposed action is in accord with the requirements of E.O. 11988 and E.O. 11990 and this part.

§ 1022.23 Applicant responsibilities.

DOE may require applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland of the requirements of this part to provide information necessary for DOE to comply with this part.

§ 1022.24 Interagency cooperation.

If DOE and one or more agencies are directly involved in a proposed floodplain or wetland action, in accordance with DOE's NEPA or CERCLA procedures, DOE shall consult with such other agencies to determine if a floodplain or wetland assessment is required by Subpart B of this part, identify the appropriate lead or joint agency responsibilities, identify the applicable regulations, and establish procedures for interagency coordination during the environmental review process.

[FR Doc. 02–29071 Filed 11–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B Series Airplanes Equipped With Hamilton Sundstrand Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers. This proposal would require a one-time inspection of two remote controlled circuit breakers (RCCB), located in specific electrical compartments, to identify the part number, and replacement of the RCCBs with new RCCBs having a different part number if necessary. This action is necessary to ensure removal of 35-ampere (amp) RCCBs on a 50-amp electrical circuit. Incorrect RCCBs on an electrical circuit could result in erroneous tripping of the RCCBs (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–200–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–200–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

Rules and Regulations

Federal Register
Vol. 68, No. 166
Wednesday, August 27, 2003

DEPARTMENT OF ENERGY

10 CFR Parts 1021 and 1022

RIN 1901–AA94

Compliance With Floodplain and Wetland Environmental Review Requirements

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is revising its floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens by simplifying DOE public notification procedures for proposed floodplain and wetland actions, exempting additional actions from the floodplain and wetland assessment provisions of these regulations, providing for immediate action in an emergency, expanding the existing list of sources that may be used in determining the location of floodplains and wetlands, and allowing floodplain and wetland assessments for actions proposed to be taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to be coordinated with the CERCLA environmental review process rather than the National Environmental Policy Act (NEPA) process. DOE also is making a conforming change to its NEPA implementing regulations to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

EFFECTIVE DATE: These rule changes will become effective September 26, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or this rulemaking, or for copies of the final rule, contact Carolyn M. Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Telephone (202) 586–4600 or leave a message at (800) 472–2756; facsimile to (202) 586–7031; e-mail to *carolyn.osborne@eh.doe.gov.* The final rule also will be available after the effective date specified above on the DOE NEPA Web at *http://tis.eh.doe.gov/nepa.*

For information on DOE's NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background

We published on November 18, 2002 (67 FR 69480), proposed revisions to our regulations entitled "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022), which were promulgated originally on March 7, 1979 (44 FR 12596), to implement the requirements of Executive Order (E.O.) 11988, "Floodplain Management" (42 FR 2951; May 24, 1977), and E.O. 11990, "Protection of Wetlands" (42 FR 26961; May 24, 1977). We also published in our November 18, 2002, **Federal Register** notice a proposed conforming change to our "National Environmental Policy Act Implementing Procedures" (10 CFR 1021.313).

Publication of the Notice of Proposed Rulemaking began a 60-day public comment period, ending January 17, 2003. Comments were received from three sources: A State, a county, and a member of the public. Copies of these comments are available for public inspection at the DOE Freedom of Information Office Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0101, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

This document adopts the revisions proposed on November 18, 2002, with certain changes discussed below, and codifies them at 10 CFR parts 1021 and 1022. In accordance with 40 CFR 1507.3, the Council on Environmental Quality (CEQ) reviewed this notice of final rulemaking and concluded that the proposed amendment to the DOE regulations implementing NEPA is in conformance with NEPA and the CEQ regulations. The Secretary of Energy has approved this notice of final rulemaking for publication.

II. Statement of Purpose

We are revising 10 CFR part 1022 based on our experience implementing the existing requirements for over 20 years. We expect these changes to improve our ability to meet our goals for floodplain and wetland protection in a timely and cost-effective manner. We are revising 10 CFR 1021.313 to conform with 10 CFR 1022.14(c) by allowing floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we are implementing will: (1) Simplify our public notification procedures for proposed floodplain and wetland actions by emphasizing local publication as opposed to publication in the **Federal Register**, (2) exempt additional actions from the floodplain and wetland assessment provisions of these regulations, (3) provide for immediate action in an emergency with documentation to follow, (4) expand the existing list of credible sources that may be used in determining the location of floodplains and wetlands, and (5) allow floodplain and wetland assessments for actions proposed to be taken under CERCLA to be coordinated with the CERCLA environmental review process rather than the NEPA process. The revisions also will make the rule easier to use by reordering sections to parallel the assessment process, clarifying requirements (such as the differences between floodplain and wetland actions and their respective assessment requirements), and simplifying the rule by deleting provisions that are no longer applicable. The revisions streamline existing procedures and add no new requirements.

III. Comments Received and DOE's Responses

We have considered and evaluated the comments received during the public comment period. A number of revisions suggested in these comments have been incorporated into the final rule. The following discussion describes the comments received, provides our response to the comments, and describes any resulting changes to the rule. We also have made editorial and stylistic revisions for clarity and consistency.

A. General Comments

In addition to a comment supporting our intent to simplify and restructure the rule, we received one comment objecting to our streamlining effort on the ground that it would make it easier to sabotage environmental protection before the public could know about potential impacts. This comment is speculative. It does not provide any example to show a potentially adverse effect from any of the proposed amendments to the regulations in 10 CFR parts 1021 and 1022. We believe the revised rule will improve our ability to meet our goals for floodplain and wetland protection. We will be able to focus our resources, and those of the public, on the types of proposed actions that our experience demonstrates are most likely to benefit from an examination of alternatives and mitigating measures and increase the efficiency of our environmental reviews (thereby, for example, allowing earlier identification of mitigation actions).

We received a comment pointing to DOE's obligation to comply with the Coastal Zone Management Act, NEPA, and applicable state laws and regulations. We recognize our legal responsibilities and note that it is the intent of the E.O.'s upon which this regulation is based, and the regulation itself, that implementation be coordinated, and when appropriate, integrated with procedures for implementing other requirements, such as those of NEPA. (*See* §§ 1022.1(b) and 1022.2(b).) We also note that this rulemaking is not a proposal to conduct any activity that would affect any coastal resource. We will comply with 10 CFR part 1022 and all other applicable requirements if we propose any such activity in the future.

B. Comments on Definitions (§ 1022.4)

Two comments requested clarification of "effects of national concern" as used in determining whether we are required to publish in the **Federal Register** a notice of proposed action (§ 1022.12(b)) or a floodplain statement of findings (§ 1022.14(e)). In response, we have added a definition to state that effects of national concern are those effects that because of the high quality or function of the affected resource or because of the wide geographic range of effects could create concern beyond the locale or region of the proposed action. The lack of potential effects of national concern does not excuse us from our public notification and participation responsibilities (§§ 1022.3(e), 1022.12, and 1022.14).

C. Comments on Exemptions (§ 1022.5)

One comment recommended that we define terms associated with the exemptions described in § 1022.5(d) to "ensure that the activities contemplated by the proposed rule changes will have only minimal and temporary adverse impacts on the aquatic environment." We do not believe it is practical or useful to attempt to define all the activities that might fall within the rule's three exemptions. We have, however, added examples for each exemption.

The rule now states that routine maintenance activities (§ 1022.5(d)(1)) are those, such as reroofing, plumbing repair, and door and window replacement, needed to maintain and preserve existing facilities and structures for their designated purpose. We believe that the restrictive conditions stated in § 1022.5(d)(2) and § 1022.5(d)(3) help describe the types of activities that could be exempted, but also have added examples in both sections. For site characterization, environmental monitoring, or environmental research activities (§ 1022.5(d)(2)), the rule now includes the examples of sampling and surveying water and air quality, flora and fauna abundance, and soil properties. For minor modification of an existing facility or structure to improve safety or environmental conditions (§ 1022.5(d)(3)), the rule now includes the examples of upgrading lighting, heating, ventilation, and air conditioning systems; installing or improving alarm and surveillance systems; and adding environmental monitoring or control systems.

D. Comments on Public Notification and Information Dissemination (§§ 1022.12 and 1022.14)

We received one comment asking that, when providing public notification, consideration be given to the interest of state government, in addition to local interest, in a proposed action. This has been our practice and is our intent. For clarification, in this final rule, we have added the parenthetical phrase "(*e.g.*, FEMA [Federal Emergency Management Agency, Department of Homeland Security] regional offices, host and affected states, and tribal and local governments)" after "government agencies" in §§ 1022.12(b) and 1022.14(d). Distribution to these parties, and to others as appropriate for a specific proposed action, facilitates public participation.

One comment questioned whether language in § 1022.14(f) would limit distribution of floodplain statements of findings to only those state agencies identified in a particular list of state contacts maintained by the Office of Management and Budget. To clarify our intent to continue to distribute statements of findings to parties interested in or potentially affected by a proposed action, in § 1022.14(f) of the final rule, we have added the word "also." The rule now states that for actions subject to E.O. 12372, "Intergovernmental Review of Federal Programs," DOE "also" shall send the floodplain statement of findings to the state in accordance with 10 CFR part 1005 (DOE's regulations for implementing the E.O.).

With regard to a comment that DOE must establish contacts and maintain current information on them, DOE Order 451.1B, "National Environmental Policy Act Compliance Program," requires each DOE Program and Field Office with NEPA responsibilities to have a Public Participation Plan. With regard specifically to state contacts, we established ongoing relationships with State Clearinghouses in 1990 through contact with the Governors, and we update our State Clearinghouse contacts in the "Directory of Potential Stakeholders for Department of Energy Action under the National Environmental Policy Act," which is distributed broadly within the Department and made available on the DOE NEPA Web site (*http://tis.eh.doe.gov/nepa/guidance.html*, under "Public Participation").

One comment opposed our change to allow discretion in whether to include a floodplain statement of findings within a final EIS. We agree with the commenter that information relevant to potential floodplain and wetland impacts is integral to the evaluation of a proposed action and alternatives within an EIS. A final EIS would consider those impacts and mitigations. For example, both the final EIS and the floodplain assessment would evaluate mitigation measures to minimize harm to or within the floodplain. Nonetheless, a floodplain statement of findings may be issued separately as there may be times when it is not appropriate to incorporate the statement within the final EIS (*e.g.*, when steps to be taken to minimize harm are not determined until after the final EIS is issued, or a phased decision involving sequential records of decision is being made and the findings would not be relevant to the initial record of decision). Moreover, E.O. 11988, upon which the floodplain management portions of this regulation are based, does not specify when in the NEPA process the statement of findings

should be published, and E.O. 11990, which addresses wetlands protection, does not require a statement of findings. The E.O.'s allow Federal agencies substantial latitude in implementing the requirements as deemed most appropriate for individual agencies.

E. Comments on Variances (§ 1022.16)

One comment sought clarification of the conditions under which we could waive time limits between various steps in the floodplain or wetland environmental review process and requested a definition of emergency actions and emergency situations. The rule allows us to alter the floodplain or wetland assessment process in response to emergencies and in some non-emergency situations.

Section 1022.16(a) allows us to take immediate action in the event of an emergency, forgoing the assessment process required by this rule until after the emergency has been addressed. We will continue to determine what constitutes an emergency (an emergency action or emergency situation) on a case-by-case basis, as is consistent with the manner in which an emergency has been declared in the past in regard to compliance with these and other requirements (*e.g.*, NEPA). We have declared only three emergency exceptions to our NEPA procedures in the past 25 years.

Section 1022.16(b) allows shortening the review process in non-emergency situations in response to "statutory deadlines or overriding considerations of program or project expense or effectiveness." This section does not allow any exception from completing a required floodplain or wetland assessment nor from following any other provision of this rule or any other applicable requirement before taking action. This provision has been in place since we first promulgated our floodplain and wetland environmental review requirements in 1979, and in practice, we have not experienced difficulty in its implementation.

The comment also asked who determines whether a variance is to be granted. The cognizant DOE official responsible for NEPA or CERCLA implementation, as applicable, normally would consult with the Office of NEPA Policy and Compliance pursuant to § 1022.16(c) before determining whether to grant a variance.

F. Other Revisions

Notable among the editorial and stylistic revisions we made are changes to the definitions of "floodplain and wetland values" and "critical action floodplain" in §1022.4. We reorganized the examples of floodplain and wetland values to improve readability.

We have added to the definition of critical action floodplain a clarification that was included in the preamble to this proposed rule in November 2002. This clarification regards when we will consider a flood with an expected frequency of less than once in a 500-year period, and thus a larger floodplain, in evaluating potential impacts associated with a critical action (*i.e.*, any DOE action for which even a slight chance of flooding would be too great). In this final rule, and as proposed, we define a critical action floodplain as "at a minimum, the 500-year floodplain, that is, a floodplain with a 0.2 percent chance of flooding in any given year." To this, we have added the clarification that when another requirement applicable to the proposed action requires evaluation of a less frequent flood (*i.e.*, a more severe flood that would inundate a larger floodplain), then we may use the less frequent flood to determine the floodplain for purposes of this rule. For example, where the safety basis documentation under 10 CFR part 830 for a proposed action requires consideration of a 100,000-year flood, then the 100,000-year floodplain could be the critical action floodplain for the proposed action for purposes of this rule.

IV. Procedural Review Requirements

A. Review Under Executive Order 12866

This rule has been determined not to be a "significant regulatory action" under E.O. 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993), as amended by E.O. 13258 (67 FR 9385; February 28, 2002). Accordingly, today's final regulatory action was not subject to review under that E.O. by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform" (61 FR 4779; February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of E.O. 12988.

C. Review Under Executive Order 13132

Today's regulatory action has been determined not to be a "policy that has federalism implications," that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under E.O. 13132, "Federalism" (64 FR 43255; August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the E.O. by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under E.O. 13175 (65 FR 67249; November 9, 2000) on "Consultation and Coordination with Indian Tribal Governments," DOE may not issue a discretionary rule that has "tribal implications" and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that this rule would not have such effects and concluded that E.O. 13175 does not apply to this rule.

E. Review Under the Regulatory Flexibility Act

The revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C.601 *et seq.*) and related provisions of E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461; August 16, 2002) and DOE's procedures and policies (68 FR 7990; February 19, 2003). The Act requires preparation of an initial regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. Today's revisions to 10 CFR parts 1021 and 1022 amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two E.O.s. The actions would

neither increase the incidence of floodplain and wetland assessments nor increase burdens associated with carrying out such an assessment. Therefore, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared. We received no comments on our decision not to prepare a regulatory flexibility analysis.

F. Review Under the Paperwork Reduction Act

No additional information or recordkeeping requirements are imposed by this rulemaking. The changes would actually reduce paperwork requirements by eliminating a requirement that public notices always be published in the **Federal Register** and by increasing the number of exemptions from requirements for preparing a floodplain or wetland assessment. Accordingly, no clearance by the Office of Management and Budget was required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these revisions to existing regulations falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the revisions to 10 CFR parts 1021 and 1022 would amend DOE's policies to streamline and simplify existing procedures for environmental review of actions proposed in a floodplain or wetland under two E.O.s. The proposed regulations are covered under the categorical exclusion in paragraph A6, "Rulemakings, Procedural" (rulemakings that are strictly procedural) to Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an EIS is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by state, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the revisions to 10 CFR parts 1021 and 1022 published today do not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs in the Office of Management and Budget a Statement of Energy Effects for any significant energy action. Today's rule is not a significant energy action, as that term is defined in the E.O. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a "Family Policymaking Assessment" for any proposed rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget. The Office ofManagement and Budget guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the Office of Management and Budget and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that is has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Parts 1021 and 1022

Floodplains, Wetlands.

Issued in Washington, DC, August 19, 2003.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

■ For the reasons set forth in the preamble, parts 1021 and 1022 of chapter III of title 10, Code of Federal Regulations, are amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 is revised to read as follows:

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

§ 1021.313 [Amended]

■ 2. In § 1021.313, paragraph (c), the last sentence is amended as follows:

■ a. Remove the word "shall" and add in its place the word "may".

■ b. Remove the phrase "Floodplain/Wetlands" and add in its place "Floodplain and Wetland".

■ c. Remove the period and add the words ", or a Statement of Findings may be issued separately." at the end of the sentence.

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

■ 3. Part 1022 is revised to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Sec.

Authority: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121; E.O. 12372, 47 FR 30959, 3 CFR, 1982 Comp., p. 197.

Subpart A—General

§ 1022.1 Background.

(a) Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977) directs each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the E.O. is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 FR 6030; February 10, 1978) and in "A Unified National Program for Floodplain Management" prepared by the Federal Interagency Floodplain Management Taskforce (Federal Emergency Management Agency, FEMA 248, June 1994). E.O. 11990—Protection of Wetlands (May 24, 1977) directs all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking and to ensure the evaluation of the potential impacts of any new construction proposed in a wetland.

(b) It is the intent of the E.O.s that Federal agencies implement both the floodplain and the wetland provisions through existing procedures such as those established to implement the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In those instances where the impacts of the proposed action are not significant enough to require the preparation of an EIS under section 102(2)(C) of NEPA, alternative floodplain or wetland evaluation procedures are to be established. As stated in the E.O.s, Federal agencies are to avoid direct or indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities under E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain and wetland factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in a floodplain or wetland, providing opportunity for early public review of such proposed actions, preparing floodplain or wetland assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE shall accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures or, when appropriate, the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with FEMA National Flood Insurance Program building standards;

(5) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property that has suffered flood damage or is in an identified floodplain and that is used by the general public;

(6) Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain;

(7) Minimize the destruction, loss, or degradation of wetlands; and

(8) Preserve and enhance the natural and beneficial values of wetlands.

(b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.

(c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

(d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.

(e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

§ 1022.4 Definitions.

The following definitions apply to this part:

Action means any DOE activity necessary to carry out its responsibilities for:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing DOE-undertaken, -financed, or -assisted construction and improvements; and

(3) Conducting activities and programs affecting land use, including but not limited to water- and related land-resources planning, regulating, and licensing activities.

Base floodplain means the 100-year floodplain, that is, a floodplain with a 1.0 percent chance of flooding in any given year.

Critical action means any DOE action for which even a slight chance of flooding would be too great. Such actions may include, but are not limited to, the storage of highly volatile, toxic, or water reactive materials.

Critical action floodplain means, at a minimum, the 500-year floodplain, that is, a floodplain with a 0.2 percent chance of flooding in any given year. When another requirement directing evaluation of a less frequent flood event also is applicable to the proposed action, a flood less frequent than the 500-year flood may be appropriate for determining the floodplain for purposes of this part.

Effects of national concern means those effects that because of the high quality or function of the affected resource or because of the wide geographic range of effects could create concern beyond the locale or region of the proposed action.

Environmental assessment (EA) means a document prepared in accordance with the requirements of 40 CFR 1501.4(b), 40 CFR 1508.9, 10 CFR 1021.320, and 10 CFR 1021.321.

Environmental impact statement (EIS) means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA and its

implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021.

Facility means any human-made or -placed item other than a structure.

FEMA means the Federal Emergency Management Agency, Department of Homeland Security.

Finding of no significant impact means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322.

Flood or flooding means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands.

Floodplain action means any DOE action that takes place in a floodplain, including any DOE action in a wetland that is also within the floodplain, subject to the exclusions specified at § 1022.5(c) and (d) of this part.

Floodplain and wetland values means the qualities of or functions served by floodplains and wetlands that can include, but are not limited to, living values (*e.g.*, conservation of existing flora and fauna including their long-term productivity, preservation of diversity and stability of species and habitats), cultural resource values (*e.g.*, archeological and historic sites), cultivated resource values (*e.g.*, agriculture, aquaculture, forestry), aesthetic values (*e.g.*, natural beauty), and other values related to uses in the public interest (*e.g.*, open space, scientific study, outdoor education, recreation).

Floodplain or wetland assessment means an evaluation consisting of a description of a proposed action, a discussion of its potential effects on the floodplain or wetland, and consideration of alternatives.

Floodplain statement of findings means a brief document issued pursuant to § 1022.14 of this part that describes the results of a floodplain assessment.

High-hazard areas means those portions of riverine and coastal floodplains nearest the source of flooding that are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

Minimize means to reduce to the smallest degree practicable.

New construction, for the purpose of compliance with E.O. 11990 and this part, means the building of any structures or facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

Notice of proposed floodplain action and notice of proposed wetland action mean a brief notice that describes a proposed floodplain or wetland action, respectively, and its location and that affords the opportunity for public review.

Practicable means capable of being accomplished within existing constraints, depending on the situation and including consideration of many factors, such as the existing environment, cost, technology, and implementation time.

Preserve means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain or wetland can again operate.

Structure means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

Wetland means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

Wetland action means any DOE action related to new construction that takes place in a wetland not located in a floodplain, subject to the exclusions specified at § 1022.5(c) and (d) of this part.

§ 1022.5 Applicability.

(a) This part applies to all organizational units of DOE, including the National Nuclear Security Administration, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part applies to all proposed floodplain or wetland actions, including those sponsored jointly with other agencies.

(c) This part does not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving a wetland that are located on non-Federal property.

(d) Subject to paragraph (e) of this section, subpart B of this part does not apply to:

(1) Routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland. Maintenance is routine when it is needed to maintain and preserve the facility or structure for its designated purpose (*e.g.*, activities such as reroofing, plumbing repair, door and window replacement);

(2) Site characterization, environmental monitoring, or environmental research activities (*e.g.*, sampling and surveying water and air quality, flora and fauna abundance, and soil properties) in a floodplain or wetland, unless these activities would involve building any structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem; and

(3) Minor modification (*e.g.*, upgrading lighting, heating, ventilation, and air conditioning systems; installing or improving alarm and surveillance systems; and adding environmental monitoring or control systems) of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would result in a significant change in the expected useful life of the facility or structure, or involve building any structure or involve draining, dredging, channelizing, filling, diking, impounding, or related activities.

(e) Although the actions listed in paragraphs (d)(1), (d)(2), and (d)(3) of this section normally have very small or no adverse impact on a floodplain or wetland, where unusual circumstances indicate the possibility of adverse impact on a floodplain or wetland, DOE shall determine the need for a floodplain or wetland assessment.

§ 1022.6 Public inquiries.

Inquiries regarding DOE's floodplain and wetland environmental review requirements may be directed to the Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, 202–586–4600, or a message may be left at 1–800–472–2756, toll free.

Subpart B—Procedures for Floodplain and Wetland Reviews

§ 1022.11 Floodplain or wetland determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA or CERCLA process requirements, DOE shall determine the applicability of the floodplain management and wetland protection requirements of this part.

(b) DOE shall determine whether a proposed action would be located within a base or critical action floodplain consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by FEMA;

(2) Information from a land-administering agency (*e.g.*, Bureau of Land Management) or from other government agencies with floodplain-determination expertise (*e.g.*, U.S. Army Corps of Engineers, Natural Resources Conservation Service);

(3) Information contained in safety basis documents as defined at 10 CFR part 830; and

(4) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(c) DOE shall determine whether a proposed action would be located within a wetland consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) U.S. Army Corps of Engineers "Wetlands Delineation Manual," Wetlands Research Program Technical Report Y–87–1, January 1987, or successor document;

(2) U.S. Fish and Wildlife Service National Wetlands Inventory or other government-sponsored wetland or land-use inventories;

(3) U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps;

(4) U.S. Geological Survey Topographic Maps; and

(5) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(d) Pursuant to § 1022.5 of this part and paragraphs (b) and (c) of this section, DOE shall prepare:

(1) A floodplain assessment for any proposed floodplain action in the base floodplain or for any proposed floodplain action that is a critical action located in the critical action floodplain; or

(2) A wetland assessment for any proposed wetland action.

§ 1022.12 Notice of proposed action.

(a) For a proposed floodplain or wetland action for which an EIS is required, DOE shall use applicable NEPA procedures to provide the opportunity for early public review of the proposed action. A notice of intent to prepare the EIS may be used to satisfy the requirement for DOE to publish a notice of proposed floodplain or wetland action.

(b) For a proposed floodplain or wetland action for which no EIS is required, DOE shall take appropriate steps to send a notice of proposed floodplain or wetland action to appropriate government agencies (*e.g.*, FEMA regional offices, host and affected States, and tribal and local governments) and to persons or groups known to be interested in or potentially affected by the proposed floodplain or wetland action. DOE also shall distribute the notice in the area where the proposed action is to be located (*e.g.*, by publication in local newspapers, through public service announcements, by posting on- and off-site). In addition, for a proposed floodplain or wetland action that may result in effects of national concern to the floodplain or wetland or both, DOE shall publish the notice in the **Federal Register**.

§ 1022.13 Floodplain or wetland assessment.

(a) A floodplain or wetland assessment shall contain the following information:

(1) *Project Description.* This section shall describe the proposed action and shall include a map showing its location with respect to the floodplain and/or wetland. For actions located in a floodplain, the nature and extent of the flood hazard shall be described, including the nature and extent of hazards associated with any high-hazard areas.

(2) *Floodplain or Wetland Impacts.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetland. This section shall include impacts on the natural and beneficial floodplain and wetland values (§ 1022.4) appropriate to the location under evaluation. In addition, the effects of a proposed floodplain action on lives and property shall be evaluated. For an action proposed in a wetland, the effects on the survival, quality, and function of the wetland shall be evaluated.

(3) *Alternatives.* DOE shall consider alternatives to the proposed action that avoid adverse impacts and incompatible development in the floodplain and/or wetland, including alternate sites, alternate actions, and no action. DOE shall evaluate measures that mitigate the adverse effects of actions in a floodplain and/or wetland including, but not limited to, minimum grading requirements, runoff controls, design and construction constraints, and protection of ecologically-sensitive areas.

(b) For proposed floodplain or wetland actions for which an EA or EIS is required, DOE shall prepare the floodplain or wetland assessment concurrent with and included in the appropriate NEPA document.

(c) For floodplain or wetland actions for which neither an EA nor an EIS is prepared, DOE shall prepare the floodplain or wetland assessment separately or incorporate it when appropriate into another environmental review process (*e.g.*, CERCLA).

§ 1022.14 Findings.

(a) If DOE finds that no practicable alternative to locating or conducting the action in the floodplain or wetland is available, then before taking action DOE shall design or modify its action in order to minimize potential harm to or within the floodplain or wetland, consistent with the policies set forth in E.O. 11988 and E.O. 11990.

(b) For actions that will be located in a floodplain, DOE shall issue a floodplain statement of findings, normally not to exceed three pages, that contains:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

(c) For floodplain actions that require preparation of an EA or EIS, DOE may incorporate the floodplain statement of findings into the finding of no significant impact or final EIS, as appropriate, or issue such statement separately.

(d) DOE shall send copies of the floodplain statement of findings to appropriate government agencies (*e.g.*, FEMA regional offices, host and affected states, and tribal and local governments) and to others who submitted comments on the proposed floodplain action.

(e) For proposed floodplain actions that may result in effects of national concern, DOE shall publish the floodplain statement of findings in the **Federal Register**, describing the location of the action and stating where a map is available.

(f) For floodplain actions subject to E.O. 12372—Intergovernmental Review of Federal Programs (July 14, 1982), DOE also shall send the floodplain statement of findings to the State in accordance with 10 CFR part 1005—Intergovernmental Review of Department of Energy Programs and Activities.

§ 1022.15 Timing.

(a) For a proposed floodplain action, DOE shall allow 15 days for public comment following issuance of a notice of proposed floodplain action. After the close of the public comment period and

before issuing a floodplain statement of findings, DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received. After issuing a floodplain statement of findings, DOE shall endeavor to allow at least 15 days of public review before implementing a proposed floodplain action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register.**

(b) For a proposed wetland action, DOE shall allow 15 days for public comment following issuance of a notice of proposed wetland action. After the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed wetland action and the mitigating measures, taking into account all substantive comments received, before implementing a proposed wetland action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register.**

§ 1022.16 Variances.

(a) *Emergency actions.* DOE may take actions without observing all provisions of this part in emergency situations that demand immediate action. To the extent practicable prior to taking an emergency action (or as soon as possible after taking such an action) DOE shall document the emergency actions in accordance with NEPA procedures at 10 CFR 1021.343(a) or CERCLA procedures in order to identify any adverse impacts from the actions taken and any further necessary mitigation.

(b) *Timing.* If statutory deadlines or overriding considerations of program or project expense or effectiveness exist, DOE may waive the minimum time periods in § 1022.15 of this subpart.

(c) *Consultation.* To the extent practicable prior to taking an action pursuant to paragraphs (a) or (b) of this section (or as soon as possible after taking such an action) the cognizant DOE program or project manager shall consult with the Office of NEPA Policy and Compliance.

§ 1022.17 Follow-up.

For those DOE actions taken in a floodplain or wetland, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigation measures, is proceeding as described in the floodplain or wetland assessment and the floodplain statement of findings.

Subpart C—Other Requirements

§ 1022.21 Property management.

(a) If property in a floodplain or wetland is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties, DOE shall:

(1) Identify those uses that are restricted under applicable floodplain or wetland regulations and attach other appropriate restrictions to the uses of the property; or

(2) Withhold the property from conveyance.

(b) Before completing any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain, DOE shall inform any private party participating in the transaction of the hazards associated with locating facilities or structures in the floodplain.

§ 1022.22 Requests for authorizations or appropriations.

It is DOE policy to indicate in any requests for new authorizations or appropriations transmitted to the Office of Management and Budget, if a proposed action is located in a floodplain or wetland and whether the proposed action is in accord with the requirements of E.O. 11988 and E.O. 11990 and this part.

§ 1022.23 Applicant responsibilities.

DOE may require applicants for any use of real property (*e.g.,* license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland to provide information necessary for DOE to comply with this part.

§ 1022.24 Interagency cooperation.

If DOE and one or more agencies are directly involved in a proposed floodplain or wetland action, in accordance with DOE's NEPA or CERCLA procedures, DOE shall consult with such other agencies to determine if a floodplain or wetland assessment is required by subpart B of this part, identify the appropriate lead or joint agency responsibilities, identify the applicable regulations, and establish procedures for interagency coordination during the environmental review process.

[FR Doc. 03–21775 Filed 8–26–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM262; Special Conditions No. 25–244–SC]

Special Conditions: Avions Marcel Dassault-Breguet Aviation Model Falcon 10 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 series airplanes modified by Elliott Aviation Technical Products Development, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) with the IS&S Air Data Sensor and an analog interface unit (AIU) that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 19, 2003.

Comments must be received on or before September 26, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM262, 1601 Lind Avenue SW., Renton Washington, 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: Docket No. NM262.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Rules and Regulations

Federal Register
Vol. 71, No. 228
Tuesday, November 28, 2006

DEPARTMENT OF ENERGY

10 CFR Parts 602, 710, 712, 725, 820, 824, 835, 850, 851, 852, 861, 862, 871, 1004, 1008, 1016, 1017, 1021, 1044, 1045, 1046, and 1049

RIN 1901–AB22

Technical Amendments: Transfer of Office Functions and Removal of Obsolete Regulations

AGENCY: Department of Energy (DOE).

ACTION: Final rule; technical amendment.

SUMMARY: DOE has created a new Office of Health, Safety and Security to strengthen and improve formulation and implementation of health, safety and security policy. Incident to creation of the new office, DOE has transferred certain health, safety and security functions to the new office that previously were carried out by the Office of Environment, Safety and Health and the Office of Security and Safety Performance Assurance. Certain functions related to DOE's responsibilities under the National Environmental Policy Act have been transferred to the Office of the General Counsel. Other functions outside of the core mission of health, safety and security have been transferred to other DOE offices performing similar or related functions. This notice of final rulemaking makes technical amendments to DOE's regulations to substitute the officials to whom or offices to which functions have been transferred pursuant to the reorganization of offices and functions. DOE also is removing Office of Environment, Safety and Health regulations in 10 CFR part 852 because Congress has transferred that authority to the Department of Labor. Today's regulatory amendments do not alter substantive rights or obligations under current law.

DATES: *Effective Date:* This rule is effective on November 28, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen Duarte, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585; *steve.duarte@hq.doe.gov*; 202–586–2951.

SUPPLEMENTARY INFORMATION:

I. Introduction

DOE has created a new office to strengthen and improve the health, safety, and security of DOE workers, facilities and the public. The new office, called the Office of Health, Safety and Security (HSS), will help formulate and implement health, safety, environmental, and security policy for DOE, provide assistance to DOE sites, conduct oversight through rigorous field inspections, and carry out enforcement activities previously carried out by the Offices of Environment, Safety and Health (EH) and Security and Safety Performance Assurance (SSA). HSS is led by a Chief Health, Safety and Security Officer who reports directly to the Secretary of Energy.

The HSS office has nine offices dedicated to health, safety and security, which include the Office of Health and Safety; Office of Nuclear Safety and Environment; Office of Corporate Safety Analysis; Office of Enforcement; Office of Independent Oversight; Office of Security Policy; Office of Security Technology and Assistance; Office of Classification; and the National Training Center. In addition, HSS now includes the Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board and the Office of Security Operations.

Functions that were performed by EH or SSA but which are outside the core mission of health, safety and security have been transferred to other DOE program offices performing similar or related functions. The DOE Office of National Environmental Policy Act (NEPA) Policy and Compliance has been transferred to the Office of the General Counsel. DOE's continuity of government program and support for technical review of authorization basis documents, previously performed by SSA, has been transferred to DOE's National Nuclear Security Administration (NNSA). Support of safety regulations for newly constructed facilities and new start projects are now the responsibility of the Office of the Under Secretary for Energy, and for new NNSA facilities, the Office of the Under Secretary for Nuclear Security. Management of the Radiological Environment Science Laboratory has been transferred to the Office of Nuclear Energy and the management of the New Brunswick Laboratory has been transferred to the Office of Science to better align those activities with their current programmatic functions. The Office of Management will assume non-safety related quality assurance program elements and the management of DOE's foreign travel and exchange visitor program.

Certain of the functions that were transferred to HSS and the NEPA functions that were transferred to the Office of the General Counsel are subject to regulations in title 10 of the Code of Federal Regulations. As a result of the transfers, title 10 of the Code of Federal Regulations contains references to DOE program offices and positions that are no longer extant. Today's final rule amends title 10 of the Code of Federal Regulations to reflect DOE's new organizational structure and to update addresses that are no longer correct. In addition, DOE takes this opportunity to remove regulations in 10 CFR part 852 made obsolete by the repeal of the statute that authorized those regulations. None of the regulatory amendments in this notice of final rulemaking alter substantive rights or obligations under current law.

This final rule has been approved by the Office of the Secretary of Energy.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless

the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

The regulatory amendments in this notice of final rulemaking reflecting transfers of functions and address changes relate solely to internal agency organization, management or personnel, and as such, are not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553). Furthermore, it is unnecessary to propose removal of 10 CFR part 852 for public comment because the statutory authority for it has been repealed. Consequently, this rulemaking is exempt from the requirements of the Regulatory Flexibility Act.

C. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends existing regulations without changing the environmental effect of the regulations being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995.

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of

OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects

10 CFR Part 602

Grant programs-health, Medical research, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

10 CFR Part 712

Administrative practice and procedure, Alcohol abuse, Classified information, Drug abuse, Government contracts, Government employees, Health, Occupational safety and health, Radiation protection, Security measures.

10 CFR Part 725

Classified information, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 824

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 835

Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 850

Beryllium, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 851

Administrative practice and procedure, Government contracts, Hazardous substances, Reporting and recordkeeping requirements, Workers' compensation.

10 CFR Part 852

Administrative practice and procedure, Government contracts, Hazardous substances, Reporting and recordkeeping requirements, Workers' compensation.

10 CFR Part 861

Federal buildings and facilities, Penalties, Traffic regulations.

10 CFR Part 862

Aircraft, Federal buildings and facilities, Security measures.

10 CFR Part 871

Air transportation, Hazardous materials transportation, Plutonium, Radioactive materials.

10 CFR Part 1004

Freedom of information.

10 CFR Part 1008

Privacy.

10 CFR Part 1016

Classified information, Nuclear materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 1017

Administrative practice and procedure, Government contracts, National defense, Nuclear energy, Penalties, Security measures.

10 CFR Part 1021

Environmental impact statements.

10 CFR Part 1044

Administrative practice and procedure, Classified information, Government contracts, Whistleblowing.

10 CFR Part 1045

Classified information.

10 CFR Part 1046

Government contracts, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 1049

Federal buildings and facilities, Government contracts, Law enforcement, Security measures.

Issued in Washington, DC on November 20, 2006.

Glenn Podonsky,

Chief Health, Safety and Security Officer, Office of Health, Safety and Security.

David R. Hill,

General Counsel.

■ For the reasons set forth in the preamble, 10 CFR parts 602, 710, 712, 725, 820, 824, 835, 850, 851, 852, 861, 862, 871, 1004, 1008, 1016, 1017, 1021, 1044, 1045, 1046, and 1049 are amended as follows:

PART 602—EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

■ 1. The authority citation for part 602 continues to read as follows:

Authority: 42 U.S.C. 2051; 42 U.S.C. 5817; 42 U.S.C. 5901–5920; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308.

§ 602.1 [Amended]

■ 2. Section 602.1 is amended by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security".

§ 602.4 [Amended]

■ 3. Section 602.4(a) is amended by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "DOE Chief Health, Safety and Security Officer".

§ 602.5 [Amended]

■ 4. Section 602.5(a) is amended by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security".

§ 602.7 [Amended]

■ 5. Section 602.7(c) is amended by removing "Office of Epidemiology and Health Surveillance (EH–42), U.S. Department of Energy, Washington, DC 20585, (301) 903–5926)" and adding in its place "Office of Illness and Injury Prevention Programs, HS–13/ Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, 301–903–4501".

§ 602.9 [Amended]

■ 6–7. Section 602.9 is amended as follows:
■ A. In paragraph (b), by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security"; and
■ B. In paragraph (g), by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security", and by

removing "Office of Environment, Safety and Health's" and adding in its place "Office of Health, Safety and Security's".

§ 602.10 [Amended]

■ 8. Section 602.10 is amended in paragraphs (b) and (c) by removing "Office of Epidemiology and Health Surveillance, (EH–42), U.S. Department of Energy, Washington, DC 20585" and adding in its place "Office of Illness and Injury Prevention Programs, HS–13/ Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290".

§ 602.16 [Amended]

■ 9. Section 602.16 is amended by removing "Director of Declassification" and adding in its place "Director, Office of Classification"; by removing "U.S. Department of Energy, Attn: Director of Declassification, NN–50, Washington, DC 20585" and adding in its place "U.S. Department of Energy, Attn: Director of Classification, HS–90, P.O. Box A, Germantown, MD 20875"; by removing "Office of Safeguards and Security" and adding in its place "Office of Security Operations"; and by removing "Division of Safeguards and Security".

§ 602.17 [Amended]

■ 10. Section 602.17(a)(1) is amended by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security".

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

■ 11. The authority citation for part 710 is revised to read as follows:

Authority: 42 U.S.C. 2165, 2201, 5815, 7101, *et seq.*, 7383h–1; 50 U.S.C. 2401, *et seq.*; E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 12958, as amended by E.O.13292, 68 FR 15315, 3 CFR 2004 Comp., p. 196; E.O. 12968, 3 CFR 1995 Comp., p. 391.

§ 710.4 [Amended]

■ 12. Section 710.4(g) is amended by removing "Office of Safeguards and Security," in the first sentence and by adding in its place "Office of Personnel Security" and by removing ", Office of Safeguards and Security," in the second sentence.

■ 13–14. Section 710.5 (a) is amended by revising the definition for "Local Director of Security" to read as set forth below, and in the definition for "Operations Office Manager or Manager", by removing "Operations Office Manager or", and by removing "Safeguards and Security" and adding in its place "Personnel Security".

§ 710.5 Definitions.

(a) * * *

Local Director of Security means the individual with primary responsibility for safeguards and security at the Chicago, Idaho, Oak Ridge, Richland, and Savannah River Operations Offices and the Pittsburgh and Schenectady Naval Reactors Offices; the Manager, National Nuclear Security Administration (NNSA) Service Center; for Washington, DC area cases, the Director, Office of Security Operations; and any person designated in writing to serve in one of the aforementioned positions in an acting capacity.

* * * * *

§ 710.6 [Amended]

■ 15–16. Section 710.6 is amended as follows:

■ A. In paragraph (b), by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security"; and

■ B. In paragraph (c) , in the first sentence by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security" and in the second sentence by removing ", Office of Safeguards and Security,".

§ 710.9 [Amended]

■ 17. Section 710.9 is amended in:

■ a. Paragraph (c) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters".

■ b. Paragraph (d) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security".

■ c. Paragraph (e) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security" and by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security".

§ 710.10 [Amended]

■ 18. Section 710.10 is amended in:

■ a. Paragraph (d), first sentence, by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters"; and in the second sentence by removing "Office of Safeguards and Security".

■ b. Paragraph (e) introductory text, by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security".

■ c. Paragraph (f) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security"; and by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security".

§ 710.21 [Amended]

■ 19. Section 710.21(a) is amended by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters".

§ 710.22 [Amended]

■ 20. Section 710.22 is amended in:

■ a. Paragraphs (b) and (c) introductory text by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters".

■ b. Paragraph (c)(2) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security".

■ c. Paragraph (c)(3) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters".

§ 710.23 [Amended]

■ 21. Section 710.23 is amended by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters".

§ 710.26 [Amended]

■ 22. Section 710.26(j) is amended by removing "Operations Office" in the second sentence.

§ 710.27 [Amended]

■ 23. Section 710.27(d) is amended by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters".

§ 710.28 [Amended]

■ 24. Section 710.28 is amended in:

■ a. Paragraphs (a) introductory text, (a)(3), (b)(1), (b)(2), (c)(1), and (c)(3) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters".

■ b. Paragraph (c)(2) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security"; and by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE headquarters".

■ c. Paragraph (d) by removing "Office of Safeguards and Security" and adding

in its place "Office of Personnel Security".

§ 710.29 [Amended]

■ 25. Section 710.29 is amended in:
■ a. Paragraph (a) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security" and by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security".
■ b. Paragraphs (b) and (d) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security".
■ c. Paragraph (c) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security" and by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security".
■ d. Paragraph (f) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security" the first time it appears and by removing "the Director, Office of Security Affairs" and adding in its place "he" the second time it appears.
■ e. Paragraph (g) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security" and by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security".
■ f. Paragraph (h) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security"; by removing "Director may" and adding in its place "Deputy Chief for Operations may"; and by removing "Director, Office of Security Affairs, shall" and adding in its place "Deputy Chief for Operations, shall".
■ g. Paragraph (i) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security"; by removing "Director may" and adding in its place "Deputy Chief for Operations may"; and by removing "Director, Office of Security Affairs, shall" and adding in its place "Deputy Chief for Operations shall".

§ 710.30 [Amended]

■ 26. Section 710.30 is amended in:
■ a. Paragraphs (a) and (b) introductory text by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters" .
■ b. Paragraph (b)(2) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security" in the first sentence and by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations" in the second sentence.

§ 710.31 [Amended]

■ 27. Section 710.31 is amended in:
■ a. Paragraph (a) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security" in both places that it appears.
■ b. Paragraph (b) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security".
■ c. Paragraph (d) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security".

§ 710.32 [Amended]

■ 28. Section 710.32 is amended in:
■ a. Paragraph (c) by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security" in the first sentence and by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations" in the second sentence.
■ b. Paragraphs (d) introductory text and (d)(2) by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE Headquarters".

§ 710.36 [Amended]

■ 29. Section 710.36 is amended by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security, DOE headquarters"; by removing "Director, Office of Security Affairs" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security"; and by removing "the Deputy Director, Office of Security Affairs" and adding in its place "his designee".

PART 712—HUMAN RELIABILITY PROGRAM

■ 30. The authority citation for part 712 continues to read as follows:

Authority: 42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended; 3 CFR Chap. IV.

§ 712.3 [Amended]

■ 31. Section 712.3 is amended by:
■ a. Removing "Deputy Assistant Secretary for Health" and adding in its place "Director, Office of Health and Safety" and moving the definition to follow the definition of "Diagnostic and Statistical Manual of Mental Disorders".
■ b. By removing "Deputy Assistant Secretary for Health" in the definitions of "Designated Physician"and "Designated Psychologist"and adding in its place "Director, Office of Health and Safety".
■ c. By removing "Manager of the Rocky Flats Office;" in the definition of "Manager"; and by removing "Director, Office of Security" in the definition of "Manager" and adding in its place "Deputy Chief for Operations, Office of Health, Safety and Security".

§ 712.10 [Amended]

■ 32. Section 712.10(b) is amended by removing "Director, Office of Security" and adding in its place "Chief Health, Safety and Security Officer".

§ 712.12 [Amended]

■ 33. Section 712.12 is amended in:
■ a. Paragraphs (c)(1) and (d) by removing "Director, Office of Security" and adding in its place "Chief Health, Safety and Security Officer".
■ b. Paragraph (e) introductory text by removing "Security Policy Staff, within the Office of Security" and adding in its place "Office of Policy".
■ c. Paragraph (f)(1) by removing "Security Policy Staff" and adding in its place "Office of Policy".

§ 712.14 [Amended]

■ 34. Section 712.14 paragraphs (f)(1) and (f)(3) are amended by removing "Deputy Assistant Secretary for Health" and adding in its place "Director, Office of Health and Safety".

§ 712.22 [Amended]

■ 35. Section 712.22 is amended by removing "Director, Office of Security"in the first and third sentences and adding in both places "Chief Health, Safety and Security Officer".

§ 712.23 [Amended]

■ 36. Section 712.23 is amended by removing "Director, Office of Security's" and adding in its place "Chief Health, Safety and Security Officer's".

§ 712.34 [Amended]

■ 37. Section 712.34, paragraphs (a), (b) introductory text, (c) and (d) are

amended by removing "Deputy Assistant Secretary for Health" and adding in its place "Director, Office of Health and Safety".

■ 38. Section 712.35 is amended by revising the section heading to read as set forth below, and the introductory text is amended by removing "Deputy Assistant Secretary for Health" and add in its place "Director, Office of Health and Safety".

§ 712.35 Director, Office of Health and Safety.

* * * * *

§ 712.36 [Amended]

■ 39. Section 712.36, paragraphs (d)(1) and (d)(3) are amended by removing "Deputy Assistant Secretary for Health" and adding in its place "Director, Office of Health and Safety".

PART 725—PERMITS FOR ACCESS TO RESTRICTED DATA

■ 40. The authority citation for part 725 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 943, 42 U.S.C. 2201.

§ 725.1 [Amended]

■ 41. Section 725.1 is amended by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".

§ 725.3 [Amended]

■ 42. Section 725.3(d) is amended by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer" and by removing "Administrator of the Department of Energy" and adding in its place "Chief Health, Safety and Security Officer".

§ 725.4 [Amended]

■ 43. Section 725.4 is amended by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".

■ 44. Section 725.5 is revised to read as follows:

§ 725.5 Communications.

All communications concerning this part should be addressed to the Chief Health, Safety and Security Officer, HS–1/Forrestal Building, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585.

§ 725.7 [Amended]

■ 45. Section 725.7 is amended by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".

■ 46. Section 725.11(a) is revised to read as follows:

§ 725.11 Applications.

(a) Any person desiring access to Restricted Data pursuant to this part should submit an application (Form 378), in triplicate, for an access permit to the Chief Health, Safety and Security Officer, HS–1/Forrestal Building, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585.

* * * * *

§ 725.13 [Amended]

■ 47. Section 725.13 is amended by removing "Administrator" in both places and adding in both places "Chief Health, Safety and Security Officer".

§ 725.21 [Amended]

■ 48. Section 725.21 is amended in:
■ a. Paragraph (a) by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".
■ b. Paragraph (b) by removing "795 of this chapter" and adding in its place "1016 of this title".

§ 725.23 [Amended]

■ 49. Section 725.23 is amended in:
■ a. Paragraph (b) by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".
■ b. Paragraph (c)(1) by removing "795 and 810 of this chapter" and adding in its place "810 and 1016 of this title".
■ c. Paragraph (c)(4) by removing "Administrator of Energy Research and Development" and adding in its place "Chief Health, Safety and Security Officer".

§ 725.24 [Amended]

■ 50. Section 725.24 is amended in:
■ a. The introductory text by removing "cognizant Operations Office" and adding in its place "Chief Health, Safety and Security Officer will designate a DOE or National Nuclear Security Administration office which".
■ b. Paragraph (b) by removing "795 of this chapter" and adding in its place "1016 of this title".

§ 725.25 [Amended]

■ 51. Section 725.25(b) is amended by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".

■ 52. Section 725.28 is amended by revising the section heading to read as set forth below, and by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".

§ 725.28 Action on application to renew or amend.

* * * * *

§ 725.29 [Amended]

■ 53. Section 725.29 is amended by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".

§ 725.30 [Amended]

■ 54. Section 725.30 is amended by removing "Administrator" and adding in its place "Chief Health, Safety and Security Officer".

Appendix B to Part 725 [Removed]

■ 55. Appendix B to Part 725 is removed.

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

■ 56. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282(a), 7191; 28 U.S.C. 2461 note.

§ 820.1 [Amended]

■ 57. Section 820.1(c) is amended by removing "Assistance Secretary" and adding in its place "Administrator".

§ 820.2 [Amended]

■ 58–59. Section 820.2 is amended in the definition of "*Director*" by removing "Assistant Secretary" and adding in its place "Administrator," and by revising the definition of "Secretarial Officer" to read as set forth below:

§ 820.2 Definitions.

* * * * *

Secretarial Officer means an individual who is appointed to a position in the Department by the President of the United States with the advice and consent of the Senate or the head of a departmental element who is primarily responsible for the conduct of an activity under the Act. With regard to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion, Secretarial Officer means the Deputy Administrator for Naval Reactors.

* * * * *

Appendix A [Amended]

■ 60. Appendix A to Part 820 is amended in:
■ a. Section IX.1.a. by adding "and Environment" after "Office of Nuclear Safety";
■ b. Section IX.9., paragraph e.(1), by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security" and by adding "and

Environment" after "Office of Nuclear Safety".

■ c. Section XIII.b. by removing "Office of Investigation and Enforcement" and adding in its place "Office of Enforcement".

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

■ 61. The authority citation for part 824 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Appendix A to Part 824 [Amended]

■ 62. Appendix A to Part 824 is amended in:

■ a. Section IV.b. by removing "10 CFR part 824.6" and adding in its place "§ 824.6".

■ b. Section VIII.9., paragraph e.(1) by removing "and Performance Assurance".

PART 835—OCCUPATIONAL RADIATION PROTECTION

■ 63. The authority citation for part 835 continues to read as follows:

Authority: 42 U.S.C. 2201; 7191.

§ 835.1 [Amended]

■ 64. Section 835.1(b)(2) is amended by removing "Director, Naval Nuclear Propulsion Program" and by adding in its place "Deputy Administrator for Naval Reactors".

■ 65. Section 835.2(a) is amended by adding the definition of "Secretarial Officer" to read as follows:

§ 835.2 Definitions.

* * * * *

Secretarial Officer means an individual who is appointed to a position in the Department of Energy by the President of the United States with the advice and consent of the Senate or the head of a departmental element who is primarily responsible for the conduct of an activity under the Act. With regard to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion, Secretarial Officer means the Deputy Administrator for Naval Reactors.

* * * * *

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

■ 66. The authority citation for part 850 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*, E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

§ 850.10 [Amended]

■ 67. Section 850.10(b)(2) is amended by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer".

§ 850.39 [Amended]

■ 68–69. Section 850.39 is amended in paragraph (a) by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer", and in paragraph (h) , by removing "DOE Office of Epidemiologic Studies with the Office of Environment, Safety and Health" and adding in its place "Office of Illness and Injury Prevention Programs, Office of Health, Safety and Security".

PART 851—WORKER SAFETY AND HEALTH PROGRAM

■ 70. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 851.8 [Amended]

■ 71–72. Section 851.8 is amended in paragraph (b) by removing "Office of Environment, Safety and Health, Office of Health (EH–5)" and adding in its place "Office of Health, Safety and Security", and in paragraph (c) , by removing "Office of Environment, Safety and Health, Office of Price-Anderson Enforcement (EH–6)" and adding in its place "Office of Health, Safety and Security, Office of Enforcement, HS–40,".

§ 851.11 [Amended]

■ 73. Section 851.11(b)(2) is amended by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer".

§ 851.27 [Amended]

■ 74. Section 851.27(a)(2)(ii) is amended by removing "Office of Environment, Safety and Health" and adding in its place "Office of Health, Safety and Security".

§ 851.30 [Amended]

■ 75. Section 851.30(a) is amended by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer".

§ 851.31 [Amended]

■ 76–78. In § 851.31, paragraphs (a)(1), (a)(2), and (a)(3) are amended by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer", paragraph (b) introductory text is amended by removing "Assistant Secretary for Environment, Safety and Health to be incomplete, the Assistant Secretary" and adding in its place "Chief Health, Safety and Security Officer to be incomplete, the Chief Health, Safety and Security Officer", and paragraph (c)(5) is amended by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer".

§ 851.32 [Amended]

■ 79–80. Section 851.32 is amended in:

■ a. Paragraph (a)(1) by removing "Assistant Secretary for Environment, Safety and Health recommends approval of a variance application, the Assistant Secretary" and adding in its place "Chief Health, Safety and Security Officer recommends approval of a variance application, the Chief Health, Safety and Security Officer".

■ b. Paragraph (a)(2) by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer" and by removing "Office of Price–Anderson Enforcement" and adding in its place "Office of Enforcement".

■ c. Paragraph (a)(4), by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer".

■ d. Paragraph (c)(1), by removing "Assistant Secretary for Environment, Safety and Health recommends denial of a variance application, the Assistant Secretary" and adding in its place "Chief Health, Safety and Security Officer recommends denial of a variance application, the Chief Health, Safety and Security Officer".

■ e. Paragraphs (c)(2)(i) and (c)(2)(ii), by removing "Assistant Secretary" and adding in its place "Chief Health, Safety and Security Officer".

§ 851.34 [Amended]

■ 81. In § 851.34, paragraphs (a) and (c) are amended by removing "Assistant Secretary for Environment, Safety and Health" and adding in its place "Chief Health, Safety and Security Officer".

PART 852—GUIDELINES FOR PHYSICIAN PANEL DETERMINATIONS ON WORKER REQUESTS FOR ASSISTANCE IN FILING FOR STATE WORKERS' COMPENSATION BENEFITS

■ 82–83. Part 852 is removed.

PART 861—CONTROL OF TRAFFIC AT NEVADA TEST SITE

■ 84. The authority citation for part 861 is revised to read as follows:

Authority: 42 U.S.C. 2201.

§ 861.3 [Amended]

■ 85. Section 861.3(c) is amended by removing "Operations" and adding in its place "Site".

PART 862—RESTRICTIONS ON AIRCRAFT LANDING AND AIR DELIVERY AT DEPARTMENT OF ENERGY NUCLEAR SITES

■ 86. The authority citation for part 862 continues to read as follows:

Authority: 42 U.S.C. 2201(b), 2201(i) and 2278(a).

§ 862.3 [Amended]

■ 87. Section 862.3(f) is amended by removing "Manager of a DOE Operations Office" and adding in its place "manager of a DOE field office" and by removing "Director of the Office of Safeguards and Security" and adding in its place "Chief Health, Safety and Security Officer".

PART 871—AIR TRANSPORTATION OF PLUTONIUM

■ 88. The authority citation for part 871 continues to read as follows:

Authority: Pub. L. 94–187, 88 Stat. 1077, 1078 (42 U.S.C. 2391 *et seq.*); Energy Reorganization Act, Pub. L. 93–438, 88 Stat. 1233 (42 U.S.C. 5801 *et seq.*); secs. 2, 3, 91, 123, and 161 of the Atomic Energy Act of 1954, as amended.

■ 89. Section 871.1, paragraph (b) introductory text is revised, and the undesignated concluding paragraph of the section is amended by removing "They" at the beginning of each sentence and adding in its place "The Deputy Administrator for Defense Programs".

The revision reads as follows:

§ 871.1 National security exemption.

* * * * *

(b) The Deputy Administrator for Defense Programs may authorize air shipments falling within paragraph (a)(1) of this section, on a case-by-case basis: *Provided,* That the Deputy Administrator for Defense Programs determines that such shipment is required to be made by aircraft either because:

* * * * *

§ 871.2 [Amended]

■ 90. Section 871.2 is amended by removing "Managers of DOE's Albuquerque, San Francisco, Oak Ridge, Savannah River, Nevada, Chicago, Idaho and Richland Operations Offices" and adding in its place "Deputy Administrator for Defense Programs" and by removing "they determine" and adding in its place "the Deputy Administrator determines".

§ 871.3 [Amended]

■ 91. Section 871.3 is amended by removing "authorizing officials" and by adding in its place "Deputy Administrator for Defense Programs" and by removing "Assistant Administrator for National Security" and adding in its place "Administrator of the National Nuclear Security Administration".

§ 871.4 [Amended]

■ 92. Section 871.4 is amended by removing "Assistant Administrator for National Security" and adding in its place "Administrator of the National Nuclear Security Administration".

PART 1004—FREEDOM OF INFORMATION

■ 93. The authority citation for part 1004 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 94. Section 1004.2(h) and (p) are revised to read as follows:

§ 1004.2 Definitions.

* * * * *

(h) *Freedom of Information Officer* means the person designated to administer the Freedom of Information Act at the following DOE offices:

(1) Bonneville Power Administration, P.O. Box 3621–KDP–7, Portland, OR 97232.

(2) Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

(3) Chicago Office, 9800 S. Cass Avenue, Argonne, IL 60439.

(4) Environmental Management Consolidated Business Center, 250 East 5th Street, Suite 500, Cincinnati, OH 45202.

(5) Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

(6) Headquarters, Department of Energy, Washington, DC 20585.

(7) Idaho Operations Office, 1955 Fremont Avenue, MS 1203, Idaho Falls, ID 83401.

(8) National Nuclear Security Administration Service Center, P.O. Box 5400, Albuquerque, NM 87185–5400.

(9) National Nuclear Security Administration Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–3521.

(10) National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26507–0800.

(11) Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

(12) Office of Scientific and Technical Information, P.O. Box 2001, Oak Ridge, TN 37831.

(13) Pacific Northwest Site Office, P.O. Box 350, Mail Stop K8–50, Richland, WA 99352.

(14) Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

(15) Richland Operations Office, P.O. Box 550, Mail Stop A7–75, Richland, WA 99352.

(16) Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

(17) Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

(18) Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

(19) Southwestern Power Administration, One West Third, S1200, Tulsa, OK 74103.

(20) Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East–MS FE–455, New Orleans, LA 70123.

(21) Western Area Power Administration, 12155 W. Alameda Parkway, P.O. Box 281213, Lakewood, CO 80228–8213.

* * * * *

(p) *Secretarial Officer* means the Under Secretary; Under Secretary for Science; Administrator, Energy Information Administration; Administrator, National Nuclear Security Administration; Assistant Secretary for Congressional and Intergovernmental Affairs; Assistant Secretary for Energy Efficiency and Renewable Energy; Assistant Secretary for Environmental Management; Assistant Secretary for Fossil Energy; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Nuclear Energy; Chief Financial Officer; Chief Health, Safety and Security Officer; Chief Human Capital Officer; Chief Information Officer; Director, Office of Civilian Radioactive Waste Management; Director, Office of Economic Impact and Diversity; Director, Office of Electricity Delivery and Energy Reliability; Director, Office of Hearings and Appeals; Director, Office of Legacy Management; Director, Office of Management; Director, Office of Public Affairs; Director, Office of

Science; General Counsel; Inspector General; and Senior Intelligence Officer.

* * * * *

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

■ 95. The authority citation for part 1008 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 5 U.S.C. 552a.

■ 96. Section 1008.2(c) is revised to read as follows:

§ 1008.2 Definitions.

* * * * *

(c) *DOE locations* means each of the following DOE components:

(1) Bonneville Power Administration, P.O. Box 3621–KDP–7, Portland, OR 97232.

(2) Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

(3) Chicago Office, 9800 S. Cass Avenue, Argonne, IL 60439.

(4) Environmental Management Consolidated Business Center, 250 East 5th Street, Suite 500, Cincinnati, OH 45202.

(5) Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

(6) Headquarters, Department of Energy, Washington, DC 20585.

(7) Idaho Operations Office, 1955 Fremont Avenue, MS 1203, Idaho Falls, ID 83401.

(8) National Nuclear Security Administration Service Center, P.O. Box 5400, Albuquerque, NM 87185–5400.

(9) National Nuclear Security Administration Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–3521.

(10) National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26507–0800.

(11) Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

(12) Office of Scientific and Technical Information, 175 S. Oak Ridge Turnpike, P.O. Box 62, Oak Ridge, TN 37830.

(13) Pacific Northwest Site Office, P.O. Box 350, Mail Stop K8–50, Richland, WA 99352.

(14) Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

(15) Richland Operations Office, P.O. Box 550, Mail Stop A7–75, Richland, WA 99352.

(16) Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

(17) Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

(18) Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

(19) Southwestern Power Administration, One West Third, S1200, Tulsa, OK 74103.

(20) Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East–MS FE–455, New Orleans, LA 70123.

(21) Western Area Power Administration, 12155 W. Alameda Parkway, P.O. Box 281213, Lakewood, CO 80228–8213.

* * * * *

PART 1016—SAFEGUARDING OF RESTRICTED DATA

■ 97. The authority citation for part 1016 is revised to read as follows:

Authority: Sec. 161i of the Atomic Energy Act of 1954, 68 Stat. 948 (42 U.S.C. 2201).

§ 1016.3 [Amended]

■ 98. Section 1016.3(o) is amended by removing "Executive Order 12356 of April 2, 1982, 'National Security Information'" and adding in its place "Executive Order 12958, as amended", "Classified National Security Information" and Executive Order 13292 "Further Amendment to Executive Order 12958, as Amended, Classified National Security Information"".

■ 99. Section 1016.4 is revised to read as follows:

§ 1016.4 Communications.

Communications concerning rulemaking, i.e., petition to change part 1016, should be addressed to the Chief Health, Safety and Security Officer, HS–1/Forrestal Building, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All other communications concerning the regulations in this part should be addressed to the cognizant DOE or National Nuclear Security Administration (NNSA) office.

§ 1016.31 [Amended]

■ 100. Section 1016.31(b) is amended by removing "DOE Operations Offices administering the permit as set forth in appendix B of part 725" and adding in its place "the cognizant DOE or NNSA office".

§ 1016.32 [Amended]

■ 101. Section 1016.32(a) is amended by removing "Operations Office administering the permit" and adding in its place "cognizant DOE or NNSA office" and by removing "U.S. DOE, Washington, DC 20545" and adding in its place "HS–90/Germantown Building, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290".

§ 1016.36 [Amended]

■ 102. Section 1016.36 is amended by removing "DOE Operations Offices administering the permit; or U.S. DOE, Washington, DC 20545, Attention: Office of Classification" and adding in its place "cognizant DOE or NNSA office or Office of Classification, HS–90/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290".

§ 1016.43 [Amended]

■ 103. Section 1016.43 is amended by removing "E.O. 12356" and adding in its place "Executive Order 12958, as amended".

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

■ 104. The authority citation for part 1017 continues to read as follows:

Authority: 42 U.S.C. 2168; 28 U.S.C. 2461 note.

§ 1017.3 [Amended]

■ 105. Section 1017.3(u)(2)(iii) is amended by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1017.7 [Amended]

■ 106. Section 1017.7(a)(2) is amended by removing "Manager of a DOE Operations Office" and adding in its place "Manager of a DOE or NNSA field element"; and in paragraph (c) introductory text by removing "Assistant Secretary for Defense Programs" and adding in its place "Director, Office of Classification".

§ 1017.8 [Amended]

■ 107. Section 1017.8(c) is amended by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1017.11 [Amended]

■ 108. Section 1017.11 is amended in the introductory text by removing "Assistant Secretary for Defense Programs" and adding in its place "Director, Office of Classification" and by removing "Assistant Secretary for Defense Programs (refer to § 1017.16(b)(1) for the address)" and adding in its place "Director, Office of Classification, HS–90/Germantown Building, U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585–1290".

§ 1017.16 [Amended]

■ 109. Section 1017.16 is amended in:

■ a. Paragraph (a)(5) by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer."

■ b. Paragraph (b)(1) by removing "Assistant Secretary for Defense Programs, U.S. Department of Energy, Washington, DC 20585" and adding in its place "Chief Health, Safety and Security Officer, HS–1/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585".

■ c. Paragraph (b)(3) introductory text and (c)(2) by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer."

■ d. Paragraph (b)(4) by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer" in both sentences.

§ 1017.17 [Amended]

■ 110. Section 1017.17(e)(2)(iv) is amended by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1017.18 [Amended]

■ 111. Section 1017.18 is amended in:

■ a. Paragraphs (a) introductory text, (a)(1)(i) introductory text, (a)(1)(i)(C), (a)(1)(i)(D) both sentences, (a)(1)(i)(E), (a)(1)(ii), and (a)(1)(iii) by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer".

■ b. Paragraph (a)(2) introductory text by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer" in both the second and third sentences.

■ c. Paragraphs (a)(2)(v) and (a)(3) by removing "Assistant Secretary for Defense Programs" and adding in its place "Chief Health, Safety and Security Officer".

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 112. The authority citation for part 1021 continues to read as follows:

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

■ 113. Section 1021.105 is revised to read as follows:

§ 1021.105 Oversight of Agency NEPA activities.

The General Counsel, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA process and the status of individual NEPA reviews may be obtained upon request from the Office of NEPA Policy and Compliance, GC–20, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0103.

PART 1044—SECURITY REQUIREMENTS FOR PROTECTED DISCLOSURES UNDER SECTION 3164 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000

■ 114. The authority citation for part 1044 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*, 7239, and 50 U.S.C. 2401 *et seq.*

§ 1044.07 [Amended]

■ 115. Section 1044.07 is amended by removing "Office of Safeguards and Security" and adding in its place "Office of Personnel Security".

§ 1044.08 [Amended]

■ 116. Section 1044.08 is amended by removing "Office of Nuclear and National Security Information" and adding in its place "Office of Classification".

§ 1044.09 [Amended]

■ 117. Section 1044.09 is amended by removing "Office of Nuclear and National Security Information" and adding in its place "Office of Classification".

§ 1044.10 [Amended]

■ 118. Section 1044.10 is amended by removing "Office of Nuclear and National Security Information" and adding in its place "Office of Classification".

§ 1044.11 [Amended]

■ 119. Section 1044.11, paragraph (c) is amended by removing "Office of Nuclear and National Security Information" and adding in its place "Office of Classification"; and paragraph (h) is amended by removing "Office of Safeguards and Security" and adding in its place "Office of Health, Safety and Security".

§ 1044.12 [Amended]

■ 120. Section 1044.12 is amended by removing "U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1017" and adding in its place "HG–1/L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1615" and by removing "(202) 426–1415" and adding in its place "(202) 287–1415".

PART 1045—NUCLEAR CLASSIFICATION AND DECLASSIFICATION

■ 121. The authority citation for part 1045 is revised to read as follows:

Authority: 42 U.S.C. 2011; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 13292, 68 FR 15315, 3 CFR 2004 Comp., p. 196.

§ 1045.3 [Amended]

■ 122. In § 1045.3:

■ a. The definition "Director of Declassification" is amended in the first sentence by removing "Declassification" and adding in its place "Classification"; by removing "Office of Declassification" and adding in its place "Office of Classification"; and in the second sentence by removing "Director of Declassification" and adding in its place "Director of Classification" and by removing "Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer".

■ b. Remove the definition of "Director of Security Affairs".

■ c. Add the definition of "Chief Health, Safety and Security Officer" in alphabetical order to read as set forth below:

§ 1045.3 Definitions.

* * * * *

Chief Health, Safety and Security officer means the Department of Energy Chief Health, Safety and Security Officer, or any person to whom the Chief's duties are delegated.

* * * * *

§ 1045.4 [Amended]

■ 123. Section 1045.4 is amended in:

■ a. Paragraph (a) introductory text and (f)(4) by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

■ b. Paragraph (b) introductory text by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1045.7 [Amended]

■ 124. Section 1045.7(a) is amended by removing "Openness Coordinator, Department of Energy, Office of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290" and adding in its place "Director, Office of Classification, HS–90/ Germantown Building, U.S. Department

of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1290".

§ 1045.8 [Amended]

■ 125. Section 1045.8, paragraphs (a) and (b) are amended by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

§ 1045.12 [Amended]

■ 126. Section 1045.12 is amended in:
■ a. Paragraph (a) by removing "DOE Director of Declassification" and adding in its place "Director of Classification".
■ b. Paragraphs (b), (c), and (d), by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1045.14 [Amended]

■ 127. Section 1045.14 is amended in:
■ a. Paragraph (a)(1) by removing "DOE Director of Declassification" and adding in its place "Director of Classification" in both places it appears.
■ b. Paragraph (a)(2) by removing "DOE Director of Declassification" and adding in its place "Director of Classification".
■ c. Paragraphs (b), (c), and (d) by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1045.15 [Amended]

■ 128. Section 1045.15, paragraphs (a), (d) introductory text, and (e) introductory text, are amended by removing "DOE Directors of Declassification and Security Affairs" and adding in its place "Director of Classification and the Chief Health, Safety and Security Officer".

§ 1045.16 [Amended]

■ 129. Section 1045.16 is amended in:
■ a. Paragraphs (a) and (b), by removing "DOE Director of Declassification" and adding in its place "Director of Classification" and by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer".
■ b. Paragraphs (c) and (d) introductory text, are amended by removing "Directors of Declassification and Security Affairs" and adding in its place "Director of Classification and the Chief Health, Safety and Security Officer".

§ 1045.17 [Amended]

■ 130. Section 1045.17, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), and (b), are amended by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

§ 1045.18 [Amended]

■ 131. Section 1045.18, paragraphs (a) and (b), are amended by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

§ 1045.19 [Amended]

■ 132. Section 1045.19 is amended in:
■ a. Paragraph (a) by removing "DOE Directors of Declassification and Security Affairs" and adding in its place "Director of Classification and the Chief Health, Safety and Security Officer" in the first, second, and fourth sentences and by removing "DOE Director of Declassification" and adding in its place "Director of Classification".
■ b. Paragraph (b) by removing "DOE Director of Declassification" and in the first and second sentences adding in its place "Director of Classification" and by removing "Department of Energy, Director of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290" and adding in its place "Director Office of Classification, HS–90/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1290".

§ 1045.20 [Amended]

■ 133. Section 1045.20 is amended by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer" and by removing "Department of Energy, Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer, HS–1/Forrestal Building, U.S. Department of Energy".

§ 1045.22 [Amended]

■ 134. Section 1045.22(c) is amended by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1045.33 [Amended]

■ 135. Section 1045.33, paragraphs (a) and (b), are amended by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

§ 1045.35 [Amended]

■ 136. Section 1045.35, paragraphs (b) and (c), are amended by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

§ 1045.36 [Amended]

■ 137. Section 1045.36(b) is amended by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

§ 1045.37 [Amended]

■ 138. Section 1045.37 is amended in:
■ a. Paragraph (a) by removing "DOE Directors of Declassification and Security Affairs" and adding in its place "Director of Classification and the Chief Health, Safety and Security Officer".
■ b. Paragraph (c) by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

§ 1045.39 [Amended]

■ 139. Section 1045.39(b)(3) is amended by removing "DOE Director of Declassification" and adding "Director of Classification" in both places that it occurs in the first sentence and by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1045.42 [Amended]

■ 140. Section 1045.42 is amended in:
■ a. Paragraphs (b)(5)(i), (b)(5)(ii), (c)(1), and (c)(2) by removing "DOE Director of Declassification" and adding in its place "Director of Classification".
■ b. Paragraphs (d)(1) and (2), by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and Security Officer".

§ 1045.43 [Amended]

■ 141. Section 1045.43 is amended in:
■ a. Paragraph (b) by removing "DOE Director of Declassification" and adding in its place "Director of Classification".
■ b. Paragraph (c) by removing "Director of Declassification, Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290" and adding in its place "Director, Office of Classification, HS–90/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1290".

§ 1045.45 [Amended]

■ 142. Section 1045.45(b) is amended by removing "DOE Director of Declassification" and adding in its place "Director of Classification".

§ 1045.52 [Amended]

■ 143. Section 1045.52(d) is amended by removing "Department of Energy, Director of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290" and adding in its place "Director, Office of Classification, HS–90/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1290".

§ 1045.53 [Amended]

■ 144. Section 1045.53 is amended in:
■ a. Paragraph (b) by removing "DOE Director of Declassification" and adding in its place "Director of Classification".
■ b. Paragraph (c) by removing "DOE Director of Security Affairs" and adding in its place "Chief Health, Safety and

Security Officer, HS–1/Forrestal Building".

■ c. Paragraphs (d) and (e) by removing "DOE Director of Security Affairs" and adding in their place "Chief Health, Safety and Security Officer".

■ d. Paragraph (f) by removing "DOE Director of Security Affairs'" and adding in its place "Chief Health, Safety and Security Officer's".

PART 1046—PHYSICAL PROTECTION OF SECURITY INTERESTS

■ 145. The authority citation for part 1046 continues to read as follows:

Authority: Sec. 2201, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2201 *et seq.*); sec. 7151, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*).

§ 1046.3 [Amended]

■ 146. Section 1046.3 is amended in the definition of "Designated physician" by removing "Medical Director, Office of Operational and Environmental Safety, Headquarters" and adding in its place "Director, Office of Health and Safety" and by removing "Medical" in the second sentence.

Appendix A to Subpart B of Part 1046 [Amended]

■ 147. Appendix A is amended in:

■ a. Section B.(9) by removing "Director of Safeguards and Security, Headquarters," and adding in its place "Chief Health, Safety and Security Officer".

■ b. Section G.(1)(e) by removing "Director of Safeguards and Security, DOE Headquarters," and adding in its place "Chief Health, Safety and Security Officer".

■ c. Section J.(5) by removing "Director of Safeguards and Security, DOE Headquarters" and adding in its place "Chief Health, Safety and Security Officer".

Appendix B to Subpart B of Part 1046 [Amended]

■ 148. Appendix B is amended in:

■ a. Section B.(1) by removing "Central Training Academy (CTA)" and adding in its place "National Training Center," and by removing "Director, Office of Safeguards and Security" and adding in its place "Chief Health, Safety and Security Officer".

■ b. Section B.(9)(b) is amended by removing "DOE Operations Office" and adding in its place "DOE field office".

■ c. Section B.(9)(g) by removing "Office of Safeguards and Security (SA–10)" and adding in its place "Chief Health, Safety and Security Officer".

■ d. Section B.(9)(i) by removing "Central Training Academy" and adding in its place "National Training Center".

PART 1049—LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICERS OF THE STRATEGIC PETROLEUM RESERVE

■ 149. The authority citation for part 1049 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*

§ 1049.8 [Amended]

■ 150. Section 1049.8(a) is amended by removing "Department of Energy Office of Safeguards and Security" and adding in its place "Chief Health, Safety and Security Officer".

[FR Doc. E6–20104 Filed 11–27–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Neomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Sparhawk Laboratories, Inc. The ANADA provides for use of neomycin sulfate oral solution in livestock for the treatment and control of bacterial enteritis.

DATES: This rule is effective November 28, 2006.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: *john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Sparhawk Laboratories, Inc., 12340 Santa Fe Trail Dr., Lenexa, KS 66215, filed ANADA 200–379 for the use of Neomycin Liquid in cattle, swine, sheep, and goats for the treatment and control of bacterial enteritis. Sparhawk Laboratories, Inc.'s Neomycin Liquid is approved as a generic copy of Pharmacia &Upjohn Co.'s BIOSOL Liquid, sponsored by Pharmacia & Upjohn Co., a Division of Pfizer, Inc., under ANADA 200–113. The ANADA is approved as of October 24, 2006, and the regulations in 21 CFR 520.1484 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1484 [Amended]

■ 2. In paragraph (b)(3) of § 520.1484, add "058005," in numerical sequence.

Dated: November 16, 2006.

Bernadette Dunham,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E6–20126 Filed 11–27–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF ENERGY

[Docket ID: DOE–HQ–2010–0002]

10 CFR Part 1021

RIN 1990–AA34

National Environmental Policy Act Implementing Procedures

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

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The U.S. Department of Energy (DOE or the Department) proposes to amend its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The majority of the changes are proposed for the categorical exclusions provisions contained in its NEPA Implementing Procedures, with a small number of related changes proposed for other provisions. These proposed changes are intended to better align the Department's regulations, particularly its categorical exclusions, with DOE's current activities and recent experiences, and to update the provisions with respect to current technologies and regulatory requirements. DOE proposes to establish 20 new categorical exclusions, and to remove two categorical exclusion categories, one environmental assessment (EA) category, and two environmental impact statement (EIS) categories. Other proposed changes modify and clarify DOE's existing provisions.

DATES: Comments should be received by (or, if mailed, postmarked by) February 17, 2011 to ensure consideration. Late comments may be considered to the extent practicable. DOE will hold a public hearing on February 4, 2011, from 1 p.m. to 4 p.m. in Washington, DC. Persons who wish to speak at the public hearing should register before 3 p.m. on February 1, 2011, as described in **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Documents relevant to this rulemaking are posted at *http://www.regulations.gov* (Docket ID: DOE–HQ–2010–0002). Documents posted to this docket include: This notice of proposed rulemaking, DOE's "Technical Support Document" that provides additional information regarding certain proposed changes, and a "redline/strikeout" (markup) file of affected sections of the DOE NEPA regulations indicating the changes proposed in this proposed rule.

Submit comments, labeled "DOE NEPA Implementing Procedures, RIN 1990–AA34," by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments electronically. This rulemaking is assigned Docket ID: DOE–HQ–2010–0002. Comments may be entered directly on the Web site. Electronic files may be submitted to this Web site.

2. *Mail:* Mail comments to NEPA Rulemaking Comments, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Because security screening may delay mail sent through the U.S. Postal Service, DOE encourages electronic submittal of comments.

3. *Public Hearing:* A public hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. Oral and written comments will be accepted at the public hearing. *See* **DATES,** above, and Section III, Invitation to Comment, below, for procedures.

FOR FURTHER INFORMATION CONTACT: For general information about DOE's NEPA procedures, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, at 202–586–4600 or leave a message at 800–472–2756. To register to speak at the public hearing and for questions concerning how to comment on this proposed rule, contact Ms. Yardena Mansoor, Office of NEPA Policy and Compliance, at *askNEPA@hq.doe.gov* or 202–586–9326. For detailed information on submitting comments and the public hearing, *see* Section III, Invitation to Comment, below.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

What is NEPA?

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to consider the potential environmental impacts of their "proposed actions" before taking action. (Please note the terms "effects" and "impacts" as used in this proposed rule are synonymous. *See* 40 CFR 1508.8.) Proposed actions include actions directly undertaken by a Federal agency, as well as certain actions undertaken by a State, local, or private entity with Federal involvement, *e.g.,* certain projects that may receive Federal funding, permits, or other support.

What is environmental review under NEPA?

The Council on Environmental Quality's (CEQ's) NEPA implementing regulations (40 CFR parts 1500–1508) establish three levels of review for proposed actions—EIS, EA, and categorical exclusion determinations—each involving different levels of information and analysis. An EIS is a detailed analysis of the potential environmental impacts of a proposed action (and alternatives) that may have a significant impact on the environment. *See* NEPA Section 102(2)(C), 42 U.S.C. 4332(2)(C); 40 CFR 1508.11. An EA is a briefer analysis conducted to determine whether a proposed action may have a significant impact on the environment and thus whether an EIS is required. *See* 40 CFR 1508.9. A categorical exclusion is a class of actions that a Federal agency has determined do not, absent extraordinary circumstances, individually or cumulatively have a significant impact on the human environment and for which, therefore, neither an EA nor an EIS is required. *See* 40 CFR 1508.4. A categorical exclusion determination is made when an agency finds that a proposed action fits within a categorical exclusion and meets other applicable requirements, such as the absence of extraordinary circumstances.

How does DOE establish categorical exclusions?

DOE establishes categorical exclusions pursuant to a rulemaking, such as this one, for defined classes of actions that the Department determines are supported by a record showing that they normally will not have significant environmental impacts, individually or cumulatively. DOE establishes categorical exclusions based on its experience, the experience of other agencies, and information provided by the public.

A complete list of DOE's current categorical exclusions can be found at 10 CFR part 1021, subpart D, appendices A and B. Appendix A lists categorical exclusions applicable to general agency actions (for example, routine administrative, financial, and personnel actions). Appendix B lists categorical exclusions that are applicable to specific agency actions.

How does DOE make a categorical exclusion determination?

Under the regulations, before a proposed action may be categorically excluded, DOE must determine in accordance with 10 CFR 1021.410(b) that: (1) The proposed action fits within

a class of actions listed in appendix A or B to subpart D, (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental impacts of the proposed action, and (3) there are no connected or related actions with cumulatively significant impacts and, as appropriate, the proposed action is not precluded as an impermissible interim action (40 CFR 1506.1 and 10 CFR 1021.211).

In addition, to fit within a class of actions in appendix B, a proposed action must satisfy certain conditions known as "integral elements" (appendix B, paragraphs (1) through (4)). Briefly, these conditions ensure that an excluded action would not have the potential to cause significant environmental impacts due to, for example, a threatened violation of applicable environmental, safety, and health requirements, or by disturbing hazardous substances such that there would be uncontrolled or unpermitted releases.

What does DOE propose to change in its NEPA regulations?

With this proposed rule, DOE proposes to update its NEPA regulations (10 CFR part 1021), primarily with changes to subpart D and with a few changes to subpart C. Most changes are to categorical exclusions (subpart D, appendices A and B, discussed in Sections IV.D and IV.E below, respectively), including establishing new categorical exclusions and modifying existing categorical exclusions. DOE also proposes to make changes to its classes of actions that normally require an EA (appendix C, discussed in Section IV.F) or EIS (appendix D, discussed in Section IV.G). In addition, DOE proposes to change several procedural provisions of the Department's regulations (Section IV.C) and modify wording for consistency and clarity (Section IV.B).

II. Purpose and Development of the Proposed Changes

Why does DOE propose to amend its NEPA implementing procedures?

The Department last updated its categorical exclusions in 1996. Since that time, the range of activities in which DOE is involved has changed and expanded. For example, in recent years, DOE has received more applications for financial support from private applicants for actions that promote energy efficiency and energy independence. DOE has received thousands of applications under grant and loan programs established by the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009. Another change since 1996 is the growth and development of new technologies in the private and public sectors, including energy efficient and renewable energy technologies, and DOE's experience with those technologies. Through this proposed rulemaking, DOE proposes to update its categorical exclusions to address the Department's current activities and its experience and bring the provisions up-to-date with current technology and regulatory requirements.

How did DOE seek input on the proposed changes?

DOE has sought input from a number of different sources. First, DOE issued an internal memorandum on December 7, 2009, soliciting suggestions for new categorical exclusions or revisions from DOE Program and Field Offices, including DOE's network of NEPA Compliance Officers. Second, DOE Office of NEPA Policy and Compliance staff identified additional candidates for new or expanded categorical exclusions by reviewing the archive of DOE EAs that led to findings of no significant impact (FONSIs), researched the existing categorical exclusions established by approximately 50 Federal agencies, and reviewed existing DOE categorical exclusions to identify potential new categorical exclusions or revisions. Third, on December 29, 2009, DOE published a Request for Information in the **Federal Register** (74 FR 68720) seeking suggestions from interested parties. Eleven entities responded to the Request for Information: Endicott Biofuels, LLC; Golder Associates, Inc.; INFORM (Information Network for Responsible Mining); Johnson Controls, Inc.; Nuclear Watch New Mexico; Presco Energy, LLC; Sierra Geothermal Power Corp.; Solar Energy Industries Association; State of Oregon's Department of Energy; U.S. Chamber of Commerce; and a contractor for DOE's Golden Field Office. The Request for Information and these comments are available at *http://www.regulations.gov*.

The comments included proposals for new categorical exclusions and suggested revisions to limit or expand existing categorical exclusions or other related provisions. DOE addresses these comments in its discussion of specific classes of actions in Section IV. Comments of a more general nature that were not associated with a particular provision are addressed below in Section V.

How did DOE develop the proposed changes?

As described above, DOE reviewed and evaluated each of the proposed revisions, reviewed past DOE NEPA analyses and other agencies' NEPA analyses and categorical exclusions, and drafted proposed categorical exclusions and revisions. DOE created a Technical Support Document that presents proposed changes and information that supplements the Preamble discussion of the supporting basis for the changes. (*See http://www.regulations.gov,* Docket ID: DOE–HQ–2010–0002.) The proposed changes were developed in consultation with CEQ (*see* 40 CFR 1507.3), and are now, through this notice of proposed rulemaking, published for public review and comment. Instructions for how to provide comments are provided in Section III. DOE is also scheduling a public hearing to accept comments on the proposed rule. Details regarding the public hearing are provided in the **DATES** and **ADDRESSES** section and in Section III.B below. DOE will review the comments received during the public comment period, including those presented at the public hearing, and revise its proposal as appropriate. The final rule with DOE responses to comments would then be published in the **Federal Register.**

What kinds of changes does DOE propose?

DOE proposes to amend 10 CFR part 1021, subparts C and D. The majority of changes are proposed for the categorical exclusion provisions at 10 CFR part 1021, subpart D, appendices A and B, with a small number of related changes proposed for other provisions within subparts C and D.

DOE proposes to add 20 new categorical exclusions. These categorical exclusions (in the order in which they appear in appendix B) address: Stormwater runoff control; lead-based paint removal; recycling stations; determinations of excess real property; small-scale educational facilities; small-scale indoor research and development projects using nanoscale materials; research activities in salt water and freshwater environments; experimental wells for injection of small quantities of carbon dioxide; combined heat and power or cogeneration systems; small-scale renewable energy research and development and pilot projects; solar photovoltaic systems; solar thermal systems; wind turbines; ground source heat pumps; biomass power plants; methane gas recovery and utilization systems; alternative fuel vehicle fueling stations; electric vehicle charging

stations; drop-in hydroelectric systems; and small-scale renewable energy research and development and pilot projects in salt water and freshwater environments. DOE proposes to remove two categorical exclusion categories, one EA category, and two EIS categories.

DOE also proposes to modify many of the existing categorical exclusions. These revisions include substantive changes, as well as changes to reflect current regulatory or statutory references and requirements, and punctuation and grammatical changes to improve readability, clarity, and internal consistency. (By "substantive" changes DOE means a change that is more than a clarifying or consistency change; this term includes changes that alter the scope or meaning of a provision or that result in the addition or deletion of a provision.)

What would result from DOE's proposed changes?

The proposed changes would better align DOE's categorical exclusions with its current activities and its experience and bring the provisions up-to-date with current technology and regulatory requirements. The changes would also facilitate compliance with NEPA by providing for more efficient review of actions (helping the Department meet the goals set forth by Congress, for example, in the Energy Policy Act of 2005), and allowing the Department to focus its resources on proposed actions that have the potential for significant environmental impacts.

III. Invitation To Comment

DOE invites interested persons to participate in this rulemaking by submitting comments on the proposed rule and on the supporting information for proposed changes set forth in the Preamble and the Technical Support Document. Comments would be particularly useful to DOE if those comments: (1) Provide information to support or oppose a proposed change (for example, describing experience with similar actions that did or did not have significant environmental impacts or providing references to such experience); (2) justify increased or lessened limitations on the application of a categorical exclusion; or (3) explain recommended changes in addition to those that DOE proposes and provide the rationale for such additional changes. As appropriate, comments should refer to the specific section of the proposed rule to which the comment applies, identify a comment as a general comment, or identify a comment as a new proposal.

DOE will consider all timely comments received in response to this notice of proposed rulemaking, whether presented orally at the public hearing or written and submitted electronically or by mail.

A. Written Comments

Comments may be submitted by one of the methods in the **ADDRESSES** section of this proposed rule. Comments received will be included in the administrative record and will be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information specifically identified as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider to be CBI or otherwise protected should be submitted by mail, not through *http://www.regulations.gov.* If you submit information that you believe to be exempt by law from public disclosure, you should mail one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been redacted. Please include written justification as to why the redacted information is exempt from disclosure. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations at 10 CFR 1004.11.

The *http://www.regulations.gov* Web site is an "anonymous access" system, which means DOE will not know your contact information unless you provide it. If you choose not to provide contact information and DOE cannot read your comment due to technical difficulties, DOE may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses.

B. Public Hearing

Attendance

The time, date, and location of the public hearing are listed in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule. Persons wishing to attend the public hearing must present government-issued identification and pass through security screening upon entering the building. Foreign nationals are subject to advance security screening procedures. Any foreign national wishing to participate or attend the public hearing should advise DOE promptly in order to initiate the necessary procedures as soon as possible; see **FOR FURTHER INFORMATION CONTACT,** above.

Registering To Speak

Any person who has an interest in the topics addressed in this proposed rule may speak at the public hearing, either as an individual or as a representative of a group or organization of interested persons. Persons wishing to speak should register in advance, as described in **FOR FURTHER INFORMATION CONTACT**. After registered speakers have made their presentations, other persons may speak to the extent that time allows.

Conduct of Public Hearing

DOE will designate an official or facilitator to preside at the public hearing. The public hearing will be informal and not a judicial or evidentiary-type hearing. DOE reserves the right to schedule the order of speakers and to establish the procedures governing the conduct of the hearing. To ensure that all persons wishing to make a presentation can be heard, DOE may limit each presentation to 10 minutes or less. The presiding official or facilitator will announce any further procedural rules needed for the proper conduct of the public hearing. After the public hearing, interested persons may submit further comments until the end of the comment period.

A transcript of the hearing will be made and posted at *http://www.regulations.gov.*

C. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties on several topics. As discussed in more detail in Section IV.B below, DOE seeks comments on its use of the phrases "including, but not limited to," and "such as" to introduce lists of examples. Unless otherwise specified, DOE's lists of examples are not intended to be exhaustive of all possible actions that fit within a categorical exclusion. DOE also seeks comments on its use of the phrase "would not have the potential to cause significant impacts" (or a similar construct) in lieu of the use of terms such as "adverse" or "substantial" as modifiers for potential impacts. DOE believes that the proposed phrase more accurately reflects NEPA and the CEQ NEPA regulations.

DOE is particularly interested in receiving comments and views of interested parties on the proposals relating to the following classes of actions:

B3.7 New Terrestrial Infill Exploratory and Experimental Wells
B3.15 Small-Scale Indoor Research and Development Projects Using Nanoscale Materials
B3.16 Research Activities in Salt Water and Freshwater Environments
B4.1 Contracts, Policies, and Marketing and Allocation Plans for Electric Power
B4.11 Electric Power Substations and Interconnection Facilities
B4.12 Construction of Transmission Lines
B4.13 Upgrading and Rebuilding Existing Transmission Lines
B5.1(b) Actions To Conserve Energy or Water
B5.13 Experimental Wells for Injection of Small Quantities of Carbon Dioxide
B5.15 Small-Scale Renewable Energy Research and Development and Pilot Projects
B5.16 Solar Photovoltaic Systems
B5.17 Solar Thermal Systems
B5.18 Wind Turbines
B5.19 Ground Source Heat Pumps
B5.20 Biomass Power Plants
B5.24 Drop-in Hydroelectric Systems
B5.25 Small-Scale Renewable Energy Research and Development and Pilot Projects in Salt Water and Freshwater Environments
B6.1 Cleanup Actions
C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power
D5 [Removed and Reserved: Main Transmission System Additions]
D6 [Removed and Reserved: Integrating Transmission Facilities]
D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

DOE also welcomes comments on those categorical exclusions for classes of actions for which DOE has not proposed any revisions at this time.

IV. Description of Proposed Changes

A. Overview

This section describes and explains the proposed amendments to the existing DOE NEPA regulations at 10 CFR part 1021, subparts C and D.

In subpart C, Implementing Procedures, the proposed amendments are minor technical changes. Specifically, to correct internal references, DOE proposes changes to three sections in subpart C: (1) 10 CFR 1021.311—Notice of intent and scoping; (2) 10 CFR 1021.322—Findings of no significant impact; and (3) 10 CFR 1021.331—Mitigation action plans. These proposed minor technical changes to subpart C are not discussed further below.

In subpart D, DOE proposes extensive substantive and clarifying changes. Recurring proposals for subpart D are described in Section IV.B and then unique proposed changes to subpart D are described in Sections IV.C through IV.G. Support for the proposed revisions is summarized below, and more information regarding the supporting basis for certain provisions is provided in the Technical Support Document.

What is subpart D of the DOE NEPA regulations?

DOE's NEPA regulations at 10 CFR part 1021 include subpart D, which lists classes of actions and the typical level of NEPA review required for those classes of actions. Subpart D appendices A and B describe DOE's categorical exclusions. Appendix C describes classes of actions that normally require preparation of an EA, but not necessarily an EIS, and appendix D describes classes of actions that normally require preparation of an EIS.

Listing a class of actions in these appendices does not constitute a conclusive determination regarding the appropriate level of NEPA review for a proposed action. Rather, the listing creates an initial assumption that the defined level of review is appropriate for the listed actions. As indicated in the existing 10 CFR 1021.400(c) and (d), this assumption does not apply when there are extraordinary circumstances related to the proposed action that may affect the significance of the environmental effects of the action.

What types of changes does DOE propose to subpart D?

DOE proposes to make several types of changes to its subpart D regulations: these revisions include substantive changes, as well as changes to reflect current regulatory or statutory references and requirements, and punctuation and grammatical changes to improve readability, clarity, and internal consistency. A proposed change does not imply that any previous application of these regulations was inappropriate. *See* 10 CFR 1021.400(b).

DOE also proposes to delete the tables of contents for the classes of actions in subpart D, and instead to precede each section or paragraph with a short title. These short titles are included merely to guide the reader and do not have any regulatory effect.

Some of the proposed changes apply multiple times throughout the provisions; others are made in the context of a specific provision. Section IV.B of this proposed rule contains an explanation of proposals that recur, that is, that affect more than one class of actions, instead of duplicating the explanation for multiple individual classes of actions. Descriptions of specific individual proposed changes and support for such changes begin with Section IV.C. With respect to certain proposed changes, a more detailed explanation of the supporting basis is provided in the Technical Support Document. (The Technical Support Document and the "redline/strikeout" markup of DOE's existing regulations that show the proposed changes are available at *http://www.regulations.gov*.)

B. Recurring Proposals, Technology Updates, and Minor Changes

DOE proposes certain changes to its regulations that recur throughout subpart D. Seven recurring proposals are described below and are followed by a listing of the existing provisions where the recurring proposals occur. Discussion of these recurring proposals is not repeated in the discussion of classes of actions in Section IV below.

DOE also proposes to modify certain technology-specific vocabulary to reflect current usage, updates to references, and minor changes to punctuation and grammar to improve internal consistency. For example, to update technology-specific vocabulary, DOE proposes to change "electric powerlines" to "electric transmission lines" in several categorical exclusions. DOE also proposes to update references, as in categorical exclusion B3.12, which would reference the latest edition of a Centers for Disease Control manual. DOE is proposing to correct typographical errors (for example, changing "with" to "within" in categorical exclusion B1.13). Also, for certain classes of actions, DOE is proposing the addition of cross-references to related classes of actions. For example, DOE is proposing to add a cross-reference to the proposed new categorical exclusion B1.33 into the existing categorical exclusion B1.6.

B.1. Adjacent/Contiguous/Nearby

To clarify use of terms reflecting proximity, and to promote consistency in its categorical exclusions, DOE is proposing to delete the word "adjacent" from its categorical exclusions and use "contiguous" and "nearby," as appropriate. DOE proposes to use the word "contiguous," where the intended application is "touching along a boundary or at a point" or "being in actual contact." In contrast, DOE is proposing to use the word "nearby," where the intended application is "not distant" or "in proximity, but not necessarily touching." In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.31, B2.1, B4.7, B5.8, B5.12.

B.2. Including, But Not Limited to/ Including/Such as

DOE proposes to use the phrases "including, but not limited to," "including," and "such as" to introduce lists of examples. DOE considers the phrases to be synonymous. Unless otherwise specified, DOE's lists of examples are not intended to be exhaustive of all possible actions that fit within a class of actions. DOE proposes generally to use "including, but not limited to," the first time that examples are introduced in a provision and "such as" for any needed clarification of the examples. In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: 1021.410(b)(2), A1, A6, A9, A12, B(4), B1.3, B1.5, B1.9, B1.10, B1.11, B1.12, B1.13, B1.15, B1.16, B1.17, B1.20, B1.21, B1.24, B1.27, B1.29, B1.31, B1.32, B2.4, B2.5, B3.1, B3.4, B3.6, B3.7, B3.8, B3.9, B3.10, B3.11, B3.12, B3.13, B4.4, B4.6, B4.7, B4.9, B4.10, B4.11, B5.1, B5.2, B5.3, B5.4, B5.5, B5.6, B5.12, B6.1, B6.2, B6.3, B6.4, B7.2, C8, C16.

B.3. In Accordance With Applicable Requirements

DOE proposes to use the phrase "in accordance with applicable requirements" in several of its categorical exclusions for emphasis. DOE recognizes that all actions must be conducted in accordance with all applicable requirements. However, with certain categorical exclusions, DOE finds it appropriate to refer specifically to this requirement, and, further, in some cases also to provide one or more examples of applicable requirements. By referring to a specific requirement, DOE does not imply that the requirement is relevant to all actions to which the categorical exclusion may apply, or that the referenced requirement is the only one that applies to a proposed action. DOE's proposed wording is intended to allow for the evolution of the requirements over time. In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.2, B1.3, B1.9, B1.16, B1.17, B1.29, B2.5, B3.8, B3.12, B5.4, B5.6, B6.1, B7.2.

B.4. Would Not Have the Potential To Cause Significant Impacts

Appendices A and B contain a number of provisions that contain the word "adverse," or the use of "any" or "no" as descriptors of, or surrogates for, impacts. Through this proposed rulemaking, DOE proposes to replace these terms with "would not have the potential to cause significant impacts" or a similar construct (for example, describing a physical change that serves as a surrogate for impacts, such as in categorical exclusions B1.18, B3.4, B3.9, and B5.2). By the proposed changes, DOE's implementing regulations are now clearly aligned with the regulatory standard in NEPA. *See* 40 CFR 1508.4. Additionally, by this proposed change, DOE seeks to clarify the affected provisions and to facilitate consistent application. *See also* 40 CFR 1508.27 (addressing the meaning of "significantly" as used in NEPA).

DOE's review of the existing provisions demonstrated the need for clarification and consistency. For example, the existing categorical exclusion B3.8 requires that the action "would not result in any permanent change to the ecosystem." A literal reading of this categorical exclusion would bar its use if there were any permanent change to the ecosystem, even a change that would not have the potential to cause significant impacts. DOE acknowledges that this is not what NEPA requires and thus DOE proposes to rephrase the categorical exclusion to incorporate the appropriate NEPA standard, phrased as "would not have the potential to cause significant impacts on the ecosystem." In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B(4), B1.5, B1.11, B1.18, B1.24, B1.31, B2.3, B3.1, B3.3, B3.8, B3.9, B4.6, B5.1, B5.2, B5.12, C8.

B.5. On DOE Sites/Onsite/Employee

In recent years, DOE's proposed actions have included more applicant proposals, including those for DOE loan guarantees, grants, cooperative agreements, and other forms of financial assistance, particularly for programs created under the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009. In an applicant situation, DOE's proposed action normally would not be located on a DOE site, but rather on private property or land administered by other agencies (*e.g.,* Bureau of Land Management). In recognition of DOE's recently expanded activities, DOE is proposing, where appropriate, to delete references to "DOE site," "onsite," or "employee" from its classes of actions. For example, DOE is proposing to amend existing categorical exclusion B1.13, Pathways, short access roads, and rail lines, by deleting "onsite" and instead inserting the condition that the construction, acquisition, and relocation of these linear features be "consistent with applicable right-of-way conditions and approved land use or transportation improvement plans." The significance of environmental impacts resulting from a class of actions does not depend on whether they occur at DOE sites.

In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.13, B1.15, B1.29, B1.32, B3.1, B6.10, C7, D7.

B.6. Previously Disturbed or Developed Area

In DOE's experience, the potential for certain types of actions to have significant impacts on the human environment is generally avoided when that action takes place within a previously disturbed or developed area, *i.e.,* land that has been changed such that the former state of the area and its functioning ecological processes have been altered. Thus, DOE includes a requirement in several of its proposed provisions that actions be located within previously disturbed or developed areas. In other instances, the existing provision contains a similar requirement, and DOE proposes to replace the existing language with the phrase "previously disturbed or developed area" for purposes of internal consistency. In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.31, B2.1, B3.6, B3.10, B3.12, B4.6, B4.7, B4.8, B4.12, B5.1, B5.5, B5.8, B6.10, C4, C11.

B.7. Small/Small-Scale/Minor/ Negligible/Short/Short-Term

DOE uses adjectives (such as "small," "small-scale," "minor," "negligible," "short," and "short-term") as limitations in a variety of its existing and proposed provisions and recognizes that these descriptors are subjective. In general, DOE did not and does not propose to define these terms, and DOE would apply a reasonable interpretation to such terms within the context of individual proposals. The CEQ regulations state that "significantly," as used in NEPA, requires consideration of context and intensity. *See* 40 CFR 1508.27. Likewise, consideration of context and intensity is useful when interpreting descriptors such as small, small-scale, minor, short, and short-term, in making categorical exclusion determinations for proposals. (DOE proposes to discontinue the use of the word "negligible.")

For example, in considering whether the use of 5–10 acres of land is "small"

for a particular proposal, it is reasonable to conclude that 5–10 acres of land at a large DOE site would likely be considered "small," but 5–10 acres of land might not be considered "small" in an urban environment. In some instances, however, the Department has quantified these descriptors because the size is more directly linked to impacts. For example, DOE categorizes a "small" area for outdoor ecological and other environmental research as generally less than 5 acres in its existing categorical exclusion B3.8. Additionally, DOE defines "small" water treatment facilities as those that have a total capacity of less than 250,000 gallons/day in existing categorical exclusion B1.26.

In order to facilitate consistent understanding and application of this concept, DOE, therefore, proposes changes to the following provisions: B1.2, B1.13, B1.15, B3.6, B3.8, B4.13, B5.1, B5.4, B5.7, C8.

C. Proposed Changes to Subpart D (Other Than Appendices)

10 CFR 1021.410 Application of Categorical Exclusions (Classes of Actions That Normally Do Not Require EAs or EISs)

DOE proposes to clarify four requirements in 10 CFR 1021.410. First, DOE proposes to remove the reference to Section 102(2)(E) of NEPA to clarify that DOE's consideration of unresolved conflicts concerning alternative uses of available resources is independent of the need to evaluate alternatives in an EA as indicated in Section 102(2)(E) of NEPA.

Second, in 10 CFR 1021.410(b)(3), DOE proposes to refer explicitly to the requirement that a categorically excludable project has not been segmented. DOE also proposes to change its references to the CEQ regulations to clarify consideration of potential cumulative impacts (40 CFR 1508.27(b)(7)), and to clarify that its references to 40 CFR 1506.1 and 10 CFR 1021.211 concern limitations on actions during EIS preparation.

Third, DOE proposes to add site preparation and purchase and installation of equipment to 10 CFR 1021.410(d) as examples of activities foreseeably necessary to implement proposals that are encompassed within the class of actions.

Fourth, DOE proposes to codify its policy to document and post online appendix B categorical exclusion determinations at 10 CFR 1021.410(e), consistent with the policy established by the Deputy Secretary of Energy's *Memorandum to Departmental Elements on NEPA Process Transparency and Openness*, October 2, 2009.

D. Proposed Changes to Appendix A—General Agency Actions

For an explanation of recurring proposals applicable to the appendix A categorical exclusions, please *see* Section IV.B, Recurring Proposals, above, where these proposed revisions are discussed and where the particular provisions affected are listed. The short titles listed below for particular categorical exclusions reflect DOE's proposed titles.

A1 Routine DOE Business Actions

DOE proposes to replace "agency" with "DOE" to clarify that this categorical exclusion applies only to DOE business actions. DOE also proposes to limit such actions to administrative, financial, and personnel actions.

A7 [Removed and Reserved: Transfer of Property, Use Unchanged]

To increase transparency of DOE's NEPA processes, DOE proposes to delete this categorical exclusion and to incorporate its key components within B1.24, which also addresses property transfers, so that any categorically excluded property transfers are documented and made available to the public. (*See* proposed changes to 10 CFR 1021.410(e) concerning documentation and public availability of DOE's appendix B categorical exclusion determinations.)

In response to DOE's December 2009 Request for Information, a commentor expressed concern that DOE, in making land transfer decisions under existing categorical exclusion A7, would be "circumventing local authority" and "normal land use planning and zoning processes." *See* the discussion of categorical exclusion B1.24 for DOE's response.

A9 Information Gathering, Analysis, and Dissemination

DOE proposes to clarify this categorical exclusion by providing site visits as an additional example of an action included within the category.

A13 Procedural Documents

DOE proposes to clarify this categorical exclusion by providing additional examples of actions included within the class of actions (*e.g.,* Policies and Manuals within the DOE Directives System).

E. Proposed Changes to Appendix B

For an explanation of recurring proposals applicable to the appendix B categorical exclusions, please *see* Section IV.B, Recurring Proposals, above, where these proposed revisions are discussed and the particular categorical exclusions affected are listed. The short titles listed below for particular categorical exclusions reflect DOE's proposed titles.

Integral Elements of the Classes of Actions in Appendix B

In appendix B(4), DOE proposes to clarify its use of "environmentally sensitive resource," defining it as "typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a Federally recognized Indian Tribe." This definition is not intended to, and does not, grant, expand, create, or diminish any legally enforceable rights, benefits, or responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this language be construed to alter, amend, repeal, interpret, or modify Tribal sovereignty, any treaty rights of any Indian Tribes, or to preempt, modify, or limit the exercise of any such rights.

In appendix B(4)(i), DOE proposes to add "Federally recognized Indian Tribe" to its list of entities that designate property as historically, archeologically, or architecturally significant. DOE also proposes to redefine other environmentally sensitive properties as "determined to be eligible" for listing on the National Register of Historic Places (rather than the phrase "eligible for listing," which is used in the existing provision, but is not the proper characterization of an official listing). In appendix B(4)(iii), DOE proposes to apply the same definition of floodplains and wetlands in its NEPA regulations as that used in DOE's floodplain and wetland environmental review regulations (10 CFR part 1022.4). In appendix B(4)(iv), DOE proposes to supplement the list of areas having special designation with additional examples (national monuments and scenic areas). In appendix B(4)(v), DOE proposes changes to the prime agricultural lands listing to conform to the terminology of the applicable regulation (7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions").

In response to the Department's December 2009 Request for Information, one commentor addressed DOE's list of "environmentally sensitive resources" in appendix B(4). First, the commentor indicated that DOE must recognize State and Tribal protected or candidate species and habitat as equal to Federally designated or considered species and

habitats. Currently, appendix B(4)(ii) includes consideration of State-listed endangered and threatened species and their habitats, and DOE is proposing to add Federally-protected marine mammals and Essential Fish Habitat to the list of environmentally sensitive resources. DOE is not proposing to include Tribal protected or candidate species and habitat because it is DOE's understanding that Tribes do not have the authority to designate species or habitat for protection outside of Tribal lands.

Second, the commentor stated that "groundwater and aquifers are State, not Federal resources" and indicated that DOE's regulations must protect and preserve all aquifers, and not just sole-source aquifers. The commentor further stated that adverse impacts to rivers, lakes, and bays, among other bodies of water, should not be allowed "unless they are specifically covered by a State and/or Tribal discharge permit under appropriate authority." DOE is not proposing a change to the existing appendix B(4)(vi), which lists "special sources of water (such as sole source aquifers, wellhead protection areas, and other water sources that are vital in a region)" in its list of environmentally sensitive resources, because those resources are listed as examples and are not the only water sources to be considered in applying a categorical exclusion. Further, the existing appendix B(4) includes States and Federally recognized Tribes as entities with jurisdiction to identify water sources needing protection.

Categorical Exclusions Applicable to Facility Operation (B1)

B1.1 Changing Rates and Prices

DOE proposes to change this categorical exclusion to encompass the setting of "prices" as well as "rates" (prices apply to products, and rates apply to services) and to consider price and rate changes instead of only increases. DOE proposes to change the measure of inflation specified in this categorical exclusion from the Gross National Product fixed weight price index, which the Department of Commerce no longer publishes, to the implicit price deflator for Gross Domestic Product. (*See* the Technical Support Document.)

B1.2 Training Exercises and Simulations

DOE proposes to provide additional examples of training actions (namely, small-scale and short-duration force-on-force exercises, and decontamination and spill cleanup training), and has added the condition that all training exercises and simulations be conducted under appropriately controlled conditions and in accordance with applicable requirements. The term "force-on-force" as used in this categorical exclusion refers to activities such as assault and defensive team exercises conducted by security forces or military units, often on parcels of DOE property not in use. Exercises that test the ability of security forces to defend a facility are one common example of this type of training. DOE's experience with these types of security force and military training actions and emergency response training at its sites indicates that they fit within the class of actions. (*See* the Technical Support Document.)

B1.3 Routine Maintenance

DOE proposes to clarify that routine maintenance actions may occur as a result of nonroutine events (*e.g.,* severe weather, such as hurricanes, floods, and tornadoes, and wildfires) by adding a sentence to that effect in its description of routine maintenance. Normally, maintenance following a nonroutine event would qualify as routine maintenance; however, for a nonroutine event, the potential for extraordinary circumstances is higher (*e.g.,* increased exposure to pesticides due to extreme runoff).

DOE proposes to clarify the scope of the categorical exclusion by providing additional examples of activities. Specifically, DOE is proposing to clarify that replacement is included in the categorical exclusion's scope under items (a), (c), and (e), as well as the existing example of repair; to add "lighting" to those items that can be repaired or replaced (item (e)); to add "scraping and grading of unpaved surfaces" to the example of road and parking area resurfacing (item (j)); and to add the additional example of "removal of debris" under item (p). DOE's experience with these activities has demonstrated that they properly fit within this class of actions.

In response to the Department's December 2009 Request for Information, one commentor stated that use of pesticides for outdoor or aquatic use should not be the subject of a categorical exclusion; instead an EA should be prepared. The commentor expressed a specific concern about the possibility for environmental impacts beyond the intended application. In existing categorical exclusion B1.3, DOE has described routine maintenance activities including localized vegetation and pest control. DOE now proposes to clarify that any routine maintenance activities would be conducted in a manner in accordance with applicable requirements. In the case of pesticides and other chemicals, for example, the proposed change would provide that the application would be in accordance with the registered and approved uses established by appropriate authorities to minimize the possibility of environmental impacts beyond the product's intended application.

B1.5 Existing Steam Plants and Cooling Water Systems

DOE proposes to delete the words "within an existing building or structure," so as to include modifications to ponds, which may be outdoor components of cooling water systems. This proposed expansion of the scope of this categorical exclusion would address the need for improvements to an entire cooling water system, rather than only those parts of a system associated with structures. Based on DOE experience, minor improvements would not have the potential to cause significant impacts, provided the three limitations placed on the scale and type of improvements listed in the categorical exclusion are met.

DOE also proposes to add minor improvements of existing steam plants in the scope of the categorical exclusion. DOE's experience is that these actions, when subject to the three limitations placed on the scale and type of such improvements, fit appropriately within this class of actions and would not have the potential to cause significant impacts.

B1.7 Electronic Equipment

DOE proposes to update the existing categorical exclusion by adding examples of current technology and equipment that improve operational efficiency and stability of the nation's power grid, commonly referred to as "smart grid" technologies. Based on DOE's experience, such technology and equipment (*i.e.,* electricity transmission control and monitoring devices for grid demand and response) fit within the scope of this categorical exclusion.

B1.9 Airway Safety Markings and Painting

DOE proposes to include repair and in-kind replacement of lighting within the scope of this categorical exclusion. Within the context of this categorical exclusion, in-kind replacement is defined as replacement that does not result in a significant change in the expected useful life, design capacity (for example, energy output in lumens), function, or shielding of existing

lighting. The initial installation of such lighting would remain ineligible for categorical exclusion. In addition, DOE proposes to add wind turbines as structures similar to transmission lines and antenna structures to which the exclusion applies. DOE has determined that these proposed changes would not have the potential to cause significant impacts.

B1.11 Fencing

DOE proposes to clarify that the limitation in this categorical exclusion applies to fencing that would have the potential to cause significant impacts to surface water flow or wildlife populations or migration, as opposed to individual animal movements. Fencing can and probably often does affect individual movements, but such impacts on individual animals would not be considered significant unless the context and intensity of the impacts would have the potential to cause significant impacts to wildlife populations or migration.

B1.12 Detonation or Burning of Explosives or Propellants After Testing

DOE proposes to delete the restriction that explosives or propellants must have failed in outdoor tests and thus to expand the categorical exclusion to include explosives or propellants that failed in indoor tests. Whether the explosives or propellants were tested indoors or outdoors, the outdoor detonation or burning of those explosives or propellants would not have the potential to cause significant impacts. The phrase "otherwise not consumed in testing" refers to excess or residual explosive or propellant materials that remain after a test is completed. DOE also proposes to specify one type of permit under the Resource Conservation and Recovery Act that could be applicable.

In response to DOE's December 2009 Request for Information, one commentor requested that DOE specify the amount, types, and methods allowed for the activities included in this categorical exclusion. DOE has determined that the limits contained in this categorical exclusion do not require quantification and is not proposing any changes to the categorical exclusion in response to this comment.

B1.13 Pathways, Short Access Roads, and Rail Lines

DOE proposes to expand the scope of the categorical exclusion to include more projects related to transportation, recreation, and fitness (*e.g.,* pedestrian walkways and trails, bicycle paths, and small outdoor fitness areas). Other Federal agencies that have categorical exclusions for comparable projects are the Bureau of Indian Affairs, the Federal Highway Administration, and the Department of Homeland Security, and the experience of these agencies supports DOE's proposed expansion of this categorical exclusion.

DOE also proposes to include a condition in the categorical exclusion that the actions be consistent with existing rights-of-way and approved land use or transportation improvement plans. In addition, DOE proposes to replace "railroads" with the term "rail lines," adding branch or spur lines as examples. DOE's experience is that the construction of rail access to or within an existing site has generally occurred at a scale that is better characterized by these small-scale activities—branch line (a secondary rail line which may branch off a main line) and spur (a rail track on which cars are left for loading, unloading, or rail car storage).

In response to the DOE's December 2009 Request for Information, a commentor stated that road construction or expansion should not be the subject of a categorical exclusion. Further, the commentor expressed a concern about the potential for damage to "high quality, high priority habitat" as a result of constructing and operating roads and that use of such a categorical exclusion would limit or circumvent consideration of appropriate mitigation for habitat disturbance or loss. As outlined above, DOE's proposed amendments to categorical exclusion B1.13 require the construction, acquisition, and relocation of short access roads and rail lines to be consistent with applicable right-of-way conditions and approved land use or transportation improvement plans. Furthermore, consideration of the integral elements in applying this categorical exclusion addresses the possibility of damage to "high quality, high priority habitat" because, among other things, one of the "environmentally sensitive resources" to consider in those integral elements is habitat for Federally or State-listed species. (*See* the Technical Support Document.)

B1.15 Support Buildings

DOE proposes to expand the list of examples of support buildings and support structures to include those for "small-scale fabrication (such as machine shop activities and modular buildings), assembly, and testing of non-nuclear equipment or components." Such structures are comparable to, or smaller in scale than, other structures given as examples in the categorical exclusion, and DOE's experience at DOE sites is that siting, construction, and operation of these activities normally fit within the class of actions. Also, DOE proposes to further clarify the scope of the categorical exclusion by specifying that it excludes facilities for nuclear weapon activities.

B1.19 Microwave, Meteorological, and Radio Towers

DOE proposes to add "modification," "abandonment," and "removal" to the list of activities included in this class of actions in order to describe the complete life cycle of categorically excluded towers. In DOE's experience, modification, abandonment, and removal of these towers and associated facilities, when subject to the restrictions in this categorical exclusion, would have fewer impacts than construction and would not have the potential to cause significant impacts.

DOE proposes to include meteorological towers as an additional example of applicable facilities within this categorical exclusion because DOE has determined that the environmental impacts resulting from siting, construction, modification, operation, abandonment, and removal of meteorological towers would be similar to the impacts from these activities relating to microwave and radio towers already contained in the scope of the existing categorical exclusion.

DOE proposes to clarify the restriction in the existing categorical exclusion, by replacing "great visual value" with a more objective criteria of "governmentally designated scenic area" and cross-referencing to the relevant integral element (appendix B(4)(iv)).

B1.20 Protection of Cultural Resources, Fish and Wildlife Habitat

DOE proposes to add to the scope of this categorical exclusion by referencing activities taken to protect cultural resources and by including examples of those activities (fencing, labeling, or flagging). DOE's Power Marketing Administrations often engage in such activities for cultural and wildlife protection purposes, and these activities would not have the potential to cause significant impacts. DOE also proposes to include a condition in the categorical exclusion that the activities would be conducted in accordance with an existing natural or cultural resource plan, if any.

B1.23 Demolition and Disposal of Buildings

In response to DOE's December 2009 Request for Information, one commentor questioned whether there should be a

size limitation for the activities under this categorical exclusion. Further, the commentor asked how DOE takes into consideration possible contamination when applying this categorical exclusion. In response to these comments, DOE proposes to modify this categorical exclusion by adding a limitation that these activities could be categorically excluded only if there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

The application of this categorical exclusion is intended to be based on existing data and knowledge about historical uses of the area, including chemical and other processes employed. DOE has extensive experience (former Rocky Flats Site, Hanford Site, Idaho National Laboratory, and other sites) in determining the potential for release of harmful substances from activities through modeling and safety basis authorization documentation. Potential hazards are considered before taking action (for example, demolition actions), and monitoring is conducted, as appropriate, to verify that there are no harmful releases of radiological or hazardous materials. Potential for releases can reliably be determined through site inventories, the use of well-established release models, and established best practices.

B1.24 Property Transfers

As discussed under categorical exclusion A7 (above), DOE proposes to delete A7 and incorporate its key components, including transfers of personal property (equipment and materials), within B1.24. By doing this, DOE makes categorical exclusion determinations for property transfers subject to documentation and online posting. DOE proposes to remove the reference to "uncontaminated" as unnecessary given the incorporation of the substance of this limitation in the revised categorical exclusion.

DOE proposes to delete the phrases "there would not be any lessening in quality or increases in volumes, concentrations, or discharge rates, of wastes, air emissions, or water effluents" and "environmental impacts would generally be similar to those before the transfer" as potentially inconsistent. DOE proposes to replace these phrases with "there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment" and "would not have the potential to cause a significant change in impacts from the transfer." Such terminology will, in DOE's experience, ensure that any property transfers under this categorical exclusion would not have the potential to cause significant impacts.

In response to DOE's December 2009 Request for Information, a commentor expressed concern that DOE, in making land transfer decisions under existing categorical exclusion A7, would be "circumventing local authority" and "normal land use planning and zoning processes." The potential applicability of such authority and processes to a potential land transfer would be addressed on a case-by-case basis.

B1.25 Property Transfers for Cultural Resources Protection, Habitat Preservation, and Wildlife Management

DOE proposes to include in B1.25 actions undertaken to protect cultural resources. DOE's Power Marketing Administrations often engage in property transfers for cultural protection purposes. Based on this experience, DOE finds property transfers intended for protecting cultural resources normally would not have the potential to cause significant impacts. Further, DOE proposes to remove the limitation that only associated buildings supporting certain purposes are to be transferred with property under this categorical exclusion, because the existing purpose of structures present on a property to be transferred for wildlife or cultural resource purposes is unrelated to environmental impacts associated with such transfer.

Also, for the reasons discussed for categorical exclusion B1.24, above, DOE proposes to eliminate the references to "uncontaminated," but include a limitation on actions subject to categorical exclusion B1.25, that there would be no potential for release of a substance at a level or in a form, that could pose a threat to public health or the environment.

B1.29 Disposal Facilities for Construction and Demolition Waste

DOE proposes to add "expansion" and "modification" to the list of activities included in this categorical exclusion in order to include all aspects of the life cycle of the disposal facilities. In DOE's experience, expansion and modification actions, when subject to the limitations expressed in this categorical exclusion, would have fewer impacts than construction, and would not have the potential to cause significant impacts.

B1.30 Transfer Actions

DOE proposes to modify this categorical exclusion (based on its experience transferring materials and equipment) to remove the condition that the amounts of materials, equipment, or waste being transferred must be "small and incidental" to the amount of such material at the receiving site. Instead, DOE proposes to add a condition that the receiving site has existing storage capacity and management capability for the material.

In addition, DOE proposes to limit use of the categorical exclusion to, as appropriate, facilities and operations that are already permitted, licensed, and approved. That is, this proposed categorical exclusion would not apply to circumstances where the receiving site requires a permit or license amendment or variance from its existing approvals in order to receive or manage the materials, and it also would not apply to circumstances where the receiving facilities are not yet completed and operational.

DOE has decades of experience transporting materials, including various types of radioactive materials and waste, and has completed NEPA reviews of such transportation under many different scenarios. DOE NEPA reviews of such transfers consistently show that these actions would not have the potential to cause significant impacts. Nevertheless, DOE will continue to analyze transportation impacts in EAs and EISs where the scope of the proposed action presents the potential for significant impacts or where the proposed action fails to meet the conditions contained in this categorical exclusion. (*See* the Technical Support Document.)

B1.31 Installation or Relocation of Machinery and Equipment

DOE proposes several changes to this categorical exclusion. DOE proposes to add "installation" to the list of actions, which is now limited to the "relocation" of machinery and equipment; explicitly include "operation" of installed or relocated machinery and equipment; add "manufacturing machinery" in the list of examples of machinery and equipment; and clarify that the scope of the categorical exclusion includes modifications to an existing building, within or contiguous to a previously disturbed or developed area, provided that the modifications do not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts. DOE also proposes to delete the restriction that uses of the installed or relocated equipment be similar to their former uses, because it is duplicative of the limitation that the actions be consistent with the general missions of the receiving structure. DOE has determined

that these proposed changes would not have the potential to cause significant impacts.

In response to DOE's December 2009 Request for Information, one commentor suggested that DOE categorically exclude projects (*e.g.,* residential, commercial, and industrial) that involve retrofitting or retooling of existing structures, provided that the projects do not include new construction, disturb previously undisturbed areas, or require new or significantly modified environmental permits. Further, the commentor explained that such a categorical exclusion would help facilitate alternative energy manufacturing projects (*e.g.,* batteries, solar equipment, and wind turbines) that are proposed to be located in existing manufacturing/industrial facilities and complexes. As described above, DOE has proposed several changes to this categorical exclusion that address these comments.

B1.32 Traffic Flow Adjustments

Because DOE proposes to broaden the scope of this categorical exclusion to include actions off DOE sites (*see* Recurring Proposals, Section IV.B), DOE proposes to require that the activities in this categorical exclusion occur within an existing right-of-way and be consistent with approved land use or transportation improvement plans. A "traffic flow adjustment" is a change to the flow of traffic on an existing street or road. Statewide and Metropolitan Transportation Planning processes are regulated by the U.S. Department of Transportation (23 CFR part 450, subparts B and C, respectively) and result in approved, legally-binding, multiyear plans that stipulate transportation actions that may be carried out in a given area and over a given length of time.

B1.33 Stormwater Runoff Control

DOE proposes a new categorical exclusion for stormwater runoff control practices that reduce stormwater runoff and maintain natural hydrology. The actions included in the proposed categorical exclusion are found in Environmental Protection Agency's Guidance No. EPA 841–B–09–001, Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act (December 2009). Based on the experience of Federal agencies, the opinions of subject matter experts, and private sector experience developing and deploying stormwater runoff control and low impact development practices, the types of actions included in this categorical exclusion are, in most cases, mitigation or best management practices commonly employed to protect surface water quality and to reduce erosion associated with runoff. DOE has concluded that such activities would not have the potential to cause significant environmental impacts. (*See* the Technical Support Document.)

B1.34 Lead-Based Paint

DOE proposes a new categorical exclusion for the containment, removal, and disposal of lead-based paint. This proposed categorical exclusion is based on laws and regulations governing such activities for buildings and other structures. Use of the proposed categorical exclusion would require adherence to applicable laws and regulations. Further, the creation of this categorical exclusion is supported by existing lead paint removal categorical exclusions from the Environmental Protection Agency and the Department of the Army. DOE has determined that such paint removal actions would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B1.35 Drop-Off, Collection and Transfer Facilities for Recyclable Materials

DOE proposes a new categorical exclusion for the siting, construction, modification, and operation of a recycling or compostable material drop-off, collection, and transfer station on or contiguous to developed or previously disturbed land and in an area where such a facility would be consistent with existing zoning requirements. The Department of Homeland Security and the Department of Agriculture's Rural Utilities Service have existing categorical exclusions for similar facilities. Specifically, Homeland Security has a categorical exclusion for the recycling of non-hazardous materials from routine/operational activities, and the Rural Utilities Service has a categorical exclusion for the construction of facilities for the transfer of waste that will be recycled or stored. DOE has determined that the limitations placed on recycling stations proposed in this new categorical exclusion would ensure that such actions would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B1.36 Determinations of Excess Real Property

DOE proposes a new categorical exclusion for determinations that real property is excess to the needs of the Department. This proposed categorical exclusion includes associated reporting of such determinations to the General Services Administration and the Bureau of Land Management, as appropriate. DOE would allow the categorical exclusion of reporting of excess property, but the actual disposal of real property is not included in the scope of this proposed categorical exclusion.

Other Federal agencies (*e.g.,* Department of Homeland Security) have existing categorical exclusions for determinations of excess real property and, based on a review of these categorical exclusions, DOE has determined that it would be conducting the same or similar activities under similar circumstances. Accordingly, DOE has concluded that its activities under this proposed categorical exclusion would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

Categorical Exclusions Applicable to Safety and Health (B2)

B2.1 Workplace Enhancements

DOE proposes to clarify that improvements to enhance workplace habitability may include installation of equipment necessary for the improvements by adding "installation" before its examples of improvements. DOE has determined that installation and subsequent operation of equipment necessary for improvements to workplace habitability would not have the potential for significant environmental impacts.

B2.2 Building and Equipment Instrumentation

DOE proposes clarifying the scope of the existing categorical exclusion by providing additional examples of instrumentation (water consumption monitors and controls).

B2.4 Equipment Qualification

DOE proposes to delete the reference to DOE Order 5480.6 ("Safety of DOE owned Nuclear Reactors") because it has been cancelled. Actions previously encompassed by the Order are still performed by DOE and other organizations to qualify equipment for use and are still appropriate for a categorical exclusion, and DOE proposes to provide examples of such actions. Calibration of sensors and diagnostic equipment, crane and lift-gear certifications, and high efficiency particulate air ("HEPA") filter testing and certifications, to name a few, are activities that DOE proposes to list as examples in the categorical exclusion. These types of actions have been performed routinely by DOE, other

Federal agencies, and private entities. In DOE's experience, these activities would not have the potential to cause significant impacts.

B2.6 Recovery of Radioactive Sealed Sources

DOE proposes changes to this categorical exclusion to better reflect the current scope of DOE's sealed source recovery activities. At the time the existing categorical exclusion was established, the focus of DOE's efforts was primarily the recovery of DOE-owned radioactive materials that had been loaned or leased, such as to universities for research, and a small number of sealed sources. DOE later established the Off-Site Source Recovery Project (OSRP) to reflect an increased emphasis on recovery of sealed sources from Nuclear Regulatory Commission (NRC) and Agreement State licensees in response to requests from the NRC and other Federal or State agencies. After 2001, DOE further expanded the scope of OSRP to focus on the recovery of sources with a wider variety of radioisotopes of concern from a public health, safety, or national security perspective. Due to their high activity and portability, many sealed sources could be used either individually or in aggregate in radiological dispersal devices commonly referred to as "dirty bombs." DOE prioritizes the recovery of radioactive sealed sources based on threat reduction criteria developed in coordination with the NRC. DOE's experience with the recovery of more than 25,000 radioactive sealed sources since 1979 demonstrates that these activities are routinely conducted and do not have the potential to cause significant environmental impact.

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

These proposed changes would reflect changes in DOE's source recovery activities since the existing categorical exclusion was formulated. First, recovery activities are no longer limited to requests from NRC or other Federal or State agencies. DOE also considers requests for source recovery from foreign governments and private parties, including private parties in foreign countries. Also, DOE provides financial and technical support to third parties (principally the Conference of Radiation Control Program Directors) for source recovery activities. Second, the scope of DOE activities is not limited to materials or licensees addressed in 10 CFR 51.22(14).

The proposed changes also would remove the reference to certain items that are not sealed sources (such as uranium shielding material and packaged radioactive waste not exceeding 50 curies). DOE has determined that the packaging, transportation, and storage of these types of materials normally would fit within categorical exclusion B1.30, Transfer actions. (*See* the Technical Support Document.)

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

B3.1 Site Characterization and Environmental Monitoring

DOE proposes several changes to categorical exclusion B3.1. DOE proposes to limit the scope of this categorical exclusion to terrestrial characterization and monitoring, as DOE is proposing a new categorical exclusion for such actions in salt water and freshwater environments (categorical exclusion B3.16 below). DOE also proposes to limit categorically excluded activities to those that would not have the potential to cause significant impacts from ground disturbance. Based on a project description for seismic surveying submitted by a commentor in response to DOE's December 2009 Request for Information, and after considering the potential scale of seismic surveying projects, DOE proposes to also limit the scope of the categorical exclusion so as not to include large-scale reflection or refraction testing with regard to seismic techniques.

One commentor responding to DOE's Request for Information suggested that DOE's list of categorical exclusions match all the categorical exclusions currently being used by the Bureau of Land Management and the U.S. Forest Service, particularly for geophysical surveys for exploration of geothermal resources. Another commentor suggested that DOE include a categorical exclusion for terrestrial seismic survey activities. In response to both comments, DOE notes that item (a) of the existing B3.1 categorical exclusion lists geological, geophysical, and geochemical surveying and mapping, including seismic surveying, as examples of actions in the scope of the categorical exclusion. Thus DOE determined that it was not necessary to propose new categorical exclusions in response to these comments.

DOE proposes to clarify the scope of the existing categorical exclusion, however, by providing additional examples of actions that DOE's experience has demonstrated properly fit within this class of actions. In response to the suggestion above and from another commentor concerning geothermal resources, DOE proposes to include temperature gradient surveying as an example of geophysical surveying activities encompassed within item (a). DOE also proposes to add underground reservoir response testing for item (d). The potential impacts of aquifer and reservoir response testing are well-known and normally insignificant; underground reservoir response testing could help determine, for example, whether further study of a reservoir for carbon sequestration purposes is warranted. DOE also proposes to add drilling using truck or mobile-scale equipment and modification, use, and plugging of boreholes as representative examples of small-scale drilling activities under item (f). DOE experience indicates that these changes would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B3.3 Research Related to Conservation of Fish, Wildlife, and Cultural Resources

DOE proposes to modify this categorical exclusion to include actions undertaken to protect cultural resources. These types of actions (such as walking a site, visually surveying, and digging small, shallow test holes with hand tools) are similar to types of actions undertaken for wildlife protection and would not have the potential to cause significant impacts.

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

DOE proposes changes to this categorical exclusion for clarity. First, DOE proposes to delete the phrase "indoor bench-scale research," which DOE views as encompassed within "small-scale research and development," which is more easily understood. DOE also proposes to define "demonstration actions" in the context of this categorical exclusion and the related EA class of actions C12 as "actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment. Demonstration actions frequently follow research and development and pilot projects that are directed at establishing proof of

concept." This definition reflects DOE's understanding of the delineation between pilot projects and demonstration projects that would be relevant to the scope of this categorical exclusion.

B3.7 New Terrestrial Infill Exploratory and Experimental Wells

DOE proposes to modify the scope of the categorical exclusion. DOE proposes to expand the categorical exclusion by providing additional examples of resources (brine, carbon dioxide, coalbed methane, gas hydrate) for which exploratory or experimental wells may be drilled. For carbon sequestration wells, DOE proposes to list examples of possible uses, including, but not limited to, the study of saline formations, enhanced oil recovery, and enhanced coalbed methane extraction. DOE also proposes to expand the locations where the infill wells may be drilled (now only in fields with operating wells) to fields with properly abandoned wells or unminable coal seams.

DOE proposes to limit this categorical exclusion to the terrestrial environment and to require that characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers.

DOE experience with new infill exploratory and experimental (test) oil, gas, and geothermal wells continues to show that they would not have the potential to cause significant impacts. DOE experience also shows that the potential impacts of infill exploratory and test wells for substances such as brine, carbon dioxide, coalbed methane, and gas hydrate would be similar and would not have the potential to cause significant impacts under the limitations of this proposed categorical exclusion. Based on DOE's experience, the proposal to expand the scope of this categorical exclusion, subject to the proposed additional limitations, would not have the potential to cause significant impacts.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B3.8 Outdoor Terrestrial Ecological and Environmental Research

DOE is proposing two new categorical exclusions covering small-scale research activities in salt water and freshwater environments, and those two categorical exclusions limit the types of activities and their location specifically to protect aquatic environments. (*See* B3.16 for research activities in salt water and freshwater environments and B5.25 for small-scale renewable energy research and development and pilot projects in salt water and freshwater environments.) DOE is therefore proposing to clarify that the types of covered actions included in B3.8 are solely limited to terrestrial environments.

DOE is also proposing to clarify that this categorical exclusion includes small-scale biomass and biofuels research. Given the current focus on the development of biomass and biofuel production and the need for proof of concept research in this area, DOE proposes to state explicitly that small test plots for energy-related biomass or biofuels research (including the use of genetically engineered plants) are within the scope of this categorical exclusion.

Research using genetically engineered plants to be grown specifically for biomass production has reached the point where field tests are being performed outdoors for proof of concept purposes. At the same time, residues from biotechnology crops such as corn and soybeans are being tested as feedstocks for biofuel production. Such plants are currently regulated by the U.S. Department of Agriculture and these existing regulatory regimes have analyzed the environmental impacts resulting from the experimental and commercial growth of these crops, so there is no need for DOE to analyze separately these impacts to show their insignificance. DOE has determined that a categorical exclusion would be appropriate for small field tests, provided that the applicant already has all the necessary authorizations from the U.S. Department of Agriculture and received all necessary permissions to proceed with the trial. (*See* the Technical Support Document.)

B3.9 Projects To Reduce Emissions and Waste Generation

This categorical exclusion was initially created for demonstration actions under DOE's Clean Coal Technology Demonstration Program. However, after many years of experience with projects that reduce emissions and waste generation at existing fossil fuel facilities and, more recently, at alternative energy facilities, DOE is proposing modifications to the categorical exclusion for these activities regardless of whether or not they are part of DOE's Clean Coal Technology Demonstration Program. Specifically, DOE is proposing to expand the scope of this categorical exclusion to include projects to reduce emissions and waste generation at alternative fuel (*e.g.,* biomass) facilities, in addition to fossil fuel facilities. As a result, DOE is proposing conforming revisions throughout this categorical exclusion (*e.g.,* replacing "coal" with "fuel"). Further, DOE proposes to define fuel to include "coal, oil, natural gas, hydrogen, syngas [synthesis gas], and biomass," and specifically to exclude nuclear fuels.

Based on its experience with these activities, DOE has found that projects that demonstrate ways to reduce emissions and waste generation at existing fossil or alternative fuel combustion or utilization facilities would not have the potential to cause significant impacts. (*See* the Technical Support Document.) DOE also proposes to remove from categorical exclusion B3.9(a) the 20 percent limitation on test treatment of the throughput product (solid, liquid, or gas) generated at existing, fully operational fuel combustion or utilization facilities. Although test treatment on a fraction of the throughput product (sometimes referred to as "slipstream testing") may be helpful in evaluating new treatment technologies, DOE experience shows that test treatment of the entire throughput product stream may be needed to provide an adequate demonstration of the commercial viability of technologies that could reduce emissions from existing facilities. DOE analyses and experience show that such test treatment normally would not have the potential to cause significant impacts under the limitations of this categorical exclusion.

Further, DOE proposes to remove from B3.9(c) the two-year limitation on the addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances at existing facilities. In DOE's experience, the potential for significant impacts of such projects does not depend on the duration of the demonstration. Moreover, two years may be too short a period of time for an adequate demonstration of equipment whose continued use is likely to be beneficial.

In addition to the provisions of B3.9(c), DOE proposes explicitly to include the addition or modification of equipment for capture and control of carbon dioxide or other regulated substances, provided that adequate infrastructure is in place to manage such substances. The use of such equipment offers the potential for environmental benefits by providing needed information on the costs, operability, and reliability of capture technologies that could enable their future deployment in existing conventional coal and other fuel utilization facilities. DOE's knowledge and experience with the physical or chemical unit processes

that could capture carbon dioxide at existing facilities show such processes would not have the potential to cause significant impacts under the conditions specified in the proposed modification of this categorical exclusion.

B3.10 Particle Accelerators

DOE proposes to modify this categorical exclusion by more clearly specifying the operating parameters for particle accelerators. This categorical exclusion currently has only one limiting parameter (primary beam energy less than approximately 100 million electron volts (MeV)). DOE's proposed modification would provide two additional limiting parameters (average beam power less than approximately 250 kilowatts (kW) and average current of 2.5 milliamperes (mA)). The voltage would be allowed to increase, as long as the resulting average current was 2.5 mA. Such result could be accomplished by lowering the power (wattage). Alternately, the wattage could increase if voltage decreased to result in an average current of 2.5 mA. DOE has determined that the use of three parameters will provide flexibility in the application of the categorical exclusion, but the actions still would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

B3.11 Outdoor Tests and Experiments on Materials and Equipment Components

The existing categorical exclusion precludes DOE from categorically excluding outdoor burn, impact, drop, puncture, and similar tests involving radiological sources, whether or not they were encapsulated. Because encapsulated sources can be used safely in these types of tests, DOE proposes to expand the scope of the categorical exclusion to cover their use under certain conditions. Specifically, DOE is proposing that nondestructive actions such as detector/sensor development and testing and first responder field training, using encapsulated sources that contain source, special nuclear, or byproduct materials, be included in the scope of this categorical exclusion. DOE experience demonstrates that such activities can be done safely and would not have the potential to cause significant impacts.

B3.14 Small-Scale Educational Facilities

DOE proposes a new categorical exclusion for the siting, construction or modification, operation, and decommissioning of small-scale educational facilities, including, but not limited to, conventional teaching laboratories, libraries, classroom facilities, auditoriums, museums, visitors centers, exhibits, and associated offices within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Based on DOE's experience, and supported by past NEPA analyses, such activities, under the limitations provided, would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

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

DOE proposes a new categorical exclusion for the siting, construction, or modification, operation, and decommissioning of facilities for indoor small-scale research and development and small-scale pilot projects using nanoscale materials, in accordance with applicable requirements necessary to ensure the containment of any biohazardous materials. Construction or modification would be within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). This proposed categorical exclusion includes activities that are already in the scope of B3.6 (Small-scale research and development, laboratory operations, and pilot projects); however, as part of its rulemaking effort, DOE finds it appropriate to propose a categorical exclusion that specifically addresses nanoscale activities.

DOE has extensive small-scale or laboratory-scale experience working with engineered (intentionally created, rather than natural or incidentally formed) nanoscale materials. For example, DOE is participating in interagency workgroups, such as the National Nanotechnology Initiative (*http://www.nano.gov/html/about/home_about.html*), that seek to promote responsible research and development of nanotechnology, ensure that the important benefits to environmental protection that nanotechnology may offer are realized, and better understand any potential risks from exposure to nanomaterials in the environment. DOE conducts basic research and development that supports the National Nanotechnology Initiative at its nanoscale research centers, in accordance with DOE Policy 456.1 (DOE P 456.1, Secretarial Policy Statement on Nanoscale Safety), and best management practices and policies that ensure protection of workers and the environment, such as DOE Nanoscale Science Research Centers: Approach to Nanomaterials ES&H, (Rev3a, May 2008) ("Approach to Nanomaterial ES&H") (*http://orise.orau.gov/ihos/Nanotechnology/nanotech_DOE_Nanoscale_SC.html*). As explained in "Approach to Nanomaterial ES&H," "laboratory-scale" research excludes those activities whose function is to produce commercial quantities of materials, as defined in 29 CFR 1910.1450(b)(2), "Occupational Exposure to Hazardous Chemicals in Laboratories, Definitions."

Laboratory-scale experimentation with nanoscale materials has been the subject of four DOE EAs, in which the Department has analyzed the construction and operation of nanomaterials facilities. DOE has determined that, with appropriate controls in place (as specified in the proposed categorical exclusion and described above), these activities would not have the potential to cause significant impacts. (*See* the Technical Support Document.)

DOE is particularly interested in receiving comments on this proposed categorical exclusion.

B3.16 Research Activities in Salt Water and Freshwater Environments

DOE proposes a new categorical exclusion for small-scale, temporary surveying, site characterization, and research actions to be performed in salt water and freshwater environments. DOE proposes limiting the actions covered by this categorical exclusion to the acquisition of rights-of-way, easements, and temporary use permits; data collection, environmental monitoring, and nondestructive research programs; resource evaluation activities; collection of various types of data and samples; installation of monitoring and recording devices; installation of equipment for flow testing of existing wells; and ecological and environmental research in a small area.

DOE proposes specifically to exclude the construction or installation of permanent facilities or devices and to exclude the drilling of resource exploration or extraction wells. In addition, DOE has included several limits on the type, scope, and location of covered actions to protect the aquatic environment from potential significant impacts.

DOE proposes to limit the covered actions in this categorical exclusion through the following conditions. Covered actions under this categorical exclusion would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and

best management practices. Furthermore, none of the above activities would occur within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a recognized area of high biological sensitivity, or outside those areas if the activities would have the potential to cause significant impacts within those areas. Additionally, no permanent facilities or devices would be constructed or installed. The categorical exclusion also lists other factors, specific to aquatic environments, to be considered by proponents of covered actions before applying this categorical exclusion to ensure that the activities would not have the potential to cause significant impacts.

DOE has determined that, subject to the proposed limitations, the activities would not have the potential to cause significant impacts. DOE is particularly interested in receiving comments on this categorical exclusion due to heightened sensitivity to activities in the salt water environment in light of recent oil-related incidents. (*See* the Technical Support Document.)

Categorical Exclusions Applicable to Power Resources (B4)

DOE proposes to make a number of recurring changes to the categorical exclusion provisions applicable to power resources. In reference to adding electric power resources (such as wind farms) into an electric power system, DOE proposes to use the term "interconnection" rather than the term "integration" now used in its existing classes of actions. "Interconnection" is the current term used in the electric transmission field for such actions. DOE, therefore, proposes changes to the following provisions: B4.1, B4.11, B4.12, B4.13.

DOE proposes to delete references to "main transmission system" in its existing classes of actions as unnecessary because DOE actions would only apply to its own transmission system. DOE, therefore, proposes changes to the following provisions: B4.11, B4.12.

DOE proposes to add pipeline rights-of-way as locations where actions could occur that are now categorically excluded or proposed for categorical exclusion in previously developed or disturbed transmission line rights-of-way. The impacts from siting, constructing, operating, or decommissioning actions in these linear rights-of-way are essentially similar. DOE, therefore, proposes changes to the following provisions: B4.7, B4.12. (DOE also proposes a similar change to EA class of actions C4.)

B4.1 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

DOE proposes to simplify the description of the scope of this categorical exclusion, without changing the scope. The categorical exclusion would still apply to electric power contracts, policies, and plans that do not involve a new generation resource and do not involve changes in the normal operating limits of existing generation resources. DOE proposes to delete the existing reference to "excess electric power" as unnecessary as it simply applies to power that is available for transmission. DOE is proposing changes to its corresponding classes of actions for EAs (C7) and EISs (D7), as discussed below in Section IV.F and IV.G, respectively.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B4.4 Power Marketing Services and Activities

DOE proposes to clarify this categorical exclusion by adding "power management activities" to its existing categorical exclusion for power marketing services to indicate that the activities that are appropriately categorically excluded do not necessarily need to be taken in the context of marketing power. The existing categorical exclusion was established based on the experience of DOE's power marketing administrations, but has been appropriately applied recently by other elements of the Department, for example, in evaluating actions under the American Recovery and Reinvestment Act. The proposed change would provide transparency to DOE's application of this categorical exclusion, and DOE has determined that the covered actions would not have the potential to cause significant impacts.

B4.6 Additions and Modifications to Transmission Facilities

DOE proposes to add "load shaping projects (such as the installation and use of flywheels and battery arrays)" to the list of example actions in this categorical exclusion. With the wider deployment and accompanying improvement in load shaping technologies, DOE's experience indicates that these actions fit within the scope of this categorical exclusion.

B4.7 Fiber Optic Cable

DOE proposes that certain actions associated with adding fiber optic cable to transmission facilities (such as vaults and pulling and tensioning sites) be within the scope of this categorical exclusion with certain limitations. DOE has found that it is often necessary to place vaults and pulling and tensioning sites outside of rights-of-way. DOE has determined that, if vaults or such sites are in nearby previously disturbed or developed areas, they would not have the potential to cause significant environmental impact.

B4.9 Multiple Use of Transmission Line Rights-of-Way

DOE proposes to add examples of crossing agreements affecting a transmission facility's rights-of-way that DOE has determined are in the scope of this categorical exclusion, namely natural gas pipelines, communications cables, and roads.

B4.10 Removal of Electric Transmission Lines and Substations

DOE proposes to add "abandonment" and "restoration" of rights-of-way to the list of activities in this categorical exclusion, because DOE has determined that these actions, which generally follow the removal of electric transmission lines and substations, would not have the potential to cause significant impacts.

B4.11 Electric Power Substations and Interconnection Facilities

DOE proposes to add interconnection facilities to its categorical exclusion for construction or modification of electric power substations because the facilities have similar equipment and function. Substations switch, step down, or regulate voltage of electricity being transmitted, and may serve as controls and transfer points on a transmission system; interconnection facilities add electric power resources to transmission systems through similar functions.

DOE proposes that actions under this categorical exclusion, instead of being limited to those that do not interconnect a new generation resource (under the existing categorical exclusion), be limited to interconnecting new generation resources that meet two conditions: The new generation resource (1) would be eligible for categorical exclusion under the DOE NEPA regulations (that is, under proposed categorical exclusions for combined heat and power or cogeneration systems (B5.14), solar energy (B5.16 and B5.17), wind energy (B5.18), biomass power plants (B5.20), methane gas recovery and utilization systems (B5.21) and drop-in hydroelectric systems (B5.24)), and (2) would be equal to or less than 50

average megawatts (which is considered a major resource under the Northwest Power Act).

DOE is also proposing to delete actions regarding construction, upgrading, or rebuilding transmission lines from this categorical exclusion because substation actions do not necessarily involve transmission line actions. Categorically excluded transmission line actions are addressed in proposed B4.12 and B4.13.

DOE is proposing to delete the restriction that facilities under this categorical exclusion be limited to no more than 230 kilovolts because DOE has determined that voltage of a substation or interconnection facility is not a determinant of the potential for significant environmental impacts.

In response to the Department's December 2009 Request for Information, one commentor suggested that DOE categorically exclude modifications and upgrades to existing substations to accommodate electricity generated from renewable energy sources, to the extent that an upgrade does not increase the overall capacity of the substation or the disturbed areas associated with the substation, noting that additional capacity is needed at substations throughout the electric grid. DOE notes that it is proposing to delete the restriction that facilities under this categorical exclusion be limited to no more than 230 kilovolts.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B4.12 Construction of Transmission Lines

DOE proposes to incorporate within the scope of categorical exclusion B4.12 an action currently addressed in the existing categorical exclusion B4.11, that is "relocation of existing electric transmission lines approximately 20 miles in length or less." By doing so, transmission line construction and rebuilding activities will be consolidated in categorical exclusions B4.12 and B4.13, rather than also included in categorical exclusion B4.11, which predominantly relates to substations and interconnection facilities. DOE's long-term experience with electric transmission line construction indicates that the approximately 10-mile limit for categorical exclusion of transmission line construction outside of a previously disturbed or developed right-of-way, and the approximately 20-mile limit for categorical exclusion of transmission line in a previously disturbed right-of-way, have been reliable guides to the appropriate level of NEPA review for the actions.

DOE proposes that actions under this categorical exclusion, instead of being limited to those that do not interconnect a new generation resource (as under the existing categorical exclusion), be limited to interconnecting new generation resources that meet the two conditions discussed with respect to categorical exclusion B4.11.

In response to the Department's December 2009 Request for Information, one commentor suggested that the addition of transmission lines to existing transmission line or pipeline rights-of-way be categorically excluded. The commentor noted that additional transmission capacity is required to move electricity generated by renewable resources to population centers and that adding that capacity in an existing right-of-way will have very little environmental impact. DOE agrees and does not restrict the addition of transmission lines to an existing transmission or pipeline right-of-way if the limitations specified in the categorical exclusion are met.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B4.13 Upgrading and Rebuilding Existing Transmission Lines

DOE proposes to continue to categorically exclude the upgrading and rebuilding of existing transmission lines of approximately 20 miles in length or less (including minor relocations of small segments of such lines), as under the existing categorical exclusion B4.13. DOE also proposes to categorically exclude the use of the upgraded or rebuilt lines for the interconnection of new generation resources that meet the two conditions discussed with respect to categorical exclusion B4.11. Further, DOE proposes to delete the purposes for which minor relocations of the existing line may occur.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

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

B5.1 Actions To Conserve Energy or Water

In B5.1, DOE proposes four types of changes to the existing categorical exclusion: (1) Adding examples to better represent the type of energy conservation actions, including those for which DOE provides financial assistance, that fall within the scope of this categorical exclusion, (2) adding actions to conserve water, (3) deleting reference to renewable energy research and development because DOE is proposing separate categorical exclusions for those actions (under B5.15 and B5.25 below), and (4) including new B5.1(b).

In B5.1(a), DOE proposes to clarify the scope of the categorical exclusion by providing additional examples of conservation actions similar in nature to the existing examples, such as weatherization, energy efficiency for vehicles and transportation (such as fleet change out), power storage (such as flywheels and batteries, generally less than 10 MW), and transportation management systems (such as traffic signal control systems). DOE's experience with these proposed covered actions demonstrate that they fit within the scope of the categorical exclusion. In addition, to ensure that the categorical exclusion would not encompass actions with potentially significant impacts on the human environment, DOE proposes to clarify that the actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Also, DOE proposes to clarify that the categorical exclusion could also involve actions in the academic or institutional sectors.

In B5.1(b), DOE proposes to include rulemakings that establish energy conservation standards in the scope of this categorical exclusion. DOE has prepared numerous EAs and FONSIs for rulemakings that establish energy conservation standards for consumer products and industrial equipment and has determined that, within the limitations on the scope of actions that could be taken under the proposed categorical exclusion, establishment of such standards would not have the potential to cause significant impacts. The limitations on scope of actions concern changes in manufacturing infrastructure, uses of available resources, disposal, and energy consumption. (*See* the Technical Support Document.)

DOE is particularly interested in receiving comments on B5.1(b) of this categorical exclusion.

B5.2 Modifications to Pumps and Piping

DOE proposes to broaden the scope of this categorical exclusion by not limiting it to oil, gas, and geothermal facilities, but by providing examples of materials that could be conveyed by pump and piping configurations (that is, by adding as examples, air, brine, carbon dioxide, produced water, steam, and water to the currently listed materials). DOE also proposes to clarify

that the existing reference to "gas" includes natural gas, hydrogen gas, and nitrogen gas. DOE has determined that the environmental impacts resulting from modifications to pump and piping configurations on systems conveying such materials would be similar to impacts from modifications to the pump and piping configurations on systems carrying the existing categorically excluded materials. DOE's experience with these materials has demonstrated that modifying such pump and piping configurations would not have the potential to cause significant impacts.

B5.3 Modification or Abandonment of Wells

DOE proposes to broaden the scope of this categorical exclusion for storage and injection wells by not limiting the wells to those for oil, brine, geothermal, and gas wells, but by adding these wells as examples: Carbon dioxide, coalbed methane, and gas hydrate wells. DOE's experience has demonstrated that actions associated with the modification and abandonment (including plugging) of carbon dioxide and similar wells normally do not have the potential to cause significant impacts. DOE is proposing to limit use of the categorical exclusion to situations where there is low potential for seismicity, subsidence, and contamination of freshwater aquifers and where the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. DOE is also proposing to clarify that "gas" in the existing categorical exclusion refers to natural gas.

B5.4 Repair or Replacement of Pipelines

DOE proposes to broaden the scope of this categorical exclusion by not limiting it to actions including oil, produced water, brine, and geothermal pipelines, but also to exclude repair and replacement actions on pipelines carrying materials similar in nature (such as air, carbon dioxide, hydrogen gas, natural gas, nitrogen gas, steam, and water). In DOE's experience, the conveyance of the proposed additional materials similar to those currently categorically excluded normally does not pose a potential to cause significant impacts. DOE also proposes to clarify that upgrading, rebuilding, and minor relocation may be involved in repair or replacement of pipelines. Further, DOE proposes to list Army Corps of Engineer permits as one type of requirement that may apply to these actions, while also acknowledging that there may be others.

B5.5 Short Pipeline Segments

DOE proposes to broaden the scope of this categorical exclusion by not limiting it to oil, steam, geothermal or natural gas resources, but by providing additional examples (air, brine, carbon dioxide, hydrogen gas, nitrogen gas, produced water, and water) of materials potentially conveyed by pipeline segments under this categorical exclusion. The potential impacts resulting from pipelines conveying the additional materials would be similar to those from the existing categorically excluded materials. DOE's experience conveying these materials has demonstrated that they would not have the potential to cause significant impacts.

DOE further proposes to remove the limitation that pipelines must be within a single industrial complex. DOE proposes to remove that limitation because potential impacts do not depend on whether the action is conducted within an arbitrary boundary. DOE is therefore proposing to replace the reference to "DOE facilities" with references to "existing source facilities" and "existing receiving facilities." Categorically excluded actions are limited to short pipelines, which DOE proposes be generally less than 20 miles in length in previously developed or disturbed areas.

B5.6 Oil Spill Cleanup

DOE is proposing to clarify that the National Oil and Hazardous Substances Pollution Contingency Plan is not necessarily the only applicable requirement for oil spill cleanup by making this an example of an applicable requirement.

B5.7 Import or Export Natural Gas, With Operational Changes

DOE proposes to add disapprovals to the current scope (approvals) for consistency with existing classes of actions C13, D8, and D9.

B5.8 Import or Export Natural Gas, With New Cogeneration Powerplant

DOE proposes to add disapprovals to the current scope (approvals) for consistency with existing classes of actions C13, D8, and D9. DOE proposes to include in the scope of this categorical exclusion pipelines generally less than 20 miles in length in previously disturbed or developed rights-of-way.

B5.10 Certain Permanent Exemptions for Existing Electric Powerplants

DOE proposes to delete two references to provisions of the Powerplant and Industrial Fuel Use Act as those provisions have been deleted from the Act.

B5.12 Workover of Existing Wells

DOE proposes to broaden the scope of this categorical exclusion by not limiting it to oil, gas, and geothermal wells, but by providing additional examples (brine, carbon dioxide, coalbed methane and gas hydrate) of wells that could be restored to functionality. DOE's experience with these materials has demonstrated that the potential impacts would be similar in nature to the impacts of wells using materials named in the existing categorical exclusion and that workover of such wells would not have the potential to cause significant impacts. In addition, DOE is proposing to limit use of the categorical exclusion to situations where there is low potential for seismicity, subsidence, and contamination of freshwater aquifers, and where the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. DOE is also proposing to clarify that "gas" in the existing categorical exclusion refers to "natural gas."

B5.13 Experimental Wells for the Injection of Small Quantities of Carbon Dioxide

DOE proposes a new categorical exclusion for experimental wells for the injection of small quantities of carbon dioxide in locally characterized geologically secure storage formations at or near existing carbon dioxide sources. The activities encompassed in the new proposed categorical exclusion are intended to help determine the suitability of geological formations for large-scale sequestration, as information from small-scale projects can be used to ensure that commercial-scale projects can be conducted safely and in an environmentally sound manner.

The proposed categorical exclusion is supported by DOE's National Energy Technology Laboratory's experience with carbon sequestration wells, through DOE-directed research projects and collaboration with the nationwide network of regional carbon sequestration partnerships tasked with determining the best technologies for carbon capture, storage, and sequestration. Through this work, DOE has gained substantial experience with small-scale carbon sequestration, showing that these projects can be managed safely and would not have the potential to cause significant impacts. In addition, the proposed categorical exclusion is supported by FONSIs for

three DOE EAs for projects with scales ranging up to one million tons of carbon dioxide over the lifetime of the project (typically one to four years).

Based on experience with small-scale projects, DOE proposes that the injection of carbon dioxide under this categorical exclusion be limited to, in aggregate, less than 500,000 tons over the duration of a project. In addition, DOE also proposes a number of conditions that the project must meet in order for the activity to be categorically excluded. For example, the proposed categorical exclusion would require that characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers. DOE's proposed limitations will ensure that injection of carbon dioxide at this scale would not have significant impacts. (*See* the Technical Support Document.)

DOE is particularly interested in receiving comments on this categorical exclusion, including the limit of 500,000 tons of carbon dioxide over the duration of the project.

B5.14 Combined Heat and Power or Cogeneration Systems

DOE proposes a new categorical exclusion for the conversion to, and replacement or modification of, combined heat and power or cogeneration systems at existing facilities provided that the action would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources.

DOE has determined that combined heat and power or cogeneration system activities under this categorical exclusion, when subject to the proposed limitations, would not have the potential to cause significant impacts because (1) these systems would be modifications to existing systems, and thus generally would not involve more than minor changes to facility footprints and do not involve major new construction, and (2) these systems would improve operating efficiency (such as making use of otherwise waste heat) and thus would be designed to lessen potential impacts.

B5.15 Small-Scale Renewable Energy Research and Development and Pilot Projects

As part of DOE's proposal to clarify and focus existing categorical exclusion B5.1 on energy efficiency and conservation actions (including research and development-related actions), DOE proposes a separate categorical exclusion for small-scale renewable energy research and development and pilot projects. In doing so, DOE proposes to limit the covered actions to those in previously disturbed and developed areas and to emphasize that such actions would be in accordance with applicable requirements and incorporate appropriate controls and practices. *See also* B5.25 for small-scale renewable energy research and development and pilot projects in salt water and freshwater environments.

In addition, this proposal is responsive to a commentor's suggestion to have a categorical exclusion for small-scale pilot projects for renewable energy generation, modeled on DOE's existing categorical exclusion B6.2 for pilot-scale waste collection and treatment facilities.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.16–B5.24

As part of DOE's proposal to clarify and focus existing categorical exclusion B5.1 on energy efficiency and conservation actions, and in response to commentors' suggestions to include more explicitly renewable energy technologies, DOE is proposing several new categorical exclusions. DOE proposes eight new categorical exclusion classes of actions involving renewable energy technologies, as described below. The proposed categorical exclusions apply to the installation, modification, operation, and removal of small-scale, commercially available renewable energy technologies. DOE proposes to specify conditions by technology (*e.g.,* wind) to ensure appropriate limitations, but does not generally set limits on energy output because DOE experience and data review suggest that the potential for significant impacts is more closely related to the site selected for a renewable energy project and the interaction of resources at a selected site with the renewable technology. DOE has proposed specific limitations for these categorical exclusions to ensure that any renewable energy technology project that would have the potential to cause significant impacts to particular resources would be identified as outside the scope of the categorical exclusion. Further, DOE proposes one new class of actions involving electric vehicle charging stations.

The proposed categorical exclusions in B5.16–B5.24 identify many of the types of projects for which DOE has made categorical exclusion determinations based on existing categorical exclusion B5.1. The actions listed in these proposed categorical exclusions are also consistent with categorical exclusions promulgated by other Federal agencies, EAs and FONSIs prepared by DOE and other Federal agencies, the opinions of subject matter experts, and private sector experience developing and deploying renewable energy technologies. DOE has determined that the activities under these categorical exclusions, when subject to the proposed limitations, would not have the potential to cause significant impacts because the categorical exclusions apply specifically to systems that are: (1) Located on or adjacent to existing structures, or on previously developed or disturbed land, (2) sited in accordance with local land use and zoning requirements, and (3) designed to incorporate appropriate control technologies and best management practices to lessen potential impacts.

The proposed categorical exclusions are responsive to the numerous suggestions that DOE received, both from within DOE and in response to its December 2009 Request for Information, to include explicitly renewable energy technologies and associated equipment in its categorical exclusions. Several commentors also suggested that DOE categorically exclude actions intended to "co-locate renewables" or to support "distributed generation projects." These suggestions describe similar actions that: (1) Support the operation of an existing facility by providing a renewable energy source on-site, (2) would be compatible with existing land use, and (3) would require minimal to no expansion of the footprint of an existing facility. As a result, DOE's review of available data led it to propose to exclude select small-scale, renewable energy technology projects, under specified proposed conditions, for the purpose of providing a renewable energy generation capability to existing facilities (specifically, B5.16–B5.21).

B5.16 Solar Photovoltaic Systems

The actions listed in categorical exclusion B5.16 apply to the installation, modification, operation, and removal of commercially available solar photovoltaic systems located on a building or other existing structure (*e.g.,* covered parking facility), or on land generally comprising less than 10 acres. The actions listed are consistent with DOE and other Federal agency experience with "co-located" solar photovoltaic energy projects generally comprising less than 10 acres within a previously disturbed or developed area, categorical exclusion determinations DOE has made based on existing regulations, categorical exclusions

promulgated by other Federal agencies, EAs and FONSIs prepared by DOE and other Federal agencies, and the opinions of subject matter experts. (*See* the Technical Support Document.)

DOE has determined that the solar photovoltaic system activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because (1) these are systems located on or adjacent to existing structures, or on previously developed or disturbed land, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction, and (2) these systems generally would support the operation of an existing facility (*e.g.,* providing an on-site, renewable electricity generation source). Such activities also may serve to lessen potential air emissions impacts when compared to electricity generated by fossil fuel (*e.g.,* coal) sources.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.17 Solar Thermal Systems

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of commercially available small-scale solar thermal systems (*e.g.,* solar hot water systems) at an existing facility or on land generally comprising less than 10 acres within a previously disturbed or developed area. These actions are consistent with categorical exclusion determinations DOE has made based on existing regulations and EAs and FONSIs prepared by DOE. (*See* the Technical Support Document.)

DOE has determined that the solar thermal system activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because (1) these are small-scale systems located on or contiguous to an existing building, or in a previously developed or disturbed area, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction, and (2) these systems generally would support the operation of an existing building (*e.g.,* providing an on-site, renewable source of energy for heat). Such activities also may serve to lessen potential air emissions impacts when compared to electricity generated by fossil fuel (*e.g.,* coal) sources.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.18 Wind Turbines

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of small (*i.e.,* generally 200 feet in height or less when measured from ground to maximum vertical blade rotation), commercially available wind turbines. Such turbines must be located within previously disturbed or developed areas; more than 10 miles from an airport or aviation navigation aid; and more than 1.5 nautical miles from National Weather Service or Federal Aviation Administration Doppler weather radar. Also such turbines must not have the potential to cause significant impacts to bird or bat species and must be appropriately designed and located so as to not cause significant impacts to persons (*e.g.,* noise or shadow flicker). These actions are consistent with categorical exclusion determinations DOE has made based on existing regulations, EAs and FONSIs prepared by DOE and other Federal agencies, and the opinions of subject matter experts. (*See* the Technical Support Document.)

DOE has determined that the activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because (1) these are small-scale wind turbines located within a previously developed or disturbed area, and thus generally involve no more than minor changes to an existing footprint and do not involve major new construction, and (2) these systems generally would support improved operation of an existing facility (*e.g.,* providing an on-site, renewable source of energy for electricity). Such activities also may serve to lessen potential air emissions impacts when compared to electricity generated by fossil fuel (*e.g.,* coal) sources.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.19 Ground Source Heat Pumps

DOE proposes a new categorical exclusion for commercially available, small-scale ground source heat pumps, designed to include appropriate leakage and contaminant control measures (*e.g.,* grouting) to support the operation of single facilities (*e.g.,* a school) or contiguous facilities (*e.g.,* an office complex), and sited only in previously disturbed and developed areas where associated activities (*e.g.,* drilling or geothermal water discharge) are regulated by a local, regional, or State authority. The actions listed in this proposed categorical exclusion are consistent with categorical exclusion determinations DOE has made based on existing regulations, categorical exclusions promulgated by other Federal agencies, and EAs and FONSIs prepared by DOE. (*See* the Technical Support Document.)

DOE has determined that the ground source heat pump system activities under this categorical exclusion, when subject to the proposed limitations, would not have the potential to cause significant impacts because (1) these are systems located within or adjacent to existing structures, or on previously developed or disturbed land, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction, and (2) these systems generally would support the operation of an existing facility (*e.g.,* providing an on-site, renewable heating or cooling source) that would serve to lessen potential air emissions impacts when compared to energy provided by traditional fossil fuel (*e.g.,* coal) sources. DOE has proposed limitations for this categorical exclusion to ensure that any project that may result in a significant change in subsurface temperature would be outside the scope of the categorical exclusion.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.20 Biomass Power Plants

DOE proposes a new categorical exclusion for small-scale biomass power plants, designed using commercially available technologies for an average energy output of 10 megawatts, to support the operation of single facilities (*e.g.,* a school) or contiguous facilities (*e.g.,* an office complex), and sited within previously disturbed and developed areas. The actions listed in this proposed categorical exclusion are consistent with EAs and FONSIs prepared by DOE. (*See* the Technical Support Document.)

DOE has determined that the activities covered by this categorical exclusion, when subject to the proposed limitations, would not have the potential to cause significant impacts because (1) these are systems located within or adjacent to existing structures, or within previously developed or disturbed areas, and thus generally involve no more than minor changes to facility footprints or land use, and (2) these systems generally would support the operation of an existing building or contiguous facilities (*e.g.,* providing an on-site, renewable electricity generation source). Such activities also may serve to lessen potential air emissions impacts

when compared to electricity generated by fossil fuel (*e.g.,* coal) sources. DOE has proposed limitations for this categorical exclusion to ensure that any project that may result in a significant increase in the quantity or rate of air emissions or have the potential to cause significant impacts to water resources would be outside the scope of the categorical exclusion.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.21 Methane Gas Recovery and Utilization Systems

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of commercially available methane gas recovery and utilization systems on or contiguous to an existing landfill or wastewater treatment plant, or within a previously disturbed and developed area. The actions listed in this proposed categorical exclusion are consistent with categorical exclusion determinations for methane gas recovery and utilization technologies that DOE has made based on existing regulations.

DOE has determined that the methane recovery and utilization system activities under this categorical exclusion, when subject to the proposed limitations, would not have the potential to cause significant impacts because (1) these are modifications to existing waste disposal or treatment facilities, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction, and (2) these modifications generally would improve operating efficiency (*e.g.,* making use of otherwise waste gas for energy production at existing facilities) and thus would be designed to lessen potential impacts. Such activities also may serve to lessen potential air emissions impacts when compared to electricity generated by fossil fuel (*e.g.,* coal) sources. DOE has proposed limitations for this categorical exclusion to ensure that any project that may result in a significant increase in quantity or rate of air emissions would be outside the scope of the categorical exclusion.

B5.22 Alternative Fuel Vehicle Fueling Stations

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of fueling stations for compressed natural gas, hydrogen, ethanol or other commercially available biofuels that are located on the site of a current or former fueling station, or in a previously disturbed or developed area controlled by the owner of the existing facility and vehicle fleet the station is meant to service. The actions listed in this proposed categorical exclusion are consistent with categorical exclusion determinations DOE has made based on existing regulations for alternative fuel vehicle fueling technologies and an EA and FONSI prepared by DOE. (*See* the Technical Support Document.)

DOE has determined that the alternative vehicle fueling system activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because these are systems located at existing stations, or on previously developed or disturbed land, and thus generally involve no more than minor changes to facility footprints and do not involve major new construction. These systems would support the operation and use of alternative fuel vehicles (*e.g.,* providing the fueling infrastructure necessary to support the use of vehicles run on alternative fuels). Such activities also may serve to lessen potential air emissions impacts when compared to traditional fossil fuel combustion engine vehicles.

B5.23 Electric Vehicle Charging Stations

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of electric vehicle stations within a previously disturbed or developed area. The actions listed in this proposed categorical exclusion are consistent with categorical exclusion determinations DOE has made based on existing regulations.

DOE has determined that the electric vehicle charging station activities under this categorical exclusion, when subject to proposed limitations, would not have the potential to cause significant impacts because these are systems located on previously developed or disturbed land, and thus generally do not involve major new construction. These systems would support the use of electric vehicles (*e.g.,* providing infrastructure necessary to support current and future use of electric vehicles). Such activities also may serve to lessen potential air emissions impacts when compared to traditional fossil fuel combustion engine vehicles.

B5.24 Drop-in Hydroelectric Systems

DOE proposes a new categorical exclusion for the installation, modification, operation, and removal of commercially available small-scale, drop-in, run-of-the-river hydroelectric systems where there would not be the potential for significant impacts to threatened and endangered species or significant impacts on water quality, temperature, flow, or volume.

The term "run-of-the-river" as used in this categorical exclusion refers to hydroelectric systems that would be fully dependent on the natural flow of the river or stream at the point of system installation; would have no water storage, such as in an impoundment; and would involve no water diversion from the stream or river. The term "drop-in" refers to prefabricated systems that are placed in a river or stream, not systems that are constructed in a river or stream such as a dam. Under this categorical exclusion, DOE envisions small turbines placed in a stream or river for small operations, where all energy would likely be consumed on-site (*e.g.,* for a home, ranch, or other small commercial operation) and unlikely to be put on the commercial grid. Hydroelectric systems capable of producing electricity for the commercial grid would likely be secured in a channel (requiring the use of heavy equipment), may require channel modification, and may have a potential to significantly affect fish, wildlife, habitat, and water flow and quality; these systems would be excluded from the scope of this categorical exclusion. The actions listed in this proposed categorical exclusion are consistent with the opinions of subject matter experts, including fish biologists with regulatory and fisheries management experience. (*See* the Technical Support Document.)

DOE has determined that the activities under this categorical exclusion would not have the potential to cause significant impacts when subject to the proposed limitations: involve no water storage or water diversion; be located only in areas upstream of a natural anadromous fish barrier (such as a waterfall that has historically prevented anadromous fish passage); and involve no major construction, modification of stream or river channels, or the use of heavy equipment. Projects in the scope of this categorical exclusion generally support adjacent uses with a renewable source of direct electricity production. Such activities also may serve to lessen potential air emissions impacts when compared to traditional systems where electrical energy is generated by fossil fuel sources.

DOE is particularly interested in receiving comments on this categorical exclusion.

B5.25 Small-Scale Renewable Energy Research and Development and Pilot Projects in Salt Water and Freshwater Environments

DOE proposes to create a new categorical exclusion for small-scale renewable energy research and development and pilot projects in salt water and freshwater environments. Research with respect to wave or tidal energy or the growth and harvest of algae as biomass for proof of concept purposes would be appropriate projects in this class of actions. However, as with B3.16, DOE proposes to impose similar limits on the scope and location of the activities to ensure that renewable energy research is conducted in a manner that would not have the potential to cause significant impacts. These actions are consistent with categorical exclusion determinations DOE has made based on existing regulations, EAs and FONSIs prepared by other Federal agencies, and the opinions of subject matter experts. (See the Technical Support Document.)

DOE proposes specifically to exclude the construction or installation of permanent facilities or devices and to exclude the drilling of wells for resource exploration or extraction. In addition, DOE has included several limits on the type, scope, and location of covered actions to protect the aquatic environment from potential significant impacts.

DOE proposes to limit the covered actions in this categorical exclusion through the following conditions. Covered actions under this categorical exclusion would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and best management practices. Furthermore, none of the above activities would occur (1) within areas of hazardous natural bottom conditions, or (2) within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a recognized area of high biological sensitivity, or outside those areas if the activities would have the potential to cause significant impacts within those areas. Additionally, no permanent facilities or devices would be constructed or installed. The categorical exclusion also lists other factors, specific to aquatic environments, to be considered by proponents of covered actions before applying this categorical exclusion to ensure that the activities would not have the potential to have significant impacts.

DOE is particularly interested in receiving comments on this categorical exclusion.

Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities (B6)

B6.1 Cleanup Actions

DOE proposes to remove the specified limit of 5 years duration for categorically excluded short-term, small-scale cleanup actions because in DOE's experience that duration has not been representative of the potential for significant environmental impacts. DOE proposes to retain a specified limit to cost, but to raise the limit from approximately $5 million to approximately $10 million, in light of the fact that this cost limitation has not been revised since 1996. DOE also proposes to add encapsulation, physical or chemical separation, and compaction to the examples of treatment methods. DOE proposes to change the text of the categorical exclusion from "would not affect future groundwater remediation" to "would not unduly limit future groundwater remediation" because a literal reading of the existing categorical exclusion would bar its use if there were any affect on future groundwater remediation.

DOE is particularly interested in receiving comments on the proposed revisions to this categorical exclusion.

B6.7 [Removed and Reserved: Granting/Denying Petitions for Allocation of Commercial Disposal Capacity]

Existing B6.7 refers to a DOE regulation that was repealed in 1995. That regulation implemented a provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985, which is no longer in effect. Therefore, DOE proposes deleting this categorical exclusion, marking B6.7 as "removed and reserved" in the regulations.

B6.10 Upgraded or Replacement Waste Storage Facilities

DOE proposes to identify "expansion" as within the scope of this categorical exclusion, which limits total facility size to 50,000 square feet.

F. Proposed Changes to Appendix C

For an explanation of recurring proposals applicable to the appendix C classes of actions, please see Section IV.B, Recurring Proposals, above, where they are discussed and the particular classes of actions affected are listed. The short titles listed below for particular classes of actions reflect DOE's proposed titles.

C2 [Removed and Reserved: Rate Increases More Than Inflation, Not Power Marketing]

DOE proposes to delete EA class of actions C2 because DOE has not prepared an EA and FONSI under C2.

C4 Upgrading, Rebuilding, or Construction of Electric Transmission Lines

DOE proposes changes to this class of actions to conform to the changes DOE is proposing for categorical exclusions B4.12 and B4.13. Proposed changes to C4 would address electric transmission lines of lengths greater than those to which categorical exclusions might apply.

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

DOE proposes changes to this class of actions to conform to the changes DOE has proposed for categorical exclusion B4.1. This provision addresses the establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve (1) the interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts and that would not be eligible for categorical exclusion under 10 CFR part 1021; (2) changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or (3) service to discrete new loads of less than 10 average megawatts over a 12-month period. DOE also proposes to delete the description that implies that this class of actions applies only to DOE power marketing operations and facilities at DOE sites.

DOE is particularly interested in receiving comments on the proposed revisions to this provision.

C8 Protection of Cultural Resources and Fish and Wildlife Habitat

DOE proposes changes to this class of actions to conform to the changes DOE is proposing for categorical exclusion B1.20. Proposed changes to C8 would address large-scale activities undertaken to protect cultural resources.

C11 Particle Acceleration Facilities

DOE proposes to change the parameters for when an EA would normally be required to conform to the changes DOE is proposing for categorical exclusion B3.10. Whether an EA would normally be required would depend upon the energy associated with the particle acceleration facility.

C12 Energy System Demonstration Actions

DOE proposes changes to this class of actions to conform to the changes DOE is proposing for categorical exclusion B3.6. Proposed changes to C12 would address "demonstration actions," which are outside the scope of B3.6.

C13 Import or Export Natural Gas Involving Minor New Construction

DOE proposes changes for consistency with categorical exclusions B5.7 and B5.8.

G. Proposed Changes to Appendix D

For an explanation of recurring proposals applicable to the appendix D classes of actions, please *see* Section IV.B, Recurring Proposals, above, where they are discussed and the particular classes of actions affected are listed. The short titles listed below for particular classes of actions reflect DOE's proposed titles.

D5 [Removed and Reserved: Main Transmission System Additions]

D6 [Removed and Reserved: Integrating Transmission Facilities]

DOE proposes deleting D5, Main transmission system additions, and D6, Integrating transmission facilities, because there is redundancy and ambiguity between D5 and D6 that makes them of limited utility. Furthermore, there is overlap between D5 (addition of new lines) and C4 (construction of new lines) in the current regulations, which makes it difficult to discern which category is appropriate for a specific project. DOE also proposes not to have EIS categories that correspond to the categorical exclusions and the EA class of actions that address the level of NEPA review for electric transmission facilities and lines (B4.11, B4.12, B4.13, and C4). Based on DOE experience, the level of NEPA review for transmission facilities and lines that are not categorically excluded is at least at an EA level, but does not necessarily warrant an EIS level. DOE has found that the determination whether an EA or an EIS is appropriate is project-specific (*e.g.,* type and size of facility) and site-specific (*e.g.,* site conditions, other facilities and lines in the area, or the proximity of residences). Working with its stakeholders, DOE has often successfully mitigated potentially significant impacts so that an EA level of review is often adequate. In those cases where an EA is not applicable, DOE completes an EIS, and the lack of an EIS category in this proposed rulemaking does not preclude such action in the future. (See the Technical Support Document.)

DOE is particularly interested in receiving comments on these provisions.

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

DOE proposes changes to this class of actions to conform to changes that DOE is proposing for both categorical exclusion B4.1 and the EA class of actions C7. This provision addresses establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve (1) the interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts; (2) changes in the normal operating limits of generation resources greater than 50 average megawatts; or (3) service to discrete new loads of 10 average megawatts or more over a 12-month period. DOE also proposes to delete the description that implies that this class of actions applies only to its power marketing operations and facilities at its sites.

DOE is particularly interested in receiving comments on the proposed revisions to this provision.

D8 Import or Export of Natural Gas Involving Major New Facilities

DOE proposes changes for consistency with categories B5.7, B5.8, and C13.

D9 Import or Export of Natural Gas Involving Major Operational Change

DOE proposes changes for consistency with categories B5.7, B5.8, and C13.

V. General Comments Received in Response to the December 2009 Request for Information

DOE reviewed and evaluated each of the suggestions provided by the 11 respondents to its December 2009 Request for Information, as discussed above in Section II. Many of the comments included proposals for new categorical exclusions and revisions to limit or expand existing categorical exclusions, or were related to other existing provisions in subpart D of the DOE NEPA regulations. In addition to comments related to specific provisions, which are discussed above in Section IV.C through IV.G, DOE received comments of a more general nature, not associated with a particular provision. These comments and DOE's responses are presented below.

Categorical exclusions, generally. In its Request for Information, DOE described categorical exclusions as categories of actions that normally do not have the potential, individually or cumulatively, to have a significant effect on the "human environment." One commentor expressed a concern that DOE focused too narrowly on the human environment and "seems to miss the true purpose of the NEPA process." In addition, a commentor stated that the DOE categorical exclusion process should "explicitly include recognition of the Department's trust and trustee duties and responsibilities that ensure actions evaluated for categorical exclusion do not adversely impact the environment or violate these responsibilities." DOE's characterization of a categorical exclusion in its Request for Information is consistent with the definition of categorical exclusion in the CEQ NEPA regulations (40 CFR 1508.4), and DOE applies the comprehensive interpretation of "human environment" as defined in the CEQ NEPA regulations (40 CFR 1508.14) "to include the natural and physical environment and the relationship of people with that environment."

Land transfers. A commentor stated that DOE should not use a categorical exclusion when land transfers have the potential to impact Tribal Nations' rights, uses, or historical, religious or cultural assets, or DOE should ensure that those rights are preserved and that there is adequate government-to-government consultation.

DOE conducts its government-to-government consultations with Tribal Nations in accordance with its American Indian Tribal Government Policy, as outlined in DOE Order 1230.2. With respect to Federally recognized Indian Tribe interests, also *see* Section IV.E for a discussion of appendix B(4) conditions that are integral elements of appendix B categorical exclusions.

Land and water contaminated with radioactive and/or hazardous materials. A commentor noted that many of DOE's facilities, and the land and water beneath these facilities, are contaminated with radioactive and/or hazardous materials. The commentor stated that DOE should not allow for the transfer or lease of contaminated facilities and land through a categorical exclusion. DOE is proposing changes to DOE's land transfer-related categorical exclusions. Proposed categorical exclusions B1.24 and B1.25 pertain to the transfer, lease, disposition, or acquisition of interests (personal property and real property). Both proposed B1.24 and B1.25 contain limitations such that they may not be applied if there is a "potential for release of substances at a level, or in a form, that could pose a threat to public health

and the environment." For further information, *see* the detailed discussion of proposed changes to A7, B1.24, and B1.25 in Section IV.D and IV.E, above.

Construction and operation of facilities. A commentor stated that "most construction of facilities (even temporary)" should not be performed under a categorical exclusion. Construction and operation under the Department's existing and proposed categorical exclusions are limited to certain types of small-scale facilities that DOE has determined would not have potential to cause significant impacts when the conditions specified in the categorical exclusion and the integral elements in appendix B(4) are considered. Under DOE's existing NEPA regulations these include, for example, support buildings (such as cafeterias), small-scale wastewater and surface water treatment facilities, and microwave and communications towers. DOE is now proposing to add recycling drop-off stations and small-scale educational facilities to that list. DOE has determined that, absent extraordinary circumstances, these types of actions are appropriately categorically excluded.

Mitigation actions. A commentor stated that mitigation actions, such as reseeding and revegetation, should not conflict with existing mitigation, restoration, and preservation activities or exacerbate environmental contamination, and that DOE's procedures for categorical exclusion determinations should include a checklist to ensure that the potential for such conflicts is considered in applying a categorical exclusion. DOE's existing and proposed categorical exclusion regulations require determinations that there are no extraordinary circumstances related to the proposal that may affect the significance of the proposal's environmental effects. The regulations also require that the proposal not be connected to other actions with significant impacts or related to other actions with cumulatively significant impacts. DOE believes that these existing procedures adequately address this concern.

Rulemaking process. A commentor stated that DOE should distribute draft categorical exclusion determinations and supporting documents to those who have specific interests or oversight responsibilities for DOE sites, providing a 30-day comment period. DOE respectfully disagrees with this proposal. Such a process would be counter to the purpose of a categorical exclusion, which is to expedite the environmental review process for proposed actions that normally do not require more resource intensive EAs or EISs. Before an agency can establish a categorical exclusion, however, an agency is required to provide an opportunity for public review of those actions that it intends to exclude. Through the publication of this notice of proposed rulemaking, DOE is providing its proposed changes to the public and providing an opportunity for public review and comment. Additionally, DOE is required to consult with CEQ on conformity of the proposed categorical exclusions with NEPA and the CEQ NEPA implementing procedures.

A commentor requested that DOE's December 2009 Request For Information "not be used to remove types of projects that are currently required to perform an EA or EIS." As discussed further in Section IV.G, DOE is proposing to remove two classes of actions that are now listed as normally requiring an EIS, D5, Main transmission system additions, and D6, Integrating transmission facilities. DOE has found that, for the most part, it has been able to mitigate impacts such that those impacts are not significant. DOE is proposing to remove one EA class of actions (C2, Rate increases more than inflation, not power marketing). DOE has not been able to identify any proposed action that has been included in that class of actions.

New technologies. A commentor requested that "if the effects of new technologies in the private and public sectors are going to influence" the proposed categorical exclusions, the technologies and their impacts must be fully explained. DOE has based its proposed categorical exclusions on its previous NEPA reviews, expert advice, categorical exclusions of other Federal agencies, and private sector experience, and it has explained the basis for its proposed decisions both here and in the Technical Support Document.

Geothermal. A commentor requested that no further regulations be promulgated that would make it more difficult to obtain permitting for the installation of geothermal wells. The commentor also emphasized the "tremendous energy savings" provided by geothermal heat pumps for heating and cooling buildings.

DOE currently has an existing categorical exclusion, B3.7, for the siting, construction, and operation of new infill exploratory and experimental (test) wells, including geothermal wells, drilled in a geological formation that has existing operating wells. Although DOE is proposing to add certain restrictions, DOE does not believe these changes would make the permitting process for geothermal wells more difficult. In addition, DOE is proposing a new categorical exclusion, B5.19, for the installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities or contiguous facilities. (See discussion of B3.7 and B5.19 in Section IV.E, above.)

Renewable energy projects. A commentor suggested that DOE adopt a "fast-track" review process for renewable energy projects, similar to a process that the Bureau of Land Management, an agency within the Department of the Interior, has adopted. DOE is a cooperating agency with the Bureau of Land Management on several of its EISs for renewable energy proposals (for example, for proposals for which an application for a loan guarantee has been submitted to DOE), and is familiar with the Bureau's process. In other cases, DOE's Program Offices (for example, the Office of Electricity Delivery and Energy Reliability, the Loan Program Office, and Bonneville Power Administration) work as expeditiously as possible on NEPA and other necessary reviews (such as electric system reliability review and financial review) needed before project approval. Part of DOE's aim in proposing updates to its categorical exclusions is to expedite the environmental review process for proposals that normally do not require more resource intensive EAs or EISs. DOE's proposed new categorical exclusions include (1) eight specifically for installation, modification, operation, and removal of commercially available renewable energy technologies (as listed in the proposed categorical exclusions B5.16 to B5.22, inclusive, and B5.24) and (2) small-scale renewable energy research and development and pilot projects (B5.15 and B5.25). DOE expects that the use of these categorical exclusions will allow for more expeditious NEPA review for projects that fit within the classes of actions.

Biofuels production projects. A commentor suggested that DOE categorically exclude new biofuels production projects, "provided that certain conditions are met with respect to air and water emissions, water consumption and other high-level considerations." At this time, DOE is not proposing a categorical exclusion for commercial-scale biofuels production projects. First, the Department conducted a survey of Federal agencies' NEPA regulations and did not identify existing (or proposed) categorical exclusions for new commercial biofuels projects that could guide DOE in proposing an appropriate scope for such

a category. Second, a Notice of Funds Availability published by the U.S. Department of Agriculture's Rural Business Cooperative Service regarding new construction and retrofitting of advanced biofuels facilities (non-corn ethanol) concluded that such facilities would not meet the classification of a categorical exclusion (75 FR 25076; May 6, 2010). DOE, nevertheless, is requesting input from the public as to whether a categorical exclusion for commercial-scale biofuel production projects would be appropriate, and, if so, what limits might be applicable (for example, throughput and operation parameters).

Consistency among Federal and State categorical exclusions. A commentor suggested that DOE should work with States to create consistency among Federal and State categorical exclusions because there is a disconnect between what the Federal government categorically excludes under NEPA and what States exclude under their environmental review provisions. DOE develops its categorical exclusions based on classes of actions it has identified that do not individually or cumulatively have a significant effect on the environment based on actions it has considered nationwide. DOE does not have any involvement in how a State assigns particular classes of actions to a particular level of environmental review. However, States have the opportunity to comment on an agency's proposed categorical exclusions and associated administrative records and also to consider whether to change their own categorical exclusions or other implementing procedures based on a Federal agency's exclusions. DOE welcomes comments from States on DOE's categorical exclusions and, in particular, as to a State's experience with similar exclusions.

Evaluation of greenhouse gases. A commentor noted that CEQ had stated that it sees no basis for excluding greenhouse gases from NEPA jurisdiction. The commentor suggested that DOE have additional categorical exclusions "to protect against abuse of this expansive new jurisdiction by entities seeking to stop or stall projects." In proposing 20 new categorical exclusions and modifying others to promote efficiency in the NEPA process while ensuring protection of the environment, DOE has considered the potential for significant environmental impacts, including potential impacts from greenhouse gas emissions. DOE's approach in this regard is consistent with draft guidance issued in February 2010 by CEQ, Consideration of the Effects of Climate Change and Greenhouse Gas Emissions (*http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf*). The draft guidance states, "In many cases, the [greenhouse gas] emissions of the proposed action may be so small as to be a negligible consideration. Agency NEPA procedures may identify actions for which [greenhouse gas] emissions and other environmental effects are neither individually or cumulatively significant. 40 CFR 1507.3." The draft guidance further states that, in proposing that the NEPA process incorporate consideration of both the impact of an agency action on the environment through the mechanism of greenhouse gas emissions and the impact of changing climate on that agency action, "This is not intended as a 'new' component of NEPA analysis, but rather as a potentially important factor to be considered within the existing NEPA framework."

Level of involvement necessary to require a NEPA review (or "Federal handle"). A commentor requested that DOE provide guidance on the level of Federal involvement necessary to categorize a project as "Federal," thereby triggering an environmental review under NEPA. Specifically, the commentor suggested that DOE consider setting a minimum threshold of 10% of the overall project budget as a funding level that would trigger NEPA, and further, that only Federal funds actually allocated to the project should be counted (that is, budgeted or anticipated funds should be excluded in determining the level of Federal financing). The commentor requested that factors be specified to help determine what level of Federal control or involvement is needed for NEPA to be triggered.

In determining whether an action constitutes a major Federal action for purposes of NEPA, DOE considers the degree of Federal control over or involvement in a project. As part of this consideration, DOE examines the total amount and percentage of Federal funding among other factors. In many cases, the fact that Federal government funding is in the range of 10 percent (or less) of total project costs will make the percentage of Federal funding an important factor in finding that an action is not a major Federal action. These are essentially the same factors suggested by the commentor. DOE also may consider other factors specific to the proposed action at issue. DOE finds this case-by-case approach workable and consistent with applicable precedent and does not propose to establish specific criteria through this proposed rulemaking for determining whether a proposed action constitutes a major Federal action.

Uranium mineral activities. A commentor, noting interest in uranium mineral exploration, development, and reclamation activities on DOE uranium leases in Western Colorado, stated that "activities related to mining and mineral exploration on Department of Energy mineral leases should remain barred from categorical exclusion." DOE's proposed revisions to the Department's NEPA regulations would not allow categorical exclusion of uranium mineral development. However, under certain conditions, some exploration and reclamation actions could be categorically excluded under DOE's existing and proposed categorical exclusions, such as, categorical exclusion B3.1, Site characterization and environmental monitoring, and categorical exclusion B6.1, Cleanup actions.

Cost parameters for environmental review under NEPA. A commentor suggested that the estimated cost of a project be factored into the categorical exclusion process. Specifically, the commentor suggested that DOE establish an upper limit of $25 million (estimated cost) for a proposed action that can be categorically excluded and a lower limit of $100 million (estimated cost) over which a proposed action requires an EIS. DOE has determined that cost is generally not a reliable indicator of environmental impacts and is not proposing to establish general cost parameters to dictate the level of NEPA review in its regulations. One exception is categorical exclusion B6.1, which contains a cost limit for small-scale, short-term cleanup actions. *See* discussion of B6.1 in Section IV.E above.

VI. Procedural Requirements

A. Review Under Executive Order 12866

Today's proposed rule has been determined to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under National Environmental Policy Act

In this proposed rule, DOE proposes amendments that establish, modify, and clarify procedures for considering the environmental effects of DOE actions within DOE's decisionmaking process,

thereby enhancing compliance with the letter and spirit of NEPA. DOE has determined that this proposed rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix A6, because it is a strictly procedural rulemaking and no extraordinary circumstances exist that require further environmental analysis. Therefore, DOE has determined that promulgation of these amendments is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an EA or an EIS.

C. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://gc.doe.gov*.

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed revisions to 10 CFR part 1021 streamline the environmental review for proposed actions, resulting in a decrease in burdens associated with carrying out such reviews. For example, the proposed revisions are expected to reduce in aggregate the number of EAs that DOE is required to prepare, thus reducing the burden on applicants to prepare an EA for DOE's consideration, pay for the preparation of an EA, and/or provide environmental information for DOE's use in preparing an EA. During the past 10 years, DOE has completed approximately 30 EAs per year. The number of EAs completed each year has not varied significantly. However, in 2010, DOE expects to complete more than 75 EAs which reflect an increase in the number of proposed projects as a result of the American Recovery and Reinvestment Act. DOE expects the number of EAs it prepares after 2010 will be closer to historical norms. The cost per EA has ranged from $3,000 to $630,000; the average and median cost has been $100,000 and $65,000, respectively. DOE expects that although the number of EAs it prepares annually could increase in response to recent emphasis on certain program areas, such as renewable energy technologies, proposed new categorical exclusions in these areas would reduce the number of EAs that might otherwise be required. In addition, the costs of making a categorical exclusion determination are less than those to prepare an EA. DOE estimates that DOE's administrative costs for research, staff time, and Web-posting for a categorical exclusion determination would most likely be less than $2,000 on average. Applicants may sometimes incur costs in providing environmental information DOE requires when making a categorical exclusion determination. While DOE does not have data on such applicant costs, DOE estimates that such costs would be similar to DOE's costs for a categorical exclusion determination, and much less than the cost of a typical EA. Although the number of EAs that would be avoided and the associated costs saved by applicants is uncertain, the proposed revisions are expected to result in a net decrease in environmental review costs and thus, are expected to have a beneficial cost impact. DOE estimates that approximately 15 percent of the EAs prepared in the last 10 years were funded by applicants, while the other 85 percent were funded by DOE. Although DOE does not have data on what percentage of those applicants qualified as small entities, a beneficial cost impact is expected to be felt by entities of all sizes.

On the basis of the foregoing, DOE tentatively certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under Paperwork Reduction Act

This proposed rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

E. Review Under Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and Tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or Tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments. 2 U.S.C. 1534.

The proposed rule would amend DOE's existing regulations governing compliance with NEPA to better align DOE's regulations, particularly its categorical exclusions, with its current activities and recent experiences, and update the provisions with respect to current technologies and regulatory requirements. The proposed rule would not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has

concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Review Under Executive Order 13132

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

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Review Under Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) Is a significant regulatory action under Executive Order 12866, or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Issued in Washington, DC, on December 20, 2010.

Scott Blake Harris,

General Counsel.

For the reasons stated in the Preamble, DOE proposes to amend part 1021 of chapter X of title 10 of the Code of Federal Regulations as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for part 1021 continues to read as follows:

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

2. Section 1021.311 is amended by revising the first sentence in paragraph (d) and revising paragraph (f) to read as follows:

§ 1021.311 Notice of intent and scoping.

* * * * *

(d) Except as provided in paragraph (f) of this section, DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. * * *

* * * * *

(f) A public scoping process is optional for DOE supplemental EISs (40 CFR 1502.9(c)(4)). If DOE initiates a public scoping process for a supplemental EIS, the provisions of paragraphs (a) through (e) of this section shall apply.

3. Section 1021.322 is amended by revising the last sentence of paragraph (f) to read as follows:

§ 1021.322 Findings of no significant impact.

* * * * *

(f) * * * A revised FONSI is subject to all provisions of this section.

4. Section 1021.331 is amended by revising paragraph (b) to read as follows:

§ 1021.331 Mitigation action plans.

* * * * *

(b) In certain circumstances, as specified in § 1021.322(b)(1), DOE shall also prepare a Mitigation Action Plan for commitments to mitigations that are essential to render the impacts of the proposed action not significant.

* * * * *

5. Subpart D is revised to read as follows:

Subpart D—Typical Classes of Actions

Sec.

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document) (appendices A and B to this subpart D);

(2) Require preparation of an EA, but not necessarily an EIS (appendix C to this subpart D); or

(3) Require preparation of an EIS (appendix D to this subpart D).

(b) Any completed, valid NEPA review does not have to be repeated, and no completed NEPA documents need to be redone by reasons of these regulations, except as provided in § 1021.314.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless there are extraordinary circumstances related to the specific proposal that may affect the significance of the environmental effects of the proposal.

(d) If a DOE proposal is not encompassed within the classes of actions listed in the appendices to this subpart D, or if there are extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal, DOE shall either:

(1) Prepare an EA and, on the basis of that EA, determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) The actions listed in appendices A and B to this subpart D are classes of actions that DOE has determined do not individually or cumulatively have a significant effect on the human environment (categorical exclusions).

(b) To find that a proposal is categorically excluded, DOE shall determine the following:

(1) The proposal fits within a class of actions that is listed in appendix A or B to this subpart D;

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

(3) The proposal has not been segmented to meet the definition of a categorical exclusion. Segmentation can occur when a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. The scope of a proposal must include the consideration of connected and cumulative actions, that is, the proposal is not connected to other actions with potentially significant impacts (40 CFR 1508.25(a)(1)), is not related to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1508.27(b)(7)), and is not precluded by 40 CFR 1506.1 or § 1021.211 of this part concerning limitations on actions during EIS preparation.

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

(d) A class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as award of implementing grants and contracts, site preparation, purchase and installation of equipment, and associated transportation activities).

(e) Categorical exclusion determinations for actions listed in appendix B shall be documented and made available to the public by posting online, generally within two weeks of the determination, unless additional time is needed in order to review and protect classified information, "confidential business information," or other information that DOE would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Posted categorical exclusion determinations shall not disclose classified information, "confidential business information," or other information that DOE would not disclose pursuant to FOIA. (*See* also 10 CFR 1021.340.)

Appendix A to Subpart D of Part 1021—Categorical Exclusions Applicable to General Agency Actions

A1 Routine DOE Business Actions

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

A2 Clarifying or Administrative Contract Actions

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

A3 Certain Actions by Office of Hearings and Appeals

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

A4 Interpretations and Rulings for Existing Regulations

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

A5 Interpretive Rulemakings With no Change in Environmental Effect

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

A6 Procedural Rulemakings

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

A7 [Reserved]

A8 Awards of Certain Contracts

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

A9 Information Gathering, Analysis, and Dissemination

Information gathering (including, but not limited to, literature surveys, inventories, site visits, and audits), data analysis (including, but not limited to, computer modeling), document preparation (including, but not limited to, conceptual design, feasibility studies, and analytical energy supply and demand studies), and information dissemination (including, but not limited to, document publication and distribution, and classroom training and informational programs), but not including site

characterization or environmental monitoring. (See *also* B3.1 of appendix B to this subpart.)

A10 Reports and Recommendations on non-DOE Legislation

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

A11 Technical Advice and Assistance to Organizations

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

A12 Emergency Preparedness Planning

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

A13 Procedural Documents

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

A14 Approval of Technical Exchange Arrangements

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

A15 International Agreements for Energy Research and Development

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

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

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

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

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a Federally recognized Indian Tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by Federal, State, or local governments, or a Federally recognized Indian Tribe, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); State-listed endangered or threatened species or their habitat; and Federally-protected marine mammals and Essential Fish Habitat (Marine Mammals Protection Act; Magnuson-Stevens Fishery Conservation and Management Act);

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

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

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

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

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

B1. Categorical Exclusions Applicable to Facility Operation

B1.1 Changing Rates and Prices

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

B1.2 Training Exercises and Simulations

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

B1.3 Routine Maintenance

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

(a) Repair or replacement of facility equipment, such as lathes, mills, pumps, and presses;

(b) Door and window repair or replacement;

(c) Wall, ceiling, or floor repair or replacement;

(d) Reroofing;

(e) Plumbing, electrical utility, lighting, and telephone service repair or replacement;

(f) Routine replacement of high-efficiency particulate air filters;

(g) Inspection and/or treatment of currently installed utility poles;

(h) Repair of road embankments;

(i) Repair or replacement of fire protection sprinkler systems;

(j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing, and scraping and grading of unpaved surfaces;

(k) Erosion control and soil stabilization measures (such as reseeding and revegetation);

(l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 435.1, "Radioactive Waste Management," or its successor;

(m) Repair and maintenance of transmission facilities, such as replacement

of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed transmission lines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions) or its successor;

(n) Routine testing and calibration of facility components, subsystems, or portable equipment (such as control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes);

(o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), and removal of contaminated intact equipment and other material (not including spent nuclear fuel or special nuclear material in nuclear reactors); and

(p) Removal of debris.

B1.4 Air Conditioning Systems for Existing Equipment

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

B1.5 Existing Steam Plants and Cooling Water Systems

Minor improvements to existing steam plants and cooling water systems (including, but not limited to, modifications of existing cooling towers and ponds), provided that the improvements would not: (1) Create new sources of water or involve new receiving waters; (2) have the potential to cause significant impacts on water withdrawals or the temperature of discharged water; or (3) increase introductions of, or involve new introductions of, hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products.

B1.6 Tanks and Equipment To Control Runoff and Spills

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

B1.7 Electronic Equipment

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

B1.8 Screened Water Intake and Outflow Structures

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

B1.9 Airway Safety Markings and Painting

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

B1.10 Onsite Storage of Activated Material

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

B1.11 Fencing

Installation of fencing, including, but not limited to border marking, that would not have the potential to cause significant impacts on wildlife populations or migration or surface water flow.

B1.12 Detonation or Burning of Explosives or Propellants After Testing

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

B1.13 Pathways, Short Access Roads, and Rail Lines

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

B1.14 Refueling of Nuclear Reactors

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

B1.15 Support Buildings

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

B1.16 Asbestos Removal

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

B1.17 Polychlorinated Biphenyl Removal

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

B1.18 Water Supply Wells

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

B1.19 Microwave, Meteorological, and Radio Towers

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

B1.20 Protection of Cultural Resources, Fish and Wildlife Habitat

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

B1.21 Noise Abatement

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

B1.22 Relocation of Buildings

Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area

(where active utilities and currently used roads are readily accessible).

B1.23 Demolition and Disposal of Buildings

Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces), provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.24 Property Transfers

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

B1.25 Property Transfers for Cultural Resources Protection, Habitat Preservation, and Wildlife Management

Transfer, lease, disposition, or acquisition of interests in land and associated buildings for cultural resources protection, habitat preservation, or fish and wildlife management, provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.26 Small Water Treatment Facilities

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

B1.27 Disconnection of Utilities

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

B1.28 Placing a Facility in an Environmentally Safe Condition

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

B1.29 Disposal Facilities for Construction and Demolition Waste

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

B1.30 Transfer Actions

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

B1.31 Installation or Relocation of Machinery and Equipment

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

B1.32 Traffic Flow Adjustments

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

B1.33 Stormwater Runoff Control

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

B1.34 Lead-based Paint

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

B1.35 Drop-off, Collection and Transfer Facilities for Recyclable Materials

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

B1.36 Determinations of Excess Real Property

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

B2. Categorical Exclusions Applicable to Safety and Health

B2.1 Workplace Enhancements

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

B2.2 Building and Equipment Instrumentation

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

B2.3 Personnel Safety and Health Equipment

Installation of, or improvements to, equipment for personnel safety and health (including, but not limited to, eye washes,

safety showers, radiation monitoring devices, fumehoods, and associated collection and exhaust systems), provided that the covered actions would not have the potential to cause a significant increase in emissions.

B2.4 Equipment Qualification

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

B2.5 Facility Safety and Environmental Improvements

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

B2.6 Recovery of Radioactive Sealed Sources

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

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

B3.1 Site Characterization and Environmental Monitoring

Site characterization and environmental monitoring (including, but not limited to, siting, construction, modification, operation, and dismantlement and abandonment of characterization and monitoring devices, and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis). Such activities would not have the potential to cause significant impacts from ground disturbance. Covered activities include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. (This class of actions excludes activities in salt water and freshwater. *See* B3.16 of this appendix for salt water and freshwater activities.) Specific activities include, but are not limited to:

(a) Geological, geophysical (such as gravity, magnetic, electrical, seismic, radar, and temperature gradient), geochemical, and engineering surveys and mapping, and the establishment of survey marks. Seismic techniques would not include large-scale reflection or refraction testing;

(b) Installation and operation of field instruments (such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools);

(c) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells;

(d) Aquifer and underground reservoir response testing;

(e) Installation and operation of ambient air monitoring equipment;

(f) Sampling and characterization of water, soil, rock, or contaminants (such as drilling using truck- or mobile-scale equipment, and modification, use, and plugging of boreholes);

(g) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(h) Installation and operation of meteorological towers and associated activities (such as assessment of potential wind energy resources);

(i) Sampling of flora or fauna; and

(j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7.

B3.2 Aviation Activities

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

B3.3 Research Related to Conservation of Fish, Wildlife, and Cultural Resources

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

B3.4 Transport Packaging Tests for Radioactive or Hazardous Material

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

B3.5 Tank Car Tests

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

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

Siting, construction, modification, operation, and decommissioning of facilities for small-scale research and development projects; conventional laboratory operations (such as preparation of chemical standards and sample analysis); and small-scale pilot projects (generally less than 2 years) frequently conducted to verify a concept before demonstration actions, provided that construction or modification would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). For purposes of this category, "demonstration actions" means actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment. Demonstration actions frequently follow research and development and pilot projects that are directed at establishing proof of concept.

B3.7 New Terrestrial Infill Exploratory and Experimental Wells

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

B3.8 Outdoor Terrestrial Ecological and Environmental Research

Outdoor terrestrial ecological and environmental research in a small area (generally less than 5 acres), including, but not limited to, siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for associated analysis, provided that such activities would not have the potential to cause significant impacts on the ecosystem. These actions include, but are not limited to, small test plots for energy-related biomass or biofuels research. Such research may include the use of genetically engineered plants where the test plot of such plants and associated activities have been authorized by the U.S. Department of Agriculture, in accordance with applicable requirements (such as 7 CFR part 340),

including the use of any required confinement measures and buffer zones.

B3.9 Projects To Reduce Emissions and Waste Generation

Projects to reduce emissions and waste generation at existing fossil or alternative fuel combustion or utilization facilities, provided that these projects would not have the potential to cause a significant increase in the quantity or rate of air emissions. For this category of actions, "fuel" includes coal, oil, natural gas, hydrogen, syngas, and biomass. Neither "fuel" nor "alternative fuel" herein includes nuclear fuels. Covered actions include, but are not limited to:

(a) Test treatment of the throughput product (solid, liquid, or gas) generated at an existing and fully operational fuel combustion or utilization facility;

(b) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that requires only minor modification to the existing structures at an existing fuel combustion or utilization facility, for which the existing use remains essentially unchanged;

(c) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that involves no permanent change in the quantity or quality of fuel burned or used and involves no permanent change in the capacity factor of the fuel combustion or utilization facility; and

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

B3.10 Particle Accelerators

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

B3.11 Outdoor Tests and Experiments on Materials and Equipment Components

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

B3.12 Microbiological and Biomedical Facilities

Siting, construction, modification, operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4), in accordance with applicable requirements or best practices (such as Biosafety in Microbiological and Biomedical Laboratories, 5th Edition, Feb. 2007, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and the National Institutes of Health) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Operation may include the purchase, installation, and operation of biomedical equipment (such as commercially available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation).

B3.13 Magnetic Fusion Experiments

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

B3.14 Small-Scale Educational Facilities

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

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

Siting, construction, modification, operation, and decommissioning of facilities for indoor small-scale research and development projects and small-scale pilot projects using nanoscale materials in accordance with applicable requirements (such as engineering, worker safety, procedural, and administrative regulations) necessary to ensure the containment of any biohazardous materials. Construction and modification activities would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible).

B3.16 Research Activities in Salt Water and Freshwater Environments

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

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

(b) Data collection, environmental monitoring, and nondestructive research programs;

(c) Resource evaluation activities including surveying and mapping, but excluding seismic activities other than passive techniques;

(d) Collection of geological, paleontological, mineralogical, geochemical, biological, and geotechnical data and samples, but excluding large-scale vibratory coring techniques;

(e) Installation of monitoring and recording devices;

(f) Installation of equipment for flow testing of existing wells including equipment for fluid analysis; and

(g) Ecological and environmental research provided that such activities would not have the potential to cause significant impacts on the ecosystem.

These activities would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan and would incorporate appropriate control technologies and best management practices. None of the above activities would occur within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity (such as protected areas and other areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally), or outside those areas if the activities would have the potential to cause significant impacts within those areas. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells.

B4. Categorical Exclusions Applicable to Power Resources

B4.1 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

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

B4.2 Export of Electric Energy

Export of electric energy as provided by Section 202(e) of the Federal Power Act over existing transmission systems or using

transmission system changes that are themselves categorically excluded.

B4.3 Electric Power Marketing Rate Changes

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

B4.4 Power Marketing Services and Activities

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

B4.5 Temporary Adjustments to River Operations

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

B4.6 Additions and Modifications to Transmission Facilities

Additions or modifications to electric power transmission facilities that would not have the potential to cause significant impacts beyond the previously disturbed or developed facility area (including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, load shaping projects (such as the installation and use of flywheels and battery arrays), changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms).

B4.7 Fiber Optic Cable

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

B4.8 Electricity Transmission Agreements

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

B4.9 Multiple Use of Transmission Line Rights-of-Way

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

B4.10 Removal of Electric Transmission Lines and Substations

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

B4.11 Electric Power Substations and Interconnection Facilities

Construction or modification of electric power substations or interconnection facilities (including, but not limited to, switching stations and support facilities) that are not for the interconnection of a new generation resource into a Power Marketing Administration's transmission system, unless: (1) The new generation resource would be eligible for categorical exclusion under this part and (2) the new generation resource would be equal to or less than 50 average megawatts.

B4.12 Construction of Transmission Lines

Construction of electric transmission lines approximately 10 miles in length or less inside or outside of previously disturbed or developed transmission line or pipeline rights-of-way, or approximately 20 miles in length or less inside of previously disturbed or developed transmission line or pipeline rights-of-way, that are not for the interconnection of a new generation resource into a Power Marketing Administration's transmission system, unless: (1) The new generation resource would be eligible for categorical exclusion under this part and (2) the new generation resource would be equal to or less than 50 average megawatts.

B4.13 Upgrading and Rebuilding Existing Transmission Lines

Upgrading or rebuilding approximately 20 miles in length or less of existing electric transmission lines, which may involve minor relocations of small segments of the transmission lines, that is not for the interconnection of a new generation resource into a Power Marketing Administration's transmission system, unless: (1) The new generation resource would be eligible for categorical exclusion under this part and (2) the new generation resource would be equal to or less than 50 average megawatts.

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

B5.1 Actions To Conserve Energy or Water

(a) Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy efficiency that would not have the potential to cause significant changes in the indoor or outdoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as State, local, and Tribal). Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); power storage (such as flywheels and batteries, generally less than 10 megawatt equivalent); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors. Covered actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) of this appendix.

(b) Covered actions include rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not: (1) Have the potential to cause a significant change in manufacturing infrastructure (such as construction of new manufacturing plants with considerable associated ground disturbance); (2) involve significant unresolved conflicts concerning alternative uses of available resources (such as rare or limited raw materials); (3) have the potential to result in a significant increase in the disposal of materials posing significant risks to human health and the environment (such as RCRA hazardous wastes); or (4) have the potential to cause a significant increase in energy consumption in a State or region.

B5.2 Modifications to Pumps and Piping

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

B5.3 Modification or Abandonment of Wells

Modification (but not expansion) or plugging and abandonment of wells, provided that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with best practices and DOE

protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include, but are not limited to, storage and injection wells for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Covered modifications would not be part of site closure.

B5.4 Repair or Replacement of Pipelines

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

B5.5 Short Pipeline Segments

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

B5.6 Oil Spill Cleanup

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

B5.7 Import or Export Natural Gas, With Operational Changes

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.

B5.8 Import or Export Natural Gas, With New Cogeneration Powerplant

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve new cogeneration powerplants (as defined in the Powerplant and Industrial Fuel Use Act of 1978, as amended) within or contiguous to an existing industrial complex and requiring generally less than 10 miles of new natural gas pipeline or 20 miles within previously disturbed or developed rights-of-way.

B5.9 Temporary Exemptions For Electric Powerplants

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

B5.10 Certain Permanent Exemptions For Existing Electric Powerplants

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

B5.11 Permanent Exemptions Allowing Mixed Natural Gas and Petroleum

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

B5.12 Workover of Existing Wells

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

B5.13 Experimental Wells for Injection of Small Quantities of Carbon Dioxide

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

B5.14 Combined Heat and Power or Cogeneration Systems

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

B5.15 Small-Scale Renewable Energy Research and Development and Pilot Projects

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

B5.16 Solar Photovoltaic Systems

The installation, modification, operation, and removal of commercially available solar photovoltaic systems located on a building or other structure (such as rooftop, parking lot or facility, and mounted to signage, lighting, gates, or fences), or if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.17 Solar Thermal Systems

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

B5.18 Wind Turbines

The installation, modification, operation, and removal of commercially available small wind turbines, with a total height generally less than 200 feet (measured from the ground to the maximum height of blade rotation) that (1) are located within a previously disturbed or developed area; (2) are located more than 10 nautical miles from an airport or aviation navigation aid; (3) are located more than 1.5 nautical miles from National Weather Service or Federal Aviation Administration Doppler weather radar; (4) would not have the potential to cause significant impacts on bird or bat species; and (5) are sited or designed such that the project would not have the potential to cause significant impacts to

persons (such as shadow flicker and other visual impacts, and noise). Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.19 Ground Source Heat Pumps

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

B5.20 Biomass Power Plants

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

B5.21 Methane Gas Recovery and Utilization Systems

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

B5.22 Alternative Fuel Vehicle Fueling Stations

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

B5.23 Electric Vehicle Charging Stations

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

B5.24 Drop-In Hydroelectric Systems

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

B5.25 Small-Scale Renewable Energy Research and Development and Pilot Projects in Salt Water and Freshwater Environments

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

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

B6.1 Cleanup Actions

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

(a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, if surface water or groundwater would not collect and if such actions would reduce the spread of, or direct contact with, the contamination;

(b) Removal of bulk containers (such as drums and barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261 or applicable State requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(c) Removal of an underground storage tank including its associated piping and underlying containment systems in accordance with applicable requirements (such as RCRA, subtitle I; 40 CFR part 265, subpart J; and 40 CFR part 280, subparts F and G) if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(d) Repair or replacement of leaking containers;

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

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

(g) Confinement or perimeter protection using dikes, trenches, ditches, or diversions,

or installing underground barriers, if needed to reduce the spread of, or direct contact with, the contamination;

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

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

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

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

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

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

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

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

B6.2 Waste Collection, Treatment, Stabilization, and Containment Facilities

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

B6.3 Improvements to Environmental Control Systems

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

B6.4 Facilities for Storing Packaged Hazardous Waste for 90 Days or Less

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

B6.5 Facilities for Characterizing and Sorting Packaged Waste and Overpacking Waste

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, provided that operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10 of this appendix, and C16 of appendix C) or the handling of spent nuclear fuel.

B6.6 Modification of Facilities for Storing, Packaging, and Repacking Waste

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

B6.7 [Reserved]

B6.8 Modifications for Waste Minimization and Reuse of Materials

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

B6.9 Measures To Reduce Migration of Contaminated Groundwater

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

B6.10 Upgraded or Replacement Waste Storage Facilities

Siting, construction, modification, expansion, operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. (*See also* B6.4, B6.5, B6.6 of this appendix, and C16 of appendix C.)

B7. Categorical Exclusions Applicable to International Activities

B7.1 Emergency Measures Under the International Energy Program

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

B7.2 Import and Export of Special Nuclear or Isotopic Materials

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

Appendix C to Subpart D of Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

C1 [Reserved]

C2 [Reserved]

C3 Electric Power Marketing Rate Changes, Not Within Normal Operating Limits

Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements if the operations of generation projects would not remain within normal operating limits.

C4 Upgrading, Rebuilding, or Construction of Electric Transmission Lines

Upgrading or rebuilding more than approximately 20 miles in length of existing electric transmission lines; or construction of electric transmission lines (1) more than approximately 10 miles in length outside previously disturbed or developed transmission line or pipeline rights-of-way or (2) more than approximately 20 miles in length within previously disturbed or developed transmission line or pipeline rights-of-way.

C5 Vegetation Management Program

Implementation of a Power Marketing Administration system-wide vegetation management program.

C6 Erosion Control Program

Implementation of a Power Marketing Administration system-wide erosion control program.

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve (1) the interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts and that would not be eligible for categorical exclusion under this part; (2) changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or (3) service to discrete new loads of less than10 average megawatts over a 12-month period.

C8 Protection of Cultural Resources and Fish and Wildlife Habitat

Large-scale activities undertaken to protect cultural resources (such as fencing, labeling, and flagging) or to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders and minor diversion channels), or fisheries.

C9 Wetlands Demonstration Projects

Field demonstration projects for wetlands mitigation, creation, and restoration.

C10 [Reserved]

C11 Particle Acceleration Facilities

Siting, construction or modification, operation, and decommissioning of low- or medium-energy (when the primary beam energy exceeds approximately 100 million electron volts and the average beam power exceeds approximately 250 kilowatts or where the average current exceeds 2.5 milliamperes) particle acceleration facilities, including electron beam acceleration facilities, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible).

C12 Energy System Demonstration Actions

Siting, construction, and operation of energy system demonstration actions (including, but not limited to, wind resource, hydropower, geothermal, fossil fuel, biomass, and solar energy, but excluding nuclear). For purposes of this category, "demonstration actions" means actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment. Demonstration actions frequently follow research and development and pilot projects that are directed at establishing proof of concept.

C13 Import or Export Natural Gas Involving Minor New Construction

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving minor new construction (such as adding new connections, looping, or compression to an existing natural gas or liquefied natural gas pipeline, or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way).

C14 Water Treatment Facilities

Siting, construction (or expansion), operation, and decommissioning of wastewater, surface water, potable water, and sewage treatment facilities with a total capacity greater than approximately 250,000 gallons per day, and of lower capacity wastewater and surface water treatment facilities whose liquid discharges are not subject to external regulation.

C15 Research and Development Incinerators and Nonhazardous Waste Incinerators

Siting, construction (or expansion), and operation of research and development incinerators for any type of waste and of any other incinerators that would treat nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

C16 Large Waste Packaging and Storage Facilities

Siting, construction, modification to increase capacity, operation, and decommissioning of packaging and unpacking facilities (such as characterization operations) and large storage facilities (greater than approximately 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage, packaging, or unpacking of spent nuclear fuel. (See also B6.4, B6.5, B6.6, and B6.10 of appendix B.)

Appendix D to Subpart D of Part 1021—Classes of Actions That Normally Require EISs

D1 Strategic Systems

Strategic Systems, as defined in DOE Order 430.1, "Life-Cycle Asset Management," or its successor, and designated by the Secretary.

D2 Nuclear Fuel Reprocessing Facilities

Siting, construction, operation, and decommissioning of nuclear fuel reprocessing facilities.

D3 Uranium Enrichment Facilities

Siting, construction, operation, and decommissioning of uranium enrichment facilities.

D4 Reactors

Siting, construction, operation, and decommissioning of power reactors, nuclear material production reactors, and test and research reactors.

D5 [Reserved]

D6 [Reserved]

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition or transmission that involve (1) the interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts; (2) changes in the normal operating limits of generation resources greater than 50 average megawatts; or (3) service to discrete new loads of 10 average megawatts or more over a 12-month period.

D8 Import or Export of Natural Gas Involving Major New Facilities

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving construction of major new natural gas pipelines or related facilities (such as liquefied natural gas terminals and regasification or storage facilities) or significant expansions and modifications of existing pipelines or related facilities).

D9 Import or Export of Natural Gas Involving Major Operational Change

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving major operational changes (such as a major increase in the quantity of liquefied natural gas imported or exported).

D10 Treatment, Storage, and Disposal Facilities for High-Level Waste and Spent Nuclear Fuel

Siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel, including geologic repositories, but not including onsite replacement or upgrades of storage facilities for spent nuclear fuel at DOE sites where such replacement or upgrade would not result in increased storage capacity.

D11 Waste Disposal Facilities for Transuranic Waste

Siting, construction or expansion, and operation of disposal facilities for transuranic (TRU) waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

D12 Incinerators

Siting, construction, and operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

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Part III

Department of Energy

10 CFR Part 1021
National Environmental Policy Act Implementing Procedures; Final Rule

DEPARTMENT OF ENERGY

[Docket ID: DOE–HQ–2010–0002]

10 CFR Part 1021

RIN 1990–AA34

National Environmental Policy Act Implementing Procedures

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is revising its National Environmental Policy Act (NEPA) Implementing Procedures. The majority of the changes are being made to the categorical exclusion provisions. These revisions are intended to better align the Department's regulations, particularly its categorical exclusions, with DOE's current activities and recent experiences, and to update the provisions with respect to current technologies and regulatory requirements. DOE is establishing 20 new categorical exclusions and removing two categorical exclusion categories, one environmental assessment category, and three environmental impact statement categories. Other changes modify and clarify DOE's existing provisions.

DATES: *Effective Date:* These rule changes will become effective November 14, 2011.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's NEPA implementation regulations or general information about DOE's NEPA procedures, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, at *askNEPA@hq.doe.gov* or 202–586–4600 or leave a message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

DOE promulgated its regulations entitled ''National Environmental Policy Act Implementing Procedures'' (10 CFR part 1021) on April 24, 1992 (57 FR 15122), and revised these regulations on July 9, 1996 (61 FR 36222), December 6, 1996 (61 FR 64603), and August 27, 2003 (68 FR 51429). The DOE NEPA regulations at 10 CFR part 1021 contain procedures that DOE shall use to comply with section 102(2) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). DOE published a Notice of Proposed Rulemaking on January 3, 2011 (76 FR 214), to solicit public comments on its proposal to further revise these regulations by adding new categorical exclusions, revising existing categorical exclusions, and making certain other changes.

Publication of the Notice of Proposed Rulemaking began a 45-day public comment period, scheduled to end on February 17, 2011, which included a public hearing on February 4, 2011, at DOE headquarters in Washington, DC. On February 23, 2011, in response to a request from the National Wildlife Federation, on behalf of itself and 9 other organizations, for additional time to review the proposed rule and submit comments, DOE re-opened the comment period until March 7, 2011 (76 FR 9981).

DOE received comments from private citizens, trade associations, nongovernmental organizations, Federal agencies, and a tribal government agency. The transcript of the public hearing, a request to extend the comment period, and the 29 comment documents received by DOE, including two documents received after the close of the comment period, are available on the DOE NEPA Web site (*http://energy.gov/nepa*) and on the Regulations.gov Web site (*http://www.regulations.gov*) at docket ID: DOE–HQ–2010–0002.

DOE considered all comments received, including those comments on categorical exclusions for which DOE did not propose any changes. DOE's response to the comments is contained in section IV, Comments Received and DOE's Responses, below.

The revisions DOE is making are consistent with guidance issued by CEQ on establishing, applying, and revising categorical exclusions under NEPA (CEQ, ''Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act''; hereafter, CEQ Categorical Exclusion Guidance) (75 FR 75628; December 6, 2010). On December 29, 2009, DOE initiated its periodic review by publishing a Request for Information in the **Federal Register** (74 FR 68720) (*http://www.gpo.gov/fdsys/pkg/FR-2009-12-29/pdf/E9-30829.pdf*) that sought input from interested parties to help identify activities that should be considered for new or revised categorical exclusions. Moreover, DOE evaluated each of its existing categorical exclusions in preparing these revisions, and this rulemaking satisfies CEQ's recommendation for periodic review of an agency's categorical exclusions.

This document adopts the revisions proposed in the Notice of Proposed Rulemaking, with certain changes discussed below, and amends DOE's existing regulations at 10 CFR part 1021. In accordance with 40 CFR 1507.3, CEQ reviewed this final rule and concluded that the proposed amendment of DOE's NEPA implementing regulations is in conformance with NEPA and the CEQ regulations. The Secretary of Energy has approved this final rule for publication.

Within this document, ''existing rule'' refers to DOE's current NEPA implementing regulations (as last modified in 2003, before the revisions announced in this document); ''proposed rule'' refers to changes identified in DOE's Notice of Proposed Rulemaking published on January 3, 2011; and ''new rule'' or ''final rule'' refers to the changes identified in this document, which will become effective on November 14, 2011.

II. Statement of Purpose

The Department last revised the categorical exclusions in its NEPA implementing regulations in 1996. Since that time, the range of activities in which DOE is involved has changed and expanded. For example, in recent years, DOE has reviewed thousands of applications from private entities requesting financial support for projects to develop new or improved energy technologies, including for renewable energy sources. This experience highlighted the potential for new and revised categorical exclusions and helped DOE identify appropriate limits to include in these categorical exclusions to ensure that the activities described normally would not have the potential for significant environmental impact.

The purpose of this rulemaking is to revise certain provisions of DOE's NEPA implementing regulations to better align DOE's categorical exclusions with its current activities and its experience and to bring the provisions up-to-date with current technology, operational practices, and regulatory requirements. The changes will facilitate compliance with NEPA by providing for more efficient review of actions (for example, helping the Department meet the goals set forth in the Energy Policy Act of 2005), and allowing the Department to focus its resources on evaluating proposed actions that have the potential for significant environmental impacts. The changes will also increase transparency by providing the public more specific information as to the circumstances in which DOE is likely to invoke a categorical exclusion.

What kinds of changes is DOE making?

DOE is amending 10 CFR part 1021, subparts B, C, and D. Most of the changes affect the categorical exclusion provisions at 10 CFR part 1021, subpart D, appendices A and B.

DOE is adding 20 new categorical exclusions. These categorical exclusions address stormwater runoff control; lead-based paint containment, removal, and disposal; drop-off, collection, and transfer facilities for recyclable material; determinations of excess real property; small-scale educational facilities; small-scale indoor research and development projects using nanoscale materials; research activities in aquatic environments; experimental wells for injection of small quantities of carbon dioxide; combined heat and power or cogeneration systems; small-scale renewable energy research and development and pilot projects; solar photovoltaic systems; solar thermal systems; wind turbines; ground source heat pumps; biomass power plants; methane gas recovery and utilization systems; alternative fuel vehicle fueling stations; electric vehicle charging stations; drop-in hydroelectric systems; and small-scale renewable energy research and development and pilot projects in aquatic environments. These new categorical exclusions include criteria (*e.g.,* acreage, location, and height limitations), based on DOE and other agency experience and regulatory requirements, that limit the covered actions to those that normally would not have the potential to cause significant impacts. DOE is removing two categorical exclusion categories, one environmental assessment category, and three environmental impact statement categories.

DOE also is modifying many of the existing categorical exclusions. These revisions include substantive changes, changes to update regulatory or statutory references and requirements, and editorial changes. By ''substantive'' changes, DOE means a change that is more than a clarifying or consistency change; this term includes changes that alter the scope or meaning of a provision or that result in the addition or deletion of a provision.

DOE is making several minor technical and organizational changes in the final rule, four of which were not identified at the time of the Notice of Proposed Rulemaking. First, after issuing the Notice of Proposed Rulemaking, DOE noted that 10 CFR 1021.215(d) includes an outdated reference to § 1021.312. In the DOE NEPA regulations promulgated in 1992, § 1021.312 addressed environmental impact statement implementation plans. In 1996, DOE removed this requirement, and the section number was reserved. Therefore, DOE is deleting the reference to § 1021.312 from § 1021.215. Second, in the Notice of Proposed Rulemaking, DOE proposed two changes to correct cross-references within § 1021.311. After further consideration, DOE is modifying the proposed change to § 1021.311(d) to improve clarity by deleting the introductory clause, rather than only correcting the cross-reference in that clause. (As described in the Notice of Proposed Rulemaking, DOE is also revising § 1021.311(f) (*i.e.,* correcting one cross-reference).) Third, in the Notice of Proposed Rulemaking, DOE proposed to change the title for the group of categorical exclusions from B4.1 through B4.13. After further consideration, DOE is further modifying the title to ''Categorical Exclusions Applicable to Electric Power and Transmission.'' Fourth, a comment from Tri-Valley CAREs (at page 1) requested that DOE not remove the table of contents from its NEPA regulations (as proposed in the Notice of Proposed Rulemaking), explaining that the table of contents is ''extremely useful.'' In response, DOE is retaining a table of contents in each appendix. These changes have no regulatory effect.

III. Overview of Categorical Exclusions

What is a categorical exclusion?

A categorical exclusion is a category (class) of actions that a Federal agency has determined normally do not, individually or cumulatively, have a significant impact on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. See 40 CFR 1508.4. A categorical exclusion determination is made when an agency finds that a particular proposed action fits within a categorical exclusion and meets other applicable requirements, including the absence of extraordinary circumstances (*i.e.,* circumstances in which a normally excluded action may have a significant environmental effect).

DOE establishes categorical exclusions pursuant to a rulemaking, such as this one, for defined classes of actions that the Department determines are supported by a record showing that they normally will not have significant environmental impacts, individually or cumulatively. This record is based on DOE's experience, the experience of other agencies, completed environmental reviews, professional and expert opinion, and scientific analyses. DOE also considers public comment received during the rulemaking, as detailed in section IV, Comments Received and DOE's Responses, below.

As CEQ states in its Categorical Exclusion Guidance, ''Categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review * * *. Once established, categorical exclusions provide an efficient tool to complete the NEPA environmental review process for proposals that normally do not require more resource-intensive EAs [environmental assessments] or EISs [environmental impact statements]. The use of categorical exclusions can reduce paperwork and delay, so that EAs or EISs are targeted toward proposed actions that truly have the potential to cause significant environmental effects'' (75 FR at 75631).

How does DOE use a categorical exclusion in its decisionmaking?

As part of its environmental review responsibilities under NEPA, a DOE NEPA Compliance Officer examines an individual proposed action to determine whether it qualifies for a categorical exclusion. DOE's process is consistent with that described in CEQ's Categorical Exclusion Guidance: ''When determining whether to use a categorical exclusion for a proposed activity, a Federal agency must carefully review the description of the proposed action to ensure that it fits within the category of actions described in the categorical exclusion. Next, the agency must consider the specific circumstances associated with the proposed activity, to rule out any extraordinary circumstances that might give rise to significant environmental effects requiring further analysis and documentation'' in an environmental assessment or environmental impact statement (75 FR at 75631).

DOE's existing and new regulations ensure that the NEPA Compliance Officer follows the steps described by CEQ. Before DOE may apply a categorical exclusion to a particular proposed action, DOE must determine in accordance with 10 CFR 1021.410(b) that: (1) The proposed action fits within an established categorical exclusion as listed in appendix A or B to subpart D, (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental impacts of the proposed action, and (3) the proposal is not ''connected'' to other actions with potentially significant impacts and is not related to other actions with cumulatively significant impacts, and the proposed action is not precluded as

an impermissible interim action pursuant to 40 CFR 1506.1 and 10 CFR 1021.211.

To fit within a categorical exclusion listed in appendix B, a proposed action also must satisfy certain conditions known as ''integral elements'' (appendix B, paragraphs (1) through (5)). Briefly, these conditions require that a categorical exclusion listed in appendix B not be applied to a proposed action with the potential to cause significant environmental impacts due to, for example, threatening a violation of applicable environmental, safety, and health requirements; requiring siting and construction, or major expansion, of a new waste storage, disposal, recovery, or treatment facility; disturbing hazardous substances such that there would be uncontrolled or unpermitted releases; having the potential to cause significant impacts on environmentally sensitive resources; or involving genetically engineered organisms, unless the proposed activity would be contained in a manner to prevent unauthorized release into the environment and conducted in accordance with applicable requirements.

The level of detail necessary to evaluate the potential for extraordinary circumstances and otherwise to determine whether a categorical exclusion is appropriate for a particular proposed action varies. For example, appendix A to subpart D lists categorical exclusions for several routine administrative actions, studies, and planning activities. A NEPA Compliance Officer normally can determine whether a categorical exclusion listed in appendix A is appropriate by reviewing a description of the proposed project. However, to determine whether a categorical exclusion from appendix B applies, in addition to the project description, a NEPA Compliance Officer also would consider information about a proposed project site and the result of reviews by other agencies (such as of historic properties or threatened and endangered species), as well as other related information.

IV. Comments Received and DOE's Responses

DOE has considered the comments on the proposed rulemaking received during the public comment period as well as all late comments. DOE has incorporated some revisions suggested in these comments into the final rule. The following discussion describes the comments received, provides DOE's response to the comments, and describes changes to the rule resulting from public comments and from DOE's further consideration of its proposal. DOE does not repeat discussion of topics in this final rule that have not changed relative to what was described in the Notice of Proposed Rulemaking. Thus, the Notice of Proposed Rulemaking may be consulted for further explanation regarding changes in the final rule.

DOE received no comments or only supportive comments on the following sections of the rule and is not making any changes beyond those discussed in the Notice of Proposed Rulemaking: In subpart C, sections 1021.322 and 1021.331; in subpart D, sections 1021.400; all of appendix A; in appendix B, paragraphs (1) through (2), and categorical exclusions B1.1, B1.2, B1.4, B1.6 through B1.8, B1.10, B1.12, B1.13, B1.15 through B1.17, B1.20 through B1.23, B1.27, B1.28, B1.30 through B1.32, B1.35, B1.36, B2.1, B2.2, B2.4 through B2.6, B3.2 through B3.5, B3.10, B3.13, B4.2, B4.3, B4.5, B4.8, B5.1, B5.2, B5.6, B5.7, B5.9 through B5.12, B5.14, B5.21 through B5.23, B6.2 through B6.10, B7.1, B7.2; in appendix C, C1 through C3, C5, C6, C9 through C11, C13, C14, C16; and in appendix D, D2 through D6, D8 through D12. In the final rule, therefore, these sections remain as discussed in the Notice of Proposed Rulemaking and are not discussed further. In addition, this final rule does not further discuss editorial changes described in the Notice of Proposed Rulemaking or in section II, Statement of Purpose, above.

A. General Comments on Proposed Amendments

The U.S. Environmental Protection Agency stated that the ''proposed changes will enhance the efficiency of DOE's environmental review process while maintaining appropriate consideration of environmental effects pursuant to NEPA'' and, accordingly, did not object to the proposed rulemaking.

In addition, several comments expressed support for the establishment of particular new categorical exclusions, especially for renewable energy technologies. DOE received comments expressing support for the following categorical exclusions as proposed: B1.7 (electronic equipment) from Edison Electric Institute (at page 2); B3.9 (projects to reduce emissions and waste generation) from Edison Electric Institute (at page 2) and National Wildlife Federation (at page 1); B3.16 (research activities in aquatic environments) from Biotechnology Industry Organization (at page 3) and Pacific Northwest National Laboratory, a DOE government research laboratory (at page 1); B5.13 (experimental wells for injection of small quantities of carbon dioxide) from Pacific Northwest National Laboratory (at page 1); B5.14 (combined heat and power or cogeneration systems) from Pacific Northwest National Laboratory (at page 1); B5.15 (small-scale renewable energy research and development and pilot projects) from Biotechnology Industry Organization (at page 3), Defenders of Wildlife (at page 2), and Pacific Northwest National Laboratory (at page 1); B5.16 (solar photovoltaic systems) from Pacific Northwest National Laboratory (at page 1); B5.17 (solar thermal systems) from Pacific Northwest National Laboratory (at page 1); B5.18 (wind turbines) from Granite Construction Company (at page 2) and Pacific Northwest National Laboratory (at page 1); B5.19 (ground source heat pumps) from Pacific Northwest National Laboratory (at page 1); B5.20 (biomass power plants) from Pacific Northwest National Laboratory (at page 1); B5.21 (methane gas recovery and utilization systems) from Pacific Northwest National Laboratory (at page 1); B5.22 (alternative fuel vehicle fueling stations) from Pacific Northwest National Laboratory (at page 1); B5.23 (electric vehicle charging stations) from National Electrical Manufacturers Association (at page 1), National Wildlife Federation (at page 1), and Pacific Northwest National Laboratory (at page 1); B5.24 (drop-in hydroelectric systems) from Pacific Northwest National Laboratory (at page 1); and B5.25 (small-scale renewable energy research and development and pilot projects in aquatic environments) from Biotechnology Industry Organization (at page 3), Ocean Renewable Power Company (at page 1), and Pacific Northwest National Laboratory (at page 1). DOE received a comment from the Biotechnology Industry Organization (at pages 1 and 3) in support of the use of algal biomass for renewable energy production, stating that the existing regulatory framework was sufficient to protect human health and the environment. The comment supported the use of categorical exclusions for related small-scale and laboratory research and pilot projects. Finally, DOE received a comment from the Blue Ridge Environmental Defense League (at page 1) indicating general support for solar photovoltaic and solar thermal facilities and wind turbines, but cautioned that the public may see categorical exclusions as loopholes, which could undermine support for these technologies. DOE notes these comments. Section 1021.410 describes

the process for applying a categorical exclusion.

Several comments expressed general objections to or concerns regarding DOE's proposed revision of its NEPA regulations. A comment from an anonymous individual (at pages 1–2) rejected all proposed changes, and a comment from the Blue Ridge Environmental Defense League (at page 1) opposed the addition of any categorical exclusions. DOE notes these comments. A comment from Jean Public (at page 1) listed wildlife, birds, reptiles, and mammals as environmental resources to be protected and stated that environmental assessments should never be allowed or used. DOE responds that DOE's NEPA regulations provide for the consideration of potential impacts on environmentally sensitive resources, and the provisions relating to environmental assessments are consistent with NEPA and the requirements of the CEQ NEPA regulations. A comment from Joyce Dillard (at page 1) stated that public health and safety should be a consideration first and foremost; DOE notes that public health and safety are among the key considerations in all NEPA reviews, including the establishment and application of categorical exclusions.

DOE received a comment from the Chesapeake Bay Foundation (at page 2) asking that DOE provide ''a clear explanation and evidential support,'' in accordance with the CEQ Categorical Exclusion Guidance, when proposing categorical exclusions. DOE establishes categorical exclusions based on Departmental experience, the experience of other agencies, completed environmental reviews, professional and expert opinion, and scientific analyses. For example, some of DOE's proposed categorical exclusions are supported by existing comparable categorical exclusions from other Federal agencies and their related experience. DOE prepared a Technical Support Document to provide analysis and identify reference documents supporting the revisions described in the Notice of Proposed Rulemaking. In preparation of this final rule, DOE updated and expanded the Technical Support Document. The Technical Support Document is available at *http://energy.gov/nepa/downloads/technical-support-document-supplement-department-energys-notice-final-rulemaking.*

A comment from the Biotechnology Industry Organization (at page 2) expressed support for science-based regulation that ''focuses on reducing and eliminating actual risks to the natural and human environment'' and applauded DOE's goals of removing barriers toward the adoption of innovative research on renewable energy.

A comment from the Kaibab Band of Paiute Indians (at page 1), citing the April 2010 Gulf oil spill, expressed opposition to the use of categorical exclusion determinations for experimental and research and development projects because of their unpredictability, and recommended that DOE analyze experimental or unproven techniques in environmental assessments or environmental impact statements. The comment recommends a similar approach for proven techniques employed in extreme situations. In response to this and other comments related to research and development activities, DOE reviewed its categorical exclusions and revised some of the listed actions and associated limits, such as described for categorical exclusions below. Limits on the size, scope, and other aspects (such as containment), combined with other criteria, restrict the application of categorical exclusions for research and development activities to projects that normally would not have a potential for significant environmental impacts. For proposed projects involving proven techniques in extreme situations, DOE would evaluate whether extraordinary circumstances are present such that application of a categorical exclusion is not appropriate.

DOE received a comment from Brian Musser (at page 2) regarding the regulation of coal combustion residue under Resource Conservation and Recovery Act Subtitle C. DOE considers this comment to be out of scope because it does not relate to the DOE NEPA regulations. However, DOE would consider potential impacts associated with coal combustion residue where relevant to NEPA review of a specific proposal.

B. Comments on DOE's NEPA Process

A comment from the Ocean Renewable Power Company (at pages 1–2), referring to a pilot project for which DOE provides funding and another agency has licensing authority, stated that the NEPA process involves duplicative and unnecessary reviews by multiple agencies, which increases costs for both the agencies and the applicant and imposes delays that can jeopardize private financing. This comment does not propose specific changes to DOE's NEPA regulations, but suggests that coordination with other environmental review requirements could be improved. DOE's NEPA regulations state, in § 1021.341, that ''DOE shall integrate the NEPA process and coordinate NEPA compliance with other environmental review requirements to the fullest extent possible.'' DOE appreciates the concern expressed by the comment and will continue to seek ways to improve coordination of environmental review requirements.

A comment from the Chesapeake Bay Foundation (at page 2) supported the recommendation in the CEQ Categorical Exclusion Guidance that an agency such as DOE develop a schedule for the periodic review of its categorical exclusions at least every 7 years. DOE also agrees with the recommendation for periodic review and considers this rulemaking to satisfy the CEQ recommendation for the near term. DOE intends to review its categorical exclusions periodically, consistent with CEQ guidance, to ensure that DOE's categorical exclusions ''remain current and appropriate,'' as stated in the CEQ guidance.

C. Comments on Amendments to Subpart D

1. Placement of Categorical Exclusions in Appendix A vs. Appendix B

A comment from Pacific Northwest National Laboratory (at page 3) asked DOE to evaluate moving several categorical exclusions from appendix B, for which determinations are documented and made publicly available, to appendix A, for which determinations are not required to be documented. For example, the comment stated that requiring documentation for routine maintenance (categorical exclusion B1.3) that is performed many times daily is an inefficient use of resources and results in gaps in compliance. DOE decided not to move any categorical exclusion from appendix B to appendix A because such a change would reduce transparency in the Department's NEPA compliance program. To address the potential inefficiency identified by the comment, DOE is adding a new paragraph (10 CFR 1021.410(f)) to the final rule that describes current practice to address proposed recurring activities to be undertaken during a specified time period, such as routine maintenance activities for a year, in a single categorical exclusion determination after considering the potential aggregated impacts.

Another comment from Sandy Beranich (at page 1) stated that many categorical exclusions in appendix A are for routine activities, and NEPA should not be required for routine activities. The comment stated that, if some level

of scale is not provided to indicate when an appendix A review is triggered, then DOE should post such appendix A categorical exclusion determinations online to inform the public how DOE uses its resources. DOE responds that the application of categorical exclusions listed in appendix A normally is a simple matter that entails minimal cost. DOE has not found use of these categorical exclusions to be problematic and has not identified any need to establish a level of activity below which NEPA normally would not apply. Some DOE offices choose to post to the Web their determinations for categorical exclusions listed in appendix A, but DOE does not require this practice.

A comment from Sandy Beranich (at page 3) stated that NEPA ''is all about ground-disturbing actions—not routine activities.'' DOE disagrees that NEPA is limited to ground-disturbing activities (for example, activities could also have air or water impacts that would be appropriate for NEPA review), and is not making any change in response to this comment.

Another comment from Sandy Beranich (at page 3) provided an example of a proposed action, the components of which, in her opinion, fell within six different appendix A and appendix B categorical exclusions. DOE agrees that it is possible for a project to be covered by more than one categorical exclusion. Furthermore, as stated in DOE's NEPA regulations (10 CFR 1021.410(d)), a class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as associated transportation activities and award of implementing grants and contracts). Where an action might fit within multiple categorical exclusions, a NEPA Compliance Officer should use the categorical exclusion(s) that best fits the proposed action.

2. Previously Disturbed or Developed Area

DOE received comments (*e.g.,* from Chesapeake Bay Foundation (at page 4), Defenders of Wildlife (at page 2), and National Wildlife Federation (at pages 1, 4–5)) on the use of the phrase ''previously disturbed or developed,'' which appears in several categorical exclusions. In the Notice of Proposed Rulemaking, DOE explained that the phrase referred to ''land that has been changed such that the former state of the area and its functioning ecological processes have been altered.'' Comments (*e.g.,* from Defenders of Wildlife (at page 2), National Wildlife Federation (at page 5)) expressed concern that the phrase was too vague to provide a useful limit and suggested, for example, including in the condition a requirement for the existence of infrastructure; further clarification is necessary, comments said. A comment from Sandy Beranich (at page 3) pointed out that land disturbed or developed in the past could, if abandoned, have reverted to a natural state and, therefore, suggested that ''previously disturbed or developed'' should be bounded by a timeframe. Comments (*e.g.,* from Defenders of Wildlife (at page 2) and National Wildlife Federation (at page 4)) also suggested that DOE mention the many brownfield, Superfund, and abandoned mine locations that have been identified through the Environmental Protection Agency's Repowering America Program, in partnership with DOE. In response, DOE clarifies that the phrase ''previously disturbed or developed'' refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. This clarification applies to all uses of the phrase ''previously disturbed or developed.'' This clarification has been added to § 1021.410(g).

In addition, DOE notes that two definitions offered in a public comment may help readers understand the meaning of previously disturbed and developed. A comment from the Chesapeake Bay Foundation (at page 4) suggested that ''previously disturbed'' should refer to land that has largely been transformed from natural cover to a managed state and that has remained in that managed state (rather than reverted back to largely natural cover). The comment (at page 4) also suggested that ''developed area'' should refer to land that is largely covered by man-made land uses and activities (residential, commercial, institutional, industrial, and transportation).

A few comments (*e.g.,* from the Chesapeake Bay Foundation (at page 4) and Defenders of Wildlife (at page 2)) pointed out that the interpretation of the phrase depends on the context, and that, in some contexts, there is a potential for significant impacts when a particular action is taken, even if it occurs in a disturbed area. Although DOE agrees with this possibility, the potential for such impacts would be unlikely and would constitute an ''extraordinary circumstance,'' where application of a categorical exclusion would be inappropriate. Before applying a categorical exclusion, a NEPA Compliance Officer will evaluate the context of the proposed action to determine whether it complies with the integral elements of the categorical exclusion (listed in appendix B, paragraphs (1) through (5)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts.

3. Small or Small-Scale

Several comments (*e.g.,* DOI (at page 3), Ocean Renewable Energy Coalition (at page 2)) asserted that DOE's use of ''small'' and ''small-scale'' was too vague to adequately define the scope of classes of actions and asked DOE to more narrowly define or clarify its use of these terms. Comments (*e.g.,* Chesapeake Bay Foundation (at page 5), Defenders of Wildlife (at page 4), Sandy Beranich (at page 2)) requested that DOE add a physical limitation such as acreage or a megawatt limitation or number of turbines (in categorical exclusion B5.18) to further define ''small'' or ''small-scale.'' A comment from the Chesapeake Bay Foundation (at page 5) asked DOE to impose a 5-acre or smaller limit for small-scale educational facilities in categorical exclusion B3.14 and expressed concern regarding the potential size (footprint) of a facility for nanoscale research in categorical exclusion B3.15. A comment from the Chesapeake Bay Foundation (at page 3) noted that determining what is a small size is influenced by the location of a proposed action on the landscape. In response, DOE provides a general discussion of ''small'' and ''small-scale'' below and also discusses the use of these terms in the context of specific classes of actions (B1.26, B1.29, B3.14, B3.15, B5.18, B5.25, B6.1, C8 (distinguishing small scale and large scale)) later in this preamble.

In determining whether a particular proposed action qualifies for a categorical exclusion, DOE considers terms such as ''small'' and ''small-scale'' in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, a DOE NEPA Compliance Officer would review the surrounding land uses, the

scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action. This clarification has been added to § 1021.410(g).

DOE has reviewed the proposed categorical exclusions and classes of action on a case-by-case basis to further consider size or scale issues in response to comments received on the Notice of Proposed Rulemaking. Among other factors, DOE considered that these terms appear in its existing categorical exclusions and have been applied by NEPA Compliance Officers for more than 15 years. As a result of this review, DOE concludes that the terms ''small'' and ''small-scale'' remain appropriate for describing the types of activities contemplated by categorical exclusions. The provisions of the individual categorical exclusions using these terms, together with the integral elements at appendix B, paragraphs (1) through (5), the general restrictions on the application of categorical exclusions at 10 CFR 1021.410, and extraordinary circumstances, provide the necessary safeguards to ensure that categorical exclusions are not applied to activities that could result in significant environmental impacts. Therefore, DOE is retaining its proposed use of ''small'' and ''small-scale'' in its final rule.

4. Would Not Have the Potential To Cause Significant Impacts

DOE received comments (*e.g.,* from Columbia Riverkeeper (at page 6), National Wildlife Federation (at page 3)) on its proposed use of the phrase ''would not have the potential for significant impact'' in both the integral element provision (at appendix B, paragraph (4)) of appendix B categorical exclusions and a number of specific categorical exclusions (categorical exclusions B1.11, B1.18, B1.24, B2.3, and B5.18). In response to these comments, DOE reviewed each use of the phrase in the Notice of Proposed Rulemaking. After further consideration, DOE is revising related text in several categorical exclusions. See discussion of categorical exclusions B1.5, B1.11, B3.1, B3.8, and B4.6 below. DOE is continuing to use the phrase in other categorical exclusions and related text.

A comment from Tri-Valley CAREs (at pages 2–3) expressed concern that DOE was expanding the categorical exclusions ''without providing an analysis of whether there was actually a potential for significant environmental impact.'' A comment from Sandy Beranich (at page 1) stated that use of ''significant'' would leave the degree of impact open to interpretation, whereas, the use of ''adversely affect'' was clearer. DOE's support for its categorical exclusions is provided in this preamble and in the Technical Support Document. For a description of how DOE creates and applies its categorical exclusions, please see Section III above.

To understand why DOE is changing some conditions in categorical exclusions that previously used the phrase ''not adversely affect'' or that required no change in a particular parameter, it is helpful to understand that it was never DOE's intent or practice that identification of any adverse impact or change whatsoever—no matter how small—would disqualify the use of a categorical exclusion for a particular proposed project. Also, the changes are consistent with the purpose of categorical exclusions, which is to define a set of activities that normally pose no potential for significant environmental impacts, and with the CEQ NEPA regulations and its Categorical Exclusion Guidance.

One change DOE is making, for example, is in the integral elements applicable to all categorical exclusions in appendix B. The existing regulation states that a proposed action ''must not adversely affect environmentally sensitive resources.'' DOE is changing this to state that a proposed action must not ''have the potential to cause significant impacts on environmentally sensitive resources.'' This is consistent with the CEQ Categorical Exclusion Guidance, which states that an agency may define its extraordinary circumstances ''so that a particular situation, such as the presence of a protected resource, is not considered an extraordinary circumstance per se, but a factor to consider when determining if there are extraordinary circumstances, such as a significant impact to that resource.''

In the case of individual categorical exclusions, use of the term ''significant'' helps to highlight a type of potential impact that a NEPA Compliance Officer must consider when reviewing a particular proposed action. This is consistent with the CEQ Categorical Exclusion Guidance, which suggests that it may be useful for agencies to ''identify additional extraordinary circumstances and consider the appropriate documentation when using certain categorical exclusions.''

5. Definition of ''State''

DOE uses the phrase ''Federal, state, or local government'' (and similar phrases) in 10 CFR part 1021. Unless otherwise specified, the term ''state'' refers broadly to any of the states that comprise the United States, any territory or possession of the United States (such as Puerto Rico, Guam, and American Samoa), and the District of Columbia. This definition is a clarification of, not a change in, DOE practice because DOE always has applied, and continues to apply, this meaning to the word ''state'' in 10 CFR part 1021.

6. Comments on Section 1021.410

Comments (*e.g.,* from Tri-Valley CAREs (at pages 2–4)) asked how DOE would meet the CEQ requirement that an agency's categorical exclusion procedures ''provide for extraordinary circumstances in which a normally [categorically] excluded action may have a significant environmental effect'' (40 CFR 1508.4). DOE's regulations require that, before a categorical exclusion may be applied to a proposed action, a determination must be made that there are no extraordinary circumstances related to a proposal that may affect the significance of the proposal's environmental effects (10 CFR 1021.410(b)(2)). In the final rule, DOE describes extraordinary circumstances as ''unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources'' (10 CFR 1021.410(b)(2)). If DOE identifies an extraordinary circumstance that would result in a potentially significant impact, then it would not apply a categorical exclusion to that proposed action. Further, under DOE's NEPA regulations, before a categorical exclusion from appendix B of subpart D may be applied, DOE must determine that the proposed action satisfies all of the conditions known as ''integral elements'' (appendix B, paragraphs (1) through (5)). These conditions ensure that a categorical exclusion is not applied to any proposed action that would have the potential to cause significant environmental impacts due to, for example, a threatened violation of applicable environmental, safety, and health requirements, or by disturbing hazardous substances such that there would be uncontrolled or unpermitted releases. Together, DOE's extraordinary circumstances and integral elements provisions require the Department to consider whether there are conditions surrounding a proposal that may affect the significance of the proposal's environmental effects.

Another comment (from Columbia Riverkeeper (at page 5)) expressed concern that DOE's extraordinary

circumstances are not consistent with CEQ guidance and asserted that DOE's examples of extraordinary circumstances set a ''higher bar'' than CEQ's examples. The comment suggested that, to be consistent with CEQ guidance, DOE's extraordinary circumstances be based on the ''presence of an endangered or threatened species or a historic resource.'' DOE based its approach to extraordinary circumstances on the definitions of categorical exclusion and significance in the CEQ regulations. See 40 CFR 1508.4 and 1508.27. DOE finds its approach to be consistent with the CEQ Categorical Exclusion Guidance, which states (II.C), ''An extraordinary circumstance requires the agency to determine how to proceed with the NEPA review. For example, the presence of a factor, such as a threatened or endangered species or a historic resource, could be an extraordinary circumstance, which, depending on the structure of the agency's NEPA implementing procedures, could either cause the agency to prepare an EA or an EIS, or cause the agency to consider whether the proposed action's impacts on that factor require additional analysis in an EA or an EIS. In other situations, the extraordinary circumstance could be defined to include both the presence of the factor and the impact on that factor. Either way, agency NEPA implementing procedures should clearly describe the manner in which an agency applies extraordinary circumstances and the circumstances under which additional analysis in an EA or an EIS is warranted'' (75 FR at 75633). Under DOE's categorical exclusion process, therefore, it is an action's potential for significant impacts, for example, on a sensitive resource, and not simply the presence of a sensitive resource, that is the basis for determining the need for an environmental assessment or environmental impact statement. It is the responsibility of the DOE NEPA Compliance Officer to consider this potential for significant impacts and to consult with other agencies as necessary when considering a proposed action. This is expressly addressed in an integral element at appendix B, paragraph (4).

DOE received a comment from Columbia Riverkeeper (at page 4) referring to CEQ's guidance that agencies: Consider cumulative effects; define physical, temporal, and environmental factors that would constrain the use of a categorical exclusion; and consider extraordinary circumstances. The comment cited the CEQ provisions, but did not recommend any particular change to DOE's regulations. DOE considered each of the cited issues in formulating its rule, and the rule is consistent with the CEQ Categorical Exclusion Guidance. Further, DOE consulted with CEQ throughout the rulemaking process in accordance with 40 CFR 1507.3.

DOE is codifying at 10 CFR 1021.410(e) its policy to document and post online appendix B categorical exclusion determinations. As stated in the Notice of Proposed Rulemaking, such postings will not include information that DOE would not disclose pursuant to the Freedom of Information Act (FOIA). A comment from Tri-Valley CAREs (at page 2) expressed concern that the public would be deprived of a right to challenge such withholdings under FOIA. Further, the comment asked DOE to explain the process by which the public can challenge potentially improper withholdings related to an online posting of a categorical exclusion determination. DOE is committed to openness, as is evidenced by its decision to post appendix B categorical exclusion determinations online. The procedures for requesting information related to a categorical exclusion determination are the same as for any other DOE document. If applicable, DOE will apply FOIA exemptions to a categorical exclusion determination—as it would with any document—to appropriately limit the release of particular types of information (*e.g.,* classified or confidential business information). To the fullest extent possible, DOE will segregate information that is exempt from release under FOIA to allow public review of the remainder of the document. See 10 CFR 1021.340. For further information on FOIA processes at DOE, see DOE's FOIA resources posted at *http://energy.gov/management/office-management/operational-management/freedom-information-act,* including a handbook on procedures for filing a request at *http://energy.gov/sites/prod/files/maprod/documents/Handbook.pdf.*

The addition of paragraphs (f) and (g) to 10 CFR 1021.410 is discussed in section IV.C.1–3, above.

7. Integral Elements

Federally Recognized Indian Tribe

In its Notice of Proposed Rulemaking, DOE proposed adding ''Federally recognized Indian tribe'' to its list of entities that designate property as historically, archeologically, or architecturally significant in appendix B, paragraph (4)(i). In addition, in the final rule, to be consistent with the Advisory Council on Historic Preservation implementing regulations (36 CFR part 800) for the National Historic Preservation Act, DOE has added ''Native Hawaiian organization'' to the list of entities that may designate such properties. The Advisory Council on Historic Preservation regulations provide consultative roles to both Indian tribes and Native Hawaiian organizations in the Section 106 process under the National Historic Preservation Act. The Advisory Council's regulations define a Native Hawaiian organization as ''any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians''; and the regulations define Native Hawaiian as ''any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii'' (36 CFR 800.16(s)).

Further, DOE clarifies that use of ''Federally recognized Indian tribe'' in subpart D, appendix B of 10 CFR part 1021, is intended to include Indian and Alaska Native tribes that the Secretary of the Interior recognizes as eligible for programs and services provided by the United States to Indians because of their status as Indians. (25 U.S.C. 479a–1). Each year, the Bureau of Indian Affairs (BIA) publishes a list in the **Federal Register** of the recognized tribal entities. For purposes of appendix B to subpart D of 10 CFR part 1021, Federally recognized Indian tribes are those entities included on the BIA list. (A link to the list and a supplement, current at the time of this final rule's publication, can be found on the BIA Web site at *http://www.bia.gov/DocumentLibrary/index.htm.*) DOE would refer to the most current BIA list when considering the integral element.

Environmentally Sensitive Resources

DOE received comments (*e.g.,* from the Chesapeake Bay Foundation (at page 3), the Ocean Renewable Energy Coalition (at page 5), and Pacific Northwest National Laboratory (at page 1)) suggesting further modifications or clarifications to the list of environmentally sensitive resources that are part of the integral elements applicable to appendix B categorical exclusions (appendix B, paragraph (4)). DOE does not intend the examples in B(4) to be an exhaustive list of environmentally sensitive resources, but

agrees that additional examples would be helpful. DOE is adding the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act to B(4)(ii). In addition, DOE is correcting a typographical error in the reference to the Marine Mammal Protection Act in B(4)(ii). Another comment (from the Chesapeake Bay Foundation (at page 4)) asked DOE to expand its listing of environmentally sensitive resources to ''recognize and protect * * * resources of high local, state, or federal value and concern that may not enjoy, or may not yet have received, specific regulatory or statutory protection.'' Specifically, the comment (at page 3) asserted that DOE's clarification of environmentally sensitive resources was too limited because it would not include ''riparian stream buffers * * * large forest or contiguous woodland assemblages, locally specified high value farmland * * * 'candidate' state or federal threatened or endangered species or their habitat * * * drinking water supply streams or reservoirs * * * or * * * headwater streams.'' In response to the comment, DOE is adding ''state-proposed endangered or threatened species or their habitat'' to the description of environmentally sensitive resources listed in integral element B(4)(ii), which already explicitly provides for consideration of ''Federally-proposed or candidate species or their habitat.'' DOE is not adding the other resources described in the comment because they are not generally resources that have been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a Federally recognized Indian tribe. However, DOE acknowledges that the resource examples contained in the comment may be considered as extraordinary circumstances in making an individual categorical exclusion determination.

Similarly, another comment (from Joyce Dillard (at page 1)) expressed general concern regarding destruction of wetlands and aquifers and salt water intrusion. DOE's existing integral elements B(4)(iii) and (vi) provide for consideration of wetlands as well as special sources of water (including sole source aquifers) as environmentally sensitive resources. With respect to salt water intrusion, DOE would consider the potential for salt water intrusion, including whether it constitutes an extraordinary circumstance, before making a categorical exclusion determination. Also, see discussion of ''would not have the potential to cause significant impacts'' in section IV.C.4 of this preamble.

Genetically Engineered Organisms, Synthetic Biology, Governmentally Designated Noxious Weeds, and Invasive Species

DOE received several comments (in reference to categorical exclusions B3.6, B3.8, B3.12, B3.15, B5.15, B5.20, and B5.25; *e.g.,* from Center for Food Safety on behalf of itself and 3 other organizations (at pages 3–5) and National Wildlife Federation (at page 2)) regarding the use of genetically engineered organisms, noxious weeds, and invasive non-native species, such as non-native algae. These comments suggested that the development and use of such organisms could affect entire ecosystems. The comments expressed concern that these organisms could not be contained and could escape into the environment and potentially cause a variety of environmental and human health impacts.

DOE received similar comments (*e.g.,* from Center for Food Safety on behalf of itself and 3 other organizations (at pages 2 and 3)) regarding ''synthetic biology,'' suggesting that the impacts of developing and releasing genetically engineered organisms, using man-made DNA sequences, were largely unknown and that such organisms could interact with native species and adversely affect the environment and entire ecosystems.

In addition, a comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 2) asserted that DOE has provided more than $700 million in funding for synthetic biology research since 2006 and that this level of funding amounts to a programmatic research program that should be analyzed in an environmental impact statement. The comment also asserted that DOE is attempting to segment the potential environmental impacts of this research by seeking categorical ''exemptions'' from NEPA for individual research projects. As an initial matter, DOE disagrees with the comment's funding estimate. For example, almost all the funding is attributed to the Genomics Science Program and the Joint Genomics Institute, both of which are ongoing initiatives (begun in the 1980s and 1990s, respectively) that support research in several areas, only some of which can be referred to as synthetic biology. Moreover, DOE disagrees with the assertion that an amount of funding is sufficient to define a programmatic research program for which DOE should prepare an environmental impact statement. In determining whether an environmental impact statement is required or would be beneficial to its decisionmaking, DOE considers the nature of decisions to be made and the relationships among proposed actions and potential environmental impacts, among other factors. DOE has determined that, at this time, its activities related to synthetic biology do not constitute a programmatic research program and do not require an environmental impact statement.

DOE received several comments regarding research into bioenergy technologies, either performed or funded by DOE. Some of the comments (*e.g.,* from the Biotechnology Industry Organization (at page 3)) were supportive of this research and encouraged the use of categorical exclusions to remove barriers to the adoption of these technologies. Some comments (*e.g.,* from Center for Food Safety on behalf of itself and 3 other organizations (at page 5), National Wildlife Federation (at pages 2 and 4)) expressed concern about bioenergy research and the harvest of biomass involving invasive and non-native species, including non-native and genetically engineered algal species, specifically citing categorical exclusions B3.6, B3.8, and B5.25. The comments suggested that intentional or inadvertent release of invasive or non-native species, especially in aquatic environments, could have unanticipated consequences, including threats to local ecosystems, and the National Wildlife Federation (at page 2) suggested that categorical exclusions were appropriate only for plant species that ''successfully pass[ed] an established weed risk assessment.'' Another comment (from the Biotechnology Industry Organization (at page 2)) requested that any regulations regarding biotechnology reflect the principles laid out in the Coordinated Framework for the Regulation of Biotechnology (51 FR 23302; June 26, 1986) and articulated by the White House Emerging Technologies Interagency Policy Coordination Committee.

To address these comments, DOE considered the addition of further restrictions to individual categorical exclusions, but opted instead to add a new integral element that will be applicable to all appendix B categorical exclusions. This integral element requires that, to fit the classes of actions in appendix B, a proposal must be one that would not ''[i]nvolve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release [that is, a release

not subject to an experimental use permit issued by the Environmental Protection Agency (EPA), a permit or notification issued by the Department of Agriculture (USDA), or a granting of nonregulated status by the USDA] into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.'' Examples of applicable guidelines and requirements include National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'' (*http://oba.od.nih.gov/rdna/nih_guidelines_oba.html*); USDA ''Noxious Weed Regulations'' (7 CFR part 360) and regulations for the ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests'' (7 CFR part 340); and EPA Reporting Requirements and Review Processes for Microorganisms (40 CFR part 725, particularly 40 CFR 725.200–470). These regulations impose appropriate containment and confinement measures to address the risk of inadvertent release of experimental organisms. In order to qualify for a categorical exclusion, a proposed action would have to prevent unauthorized releases into the environment, comply with all applicable requirements, and meet other conditions of the applicable categorical exclusion.

This new integral element obviates the need for the last sentence in categorical exclusion B3.8, as proposed, and that sentence is removed in the final rule. This integral element limits the activities that can receive a categorical exclusion determination to those that will not be released into the environment without proper authorization and will be conducted in accordance with applicable requirements, which include containment, confinement, or other requirements for working with these organisms. The new integral element takes into account both the principles laid out in the Coordinated Framework for the Regulation of Biotechnology and by the White House Emerging Technologies Interagency Policy Coordination Committee.

A comment relating to categorical exclusion B3.8 (from the National Wildlife Federation (at page 2) and also from Center for Food Safety on behalf of itself and 3 other organizations (at page 4)) stated that USDA approval of a genetically engineered crop does not guarantee environmental safety. DOE believes that, in general, it is reasonable to consider compliance with applicable regulations as a factor in determining whether a proposed action would have the potential to cause significant environmental impacts. In the case of genetically engineered plants regulated by USDA, its regulations require the agency to perform independent NEPA analysis before the plants may be grown outdoors (7 CFR part 372). When grown for research purposes, USDA regulations further require that field trials of genetically engineered plants are conducted with sufficient confinement methods in place such that the plants will not persist in the environment or pose the risk for significant environmental impacts (7 CFR part 340).

DOE is generally limiting categorical exclusions involving the activities mentioned in the comments to small-scale, as opposed to commercial-scale, actions. In DOE's experience, small-scale research and development activities normally do not have the potential to cause significant environmental impacts (see section IV.C.3).

A few comments (*e.g.,* Center for Food Safety on behalf of itself and 3 other organizations (at page 4)) suggested that genetically engineered crops grown for biofuels production might cause environmental impacts different from genetically engineered plants grown for other purposes, but the comments did not indicate what those differential impacts would be. DOE foresees no difference in environmental impacts from a small research plot of genetically engineered plants grown for the purpose of food or fiber as compared to the impacts from the same plants grown for biomass.

Another comment from the National Wildlife Federation (at page 2) and the Center for Food Safety (on behalf of itself and 3 other organizations; at page 4) suggested that, once DOE provided funding to a researcher to perform work with non-genetically engineered organisms under a categorical exclusion, the researcher could switch to the use of a genetically engineered organism without incurring further NEPA review. Under the terms of DOE funding agreements, the scope of work is disclosed by the researcher, and fundamental changes such as those suggested in the comment would require further NEPA analysis.

8. Powerlines

In the Notice of Proposed Rulemaking DOE proposed to change ''electric powerlines'' to ''electric transmission lines'' in several categorical exclusions to update technology-specific vocabulary. DOE received a general comment from Edison Electric Institute (at page 2) requesting that it further revise the proposed phrase to include distribution lines and related facilities to ensure that the relevant categorical exclusions are not limited to just transmission lines, but apply to energy delivery facilities more generally. Upon further consideration, DOE is using the term ''powerlines'' to be inclusive of both transmission and distribution lines (see categorical exclusions B1.3(m), B1.9, B4.7, B4.10, B4.12, B4.13, and class of actions C4).

9. Appendix B—Categorical Exclusions

Categorical Exclusions Applicable to Facility Operations (B1)

B1.3 Routine Maintenance

DOE received comments (*e.g.,* from Pacific Northwest National Laboratory (at page 3)) suggesting that categorical exclusion B1.3 covers minor types of activities that are of a sufficiently small scale not to warrant the documentation required of an appendix B categorical exclusion and, therefore, such actions should be listed in appendix A. DOE is committed to increasing the transparency of its NEPA implementing regulations and practices, and DOE decided not to move this categorical exclusion from appendix B, for which a public document is prepared and posted on DOE's NEPA Web site (*http://energy.gov/nepa/doe-nepa-documents/categorical-exclusion-determinations*), to appendix A, for which no documentation is required. Further, the actions under categorical exclusion B1.3 include physical activities in contrast to the more administrative functions covered by categorical exclusions in appendix A. Thus, DOE is not making any changes based on these comments.

DOE also received a comment from Sandy Beranich (at page 1) regarding item (k) in categorical exclusion B1.3. The comment suggested DOE insert additional examples of erosion control and soil stabilization measures, specifically ''gabions'' and ''grading.'' The examples already provided in the proposed B1.3(k), reseeding and revegetation, were not meant to serve as an exhaustive list, and other measures could qualify for categorical exclusion under B1.3(k). Nonetheless, DOE is adding the two examples suggested in the comment because they will help illustrate the types of erosion control and soil stabilization measures that are encompassed by B1.3(k).

B1.5 Existing Steam Plants and Cooling Water Systems

In its Notice of Proposed Rulemaking, DOE proposed modifying the second condition of this categorical exclusion from would not ''adversely affect water withdrawals or the temperature of discharged water'' to would not ''have the potential to cause significant impacts on water withdrawals or the temperature of discharged water.'' After further consideration, DOE is revising the language in this categorical exclusion to further specify the conditions. DOE is changing these provisions to: ''Improvements would not: * * * (2) have the potential to significantly alter water withdrawal rates; (3) exceed the permitted temperature of discharged water * * *.''

B1.11 Fencing

After further consideration, DOE is modifying this categorical exclusion to better focus on the types of impacts to wildlife that might be caused by fencing. DOE is replacing ''would not have the potential to cause significant impacts on wildlife populations or migration * * *'' with ''would not have the potential to significantly impede wildlife population movement (including migration) * * *.'' Also, see discussion of ''would not have the potential to cause significant impacts'' in section IV.C.4 of this preamble.

B1.14 Refueling of Nuclear Reactors

DOE received a comment from Sandy Beranich (at page 2) asking which section of the DOE NEPA regulations addresses the disposition of spent nuclear fuel. Management and disposition of spent nuclear fuel would typically be the subject of the NEPA review for the facility (*e.g.,* an environmental impact statement is required under class of action D4, for ''siting, construction, operation, and decommissioning of power reactors, nuclear material production reactors, and test and research reactors''). The comment does not propose a change to this categorical exclusion, and DOE is retaining the proposed language in the final categorical exclusion.

B1.18 Water Supply Wells

For DOE's response to comments on this categorical exclusion, see discussion of ''would not have the potential to cause significant impacts'' in section IV.C.4 of this preamble.

B1.19 Microwave, Meteorological, and Radio Towers

In its Notice of Proposed Rulemaking, DOE proposed adding ''abandonment'' to the list of activities included in this class of actions in order to encompass the complete life cycle of the towers addressed by the categorical exclusion. After further consideration, DOE acknowledges that abandonment could be misconstrued so as to absolve DOE of all responsibility for a tower, including for maintenance. This was not DOE's intent. Thus, DOE is removing ''abandonment'' from the list of activities in this categorical exclusion (but is keeping ''modification'' and ''removal''). For towers that are no longer used, DOE's normal practice would be to remove the tower or transfer responsibility to another party.

As noted elsewhere in this preamble, DOE received public comments related to potential impacts on bird populations that could be associated with the use of categorical exclusions. Though none of the public comments was specific to categorical exclusion B1.19, DOE nonetheless considered the comments in the context of the activities addressed in this categorical exclusion and reviewed current information related to the potential impacts of relevant towers on bird populations. DOE concluded that its existing provisions, including for determining whether a proposal meets the integral elements of the categorical exclusion (particularly appendix B, paragraph (4)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts, ensure appropriate consideration of proposed tower design (height, use of guy wires, lighting) and location. Therefore, DOE is not further revising categorical exclusion B1.19.

In addition, a comment from Edison Electric Institute (at page 2) asked DOE to add individual electric transmission towers and distribution poles to the scope of this categorical exclusion. Because electric transmission towers and distribution poles are already included in the scope of DOE's existing B4 categorical exclusions, DOE is not making any changes to categorical exclusion B1.19 in response to this comment.

B1.24 Property Transfers

A comment from Natural Resources Defense Council and Committee to Bridge the Gap (at page 2) expressed concern that the reference to contamination was being removed from the categorical exclusion. DOE's existing categorical exclusion is limited to property that is uncontaminated, which is defined to mean that there ''would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.'' A comment from Columbia Riverkeeper (at page 5) stated that this categorical exclusion is not warranted. DOE is not changing the scope of the categorical exclusion but is merely re-wording the categorical exclusion to incorporate the definition of ''uncontaminated'' in a different way. Thus, DOE is making no change to the categorical exclusion in response to this comment. A separate comment stated that a categorical exclusion for the transfer, lease, or disposition of contaminated property is not warranted. DOE agrees, and, as described above, the categorical exclusion is limited to property for which there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment. Therefore, DOE is not making a change to the categorical exclusion based on this comment.

A comment from Columbia Riverkeeper (at page 6) stated that DOE's approach does not account for the environmental impacts of future operations after the transfer. DOE responds that the second limitation proposed for the categorical exclusion states that ''under reasonably foreseeable uses * * * the covered actions would not have the potential to cause a significant change in impacts from before the transfer * * *'' This limitation would require the NEPA Compliance Officer to consider the significance of potential environmental impacts of reasonably foreseeable future uses (including during operations, as indicated by the comment) of the transferred property.

Several comments (*e.g.,* from Columbia Riverkeeper (at page 6) and Natural Resources Defense Council/ Committee to Bridge the Gap (at page 1)) questioned how DOE can assess whether an action is appropriately covered by this categorical exclusion without preparing an environmental assessment or environmental impact statement. The process DOE uses for making a categorical exclusion determination is described in this notice under section III, Overview of Categorical Exclusions, above.

A comment from Columbia Riverkeeper (at page 6) stated that there would be no pathway for public involvement or comment on DOE's review under categorical exclusion B1.24. DOE is increasing public involvement and comment opportunities with regard to categorical exclusion A7, transfers of personal property, by combining it into categorical exclusion B1.24. The result is that the scope of B1.24 includes both personal and real property, and since it

is an appendix B categorical exclusion, it is subject to the online posting requirement of 10 CFR 1021.410(e). Under this new rule, DOE is codifying its policy to document and post online appendix B categorical exclusion determinations at 10 CFR 1021.410(e), consistent with the policy established by the Deputy Secretary of Energy's *Memorandum to Departmental Elements on NEPA Process Transparency and Openness,* October 2, 2009. This process provides an opportunity for public review of the categorical exclusion determination. In addition, see discussion of ''would not have the potential to cause significant impacts'' in section IV.C.4 of this preamble.

B1.25 Real Property Transfers for Cultural Protection, Habitat Preservation, and Wildlife Management

A comment from Edison Electric Institute (at page 2) encouraged DOE to stipulate in the categorical exclusion that any permit holders and owners of facilities on land involved in the transfers must be given advance notice so they can protect their rights. This comment raises concerns unrelated to environmental review under NEPA, which is the scope of this regulation. For this reason, DOE is retaining the proposed language in the final categorical exclusion. Separately, DOE is adding the word ''Real'' to the title of this categorical exclusion to clarify that the scope of the categorical exclusion does not include personal property.

B1.26 Small Water Treatment Facilities

Although DOE did not propose to substantively change this categorical exclusion, a comment from the Chesapeake Bay Foundation (at page 4) disagreed with the existing categorical exclusion's characterization that a ''small'' surface water or wastewater treatment facility is one with ''a total capacity less than approximately 250,000 gallons per day,'' and stated that an environmental assessment might be appropriate if the context of a facility so warrants. DOE's experience over many years is that a water or wastewater treatment facility processing 250,000 gallons or less per day is of a size that normally would not have the potential for significant impacts. For further information, see discussion of ''small'' and ''small-scale'' in section IV.C.3 of this preamble. A NEPA Compliance Officer would consider location and context in determining whether a proposal meets the integral elements of the categorical exclusion (listed in appendix B, paragraph (4)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts. In accordance with integral element B(1) of the DOE NEPA regulations, DOE would ensure that water treatment facilities under this categorical exclusion would not threaten a violation of applicable statutory, regulatory, or permit requirements. For example, a wastewater treatment facility would comply with the National Pollutant Discharge Elimination System permit issued by the cognizant regulatory authority, which would ensure that pollutant loads are consistent with applicable water quality standards. For these reasons, DOE is retaining the proposed language in the final categorical exclusion.

B1.29 Disposal Facilities for Construction and Demolition Waste

A comment from the Chesapeake Bay Foundation (at page 5) recommended that the existing limitation of less than approximately 10 acres be reduced to less than approximately 5 acres; the comment did not provide the basis or any support for this recommendation. DOE is retaining the existing limitation of less than 10 acres. The comment also referred to consideration of context and intensity, including the location, landscape setting, and other resources present, in determining whether a given project is ''small.'' DOE agrees. For further information, see discussion of ''small'' and ''small-scale'' in section IV.C.3 of this preamble. Under DOE's NEPA regulations, a NEPA Compliance Officer would evaluate the considerations cited in determining whether a proposal meets the integral elements of the categorical exclusion (listed in appendix B, paragraphs (1) through (5)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts. For these reasons, DOE is retaining the proposed language in the final categorical exclusion.

B1.33 Stormwater Runoff Control

DOE received a comment from Joyce Dillard (at page 1) stating that stormwater control is another potential money maker for local policymakers and the danger is high. DOE notes this comment and is not making any changes to this categorical exclusion in response.

B1.34 Lead-Based Paint Containment, Removal, and Disposal

DOE is adding ''containment, removal, and disposal'' to the title of this categorical exclusion for clarification.

Categorical Exclusions Applicable to Safety and Health

B2.3 Personal Safety and Health Equipment

For DOE's response to comments on this categorical exclusion, see discussion of ''would not have the potential to cause significant impacts'' in section IV.C.4 of this preamble.

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

B3.1 Site Characterization and Environmental Monitoring

After further consideration, DOE is clarifying the means by which to address potential impacts from ground disturbance. DOE is replacing the second sentence of the categorical exclusion (as proposed in the Notice of Proposed Rulemaking) with the following: ''Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance.''

A comment from Sandy Beranich (at page 2) requested clarification of the size of certain projects covered by this categorical exclusion, saying that the difference between small and large-scale projects is subject to interpretation. DOE's discussion of ''small'' and ''small-scale'' appears in section IV.C.3 of this preamble.

In its Notice of Proposed Rulemaking, DOE included ''abandonment'' in the list of potential activities included in this categorical exclusion and in categorical exclusion B1.19 in order to encompass the complete life cycle of the characterization and monitoring devices in B3.1 and the towers in B1.19. As described with respect to B1.19, after further consideration, DOE acknowledges that abandonment could be misconstrued so as to absolve DOE of all responsibility for such devices or facilities, including for maintenance. This was not DOE's intention. Therefore, DOE is removing ''abandonment'' (and adding ''removal or otherwise proper closure (such as of a well)'') in the text describing the life cycle of characterization and monitoring devices and facilities addressed by the categorical exclusion.

To simplify the categorical exclusion, DOE is changing ''salt water and freshwater'' to ''aquatic environments.'' Aquatic, as used herein, may refer to salt water, freshwater, or areas with shifting delineation between the two; this is not a substantive change.

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

Categorical exclusion B3.6 does not include demonstration actions, as stated in the Notice of Proposed Rulemaking. However, after reviewing public comments and further internal consideration, DOE is revising the text to state this condition more clearly. Separately, a comment (*e.g.,* from Friends of the Earth and from Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion, by its terms and in light of the integral element and extraordinary circumstances requirements, is appropriate and would not have the potential for significant impacts.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae in projects that may be categorically excluded under this section of the rule. For further information, see discussion of ''Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species'' in section IV.C.7 of this preamble.

DOE received a comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 3) that the difference between a pilot study and a demonstration action, which could require an environmental assessment or environmental impact statement, is unclear and suggested that this categorical exclusion could be applied to large-scale, open-pond projects involving genetically engineered algae or algae altered through synthetic biology without review of environmental risks. DOE disagrees. This categorical exclusion applies only to small-scale projects, such as those performed for proof of concept purposes. For further information, see discussion of ''small'' and ''small-scale'' in section IV.C.3 of this preamble. Further, before a categorical exclusion determination can be made, the proposed action undergoes review, for example, to determine whether it is consistent with the integral elements and the conditions of the particular categorical exclusion.

B3.7 New Terrestrial Infill Exploratory and Experimental Wells

DOE received a comment from Joyce Dillard (at page 1) regarding the risks associated with injection wells. Categorical exclusion B3.7 requires that the well be sited within an existing, characterized well field and requires that the site characterization has verified a low potential for seismicity. DOE has experience in the construction and operation of exploratory and experimental wells and, in DOE's experience, these conditions are appropriate. Therefore, DOE is retaining the proposed language in the final categorical exclusion. (The issue is also relevant to categorical exclusions B5.3, B5.12, and B5.13.)

DOE intended this categorical exclusion to include both extraction and injection wells. After further consideration, DOE is adding ''for either extraction or injection use'' to clarify the scope of new terrestrial infill exploratory and experimental well activities under this categorical exclusion.

B3.8 Outdoor Terrestrial Ecological and Environmental Research

After further consideration, DOE is clarifying the means by which to address potential impacts from ground disturbance. DOE is deleting the following words from the end of the first sentence of the categorical exclusion: ''provided that such activities would not have the potential to cause significant impacts on the ecosystem'' (as proposed in the Notice of Proposed Rulemaking). The following new second sentence is being inserted: ''Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance.''

DOE is deleting the following sentence to avoid confusion: ''These actions include, but are not limited to, small test plots for energy related biomass or biofuels research.'' Although this categorical exclusion is appropriate for small biomass or biofuels research, it is only one example of a variety of research projects that could be included in the class of actions described by categorical exclusion B3.8. Another comment (from Friends of the Earth and from Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected because its use could cause significant impacts; DOE has determined that this categorical exclusion, by its terms and in light of the integral element and extraordinary circumstances requirements, is appropriate and would not have the potential for significant impacts.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae in projects that may be categorically excluded under this section of the rule. For further information, see discussion of ''Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species'' in section IV.C.7 of this preamble. DOE is deleting the last sentence of the categorical exclusion (as proposed in the Notice of Proposed Rulemaking), because the use of genetically engineered organisms is now addressed by the new integral element.

B3.9 Projects To Reduce Emissions and Waste

DOE received a comment from Edison Electric Institute (at page 2) expressing concern that the list of fuels provided in this categorical exclusion did not encompass all fuels with the potential to reduce emissions and waste. It was DOE's intention that the list be illustrative, rather than exhaustive, so DOE is replacing the second and third sentences of the categorical exclusion with the following sentence: ''For this category of actions, 'fuel' includes, but is not limited to, coal, oil, natural gas, hydrogen, syngas, and biomass; but 'fuel' does not include nuclear fuel.''

B3.11 Outdoor Tests and Experiments on Materials and Equipment Components

DOE received a comment from Tri-Valley CAREs (at page 4) regarding the use of encapsulated source, special nuclear, or byproduct materials for nondestructive tests and experiments. The comment expressed concern that the encapsulation could be accidentally destroyed, releasing the contents into the environment. The comment also noted that the categorical exclusion did not limit the amount of encapsulated materials that could be used. DOE responds that capsules for source, special nuclear, and byproduct material are designed using technologies and materials to enable their safe transport and use. These capsules are tested to withstand extremes of temperature and pressure and to resist severe impacts, puncture, and vibration without allowing their contents to escape. Such encapsulation can readily withstand the types of handling that would occur during the nondestructive tests and experiments covered by the categorical exclusion. Performance requirements for such testing are based on factors such as the type and amount of radioactive material involved and intended use of the source. Therefore, there is minimal risk that encapsulated materials will be

inadvertently released into the environment. Because encapsulation addresses the risk of environmental release, DOE is not including a limit on the amount of encapsulated source, special nuclear, or byproduct material that could be used in the nondestructive tests and experiments covered by the categorical exclusion. Any such limit would be part of the design of a nondestructive test or experiment, which would include appropriate protocols to protect participants and the environment. DOE is retaining the proposed language and adding a reference to applicable standards to the categorical exclusion in the final rule.

B3.12 Microbiological and Biomedical Facilities

Comments (*e.g.,* from Friends of the Earth and Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion, by its terms and in light of the integral element and extraordinary circumstances requirements, is appropriate and would not have the potential for significant impacts. DOE received comments from Center for Food Safety on behalf of itself and 3 other organizations (at page 4) raising concerns that the environmental release of genetically engineered organisms or synthetic organisms (including genetically engineered algae or synthetic biology) from a microbiological or biomedical facility (including facilities to house such organisms for the production of biofuels) could pose risks to local ecosystems, during both the operation and decommissioning of these facilities. In response, DOE points out that facilities covered by this categorical exclusion must be constructed and maintained in accordance with all applicable regulations, including provisions (*e.g.,* the use of biological safety cabinets and chemical fume hoods) to ensure the containment of organisms that may pose environmental risks as well as the destruction of these organisms when they are no longer needed. Generally, these regulations and practices have been effective in preventing unintended releases of research organisms and thereby prevented impacts to the environment from these organisms. Further, DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae in projects that may be categorically excluded under this section of the rule. For further information, see discussion of ''Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species'' in section IV.C.7 of this preamble.

In addition, DOE is updating the reference to the manual on Biosafety in Microbiological and Biomedical Laboratories to the most current version.

B3.14 Small-Scale Educational Facilities

A comment from the Chesapeake Bay Foundation (at page 5) stated that a specific small size limitation should be added for the facilities under the proposed categorical exclusion or the categorical exclusion should be eliminated from the rulemaking. The comment suggested that DOE consider including a limit of 5 acres or smaller, and be restricted to placement in a developed area. When considering the physical size and location of a proposed educational facility, a DOE NEPA Compliance Officer would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure. The NEPA Compliance Officer would have to determine that the size of the proposed facility, in the context of its location and surroundings, was sufficiently small that it would not have the potential to cause significant environmental impacts. Thus, DOE is not proposing any modifications to this categorical exclusion. For further information, see discussion of ''small'' and ''small-scale'' in section IV.C.3 of this preamble.

In addition, DOE received a comment from Joyce Dillard (at page 1) that states, rather than the Federal government, are responsible for education and its related facilities. DOE acknowledges this comment and notes that the categorical exclusion is intended to address small facilities that are generally educational in nature, such as visitor centers, small museums, libraries, and similar facilities. Such facilities may be part of a school or university. Therefore, DOE is retaining the proposed language in the final categorical exclusion.

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

A comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 1) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion, by its terms and in light of the integral element and extraordinary circumstances requirements, is appropriate and would not have the potential for significant impacts. Additionally, DOE received comments (*e.g.,* from Friends of the Earth (in attachment titled Nanotechnology, Climate and Energy), and Center for Food Safety on behalf of itself and 3 other organizations (at page 4)) expressing a wide range of environmental and human health concerns regarding a potential release of nanoscale materials into the environment or commercial-scale use of nanoscale materials. DOE reiterates that this categorical exclusion may be used only for facilities for indoor small-scale research activities and not involving the environmental release, or commercial-scale production, of nanoscale materials. For further information, see discussion of ''small'' and ''small-scale'' in section IV.C.3 of this preamble. Covered facilities employing nanoscale materials would be constructed and operated in accordance with applicable requirements to ensure worker safety and to prevent environmental releases. Therefore, DOE is retaining the proposed language in the final categorical exclusion, with one exception. DOE is changing ''biohazardous materials'' to ''hazardous materials,'' in the final categorical exclusion. Hazardous materials is a broader category that includes biohazardous materials, and thus better reflects the range of materials that would need to be safely managed for this type of research and development work.

B3.16 Research Activities in Aquatic Environments

To simplify the categorical exclusion, DOE is changing ''salt water and freshwater'' to ''aquatic.'' Aquatic, as used herein, may refer to salt water, freshwater, or areas with shifting delineation between the two; this is not a substantive change. In addition, DOE is clarifying in the preamble that passive seismic techniques in item (c) refers to activities (*e.g.,* use of seismometers) that do not involve the introduction of energy or vibration that would have the potential for significant environmental impacts.

A comment from Pacific Northwest National Laboratory (at page 2) suggested that many of the activities described in this categorical exclusion, such as sample collection, installation of environmental monitoring devices, and other ecological research, should be allowed within the boundary of a marine sanctuary or wildlife refuge, if conducted in a manner consistent with

sanctuary goals and objectives. DOE agrees that, if the listed activities are authorized by the government agency responsible for the management of the sanctuary or refuge, or after consultation with such responsible agency when authorization is not applicable, then the activity may be categorically excluded under B3.16. Therefore, DOE is modifying categorical exclusion B3.16 (and B5.25) to now allow covered actions within, or having effects on, existing or proposed marine sanctuaries, wildlife refuges, or governmentally recognized areas of high biological sensitivity, if the action receives authorization from, or after consultation with, the responsible agency. The DOE NEPA Compliance Officer would take concerns from the responsible agency into account when considering whether to apply this categorical exclusion.

DOE also received a comment from DOI (at page 1) stating that it has initiated the process of reviewing and potentially revising or deleting some of its own categorical exclusions. DOE had relied on some of these DOI categorical exclusions, as well as categorical exclusions from the Department of the Navy and the National Oceanic and Atmospheric Administration, when developing this categorical exclusion. In response to the DOI comment, DOE is revising categorical exclusion B3.16 in the final rule to remove certain research activities adapted from DOI's categorical exclusions. The remaining activities are consistent with other Federal agencies' existing categorical exclusions, as well as activities included in other DOE categorical exclusions, such as flow measurements (see categorical exclusion B3.1).

DOE received a comment from DOI (at page 2) expressing concern that DOE would categorically exclude proposed actions located in unsurveyed areas of the seafloor under categorical exclusions B3.16 and B5.25. The comment suggested that DOE should perform an assessment of survey data within the area of potential effect or complete an assessment of potential seafloor impacts from the proposed activities before DOE makes a categorical exclusion determination. In response, DOE notes that a NEPA Compliance Officer, when considering a proposed action in an unsurveyed area, would gather additional information about the proposed project site needed to support a categorical exclusion determination under B3.16 and B5.25. It is the responsibility of the DOE NEPA Compliance Officer to consider the potential for significant impacts and to consult with other agencies as necessary when considering a proposed action.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae, in projects that may be categorically excluded under this section of the rule. For further information, see discussion of ''Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species'' in section IV.C.7 of this preamble.

DOE received a comment from National Wildlife Federation (at page 4) expressing strong support for ''removing unnecessary barriers to the commercialization of deepwater offshore wind technology,'' and stating that ''[w]ith siting screens, research and demonstration projects in these technologies will not have significant impacts.'' DOE does not currently have the experience to support expanding the categorical exclusion to include such projects, but this may change as DOE gains experience over time.

Categorical Exclusions Applicable to Electrical Power and Transmission (B4)

DOE is changing the title of this group of categorical exclusions to state that they are applicable to ''electrical power and transmission,'' rather than to ''power resources,'' as used in the existing regulations and the Notice of Proposed Rulemaking. This change better identifies the subject of this group of categorical exclusions.

B4.1 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

In the Notice of Proposed Rulemaking, DOE proposed to clarify the scope of this categorical exclusion by stating that the contracts, policies, and marketing and allocation plans are ''related to electric power acquisition or transmission.'' After further consideration, DOE will not explicitly refer to transmission in this categorical exclusion; transmission activities are included in the contracts, policies, and marketing plans, or are covered primarily in other classes of actions, such as categorical exclusion B4.11.

B4.4 Power Marketing Services and Activities

Upon further consideration, DOE is changing the example of ''load shaping'' to ''load shaping and balancing.'' Load balancing helps ensure system reliability by managing energy resources to be equal with load.

B4.6 Additions and Modifications to Transmission Facilities

After further consideration, DOE will not adopt its proposal to apply this categorical exclusion to facilities that ''would not have the potential to cause significant impacts beyond the previously disturbed or developed facility area'' and instead this categorical exclusion will be limited to actions ''within a previously disturbed or developed facility area.'' DOE is making this change to conform the categorical exclusion to others that relate to proposed actions in a previously disturbed or developed area. In addition, after further consideration, DOE is making a clarifying improvement by moving the activity examples to a separate sentence. For further information, see discussion of ''Previously disturbed or developed area'' in section IV.C.2 of this preamble.

B4.9 Multiple Uses of Transmission Line Rights-of-Way

A comment from Edison Electric Institute (at page 3) on this categorical exclusion, for granting or denying requests for multiple uses of a transmission facility's rights-of-way, requested that DOE specify that multiple uses need to accommodate technical and other concerns that may be raised by the owners of the transmission facilities involved. This categorical exclusion is used by DOE entities, for example Power Marketing Administrations, in responding to a request regarding their own transmission facility rights-of-way, not those owned by other parties. Therefore, DOE is retaining the proposed language in the categorical exclusion in the final rule.

B4.10 Removal of Electric Transmission Facilities

A comment from Edison Electric Institute (at page 3) expressed agreement with the proposed changes to the categorical exclusion, but requested that DOE stipulate that any permit holders and owners of facilities affected by the abandonment must be given advance notice so they can protect their rights. This comment raises concerns unrelated to environmental review under NEPA, which is the scope of this regulation. For this reason, DOE is retaining its proposed categorical exclusion as the final categorical exclusion.

DOE is changing the title of this categorical exclusion to more closely reflect the wording of the categorical exclusion.

B4.11 Electric Power Substations and Interconnection Facilities

DOE is simplifying the wording of this categorical exclusion. In the Notice of Proposed Rulemaking, DOE proposed that actions under this categorical exclusion be restricted to interconnecting new generation resources that meet two conditions—that the new generation resource would be eligible for a categorical exclusion and that it would be equal to or less than 50 average megawatts. DOE determined that these limitations on the generation resource were more limiting than necessary to ensure appropriate application of this categorical exclusion. The appropriate limit is that the generation resource not pose the potential for significant environmental impacts. This limit already is addressed in DOE's existing NEPA regulations, which state, in part, that before applying a categorical exclusion, DOE must determine that the proposed action is not ''connected'' (40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts (10 CFR 1021.410(b)(3)).

DOE received a comment from the Chesapeake Bay Foundation (at page 5) stating that ''a categorical exclusion without any limitations or conditions on what can be fairly substantial development is inappropriate'' and that DOE should consider context and size to ensure that actions with significant impacts are not categorically excluded. In applying this categorical exclusion, a NEPA Compliance Officer considers context and size, along with other factors associated with potential for significant impacts, and DOE prepares an environmental assessment or environmental impact statement if a categorical exclusion determination is not appropriate.

B4.12 Construction of Powerlines

DOE is simplifying the wording of this categorical exclusion with respect to activities not in previously disturbed or developed rights-of-way. Upon further consideration, DOE is removing the limitation on interconnection of new generation resources proposed for this categorical exclusion for the same reason described above for categorical exclusion B4.11.

B4.13 Upgrading and Rebuilding Existing Powerlines

DOE is simplifying the wording of this categorical exclusion by removing the limitation on interconnection of new generation resources. The existing categorical exclusion B4.13 does not include a condition regarding interconnections, and DOE has determined that it is not necessary to add one. Also, any proposed upgrade or rebuild of existing powerlines would be subject to the same consideration regarding connected actions as described above for categorical exclusion B4.11.

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

B5.3 Modification or Abandonment of Wells

DOE received a comment from the Chesapeake Bay Foundation (at page 6) that well abandonment should be accompanied by revegetation and rehabilitation of the area. In response, DOE notes that abandonment of a well normally includes actions such as plugging, welding, or crimping and backfilling to ensure safety and prevent contamination from entering the well. DOE's proposed language adds new conditions, including that this categorical exclusion could only apply if the well abandonment were to be conducted ''consistent with best practices and DOE protocols,'' such as those to address revegetation and rehabilitation, among other issues. Therefore, DOE is retaining the proposed language in the categorical exclusion in the final rule. DOE notes, however, that revegetation and rehabilitation may not always be part of a proposed abandonment, where, for example, continued maintenance of cleared areas may be necessary because of ongoing operations near the abandoned well.

B5.4 Repair or Replacement of Pipelines, B5.5 Short Pipeline Segments, and B5.8 Import or Export Natural Gas, With New Cogeneration Powerplant

A comment from an anonymous individual (at page 2) objected to the categorical exclusions for pipelines because ''major pipelines blow up'' and asserted that DOE has allowed major oil firms to fail to maintain pipelines and has failed to adequately punish these companies for oil spills. DOE's experience is that the types of pipeline projects addressed by these categorical exclusions do not pose significant risk of accident and, indeed, repair, replacement, and similar activities can reduce such risks. DOE is retaining the proposed language in the categorical exclusions in the final rule.

B5.13 Experimental Wells for the Injection of Small Quantities of Carbon Dioxide

A comment from Sandy Beranich (at page 2) expressed concern that the injection of carbon dioxide into experimental wells should be allowed only after completing an environmental assessment. The comment also inquired as to DOE experience with these wells and their potential impacts. DOE has identified, in the Technical Support Document, multiple environmental assessments and findings of no significant impact and the results of field projects that demonstrate DOE experience with wells of a scale covered by this categorical exclusion. These environmental assessments and findings of no significant impact demonstrate that the operation of such wells normally does not result in significant environmental impacts.

To simplify the categorical exclusion, DOE is changing ''salt water and freshwater'' to ''aquatic environments.''Aquatic, as used herein, may refer to salt water, freshwater, or areas with shifting delineation between the two; this is not a substantive change.

B5.15, B5.16, B5.17, B5.18, and B5.25 Renewable Energy

Certain of DOE's proposed categorical exclusions for small-scale renewable energy projects include a condition that a proposed project ''would incorporate appropriate control technologies and best management practices.'' DOE received a comment from Defenders of Wildlife (at pages 2–5) recommending that the control technologies and best management practices for five categorical exclusions (B5.15, B5.16, B5.17, B5.18, and B5.25) include pre-development surveys, mitigation measures, continued monitoring, and decommissioning/reclamation. In response, DOE notes that it normally would consider these and other practices during its NEPA review, including when determining whether to apply one of the categorical exclusions referenced by the comment.

The comment first recommended inclusion of pre-development surveys for endangered and threatened species and other sensitive resources. DOE already evaluates the likelihood of potential impacts to threatened and endangered species and sensitive ecological resources through the integral elements applicable to all appendix B categorical exclusions, as well as the consideration of extraordinary circumstances. Furthermore, predevelopment surveys may be required as part of compliance with

other regulations (*e.g.,* those pertaining to the Endangered Species Act, Bald and Golden Eagle Protection Act) and would be considered by DOE in its decision whether to apply a categorical exclusion to a particular proposed action.

The second recommendation in the comment was to include mitigation measures to compensate for impacts to ecological resources. In response, compensating for impacts to biological resources is not required by NEPA for application of a categorical exclusion, and DOE declines to adopt such a requirement. However, DOE considers all mitigation measures and best management practices that are incorporated into a proposed action as part of its decision whether to apply any categorical exclusion. This approach is supported by the CEQ final guidance on the ''Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact'' (CEQ Mitigation and Monitoring Guidance) (76 FR 3843; January 14, 2011). In its guidance, CEQ noted that ''[m]any Federal agencies rely on mitigation to reduce adverse environmental impacts as part of the planning process for a project, incorporating mitigation as integral components of a proposed project design before making a determination about the significance of the project's environmental impacts. Such mitigation can lead to an environmentally preferred outcome and in some cases reduce the projected impacts of agency actions to below a threshold of significance. An example of mitigation measures that are typically included as part of the proposed action are agency standardized best management practices such as those developed to prevent storm water runoff or fugitive dust emissions at a construction site'' (CEQ Mitigation and Monitoring Guidance).

The comment also recommended continued monitoring of environmental impacts resulting from categorically excluded actions. In response, ongoing monitoring is a part of many DOE programs, often in conjunction with an environmental management system, and private project proponents may include such monitoring (*e.g.,* for compliance with environmental protection requirements). However, when DOE is providing funding, its ability to require or oversee ongoing monitoring may be limited. In sum, DOE supports the objective of monitoring, but is not able to ensure that monitoring occurs in all circumstances.

The fourth recommendation in the comment was to include decommissioning/reclamation plans that restore impacted areas. DOE considers available information on decommissioning/reclamation plans as part of its decision whether to apply a categorical exclusion. Decommissioning and reclamation plans are not prerequisites for application of a categorical exclusion and, while they may be appropriate in some instances, DOE does not elect to require them in every situation.

DOE is not making any changes to categorical exclusions B5.15, B5.16, B5.17, B5.18, and B5.25 in response to the comments discussed above.

B5.15 Small-Scale Renewable Energy Research and Development and Pilot Projects

A comment from DOI (at page 3) asked for clarification regarding whether actions covered under the proposed categorical exclusion included both research and development projects and pilot projects located in previously disturbed or developed areas. DOE is modifying the categorical exclusion to more clearly state that both types of projects must be located in a previously disturbed or developed area. Therefore, DOE is changing the first sentence to read: ''Small-scale renewable energy research and development projects and small-scale pilot projects, provided that the projects are located within a previously disturbed or developed area.'' For further information, see discussion of ''Previously disturbed or developed area'' in section IV.C.2. of this preamble. Another comment requested that the term ''small-scale'' be defined. For further information, see discussion of ''small'' and ''small-scale'' in section IV.C.3 of this preamble.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae, in projects that may be categorically excluded under this section of the rules. For further information, see discussion of ''Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species'' in section IV.C.7 of this preamble.

For discussion of additional comments on this categorical exclusion, see ''B5.15, B5.16, B5.17, B5.18, and B5.25—Renewable energy'' above in this preamble.

B5.16 Solar Photovoltaic Systems

DOE received a comment from William Kirk Williams (at page 1) objecting to DOE's proposed categorical exclusion for solar photovoltaic projects because of the potentially large amount of land involved, associated impacts on ecosystems, and the economic interests of local communities who might be restricted from existing economic uses of Federal lands. The comment said that such projects should not be built without preparation of an environmental impact statement to consider alternatives. DOE agrees that some solar projects are large and appropriately analyzed in an environmental assessment or environmental impact statement. However, DOE is not making any changes in response to this comment because the categorical exclusion could only be applied to projects ''on a building or other structure'' or on land ''generally less than 10 acres within a previously disturbed or developed area.'' At this scale, solar photovoltaic projects normally would not have the potential to cause significant impacts. For further information, see discussion of ''Previously disturbed or developed area'' in section IV.C.2 of this preamble.

Two comments (from Granite Construction Company (at pages 1–2) and Amonix (at pages 1–2)) asked DOE to increase the allowable footprint (acreage) for actions under this categorical exclusion to 100 acres when the projects would be located on heavily developed land such as mine or quarry sites. However, DOE does not have an adequate record to support a conclusion that larger photovoltaic systems, including up to 100 acres, normally would not have the potential for significant environmental impacts. For all proposed projects, including those at the mine and quarry locations, DOE would need to consider numerous site-specific factors, including the current state of animal and plant systems, reclamation, and alternative uses (*e.g.,* grazing). The scale of construction activities and the potential impacts for systems on 100 acres of land could be significantly different than those for a project located on 10 acres or less. DOE will continue to collect and review data and could revise or add a new categorical exclusion at a future time, if warranted. At a minimum, DOE would consider this during the next periodic review of its categorical exclusions.

A comment from William Kirk Williams (at page 1) also expressed concerns regarding negative impacts to species such as the sage grouse from activities under this categorical exclusion. Under integral element B(4)(ii), a provision applicable to all categorical exclusions in appendix B, DOE would not categorically exclude an action with the potential for significant impacts on threatened and endangered species, including Federal and state-

listed and proposed species and otherwise Federally protected species.

For discussion of additional comments on this categorical exclusion, see ''B5.15, B5.16, B5.17, B5.18, and B5.25—Renewable energy'' above in this preamble.

B5.17 Solar Thermal Systems

For DOE's response to comments on this categorical exclusion, see discussion of ''B5.15, B5.16, B5.17, B5.18, and B5.25 Renewable energy'' above in this preamble.

B5.18 Wind Turbines

In response to comments, DOE is making three changes to the categorical exclusion. A comment from Pacific Northwest National Laboratory (at page 2) asked for exclusionary wording stating that wind turbines would not be located in an established marine sanctuary or wildlife refuge. In response to the comment, DOE is limiting the categorical exclusion to land activities by adding the following sentence to the end of the categorical exclusion: ''Covered actions include only those related to wind turbines to be installed on land.'' DOE also received a comment supporting the use of categorical exclusions for deepwater floating offshore wind energy projects. DOE does not currently have the experience to support expanding the categorical exclusion to include such projects, but this may change as DOE gains experience over time. Second, DOE received comments (*e.g.,* from Defenders of Wildlife (at page 4), Sandy Beranich (at page 2)) expressing uncertainty or concern as to the scope or size of a proposed action to which this categorical exclusion may apply, asking whether this categorical exclusion could cover the establishment of a wind farm. In order to clarify that DOE intends the categorical exclusion to apply to proposals for a limited number of wind turbines, DOE is changing the first sentence of the categorical exclusion to refer to a small number of wind turbines (generally not more than 2), which is the number of turbines generally analyzed in the environmental assessments and findings of no significant impact identified in the Technical Support Document. Third, DOE identified distances for siting turbines from air safety and navigational devices in nautical miles in its Notice of Proposed Rulemaking. DOE is adding the conversion to miles to ensure the limitation is readily understood by both experts and the general public.

In addition, upon further consideration, DOE is clarifying the examples of significant impacts to persons, so that the examples now read ''(such as from shadow flicker and other visual effects, and noise).'' DOE also is changing a condition that a proposed action ''would not have the potential to cause significant impacts on bird or bat species'' to ''would not have the potential to cause significant impacts on bird or bat populations.'' The appropriate context for considering potential impacts is the local populations of birds and bats (including those nesting or foraging in, or flying through, the vicinity of the proposed project site).

DOE also received several other comments in response to which DOE is not making changes to the categorical exclusion. As noted previously (section IV.C.4), DOE received comments on its proposed use of ''would not have the potential for significant impact'' in a number of its categorical exclusions, including B5.18. In the context of categorical exclusion B5.18, comments asserted that the phrase would be open to interpretation or was too vague. DOE is including the limitations ''would not have the potential to cause significant impacts on bird or bat populations'' and ''would not have the potential to cause significant impacts to persons (such as from shadow flicker and other visual effects, and noise)'' in categorical exclusion B5.18 to highlight the types of potential impacts that a NEPA Compliance Officer must consider when reviewing a proposed action specific to wind turbines. As explained in section IV.C.4, this is consistent with CEQ's NEPA regulations and its Categorical Exclusion Guidance.

DOE received comments that expressed concern that the phrase ''previously disturbed or developed area'' was too vague and prone to interpretation. As indicated in its Notice of Proposed Rulemaking, DOE is limiting categorical exclusion B5.18 to actions located within previously disturbed or developed areas to avoid potential impacts to resources. For further information, see discussion of ''Previously disturbed or developed area'' in section IV.C.2 of this preamble.

DOE received a comment from William Kirk Williams (at page 1) that expressed concern over the scale of wind farms as too large and consuming too much land. Other comments (*e.g.,* from DOI (at page 3), Defenders of Wildlife (at page 4), Sandy Beranich (at page 2)) suggested limiting this categorical exclusion to a single turbine or specifying the scale in terms of acres. DOE is changing the categorical exclusion to limit covered actions to those that involve only ''a small number of (generally not more than 2) * * *.'' This restriction, along with the condition that wind turbines must have a total height generally less than 200 feet and be sited within a previously disturbed or developed area, limits the potential scale of actions under this categorical exclusion to those that would not require large parcels of land. DOE has identified, in the Technical Support Document, multiple environmental assessments and findings of no significant impact that demonstrate DOE experience with wind turbine projects of the scale covered by this categorical exclusion. These environmental assessments and findings of no significant impact demonstrate that the construction of a small number of wind turbines normally does not result in large parcels of land being affected or significant environmental impacts. For further information, see discussion of ''small'' and ''small-scale'' in section IV.C.3 of this preamble.

Another comment (from National Wildlife Federation (at page 3)) suggested that DOE had not taken into consideration the ''non-footprint'' and potential cumulative impacts of wind turbines on bird, bat and wildlife behavior, migration pathways or habitat. A DOE NEPA Compliance Officer would consider potential direct, indirect, and cumulative impacts, as well as extraordinary circumstances when reviewing a proposed action and making a NEPA determination.

DOE received a comment from DOI (at page 3) asking for the basis for the limitation, as stated in the Notice of Proposed Rulemaking, that covered actions would be for commercially available wind turbines ''with a total height generally less than 200 feet.'' This limitation is based on several considerations. DOE is choosing to limit this categorical exclusion to actions that are small-scale (*i.e.,* a small number of small turbines). The ''generally less than 200 feet'' limitation is intended to avoid potential conflicts with airports and aviation navigation aids, and to avoid potential commercial and military air safety issues.

The nature of potential impacts related to turbine height on visual or biological resources for any proposed action will vary depending on the nature of the site. DOE is including other limitations in B5.18 (*e.g.,* ''would not have the potential to cause significant impacts on bird or bat populations'') that better address issues related to visual, biological, and other resources in order to highlight the types of potential impacts that a NEPA Compliance Officer must consider when reviewing a proposed action specific to wind turbines.

DOE also received a comment from Defenders of Wildlife (at page 4) focused on best management practices and monitoring measures associated with categorical exclusion B5.18. A comment from William Kirk Williams (at page 1) expressed concern that B5.18 lacks a mechanism for requiring that actions covered under this categorical exclusion would incorporate best management practices. Both of these comments were related to using best management practices to reduce impacts to birds and bats under categorical exclusion B5.18. DOE considers all mitigation measures and best management practices that are incorporated into a proposed action as part of its decision whether to apply any categorical exclusion. This approach is supported by the CEQ Mitigation and Monitoring Guidance. DOE supports the objective of better design and planning to limit impacts to birds and bats and has therefore included a limitation in B5.18 that covered actions would ''incorporate appropriate control technologies and best management practices.'' Whether or not such practices are included in the design of a wind turbine proposed action would be evident at the time that a DOE NEPA Compliance Officer considers the specific details of a proposed action.

The comment from Defenders of Wildlife (at page 5) also recommended continued monitoring of environmental impacts resulting from categorically excluded actions. In response, ongoing monitoring is a part of many DOE programs, often in conjunction with an environmental management system, and private project proponents may include such monitoring (*e.g.,* for compliance with environmental protection requirements). However, when DOE is providing funding, its ability to require or oversee ongoing monitoring may be limited, due to factors such as the terms of the financial award and the extent of Federal control over the lifetime of the project. In sum, DOE supports the objective of monitoring but is not able to ensure that monitoring occurs in all circumstances.

Several comments (*e.g.,* from DOI (at page 3), William Kirk Williams (at page 1)) raised issues related to impacts to biological resources, namely on impacts to bird and bat species. A comment from DOI (at page 3) asked DOE to describe ''how the determination [would be] made that a significant number of birds or bats would not be affected.'' Because a determination of significance under NEPA depends on the context and intensity of an individual proposal, potential significance of the impacts from wind turbines on birds and bats is site-specific. At the time that a NEPA Compliance Officer considers applying this categorical exclusion to a proposed action, DOE would determine significance of impacts on birds and bats based on the specific site conditions of the proposed wind turbine(s).

A second comment (from William Kirk Williams (at page 1)) pointed out that wind turbines kill birds, and therefore, constitute a violation of the Migratory Bird Treaty Act. DOE agrees that impacts to birds are an important concern associated with this renewable technology, and DOE is modifying the integral elements applicable to appendix B categorical exclusions by adding that a proposal must be in compliance with the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. As indicated in its Notice of Proposed Rulemaking, DOE is also including a limitation that the action not have the potential to cause significant impacts on bird or bat populations, so that a NEPA Compliance Officer must consider the impact on these populations specifically when reviewing a proposed action to determine whether it fits this categorical exclusion.

Another comment (from Sandy Beranich (at page 2)) requested that DOE include a requirement that a covered action under categorical exclusion B5.18 would require agreement from the U.S. Fish and Wildlife Service for the size and location. Under integral element B(4)(ii), applicable to all categorical exclusions in appendix B, DOE would not categorically exclude an action with the potential for significant impacts on threatened and endangered species, including Federal and state-listed and proposed species and otherwise Federally protected species. Further, DOE consults with other agencies, as required. While the U.S. Fish and Wildlife Service has some authority related to the protection of such species, it does not have statutory or regulatory authority for siting wind turbines generally. The authority for siting wind turbines typically rests with state and/or local governments that make decisions with regard to land use, zoning, or other natural resource uses. Thus, DOE is not making any changes to categorical exclusion B5.18 based on this comment.

A comment from National Wildlife Federation (at page 3) requested that DOE include a specific requirement that wind turbines must not be sited in migration corridors or pathways, habitat areas, or areas where birds concentrate, such as wetlands or lakes. As indicated in its Notice of Proposed Rulemaking, DOE is including a limitation that covered actions ''would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area.'' DOE clarifies that this could include, but is not limited to, State, local or other requirements regarding the protection of special or sensitive species, migration pathways, and habitats. Therefore, DOE is not making a change based on this comment.

Another comment from National Wildlife Federation (at page 3) suggested that DOE include a requirement that the actions covered be in accordance with a municipal, state, or Federal wind turbine siting guideline such as the U.S. Fish and Wildlife Service, *Draft Land-Based Wind Energy Guidelines* (April 2011). The U.S. Fish and Wildlife Service has since issued revised draft guidelines (July 2011) and continues related discussions with the interested public and other Federal agencies. DOE will continue following the development of these guidelines and considering how to most appropriately apply them to its activities. However, DOE does not find it appropriate to make conformance to the guidelines a condition of applying a categorical exclusion. The guidelines are still being developed, and the U.S. Fish and Wildlife Service does not consider them mandatory at this time. Thus, DOE is not making any changes to categorical exclusion B5.18 based on this comment.

For discussion of additional comments on this categorical exclusion, see ''B5.15, B5.16, B5.17, B5.18, and B5.25—Renewable energy'' above in this preamble.

B5.19 Ground Source Heat Pumps

After further consideration, DOE is making two changes to the categorical exclusion. The first is to address the potential for a ground source heat pump system to allow cross-contamination between aquifers, during the construction or operation of the heat pump system. The second is to correct a typographical error; DOE intended to say ''school or community center'' rather than ''school and community center.'' Therefore, DOE is changing the first sentence of the categorical exclusion to read: ''The installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex) (1) only where (a) major associated activities (such as drilling and discharge) are regulated, and (b) appropriate leakage and contaminant

control measures would be in place (including for cross-contamination between aquifers) * * *.''

B5.20 Biomass Power Plants

DOE received comments (*e.g.,* from National Wildlife Federation (at page 4) and Center for Food Safety on behalf of itself and 3 other organizations (at page 5)) expressing concern about the impacts of biomass used in energy production. These concerns included impacts to wildlife habitat from the conversion of natural forests to monocultures for biomass production and the use of experimental biomass technologies employing genetically engineered organisms. DOE received a comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 5) stating that biomass harvesting (or sourcing) could result in widespread forest destruction and soil degradation. Another comment (from National Wildlife Federation (at page 4)) suggested that biomass be certified by the Forest Stewardship Council or the Council for Sustainable Biomass Production to address the impact of biomass sourcing on forest stewardship and sustainability. Comments from Center for Food Safety on behalf of itself and 3 other organizations (at page 5) expressed concern about significant air pollution that could result from biomass combustion, when compared to other fuels. Another comment (from Friends of the Earth (at pages 1–2) and Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion is appropriate, in part, because of the requirement to consider extraordinary circumstances.

A DOE NEPA Compliance Officer would evaluate the size and output of proposed biomass power plants to determine whether the proposals meet the integral elements of the categorical exclusion (listed in appendix B, paragraph (4)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts, including impacts to wildlife and habitat. In DOE's experience, the limitations on the size and energy output of covered biomass power plants ensure that any covered action would not consume quantities of biomass that could foreseeably impact soil quality or forest sustainability, nor would such small-scale projects result in the conversion of natural forests to monocultures of biomass crops. Therefore, DOE is not adding specific restrictions on biomass sourcing, although an applicant's use of biomass certified as sustainable could be considered by the NEPA Compliance Officer in determining whether a categorical exclusion is appropriate. Regarding pollution that could result from biomass combustion, the categorical exclusion requires that any covered biomass power plant not affect the air quality attainment status of the area, not have the potential to cause a significant increase in the quantity or rate of air emissions, and not have the potential to cause significant impacts to water resources. For these reasons, DOE is retaining the proposed language in the categorical exclusion in the final rule.

A comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 5) expressed concern about potential impacts on global climate change, stating that burning biomass can emit almost 1.5 times as much global warming pollution per unit of energy as coal, and that harvesting and transporting biomass would add to greenhouse gas emissions. A comment from the Blue Ridge Environmental Defense League (at page 1) stated that biomass energy source impacts are large, and that labeling such projects as ''carbon neutral'' is a mistaken concept without scientific basis. DOE considered these issues when developing the categorical exclusion. For example, DOE reviewed the Environmental Protection Agency's *Call for Information* regarding greenhouse gas emissions from bioenergy and other biogenic sources (75 FR 4117; July 15, 2010), which noted that the issue is complex and requested comments on analytical approaches that would apply to biomass facilities. Partly because of these issues, the categorical exclusion explicitly limits covered actions to those that would not have the potential to cause a significant increase in the quantity or rate of air emissions. DOE intends that ''emissions'' includes greenhouse gas emissions. Further, the small-scale biomass plants under this categorical exclusion would have correspondingly small-scale greenhouse gas emissions, and would produce power that may offset energy that otherwise might have been produced by fossil energy facilities, resulting in a potential for net beneficial impacts on climate change. Impacts from harvesting fuel would be limited by the size of the facility (and thus the total fuel needs) and consideration of factors such as existing land use plans.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae, in projects that may be categorically excluded under this section of the rules. For further information, see discussion of ''Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species'' in section IV.C.7 of this preamble.

B5.21 Methane Gas Recovery and Utilization System

DOE received a comment from the Blue Ridge Environmental Defense League (at page 1) stating that methane gas recovery and utilization systems are either negative or associated with negative impacts. A DOE NEPA Compliance Officer would evaluate the size and output of proposed methane gas systems to determine whether the proposals meet the integral elements of the categorical exclusion (listed in appendix B, paragraph (4)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts, including impacts to wildlife and habitat. The categorical exclusion also requires that any covered methane gas system not have the potential to cause a significant increase in the quantity or rate of air emissions, be in accordance with applicable requirements, and incorporate appropriate control technologies and best management practices. Because these measures would address potential significant impacts from these facilities, DOE is retaining the proposed language in the final categorical exclusion.

B5.24 Drop-in Hydroelectric Systems

A comment from Pacific Northwest National Laboratory (at page 2) suggested that limiting this categorical exclusion to stream and river areas upgradient of ''natural'' fish barriers is unduly restrictive because it excludes, for example, a small-scale hydroelectric system in an irrigation canal that uses existing fish screens or in a river system above an existing dam. DOE agrees that it is the effectiveness of the fish barrier—not whether the barrier is natural or man-made—that is relevant to the potential environmental impacts. Two important indicators of future effectiveness of an existing fish barrier are whether it is planned for removal (as are man-made barriers in several river systems) and whether it is to be modified to facilitate fish moving upstream past the barrier. Thus, DOE is revising the categorical exclusion to remove the word ''natural'' and to include a condition that the system ''be

located up-gradient of an existing anadromous fish barrier that is not planned for removal and where fish passage retrofit is not planned. * * *''

Another comment from Pacific Northwest National Laboratory (at page 2) asked DOE to restrict this categorical exclusion to activities that would ''not have the potential to cause impacts to threatened or endangered species'' or significant impacts to fish or wildlife. Before making a categorical exclusion determination, a NEPA Compliance Officer must assess whether the proposed action will have the potential to cause significant impacts to listed or proposed threatened and endangered species. See integral element B(4)(ii). Thus, potential significant impacts to threatened and endangered species and fish and wildlife will be considered. The comment seeks inclusion of a higher standard—any potential impact to threatened and endangered species—which is not the correct standard required under NEPA. However, in response DOE is adding a reference to the integral element listed at B(4)(ii), which requires consideration of the impacts on threatened and endangered species, including Federal and state-listed and proposed species and otherwise Federally protected species.

DOE also received a comment from the Blue Ridge Environmental Defense League (at page 1) expressing concern with the proposed categorical exclusion for drop-in hydroelectric systems. DOE has concluded that such systems meeting the requirements of the categorical exclusion (*i.e.,* they would involve no storage or diversion of stream or river water, they would be located up-gradient of an existing anadromous fish barrier, and installation would be accomplished without use of heavy equipment and would involve no major construction or modification of stream or river channels) normally would not have the potential to cause significant impacts.

B5.25 Small-Scale Renewable Energy Research and Development and Pilot Projects in Aquatic Environments

To simplify the categorical exclusion, DOE is changing ''salt water and freshwater'' to ''aquatic.'' Aquatic, as used herein, may refer to salt water, freshwater, or areas with shifting delineation between the two; this is not a substantive change. A comment from Pacific Northwest National Laboratory (at page 2) asked that additional restrictions be added to the categorical exclusion to preclude the installation of a small-scale renewable energy research and development or pilot project device, if the installation of the device would require significant dredging or if the device itself could interfere with shipping navigation. Under integral element B(1) (appendix B, paragraph (1)) to 10 CFR part 1021, to fit within the classes of actions under appendix B categorical exclusions, the proposed action must be one that would not ''threaten a violation of applicable, statutory, or permit requirements for environment, safety, and health.'' Actions covered by this categorical exclusion would be subject to, and would often require permits under, Section 10 of the Rivers and Harbors Act, which regulates structures placed in ''navigable waters of the United States,'' and Section 404 of the Clean Water Act, which regulates the discharge of dredged or fill material into waters of the United States. These regulations and statutes are expected to address the comment; therefore, DOE is not making any changes based on this comment.

A comment from the Ocean Renewable Energy Coalition (at page 4) asked if a transmission line connecting the proposed generation device to the grid would be covered under this categorical exclusion. Any action subject to a NEPA determination, whether an environmental impact statement, environmental assessment, or categorical exclusion, must include all necessary components of that action. In this case, the inclusion of one or more transmission lines connecting the generation device to the electrical grid as part of the proposed action would not prevent the application of the categorical exclusion, unless some aspect of the installation, character, or path of the line was inconsistent with one or more of the limitations described in the categorical exclusion or the integral elements, or if extraordinary circumstances were present.

Several comments (*e.g.,* from DOI (at page 3) and the Ocean Renewable Energy Coalition (at page 4)) asked that the term ''small-scale'' be defined, and one comment (from the Ocean Renewable Energy Coalition (at page 4)) suggested that a power limit of 5 megawatts be added to the categorical exclusion. Whether a proposal is small-scale would be determined by the NEPA Compliance Officer based on the context and intensity of the proposed action, which would be determined by the site conditions and nature of the proposal. Such limitations are more meaningful than a megawatt limit, as there is not necessarily a direct correlation between generation capacity and potential environmental impacts for the various technologies that could be addressed under this categorical exclusion. For additional discussion on the term ''small-scale,'' see DOE's discussion of ''small'' and ''small-scale'' that appears in section IV.C.3 of this preamble.

A comment from the Ocean Renewable Energy Coalition (at page 5) suggested that DOE provide guidance as to the meaning of ''biologically sensitive.'' Areas of high biological sensitivity are defined in the categorical exclusion to include ''areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally.'' Information regarding areas of high biological sensitivity is available from local, state, and Federal regulatory and natural resource management agencies. It is not uncommon for a categorical exclusion determination to require some analysis to determine whether any extraordinary circumstances exist that would render the categorical inapplicable to a particular proposal. Determining the presence of conditions that would constitute an area of high biological sensitivity would be the responsibility of the DOE NEPA Compliance Officer, in consultation with the project proponent, and would necessarily occur before a categorical exclusion was granted.

A comment from Sandy Beranich (at page 2) noted that marine areas are too fragile for a variety of projects that could include the use of chemicals or invasive work and suggested that actions under this categorical exclusion warrant an environmental assessment level of analysis. Further, the comment requested that DOE limit the scale of projects under this categorical exclusion to allow only small projects in very specific areas. As indicated in its Notice of Proposed Rulemaking, DOE is limiting the scope and location of activities under this categorical exclusion to ensure that renewable energy research is conducted in a manner that would not have the potential to cause significant impacts.

DOE received a comment from the Ocean Renewable Energy Coalition (at page 5) noting that an offshore wave pilot project identified in a document cited in DOE's Technical Support Document for the Notice of Proposed Rulemaking was located in a marine sanctuary, yet was still deemed to have minimal impacts. In addition, a comment from Pacific Northwest National Laboratory (at page 2) suggested that many of the activities

described in categorical exclusion B3.16—a related categorical exclusion for activities in aquatic environments—should be allowed within the boundary of a marine sanctuary or wildlife refuge if conducted in a manner consistent with sanctuary goals and objectives. Therefore, DOE is modifying categorical exclusion B5.25 (and B3.16) to now allow covered actions within, or having effects on, existing or proposed marine sanctuaries, wildlife refuges, or governmentally recognized areas of high biological sensitivity, if the action receives authorization from, or after consultation with, the responsible agency. The DOE NEPA Compliance Officer would take concerns from the responsible agency into account when considering whether to apply this categorical exclusion. For further discussion, see discussion of categorical exclusion B3.16, above.

DOE received a comment from National Wildlife Federation (at page 4) expressing strong support for ''removing unnecessary barriers to the commercialization of deepwater offshore wind technology,'' and stating that ''with siting screens, research and demonstration projects in these technologies will not have significant impacts.'' DOE does not currently have the experience to support expanding the categorical exclusion to include such projects, but this may change as DOE gains experience over time and will be considered when DOE conducts its next periodic review of its categorical exclusions. Another comment (from Friends of the Earth (at page 2) and Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion is appropriate, in part, because of the requirement to consider extraordinary circumstances.

DOE received a comment from DOI (at page 2) suggesting that it discuss or consider impacts related to decommissioning of authorized temporary structures or devices under categorical exclusion B5.25. The comment expressed concern regarding impacts from both planned decommissioning and unplanned ''cessation of operation'' or failure. DOE agrees that potential impacts associated with decommissioning and similar activities would be appropriate to consider when determining whether a particular proposed action qualifies for a categorical exclusion. Another comment (from DOI (at page 3)) asked for clarification on what happens if a proposed action does not meet the conditions outlined in categorical exclusion B5.25. In response, if a condition is not met, then the DOE NEPA Compliance Officer would not apply this categorical exclusion and would prepare an environmental assessment or environmental impact statement, as appropriate. Another comment (from DOI (at page 3)) requested that DOE clarify the meaning of ''the construction of permanent devices.'' DOE also received a comment from DOI (at page 2) expressing concern that it would categorically exclude proposed actions located in unsurveyed areas of the seafloor under categorical exclusions B3.16 and B5.25. See explanation under categorical exclusion B3.16, above.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae, in projects that may be categorically excluded under this section of the rules. For further information, see discussion of ''Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species'' in section IV.C.7 of this preamble.

For discussion of additional comments on this categorical exclusion, see ''B5.15, B5.16, B5.17, B5.18, and B5.25—Renewable energy'' above in this preamble.

Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities (B6)

B6.1 Cleanup Actions

DOE received a comment from Tri-Valley CAREs (at page 4) that questioned the basis for finding that the proposed increase in the cost limitation (from approximately $5 million to approximately $10 million) and the proposed removal of the time limitation (5 years) from this categorical exclusion will not result in potentially significant impacts to the environment. In DOE's experience, in light of other limitations on the scope of this categorical exclusion and the integral elements, increasing the cost limit would not add greatly to the types of projects that would be covered by this categorical exclusion. The time for project implementation is indirectly affected by the cost limit; *e.g.,* a container removal operation would be limited by its total cost even without an explicit time limit. Further, based on DOE's experience, the amount of time that a cleanup action requires is not a reliable indicator of its potential environmental impacts.

DOE received a comment from Sandy Beranich (at page 2) that acknowledged that cleanup costs have increased since the categorical exclusion was first established, but questioned whether a $10 million cleanup could appropriately be considered ''small-scale.'' The size of typical small-scale cleanup actions with which DOE has experience has not changed, nor have the environmental impacts resulting from these actions increased. However, the costs of completing these actions have increased due to inflation. Projects meeting the $10 million limit, along with the other limitations on the scope of the categorical exclusion, normally would not have the potential for significant impacts. For further information, see discussion of ''small'' and ''small-scale'' in section IV.C.3 of this preamble.

After further consideration, to clarify the cost limitation by accounting for inflation over time, DOE is inserting ''(in 2011 dollars)'' after ''10 million dollars.''

10. Appendix C and Appendix D

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

After further consideration, DOE will not explicitly refer to transmission in this class of actions; transmission activities are included in the contracts, policies, and marketing plans, or are covered primarily in other classes of actions, such as the group of categorical exclusions under B4. In addition, to improve clarity, DOE is removing the previously proposed condition that the new generation resource ''would not be eligible for categorical exclusion under this part.'' DOE normally would not prepare an environmental assessment when a categorical exclusion would apply. Therefore, the condition is unnecessary and potentially confusing.

C8 Protection of Cultural Resources and Fish and Wildlife Habitat

DOE received a comment from Sandy Beranich (at page 2) asking what DOE means by ''large-scale,'' a term that distinguishes this environmental assessment category from categorical exclusion B1.20 for ''small-scale'' proposals of this type. DOE NEPA Compliance Officers use their professional expertise and judgment to determine whether a proposal meets a categorical exclusion for ''small-scale'' activities when no additional limitation is specified. A proposal that a NEPA Compliance Officer does not consider small-scale under such an evaluation would fit within this environmental assessment category. For further information, see discussion of ''small''

and ''small-scale'' in section IV.C.3 of this preamble. In addition, under the DOE NEPA regulations (10 CFR 1021.321), DOE may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking. DOE is retaining the proposed language in this class of action in the final rule.

C12 Energy System Demonstration Actions

DOE received a comment from the Chesapeake Bay Foundation (at page 6) that the scale of the project should be specified to clarify whether a project is covered in this ''limited exclusion.'' The comment is noted, but classes of actions in appendix C are not categorical exclusions; they are categories for which an environmental assessment is normally prepared to provide a basis for determining whether to prepare an environmental impact statement or issue a finding of no significant impact. DOE is retaining the proposed language in this class of actions in the final rule.

Upon further consideration, DOE is adding decommissioning to the list of actions. For proposed new facilities, DOE normally would address siting construction, operation, and decommissioning in the same review under NEPA.

In addition, DOE has determined that the final sentence of C12 is unnecessary and, thus, is deleting the sentence. This deletion does not change the meaning or scope of the paragraph.

C15 Research and Development Incinerators and Nonhazardous Waste Incinerators

Upon further consideration, DOE is adding decommissioning to the list of actions. For proposed new facilities, DOE normally would address siting construction, operation, and decommissioning in the same review under NEPA.

D1 [Reserved: Strategic Systems]

After further consideration, DOE is removing this class of actions because the term ''strategic systems'' is no longer in use and the referenced Order no longer defines it. The term previously referred to ''a single, stand-alone effort within a program mission area that is a primary means to advance the Department's strategic goals.''

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

After further consideration, DOE will not explicitly refer to transmission in this class of actions; transmission activities are included in the contracts, policies, and marketing plans, or are covered primarily in other classes of actions, such as the group of categorical exclusions under B4.

V. Procedural Requirements

Review Under Executive Order 12866

Today's final rule has been determined not to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Review Under National Environmental Policy Act

In this rule, DOE establishes, modifies, and clarifies procedures for considering the environmental effects of DOE actions within DOE's decisionmaking process, thereby enhancing compliance with the letter and spirit of NEPA. The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461; August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc* under GC Guidance/Opinions, Rulemaking Policy.

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule revises DOE's categorical exclusions, and makes certain other changes, that will help reduce the cost and time associated with completing the environmental review for certain proposed actions.

In the Notice of Proposed Rulemaking, DOE tentatively certified that this rule would not have a significant economic impact on a substantial number of small entities and did not prepare a regulatory flexibility analysis for this rulemaking. DOE received no comments on the certification, and the factual basis for DOE's certification is unchanged. Thus, DOE maintains its certification that this rule would not have a significant economic impact on a substantial number of small entities. DOE transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

Review Under Paperwork Reduction Act

This rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Review Under Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on state, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that

would impose upon state, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to state, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of state, local, and tribal governments.

This rule would amend DOE's existing regulations governing compliance with NEPA to better align DOE's regulations, particularly its categorical exclusions, with its current activities and recent experiences, and update the provisions with respect to current technologies and regulatory requirements. This rule would not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

Review Under Executive Order 13132

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

Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

Review Under Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) Is a significant regulatory action under Executive Order 12866, or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits for energy supply, distribution, and use. This rule would not have a significant adverse effect on the supply, distribution, or use of energy, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' (53 FR 8859; March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Issued in Washington, DC, September 27, 2011.

Sean A. Lev,

Acting General Counsel.

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

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 continues to read as follows:

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

■ 2. Section 1021.215 is amended by revising the fourth sentence in paragraph (d) to read as follows:

§ 1021.215 Applicant process.

* * * * *

(d) * * * The contractor shall provide a disclosure statement in accordance with 40 CFR 1506.5(c). * * *

■ 3. Section 1021.311 is amended by revising the first sentence in paragraph (d) and paragraph (f) to read as follows:

§ 1021.311 Notice of intent and scoping.

* * * * *

(d) DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. * * *

* * * * *

(f) A public scoping process is optional for DOE supplemental EISs (40 CFR 1502.9(c)(4)). If DOE initiates a public scoping process for a supplemental EIS, the provisions of paragraphs (a) through (e) of this section shall apply.

■ 4. Section 1021.322 is amended by revising the last sentence of paragraph (f) to read as follows:

§ 1021.322 Findings of no significant impact.

* * * * *

(f) * * * A revised FONSI is subject to all provisions of this section.

■ 5. Section 1021.331 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 1021.331 Mitigation action plans.

* * * * *

(b) In certain circumstances, as specified in § 1021.322(b)(1), DOE shall also prepare a Mitigation Action Plan for commitments to mitigations that are essential to render the impacts of the proposed action not significant. * * *

* * * * *

■ 6. Subpart D of part 1021 is revised to read as follows:

Subpart D—Typical Classes of Actions

Sec.

Subpart D—Typical Classes of Actions

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document) (appendices A and B to this subpart D);

(2) Require preparation of an EA, but not necessarily an EIS (appendix C to this subpart D); or

(3) Require preparation of an EIS (appendix D to this subpart D).

(b) Any completed, valid NEPA review does not have to be repeated, and no completed NEPA documents need to be redone by reasons of these regulations, except as provided in § 1021.314.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless there are extraordinary circumstances related to the specific proposal that may affect the significance of the environmental effects of the proposal.

(d) If a DOE proposal is not encompassed within the classes of actions listed in the appendices to this subpart D, or if there are extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal, DOE shall either:

(1) Prepare an EA and, on the basis of that EA, determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) The actions listed in appendices A and B to this subpart D are classes of actions that DOE has determined do not individually or cumulatively have a significant effect on the human environment (categorical exclusions).

(b) To find that a proposal is categorically excluded, DOE shall determine the following:

(1) The proposal fits within a class of actions that is listed in appendix A or B to this subpart D;

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

(3) The proposal has not been segmented to meet the definition of a categorical exclusion. Segmentation can occur when a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. The scope of a proposal must include the consideration of connected and cumulative actions, that is, the proposal is not connected to other actions with potentially significant impacts (40 CFR 1508.25(a)(1)), is not related to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1508.27(b)(7)), and is not precluded by 40 CFR 1506.1 or § 1021.211 of this part concerning limitations on actions during EIS preparation.

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

(d) A class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as award of implementing grants and contracts, site preparation, purchase and installation of equipment, and associated transportation activities).

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

Posted categorical exclusion determinations shall not disclose classified information, ''confidential business information,'' or other information that DOE would not disclose pursuant to FOIA. (See also 10 CFR 1021.340.)

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

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

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

(2) DOE considers terms such as ''small'' and ''small-scale'' in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, DOE would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action.

Appendix A to Subpart D of Part 1021—Categorical Exclusions Applicable to General Agency Actions

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A1 Routine DOE business actions

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

A2 Clarifying or administrative contract actions

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

A3 Certain actions by Office of Hearings and Appeals

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

A4 Interpretations and rulings for existing regulations

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

A5 Interpretive rulemakings with no change in environmental effect

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

A6 Procedural rulemakings

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

A7 [Reserved]

A8 Awards of certain contracts

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

A9 Information gathering, analysis, and dissemination

Information gathering (including, but not limited to, literature surveys, inventories, site visits, and audits), data analysis (including, but not limited to, computer modeling), document preparation (including, but not limited to, conceptual design, feasibility studies, and analytical energy supply and demand studies), and information dissemination (including, but not limited to, document publication and distribution, and classroom training and informational programs), but not including site characterization or environmental monitoring. (See also B3.1 of appendix B to this subpart.)

A10 Reports and recommendations on non-DOE legislation

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

A11 Technical advice and assistance to organizations

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

A12 Emergency preparedness planning

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

A13 Procedural documents

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

A14 Approval of technical exchange arrangements

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

A15 International agreements for energy research and development

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

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

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

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a Federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, Federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened

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

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

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

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

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

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

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

B1. Categorical Exclusions Applicable to Facility Operation

B1.1 Changing rates and prices

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

B1.2 Training exercises and simulations

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

B1.3 Routine maintenance

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

(a) Repair or replacement of facility equipment, such as lathes, mills, pumps, and presses;

(b) Door and window repair or replacement;

(c) Wall, ceiling, or floor repair or replacement;

(d) Reroofing;

(e) Plumbing, electrical utility, lighting, and telephone service repair or replacement;

(f) Routine replacement of high-efficiency particulate air filters;

(g) Inspection and/or treatment of currently installed utility poles;

(h) Repair of road embankments;

(i) Repair or replacement of fire protection sprinkler systems;

(j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing, and scraping and grading of unpaved surfaces;

(k) Erosion control and soil stabilization measures (such as reseeding, gabions, grading, and revegetation);

(l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 435.1, ''Radioactive Waste Management,'' or its successor;

(m) Repair and maintenance of transmission facilities, such as replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed powerlines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions) or its successor;

(n) Routine testing and calibration of facility components, subsystems, or portable equipment (such as control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes);

(o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), and removal of contaminated intact equipment and other material (not including spent nuclear fuel or special nuclear material in nuclear reactors); and

(p) Removal of debris.

B1.4 Air conditioning systems for existing equipment

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

B1.5 Existing steam plants and cooling water systems

Minor improvements to existing steam plants and cooling water systems (including, but not limited to, modifications of existing cooling towers and ponds), provided that the improvements would not: (1) Create new sources of water or involve new receiving waters; (2) have the potential to significantly alter water withdrawal rates; (3) exceed the permitted temperature of discharged water; or (4) increase introductions of, or involve new introductions of, hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products.

B1.6 Tanks and equipment to control runoff and spills

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

B1.7 Electronic equipment

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

B1.8 Screened water intake and outflow structures

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

B1.9 Airway safety markings and painting

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

B1.10 Onsite storage of activated material

Routine, onsite storage at an existing facility of activated equipment and material

(including, but not limited to, lead) used at that facility, to allow reuse after decay of radioisotopes with short half-lives.

B1.11 Fencing

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

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

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

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

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

B1.14 Refueling of nuclear reactors

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

B1.15 Support buildings

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

B1.16 Asbestos removal

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

B1.17 Polychlorinated biphenyl removal

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

B1.18 Water supply wells

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

B1.19 Microwave, meteorological, and radio towers

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

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

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

B1.21 Noise abatement

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

B1.22 Relocation of buildings

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

B1.23 Demolition and disposal of buildings

Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces), provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.24 Property transfers

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

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

Transfer, lease, disposition, or acquisition of interests in land and associated buildings for cultural resources protection, habitat preservation, or fish and wildlife management, provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.26 Small water treatment facilities

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

B1.27 Disconnection of utilities

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

B1.28 Placing a facility in an environmentally safe condition

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

B1.29 Disposal facilities for construction and demolition waste

Siting, construction, expansion, modification, operation, and decommissioning of small (less than approximately 10 acres) solid waste disposal facilities for construction and demolition waste, in accordance with applicable requirements (such as 40 CFR part 257, ''Criteria for Classification of Solid Waste Disposal Facilities and Practices,'' and 40 CFR part 61, ''National Emission Standards

for Hazardous Air Pollutants'') that would not release substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.30 Transfer actions

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

B1.31 Installation or relocation of machinery and equipment

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

B1.32 Traffic flow adjustments

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

B1.33 Stormwater runoff control

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

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

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

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

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

B1.36 Determinations of excess real property

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

B2. Categorical Exclusions Applicable to Safety and Health

B2.1 Workplace enhancements

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

B2.2 Building and equipment instrumentation

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

B2.3 Personnel safety and health equipment

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

B2.4 Equipment qualification

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

B2.5 Facility safety and environmental improvements

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

B2.6 Recovery of radioactive sealed sources

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

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

B3.1 Site characterization and environmental monitoring

Site characterization and environmental monitoring (including, but not limited to, siting, construction, modification, operation, and dismantlement and removal or otherwise proper closure (such as of a well) of characterization and monitoring devices, and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis). Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance. Covered activities include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. (This class of actions excludes activities in aquatic environments. See B3.16 of this appendix for such activities.) Specific activities include, but are not limited to:

(a) Geological, geophysical (such as gravity, magnetic, electrical, seismic, radar, and

temperature gradient), geochemical, and engineering surveys and mapping, and the establishment of survey marks. Seismic techniques would not include large-scale reflection or refraction testing;

(b) Installation and operation of field instruments (such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools);

(c) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells;

(d) Aquifer and underground reservoir response testing;

(e) Installation and operation of ambient air monitoring equipment;

(f) Sampling and characterization of water, soil, rock, or contaminants (such as drilling using truck- or mobile-scale equipment, and modification, use, and plugging of boreholes);

(g) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(h) Installation and operation of meteorological towers and associated activities (such as assessment of potential wind energy resources);

(i) Sampling of flora or fauna; and

(j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7.

B3.2 Aviation activities

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

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

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

B3.4 Transport packaging tests for radioactive or hazardous material

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

B3.5 Tank car tests

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

B3.6 Small-scale research and development, laboratory operations, and pilot projects

Siting, construction, modification, operation, and decommissioning of facilities for small-scale research and development projects; conventional laboratory operations (such as preparation of chemical standards and sample analysis); and small-scale pilot projects (generally less than 2 years) frequently conducted to verify a concept before demonstration actions, provided that construction or modification would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Not included in this category are demonstration actions, meaning actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment.

B3.7 New terrestrial infill exploratory and experimental wells

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

B3.8 Outdoor terrestrial ecological and environmental research

Outdoor terrestrial ecological and environmental research in a small area (generally less than 5 acres), including, but not limited to, siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for associated analysis. Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance.

B3.9 Projects to reduce emissions and waste generation

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

(a) Test treatment of the throughput product (solid, liquid, or gas) generated at an existing and fully operational fuel combustion or utilization facility;

(b) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that requires only minor modification to the existing structures at an existing fuel combustion or utilization facility, for which the existing use remains essentially unchanged;

(c) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that involves no permanent change in the quantity or quality of fuel burned or used and involves no permanent change in the capacity factor of the fuel combustion or utilization facility; and

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

B3.10 Particle accelerators

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

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

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

B3.12 Microbiological and biomedical facilities

Siting, construction, modification, operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4), in accordance with applicable requirements and best practices (such as Biosafety in Microbiological and Biomedical Laboratories, 5th Edition, Dec. 2009, U.S. Department of Health and Human Services) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to a previously disturbed or developed area (where active utilities and

currently used roads are readily accessible). Operation may include the purchase, installation, and operation of biomedical equipment (such as commercially available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation).

B3.13 Magnetic fusion experiments

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

B3.14 Small-scale educational facilities

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

B3.15 Small-scale indoor research and development projects using nanoscale materials

Siting, construction, modification, operation, and decommissioning of facilities for indoor small-scale research and development projects and small-scale pilot projects using nanoscale materials in accordance with applicable requirements (such as engineering, worker safety, procedural, and administrative regulations) necessary to ensure the containment of any hazardous materials. Construction and modification activities would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible).

B3.16 Research activities in aquatic environments

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

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

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

(c) Natural resource inventories, data and sample collection, environmental monitoring, and basic and applied research, excluding (1) large-scale vibratory coring techniques and (2) seismic activities other than passive techniques; and

(d) Surveying and mapping.

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

B4. Categorical Exclusions Applicable to Electrical Power and Transmission

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

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

B4.2 Export of electric energy

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

B4.3 Electric power marketing rate changes

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

B4.4 Power marketing services and activities

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

B4.5 Temporary adjustments to river operations

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

B4.6 Additions and modifications to transmission facilities

Additions or modifications to electric power transmission facilities within a previously disturbed or developed facility area. Covered activities include, but are not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, load shaping projects (such as the installation and use of flywheels and battery arrays), changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.

B4.7 Fiber optic cable

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

B4.8 Electricity transmission agreements

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

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

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

B4.10 Removal of electric transmission facilities

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

B4.11 Electric power substations and interconnection facilities

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

B4.12 Construction of powerlines

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

B4.13 Upgrading and rebuilding existing powerlines

Upgrading or rebuilding approximately 20 miles in length or less of existing electric powerlines, which may involve minor relocations of small segments of the powerlines.

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

B5.1 Actions to conserve energy or water

(a) Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy efficiency that would not have the potential to cause significant changes in the indoor or outdoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as state, local, and tribal). Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); power storage (such as flywheels and batteries, generally less than 10 megawatt equivalent); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors. Covered actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) of this appendix.

(b) Covered actions include rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not: (1) Have the potential to cause a significant change in manufacturing infrastructure (such as construction of new manufacturing plants with considerable associated ground disturbance); (2) involve significant unresolved conflicts concerning alternative uses of available resources (such as rare or limited raw materials); (3) have the potential to result in a significant increase in the disposal of materials posing significant risks to human health and the environment (such as RCRA hazardous wastes); or (4) have the potential to cause a significant increase in energy consumption in a state or region.

B5.2 Modifications to pumps and piping

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

B5.3 Modification or abandonment of wells

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

B5.4 Repair or replacement of pipelines

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

B5.5 Short pipeline segments

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

B5.6 Oil spill cleanup

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

B5.7 Import or export natural gas, with operational changes

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.

B5.8 Import or export natural gas, with new cogeneration powerplant

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve new cogeneration powerplants (as defined in the Powerplant and Industrial Fuel Use Act of 1978, as amended) within or contiguous to an existing industrial complex and requiring generally less than 10 miles of new natural gas pipeline or 20 miles within previously disturbed or developed rights-of-way.

B5.9 Temporary exemptions for electric powerplants

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

B5.10 Certain permanent exemptions for existing electric powerplants

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

B5.11 Permanent exemptions allowing mixed natural gas and petroleum

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

B5.12 Workover of existing wells

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

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

Siting, construction, operation, plugging, and abandonment of experimental wells for the injection of small quantities of carbon dioxide (and other incidentally co-captured gases) in locally characterized, geologically secure storage formations at or near existing carbon dioxide sources to determine the suitability of the formations for large-scale sequestration, provided that (1) The characterization has verified a low potential for seismicity, subsidence, and

contamination of freshwater aquifers; (2) the wells are otherwise in accordance with applicable requirements, best practices, and DOE protocols, including those that protect against uncontrolled releases of harmful materials; and (3) the wells and associated drilling activities are sufficiently remote so that they would not have the potential to cause significant impacts related to noise and other vibrations. Wells may be used for enhanced oil or natural gas recovery or for secure storage of carbon dioxide in saline formations or other secure formations. Over the duration of a project, the wells would be used to inject, in aggregate, less than 500,000 tons of carbon dioxide into the geologic formation. Covered actions exclude activities in aquatic environments. (See B3.16 of this appendix for activities in aquatic environments.)

B5.14 Combined heat and power or cogeneration systems

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

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

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

B5.16 Solar photovoltaic systems

The installation, modification, operation, and removal of commercially available solar photovoltaic systems located on a building or other structure (such as rooftop, parking lot or facility, and mounted to signage, lighting, gates, or fences), or if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.17 Solar thermal systems

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

B5.18 Wind turbines

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

B5.19 Ground source heat pumps

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

B5.20 Biomass power plants

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

B5.21 Methane gas recovery and utilization systems

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

B5.22 Alternative fuel vehicle fueling stations

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

B5.23 Electric vehicle charging stations

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

B5.24 Drop-in hydroelectric systems

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

zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

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

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

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

B6.1 Cleanup actions

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

(a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, if surface water or groundwater would not collect and if such actions would reduce the spread of, or direct contact with, the contamination;

(b) Removal of bulk containers (such as drums and barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261 or applicable state requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(c) Removal of an underground storage tank including its associated piping and underlying containment systems in accordance with applicable requirements (such as RCRA, subtitle I; 40 CFR part 265, subpart J; and 40 CFR part 280, subparts F and G) if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(d) Repair or replacement of leaking containers;

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

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

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

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

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

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

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

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

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

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

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

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

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

B6.3 Improvements to environmental control systems

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

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

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

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

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, provided that operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10 of this appendix, and C16 of appendix C) or the handling of spent nuclear fuel.

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

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

B6.7 [Reserved]

B6.8 Modifications for waste minimization and reuse of materials

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

B6.9 Measures to reduce migration of contaminated groundwater

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

B6.10 Upgraded or replacement waste storage facilities

Siting, construction, modification, expansion, operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. (See also B6.4, B6.5, B6.6 of this appendix, and C16 of appendix C.)

B7. Categorical Exclusions Applicable to International Activities

B7.1 Emergency measures under the International Energy Program

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

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

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

Appendix C to Subpart D of Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

Table of Contents

C1 [Reserved]

C2 [Reserved]

C3 Electric Power Marketing Rate Changes, Not Within Normal Operating Limits

Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements if the operations of generation projects would not remain within normal operating limits.

C4 Upgrading, Rebuilding, or Construction of Powerlines

Upgrading or rebuilding more than approximately 20 miles in length of existing powerlines; or construction of powerlines (1) More than approximately 10 miles in length outside previously disturbed or developed powerline or pipeline rights-of-way or (2) more than approximately 20 miles in length within previously disturbed or developed powerline or pipeline rights-of-way.

C5 Vegetation Management Program

Implementation of a Power Marketing Administration system-wide vegetation management program.

C6 Erosion Control Program

Implementation of a Power Marketing Administration system-wide erosion control program.

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve (1) The interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts; (2) changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or (3) service to discrete new loads of less than10 average megawatts over a 12-month period.

C8 Protection of Cultural Resources and Fish and Wildlife Habitat

Large-scale activities undertaken to protect cultural resources (such as fencing, labeling, and flagging) or to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders and minor diversion channels), or fisheries.

C9 Wetlands Demonstration Projects

Field demonstration projects for wetlands mitigation, creation, and restoration.

C10 [Reserved]

C11 Particle Acceleration Facilities

Siting, construction or modification, operation, and decommissioning of low- or medium-energy (when the primary beam energy exceeds approximately 100 million electron volts and the average beam power exceeds approximately 250 kilowatts or where the average current exceeds 2.5 milliamperes) particle acceleration facilities, including electron beam acceleration facilities, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible).

C12 Energy System Demonstration Actions

Siting, construction, operation, and decommissioning of energy system demonstration actions (including, but not limited to, wind resource, hydropower, geothermal, fossil fuel, biomass, and solar energy, but excluding nuclear). For purposes of this category, ''demonstration actions'' means actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment.

C13 Import or Export Natural Gas Involving Minor New Construction

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving minor new construction (such as adding new connections, looping, or compression to an existing natural gas or liquefied natural gas pipeline, or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way).

C14 Water Treatment Facilities

Siting, construction (or expansion), operation, and decommissioning of wastewater, surface water, potable water, and sewage treatment facilities with a total capacity greater than approximately 250,000 gallons per day, and of lower capacity wastewater and surface water treatment facilities whose liquid discharges are not subject to external regulation.

C15 Research and Development Incinerators and Nonhazardous Waste Incinerators

Siting, construction (or expansion), operation, and decommissioning of research

and development incinerators for any type of waste and of any other incinerators that would treat nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

C16 Large Waste Packaging and Storage Facilities

Siting, construction, modification to increase capacity, operation, and decommissioning of packaging and unpacking facilities (such as characterization operations) and large storage facilities (greater than approximately 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage, packaging, or unpacking of spent nuclear fuel. (See also B6.4, B6.5, B6.6, and B6.10 of appendix B.)

Appendix D to Subpart D of Part 1021—Classes of Actions that Normally Require EISs

Table of Contents

D1 [Reserved]

D2 Nuclear Fuel Reprocessing Facilities

Siting, construction, operation, and decommissioning of nuclear fuel reprocessing facilities.

D3 Uranium Enrichment Facilities

Siting, construction, operation, and decommissioning of uranium enrichment facilities.

D4 Reactors

Siting, construction, operation, and decommissioning of power reactors, nuclear material production reactors, and test and research reactors.

D5 [Reserved]

D6 [Reserved]

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve (1) The interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts; (2) changes in the normal operating limits of generation resources greater than 50 average megawatts; or (3) service to discrete new loads of 10 average megawatts or more over a 12-month period.

D8 Import or Export of Natural Gas Involving Major New Facilities

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving construction of major new natural gas pipelines or related facilities (such as liquefied natural gas terminals and regasification or storage facilities) or significant expansions and modifications of existing pipelines or related facilities.

D9 Import or Export of Natural Gas Involving Major Operational Change

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving major operational changes (such as a major increase in the quantity of liquefied natural gas imported or exported).

D10 Treatment, Storage, and Disposal Facilities for High-Level Waste and Spent Nuclear Fuel

Siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel, including geologic repositories, but not including onsite replacement or upgrades of storage facilities for spent nuclear fuel at DOE sites where such replacement or upgrade would not result in increased storage capacity.

D11 Waste Disposal Facilities for Transuranic Waste

Siting, construction or expansion, and operation of disposal facilities for transuranic (TRU) waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

D12 Incinerators

Siting, construction, and operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

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names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on February 25, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 22, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

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DEPARTMENT OF ENERGY

10 CFR Part 1021

[DOE–HQ–2020–0017]

RIN 1990–AA49

National Environmental Policy Act Implementing Procedures

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (DOE or the Department) proposes to update its National Environmental Policy Act (NEPA) implementing procedures regarding authorizations issued under section 3 of the Natural Gas Act. These changes will improve the efficiency of the DOE decision-making process by saving time and money in the NEPA review process and eliminating unnecessary environmental documentation. DOE invites public comments on the proposed changes.

DATES: Comments must be received by (or, if mailed, postmarked by) June 1, 2020 to ensure consideration.

ADDRESSES: Documents relevant to this rulemaking are posted on the Federal eRulemaking Portal at *https://www.regulations.gov* (*Docket: DOE–HQ–2020–0017*). Documents posted to this docket include: This notice of proposed rulemaking; DOE's ''Technical Support Document'' which provides additional information; and a ''redline/strikeout'' (markup) file of affected sections of the DOE NEPA regulations indicating the changes proposed in this proposed rule.

Submit comments, labeled ''DOE NEPA/NG Procedures, RIN 1990–AA49,'' by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments electronically. This

rulemaking is assigned *Docket: DOE–HQ–2020–0017.*

2. *Postal Mail:* Mail comments to Office of NEPA Policy and Compliance (GC–54), ATTN: NEPA/NG Procedures (RIN 1990–AA49), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Because security screening may delay mail sent through the U.S. Postal Service, DOE encourages electronic submittal of comments through the Federal eRulemaking Portal.

FOR FURTHER INFORMATION CONTACT: For questions concerning how to comment on this proposed rule, contact Yardena Mansoor, Office of NEPA Policy and Compliance, at *DOE-NEPA-Rulemaking@hq.doe.gov* or 800–472–2756. For detailed information on submitting comments, see ''How may the public comment on DOE's proposed changes?''.

SUPPLEMENTARY INFORMATION: DOE is responsible for authorizing exports of domestically produced natural gas to foreign countries under section 3 of the Natural Gas Act (NGA).[1] Section 3(a) of the NGA requires DOE to issue an order authorizing natural gas exports unless it finds that such an order ''will not be consistent with the public interest.'' DOE complies with NEPA [2] before reaching a final decision on applications to export natural gas to countries with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas (non-FTA countries).

DOE authorization also is required for imports of natural gas under section 3(a) of the NGA. However, section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 [3] to require that applications to authorize the import of natural gas (as well as the export of natural gas to FTA countries) be ''deemed consistent with the public interest, and . . . granted without modification or delay.'' This requirement leaves DOE with no discretion in its approvals of natural gas imports, as they are deemed to be in the public interest. Accordingly, DOE proposes to remove the reference to authorizations to import natural gas from its NEPA regulations consistent with the legal principle that an agency is not required to prepare a NEPA analysis when it has no discretion in its action.

In addition, with regard to authorizations for export to non-FTA countries, DOE proposes to revise its regulations consistent with the legal principle that potential environmental effects considered under NEPA do not include effects that the agency has no authority to prevent, because they would not have a sufficiently close causal connection to the proposed action.[4] Here, DOE's proposed action is authorization of natural gas exports.

The statutory term ''export'' is not defined in the NGA. In adjudications under NGA section 3(a), however, DOE has construed an ''export'' of LNG from the United States as occurring ''when the LNG is delivered to the flange of the LNG export vessel.'' [5] To ensure that DOE's NEPA regulations are consistent with this longstanding practice, DOE will focus exclusively on NEPA review of potential environmental impacts resulting from actions occurring at or after the point of export.[6]

Additionally, this proposed rulemaking is consistent with two life cycle analyses (LCAs) that DOE commissioned to calculate the life cycle greenhouse gas (GHG) emissions for LNG exported from the United States. DOE commissioned both the original LCA GHG Report, published in 2014,[7] and an updated LCA GHG Report, published in 2019,[8] to evaluate environmental aspects of the LNG export chain under NGA section 3(a). Both Reports concluded that the use of U.S. LNG exports for power production in European and Asian markets will not increase global GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production.[9] DOE has used these Reports to support its public interest determination regarding a proposed export. These Reports are not, however, part of DOE's NEPA reviews because the regasification and ultimate burning of LNG in foreign countries are beyond the scope of DOE's NEPA review.

What parts of DOE's current NEPA regulations does DOE propose to amend?

DOE's current NEPA regulations list classes of actions for each level of NEPA review.[10] Five of these classes regard applications to import or export natural gas to a non-FTA country. There are two categorical exclusions: B5.7 (Import or export of natural gas, with operational changes) and B5.8 (Import or export of natural gas, with new cogeneration powerplant); one class of actions normally requiring an EA: C13 (Import or export natural gas involving minor new construction); and two classes of action normally requiring an EIS: D8 (Import or export of natural gas involving major new facilities) and D9 (Import or export of natural gas involving major operational change).[11]

What changes does DOE propose?

DOE proposes to revise the classes of action in its NEPA regulations regarding authorizations under section 3 of the NGA consistent with the legal principle enunciated in *Public Citizen* and *Sierra Club* [12] that potential environmental effects considered under NEPA do not include effects that the agency has no authority to prevent. DOE's authority under Section 3 of the NGA is limited to authorization of exports of natural gas. Therefore, DOE need not review potential environmental impacts associated with the construction or

[1] 15 U.S.C. 717b.

[2] 42 U.S.C. 4321 *et seq.*

[3] EPACT 1992, Public Law 102–486.

[4] *See Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 752 (2004); *Sierra Club* v. *Fed. Energy Regulatory Comm'n,* 827 F.3d 36 (D.C. Cir. 2016).

[5] *See, e.g., Freeport LNG Expansion L.P., et al.,* DOE/FE Order No. 3282–C, FE Docket No. 10–161–LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations, at 23 (Nov. 14, 2014) (''Export occurs when the LNG is delivered to the flange of the LNG export vessel.'') (citing *Dow Chem. Co.,* DOE/FE Order No. 2859, FE Docket No. 10–57–LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas, at 1 (Oct. 5, 2010)).

[6] This scope of analysis is also consistent with decisions in recent years of the U.S. Court of Appeal for the District of Columbia Circuit (D.C. Circuit), which recognized that DOE ''maintains exclusive jurisdiction over the export of natural gas as a commodity.'' *Sierra Club* v. *Fed. Energy Regulatory Comm'n,* 827 F.3d 36, 40 (2016). Specifically, the D.C. Circuit observed that the Federal Energy Regulatory Commission (FERC) has an obligation to comply with the NGA and NEPA with respect to its decisions to authorize the construction of LNG terminals, whereas DOE has an independent obligation ''to consider the environmental impacts of its export authorization decision under NEPA and determine whether it satisfied the Natural Gas Act's 'public interest' test.'' *Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 189, 192 (D.C. Cir. 2017).

[7] *See* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States, 79 FR 32260 (June 4, 2014) (LCA GHG Report).

[8] *See* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States; Notice of Availability of Report Entitled Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update and Request for Comments, 84 FR 49278 (Sept. 19, 2019) (LCA GHG Update).

[9] *See, e.g.,* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72, 78, 85 (Jan. 2, 2020).

[10] There are three levels of NEPA review established in the Council on Environmental Quality's (CEQ's) NEPA implementing regulations (40 CFR parts 1500–1508)—categorical exclusion, environmental assessment (EA), and environmental impact statement (EIS)—each involving different levels of information and analysis.

[11] *See* 10 CFR 1021.410 and subpart D.

[12] *See Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 752 (2004); *Sierra Club* v. *Fed. Energy Regulatory Comm'n,* 827 F.3d 36 (D.C. Cir. 2016).

operation of natural gas export facilities because DOE lacks authority to approve the construction or operation of those facilities. DOE's review is properly focused on potential environmental impacts resulting from the exercise of its NGA section 3 authority. These impacts occur at or after the point of export.

Accordingly, DOE proposes to revise the scope of categorical exclusion B5.7 by deleting the reference to operation of natural gas facilities. The revised B5.7 would include a new statement that the scope includes any ''associated transportation of natural gas by marine vessel,'' which is the only source of potential environmental impacts associated with DOE's decision regarding authorizations under section 3 of the NGA. Based on prior NEPA reviews and technical reports, DOE has determined that transport of natural gas by marine vessel normally does not pose the potential for significant environmental impacts. (See Technical Support Document.)

DOE also proposes to remove the reference to import authorizations from B5.7 because section 3(c) of the Natural Gas Act directs that authorization requests to import natural gas ''shall be granted without modification or delay.'' DOE is not required to prepare NEPA analysis when it has no discretion in its action.[13]

Finally, DOE proposes to remove and reserve categorical exclusion B5.8 and classes of action C13, D8, and D9. These would no longer be needed with the proposed changes to categorical exclusion B5.7.

How does DOE make a categorical exclusion determination?

The proposed revision to B5.7 would be subject to the same conditions as other categorical exclusions listed in appendix B to subpart D of DOE's NEPA regulations. Before a proposed action such as an export authorization may be categorically excluded, DOE must determine in accordance with 10 CFR 1021.410(b) that: (1) The proposed action fits within a categorical exclusion listed in appendix A or B to subpart D; (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental impacts of the proposed action; and (3) the proposal has not been segmented to meet the definition of a categorical exclusion, there are no connected or related actions with cumulatively significant impacts and the proposed action is not precluded as an impermissible interim action.[14]

In addition, to fit within a class of actions in appendix B (including B5.7), a proposed action must satisfy certain conditions known as ''integral elements'' (appendix B, paragraphs (1) through (5)). These conditions ensure that a proposed action would not have the potential to cause significant environmental impacts—for example, due to a threatened violation of applicable environmental, safety, and health requirements, or by disturbing hazardous substances such that there would be uncontrolled or unpermitted releases.

How may the public comment on DOE's proposed changes?

DOE invites interested persons to participate in this proposed rulemaking by submitting comments on the proposed rule and on the supporting information for proposed changes set forth in the preamble and the Technical Support Document, including on industry experience with marine transport of natural gas. As appropriate, comments should refer to the specific section of the proposed rule to which the comment applies, identify a comment as a general comment, or identify a comment as a new proposal.

DOE will consider all timely comments received in response to this notice of proposed rulemaking.

Comments may be submitted by one of the methods in the **ADDRESSES** section of this proposed rule. Comments received will be included in the administrative record and will be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information specifically identified as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider to be CBI or otherwise protected should be submitted by mail, not through *https://www.regulations.gov.* If you submit information that you believe to be exempt by law from public disclosure, you should mail one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been redacted. Please include written justification as to why the redacted information is exempt from disclosure. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations (10 CFR 1004.11).

The Federal eRulemaking Portal is an ''anonymous access'' system, which means DOE will not know your contact information unless you provide it. If you choose not to provide contact information and DOE cannot read your comment due to technical difficulties, DOE may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses.

Procedural Requirements

A. Review Under Executive Order 12866

This proposed rule has been determined not to be a significant regulatory action under E.O. 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under National Environmental Policy Act

The requirements for Federal agencies to establish NEPA implementing procedures are set forth in the CEQ regulations at 40 CFR 1505.1 and 40 CFR 1507.3. DOE NEPA procedures assist the Department in the fulfillment of its responsibilities under NEPA but are not final determinations of the level of NEPA analysis required for particular actions. The CEQ regulations do not require agencies to prepare a NEPA analysis before establishing or updating agency procedures for implementing NEPA. DOE has determined that the proposed revision would not have a significant effect on the environment because it would not authorize any activity or commit resources to a project that may affect the environment. Therefore, DOE does not intend to conduct a NEPA analysis of these proposed regulations.

C. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990).

[13] 15 U.S.C. 717b(c).

[14] 40 CFR 1506.1 and 10 CFR 1021.211.

DOE has made its procedures and policies available on the Office of the General Counsel's website: *https://energy.gov/gc.*

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule would not directly regulate small entities. The proposed revisions to 10 CFR part 1021 would revise the scope of categorical exclusion B5.7 by removing reference to operation of natural gas facilities and adding ''transportation of natural gas by marine vessel.'' The proposed revisions would also focus on the export of natural gas because imports are deemed by law to be in the public interest. The proposal is intended to appropriately focus DOE's NEPA analysis for natural gas export applications, and does not impose any new requirements on small entities. DOE anticipates that the rule could reduce the burden on applicants for conducting environmental reviews.

On the basis of the foregoing, DOE certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under Paperwork Reduction Act

This proposed rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on state, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon state, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to state, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation) (2 U.S.C. 1532(a) and (b)). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of state, local, and tribal governments (2 U.S.C. 1534).

The proposed rule would amend DOE's existing regulations governing compliance with NEPA to update DOE's regulations consistent with controlling legal principle. The proposed rule would not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Review Under Executive Order 13132

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

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the regulation's preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of E.O. 12988.

I. Review Under Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) Is a significant regulatory action under E.O. 12866, or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 12630

DOE has determined pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

L. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' E.O. 13771 states that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 states that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued E.O. 13777, ''Enforcing the Regulatory Reform Agenda.'' E.O. 13777 requires the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE initially concludes that this rulemaking is consistent with the directives set forth in these Executive Orders. This proposed rule would update and improve efficiency in DOE's implementation of NEPA by appropriately focusing DOE's NEPA analysis for natural gas export applications and eliminating certain requirements of its existing regulations that are unnecessary.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Signing Authority

This document of the Department of Energy was signed on April 16, 2020, by William S. Cooper III, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 17, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 1021 of Chapter X of Title 10 of the Code of Federal Regulations as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 continues to read as follows:

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

■ 2. Appendix B to subpart D of part 1021 is amended by:

■ a. Revising section B5.7; and

■ b. Removing and reserving section B5.8.

The revision reads as follows:

APPENDIX B TO SUBPART D OF PART 1021—CATEGORICAL EXCLUSIONS APPLICABLE TO SPECIFIC AGENCY ACTIONS

* * * * *

B5. * * *

* * * * *

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

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

B5.8 [Removed and Reserved].

* * * * *

APPENDIX C TO SUBPART D OF PART 1021—CLASSES OF ACTIONS THAT NORMALLY REQUIRE EAs BUT NOT NECESSARILY EISs

C13 [Removed and Reserved]

■ 3. Remove and reserve section C13.

APPENDIX D TO SUBPART D OF PART 1021—CLASSES OF ACTIONS THAT NORMALLY REQUIRE EISs

D8 and D9 [Removed and Reserved]

■ 4. Remove and reserve sections D8 and D9.

[FR Doc. 2020–08511 Filed 4–30–20; 8:45 am]

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Rules and Regulations

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DEPARTMENT OF ENERGY

10 CFR Part 1021

[DOE–HQ–2020–0017]

RIN 1990–AA49

National Environmental Policy Act Implementing Procedures

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is updating its National Environmental Policy Act (NEPA) implementing procedures pertaining to authorizations issued under the Natural Gas Act (NGA). These changes will improve the efficiency of the DOE decision-making process by saving time and expense in the NEPA compliance process and eliminating unnecessary environmental documentation for these actions that DOE has determined normally do not have significant effects.

DATES: This final rule is effective January 4, 2021.

ADDRESSES: Documents relevant to this rulemaking are posted on the Federal eRulemaking Portal at *https://beta.regulations.gov/* (*Docket: DOE–HQ–2020–0017*). Documents posted to this docket include: The Notice of Proposed Rulemaking issued on May 1, 2020 (85 FR 25340); DOE's May 2020 Technical Support Document, which provides additional information; a ''redline/strikeout'' (markup) file of affected sections of the DOE NEPA regulations indicating the proposed changes; the comments received on the proposed changes; this final rule; and DOE's November 2020 Technical Support Document. Documents related to this rulemaking also are available on DOE's NEPA website at *https://energy.gov/nepa.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Matarrese, Office of Fossil Energy, *Mark.Matarrese@hq.doe.gov,* 202–586–0491; Edward Le Duc, Office of Assistant General Counsel for Environment, *Edward.LeDuc@hq.doe.gov,* 202–586–4007.

SUPPLEMENTARY INFORMATION:

I. Background

DOE is responsible for authorizing exports of domestically produced natural gas to foreign countries under section 3 of the NGA.[1] NEPA requires agencies to consider the environmental impacts of proposed major Federal actions as part of their decision-making process.[2] DOE must comply with NEPA's requirement for an environmental review before reaching a final decision on applications to export natural gas to countries with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas (non-FTA countries).

The Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) implementing NEPA require agencies to develop their own NEPA implementing procedures, as necessary, to apply the CEQ regulations to their specific programs and decision-making processes.[3] CEQ revised its NEPA regulations in July 2020.[4] Through this rule, DOE is revising its NEPA regulations [5] consistent with the CEQ regulations that allow agencies to identify in their agency procedures categories of actions that normally do not have significant effects, and with the legal principle that potential environmental effects to be considered by an agency under NEPA do not include effects that the agency has no authority to prevent.

In particular, DOE makes these revisions because (1) DOE is required by section 3(c) of the Natural Gas Act [6] to authorize liquefied natural gas (LNG) exports to FTA countries and lacks discretion with respect to such approvals and (2) DOE's review of applications for LNG exports to non-FTA countries is limited to consideration of effects that are reasonably foreseeable and have a sufficiently close causal connection to the granting of the export authorization.[7] As set forth below, DOE revises categorical exclusion (CX) B5.7 to focus exclusively on the analysis of potential environmental impacts resulting from activities occurring at or after the point of export, which are within the scope of DOE's export authorization authority under the NGA.[8] Such impacts begin at the point of export and are limited to the marine transport effects.[9]

DOE authorization also is required for imports of natural gas under section 3(a) of the NGA. However, section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 [10] to require that applications to authorize the import of natural gas be ''deemed consistent with the public interest, and . . . granted without modification or delay.'' This requirement leaves DOE with no discretion in its approvals of LNG imports, as they are deemed to be in the public interest. Accordingly, DOE is removing the reference to authorizations to import natural gas from its NEPA regulations, consistent with the legal principle that an agency is not required to prepare a NEPA analysis when it has no discretion in its action.[11]

[1] 15 U.S.C. 717b. Section 3(a) of the NGA requires DOE to issue an order authorizing natural gas exports unless it finds that such an order ''will not be consistent with the public interest.''

[2] 42 U.S.C. 4332(2)(C).

[3] 40 CFR 1507.3.

[4] 85 FR 43304 (July 16, 2020).

[5] 10 CFR part 1021.

[6] Section 3(c) requires DOE to authorize applications for the export of natural gas to nations with which there is a free trade agreement (FTA countries), requiring that all such exports be ''deemed consistent with the public interest, and . . . granted without modification or delay.''

[7] 40 CFR 1508.1(g); *see also Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 752 (2004); *Sierra Club* v. *Fed. Energy Regulatory Comm'n,* 827 F.3d 36 (D.C. Cir. 2016).

[8] This scope of analysis is consistent with decisions in recent years of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), which recognize that DOE ''maintains exclusive jurisdiction over the export of natural gas as a commodity.'' *Sierra Club* v. *Fed. Energy Regulatory Comm'n,* 827 F.3d at 40. Specifically, the D.C. Circuit has observed that the Federal Energy Regulatory Commission (FERC) has an obligation to comply with the NGA and NEPA with respect to its decisions to authorize the construction of LNG terminals, whereas DOE has an independent obligation ''to consider the environmental impacts of its export authorization decision under NEPA and determine whether it satisfie[s] the Natural Gas Act's 'public interest' test.'' *Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 189, 192 (D.C. Cir. 2017).

[9] DOE defines export activities as starting at the point of delivery to the export vessel, and extending to the territorial waters of the receiving country.

[10] Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 (Oct. 24, 1992).

[11] 40 CFR 1501.1(a)(5), and 40 CFR 1508.1(q)(1)(ii); 10 CFR 1021.104(b) (defining ''Actions'' requiring NEPA review but specifically excluding ''purely ministerial actions with regard to

Continued

A. What parts of DOE's NEPA regulations is DOE amending?

DOE's NEPA regulations list classes of actions normally associated with each level of NEPA review.[12] This final rule revises the five classes of actions regarding applications to import or export natural gas to a non-FTA country. These are two CXs: B5.7 (Import or export of natural gas, with operational changes) and B5.8 (Import or export of natural gas, with new cogeneration powerplant); one class of actions normally requiring an EA: C13 (Import or export natural gas involving minor new construction); and two classes of action normally requiring an EIS: D8 (Import or export of natural gas involving major new facilities) and D9 (Import or export of natural gas involving major operational change).[13]

B. What revisions is DOE making?

DOE is revising the classes of action in its NEPA regulations regarding authorizations under section 3 of the NGA for non-FTA countries, consistent with the CEQ regulations,[14] and the legal principle enunciated in *Public Citizen* and *Sierra Club*[15] that potential environmental effects considered under NEPA do not include effects that the agency has no authority to prevent. DOE's discretionary authority under Section 3 of the NGA is limited to the authorization of exports of natural gas to non-FTA countries. Therefore, DOE need not review potential environmental impacts associated with the construction or operation of natural gas export facilities because DOE lacks authority to approve the construction or operation of those facilities. DOE's review is properly focused on potential environmental impacts resulting from the exercise of its NGA section 3 authority. These potential impacts would occur at or after the point of export to non-FTA countries.

Accordingly, DOE is revising the scope of CX B5.7 by deleting the reference to operation of natural gas facilities. The revised B5.7 includes a new statement that the scope includes any ''associated transportation of natural gas by marine vessel,'' which would be the only source of potential environmental impacts resulting from DOE's decision regarding authorizations under section 3 of the NGA. Based on prior NEPA reviews and technical reports,[16] DOE has determined that transport of natural gas by marine vessel normally does not pose the potential for significant environmental impacts.

DOE also is removing the reference to import authorizations from B5.7 because section 3(c) of the NGA directs that authorization requests to import natural gas, as described in NGA section 3(b), ''shall be granted without modification or delay.'' DOE is not required to prepare NEPA analysis when it has no discretion in its action.[17]

Finally, DOE is removing and reserving CX B5.8 and classes of action C13, D8, and D9 because these actions are outside the scope of DOE's authority or are covered by the revised CX B5.7.

C. How does DOE make a CX determination?

The revised CX B5.7 is subject to the same conditions as other CXs listed in appendix B to subpart D of DOE's NEPA regulations. Before a proposed action such as an export authorization may be categorically excluded, DOE must review the proposed action in accordance with 10 CFR 1021.410 and determine that application of a CX is appropriate.

In addition, to fit within a class of actions in appendix B (including B5.7), a proposed action must satisfy certain conditions known as ''integral elements.''[18] These conditions ensure that a proposed action would not have the potential to cause significant environmental impacts—for example, due to a threatened violation of applicable environmental, safety, and health requirements.

II. Comments Received and DOE's Responses

DOE invited interested persons to submit comments on the Notice of Proposed Rulemaking and supporting information during a public comment period that ended on June 1, 2020.[19] DOE received 16 comment letters from a number of parties, including environmental organizations, industry groups, and individuals. The Notice of Proposed Rulemaking and comments DOE received are available on the Federal eRulemaking Portal as described in the **ADDRESSES** section of this final rule.

DOE has evaluated the comments it received. In this section, DOE discusses the relevant, substantive comments and provides its responses to those comments. Some commenters raised issues that are outside the scope of the Notice of Proposed Rulemaking, because they do not speak to DOE's NEPA obligations or to the subject of the proposed rule. These issues include fossil energy extraction and use, construction of LNG pipelines and terminals, expanding use of renewable energy generally, moving to a carbon-neutral energy mix, and whether DOE's public interest analysis under the NGA has an environmental component.

A. General Comments

Some commenters expressed support for DOE's proposed changes. For example, some commenters remarked that the proposed changes will reduce redundancy, delay, and regulatory uncertainty. DOE acknowledges these comments. Some commenters opposed the proposed rulemaking, stating, for example, that DOE had provided no evidence the proposed changes would improve efficiency. Based on its experience reviewing and considering the potential environmental effects of many requests for export authorization, DOE believes that the proposed changes will improve the efficiency of DOE's decision-making process by focusing its NEPA review on those activities that are within DOE's authority under the NGA.

Some commenters requested that DOE extend the public comment period on the Notice of Proposed Rulemaking. To support their request, these commenters referred to impacts of the proposed changes on agency environmental review obligations and to circumstances created by the COVID–19 national emergency. DOE believes that the thirty-day comment period provided for this proposed rulemaking provided an adequate opportunity for public comment for these limited revisions to its implementing procedures. DOE recognizes the substantial disruption and hardship brought about by the COVID–19 pandemic. However, the proposed rule was widely available in a variety of accessible formats, and

which DOE has no discretion,'' such as ''ministerial actions to implement congressionally mandated funding for actions not proposed by DOE and as to which DOE has no discretion''); *Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. at 768–770; *Sierra Club* v. *Fed. Energy Regulatory Comm'n,* 827 F.3d at 40; *Citizens Against Rails-to-Trails* v. *Surface Transp. Bd.,* 267 F.3d 1144, 1151 (D.C. Cir. 2001).

[12] There are three levels of NEPA review established in the (CEQ NEPA implementing regulations (40 CFR parts 1500–1508)—categorical exclusion, environmental assessment (EA), and environmental impact statement (EIS) each involving different levels of information and analysis.

[13] *See* 10 CFR part 1021, subpart D.

[14] 40 CFR 1508.1(g)(2).

[15] *Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 768–770; *Sierra Club* v. *Fed. Energy Regulatory Comm'n,* 827 F.3d 40 (D.C. Cir. 2016).

[16] U.S. Dep't of Energy, Technical Support Document, Notice of Final Rulemaking, National Environmental Policy Act Implementing Procedures (10 CFR part 1021) (Nov. 2020) [hereinafter Technical Support Document].

[17] *Supra* note 11.

[18] 10 CFR part 1021, subpart D, Appendix B, paragraphs (1) through (5).

[19] Dep't of Energy, National Environmental Policy Act Implementing Procedures, Notice of Proposed Rulemaking and Request for Comment, 85 FR 25340 (May 1, 2020).

comment submission was available through the Federal eRulemaking Portal and postal mail. It is important throughout this pandemic that DOE continue its mission, particularly in areas that contribute to strengthening the United States' economy.

B. Comments Regarding the NEPA Process and Standards for Developing a CX

I. Environmental Documentation Supporting Decisions Made Pursuant to DOE's Statutory Authority

Some commenters objected to use of a CX as proposed, stating that NEPA reviews are not ''unnecessary environmental documentation.'' A CX does not eliminate NEPA review. Rather it is a form of NEPA review that allows agencies to focus their resources on information pertinent to the agency's decision-making authority and related to potentially significant environmental impacts. In implementing the revised CX, DOE will consider whether an extraordinary circumstance is present such that an EA or EIS will be required.[20] DOE will also document its determination that application of the CX is appropriate. DOE's use of the phrase ''unnecessary environmental documentation'' is a reference to DOE's prior practice of considering the potential environmental effects from activities that are beyond its decision-making authority, such as LNG terminal construction and operation. In virtually all of its recent LNG export proceedings, DOE has referenced in its export orders the environmental documents prepared by the Federal Energy Regulatory Commission (FERC).[21] FERC, not DOE, reviews the potential environmental impacts of the construction and operation of the LNG terminals. Under the revised CX, DOE's NEPA review is tailored to its statutory authority and will not unnecessarily duplicate the documents that FERC or other agencies prepare under their statutory authorities.

II. Scope of ''Export Activities''

One commenter suggested that DOE should expand the definition of ''export'' to include operations required for the export process. DOE acknowledges the comment and notes that the statutory term ''export'' is not defined in the NGA. However, in adjudications under NGA section 3(a), DOE has construed an ''export'' of LNG from the United States as occurring ''when the LNG is delivered to the flange of the LNG export vessel.'' [22] Therefore, DOE believes it is appropriate for its NEPA review of natural gas export applications to consider the potential environmental impacts starting at the point of delivery to the export vessel, and extending to the territorial waters of the receiving country. This is referred to in the revised CX as export of natural gas under section 3 of the Natural Gas Act and any associated transportation of natural gas by marine vessel.

III. Criteria for Establishing a CX

Some commenters expressed concern that DOE did not meet the standard for establishing a CX and should have prepared an EA or an EIS for this rulemaking. These commenters stated that DOE (i) did not adequately consider the potential significance of environmental impacts resulting from this rulemaking, (ii) must analyze cumulative impacts of this rulemaking, and (iii) segmented consideration of natural gas exports from other connected actions in promulgating this rule.

DOE has met its obligations under NEPA. As noted in the Review Under National Environmental Policy Act sections of the Notice of Proposed Rulemaking and this final rule, the CEQ regulations do not direct agencies to prepare an EA or EIS before establishing agency procedures that supplement the CEQ regulations to implement NEPA.[23] CEQ regulations provide that an agency, when establishing a CX, must ''consult'' with CEQ for input regarding conformity with CEQ regulations and NEPA before publishing new NEPA procedures in the **Federal Register** for comment.[24] DOE has complied with this requirement.

Nevertheless, to support its decision, DOE did engage in an analysis to properly assess the potential significance of actions included in the revised CX B5.7. This analysis included a detailed review of technical documents regarding potential effects associated with marine transport of LNG. These documents are included in the Technical Support Document and support DOE's conclusion that potential environmental effects associated with marine transport, the only reasonably foreseeable environmental impacts associated with DOE natural gas export authorizations, are minimal.

Commenters asserted that DOE does not meet the standard for establishing a CX because it impermissibly segments natural gas exports from other connected actions, arguing that FERC's approval of export facilities is a ''connected action'' to DOE's export approval that must be considered as part of DOE's NEPA review. The CX adopted in this final rule follows the Supreme Court's holding in *Public Citizen* [25] and the current CEQ NEPA regulation at 40 CFR 1501.9(e)(1) regarding the circumstances in which ''connected actions'' must be analyzed. According to *Public Citizen* and the current CEQ NEPA regulations, a ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.[26] Accordingly, DOE's export authorizations and the construction and operation of export facilities do not have a sufficient causal connection to be considered connected actions. FERC has exclusive statutory authority to approve construction and operation of natural gas export facilities. DOE has no authority to approve construction or operation of such facilities, and thus there is no DOE decision to be informed by a NEPA analysis. The only decision for which DOE has authority is with respect to the export of the commodity itself. DOE's and FERC's approval actions are not interdependent.[27] Therefore, DOE need

[20] 40 CFR 1501.4(b).

[21] In most cases, facility approval falls under FERC jurisdiction. In some cases involving offshore export facilities, the United States Maritime Administration (MARAD), rather than FERC, has statutory authority to approve facility construction and operation. Less commonly, where MARAD lacks jurisdiction, the Bureau of Ocean Energy Management (BOEM) would issue approval. DOE's practice was to adopt the NEPA record established by the authorizing agency for the facility.

[22] *See Kuhali* v. *Reno,* 266 F.3d 93, 104 (2d Cir. 2001) (citing legal definitions of ''export'' including those in Black's Law Dictionary 600 (7th ed.1999) (''to send or carry abroad''), ''as well as with the common usage of the term, *e.g.,* Webster's New Collegiate Dictionary 400 (1981) ('to carry or send (as a commodity) to some other place (as another country).' ''). This suggests that the ''export'' is limited to the action of transporting natural gas products from the U.S. to the receiving country, and that export activities therefore do not begin before the act of transporting the product overseas is initiated.

[23] *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F. 3d 947, 954–55 (7th Cir. 2000) (upholding the determination that establishing agency NEPA procedures does not require an EA or an EIS).

[24] 40 CFR 1507.3(b).

[25] *Pub. Citizen,* 541 U.S. 767–768.

[26] *Pub. Citizen,* 541 U.S. 767 (''Respondents must rest, then, on a particularly unyielding variation of 'but for' causation, where an agency's action is considered a cause of an environmental effect even when the agency has no authority to prevent the effect. However, a ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations.''); *see also* 40 CFR 1508.1(g).

[27] U.S. Dep't of Energy, Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States, at 1 (Aug. 2014) (citing Freeport LNG Expansion, L.P.

Continued

not consider effects associated with the construction and operation of natural gas export facilities under NEPA.

To the extent that commenters rely on *Sierra Club* v. *Bosworth* [28] to support the concerns raised above, this reliance is misplaced. As described in the paragraphs that follow, the facts of *Bosworth* are not analogous to this rulemaking.

With regard to scoping, DOE notes that *Bosworth* pertains to an action taken by the U.S. Forest Service. According to the Forest Service NEPA Handbook, scoping was required for all Forest Service proposed actions, including those that would be categorically excluded.[29] DOE has no similar requirement in its regulations, and the CEQ regulations require scoping only after a decision has been made to prepare an EIS.[30] Since an EIS is not required to establish NEPA procedures under CEQ or DOE regulations or applicable case law, scoping was not a prerequisite for the promulgation of this rule.

Some commenters cited *Bosworth* when raising their concern that DOE had failed to adequately review potential cumulative impacts associated with promulgation of the CX, or that DOE has failed to draft the CX with sufficient specificity to distinguish between actions having significant impacts and those that do not. In contrast to the CX at issue in *Bosworth,* DOE's CX has been drafted with the requisite specificity, given the nature of action to which it will apply. Furthermore, DOE has determined that the transport of natural gas by marine vessels adhering to applicable maritime safety regulations and established shipping methods and safety standards normally does not pose the potential for significant environmental impacts. Impacts beyond marine transport are beyond the scope of DOE's NEPA review.

In *Bosworth,* the court agreed with previous cases finding that the promulgation of agency NEPA procedures, including the establishment of new CXs, did not itself require preparation of an EA or EIS, but that agencies need only comply with CEQ regulations setting forth procedural requirements, including consultation with CEQ, and **Federal Register** publication for public comment. The court, however, found that the record relied on by the U.S. Forest Service to develop and justify a CX was deficient. Unlike the circumstances in *Bosworth,* DOE's proposed CX would not include exports with materially different environmental impacts. Although DOE's CX would apply to various types of natural gas exports, the degree of potential environmental effects are not expected to vary significantly based on the type or volume of natural gas to be exported, to the extent they comport with established applicable maritime safety regulations and shipping methods and safety standards. This is due, in part, to the safety controls imposed on vessels permitted to carry natural gas products.

Other commenters argued that DOE does not meet the standard for establishing a CX because it fails to take into account the potential environmental impacts of natural gas export beyond marine transit, noting that DOE has previously acknowledged other potential impacts associated with its export authorizations, including inducement of upstream natural gas production. However, DOE has not previously included potential upstream and downstream impacts as part of its NEPA analyses for natural gas export approvals.[31] Induced upstream production impacts are not reasonably foreseeable for NEPA purposes,[32] and are therefore not ''effects'' subject to analysis under NEPA.[33] Furthermore, downstream emissions at the point of consumption are too attenuated to be reasonably foreseeable and do not have a reasonably close causal relationship to the granting of an export authorization. The Notice of Proposed Rulemaking and final rule are consistent with these principles.

One commenter noted that while DOE has relied on the life cycle analyses (LCAs) to support its public interest determination, the subject matter falls outside DOE's NEPA review obligations because the regasification and ultimate burning of LNG in foreign countries are beyond the scope of DOE requirements under NEPA. DOE agrees with this comment.

IV. Compliance With Applicable NEPA Requirements

Some commenters raised concerns regarding the application of the proposed CX, arguing that the CX is invalid because it improperly excludes the consideration of end use impacts, including those related to climate change. Conversely, one commenter requested that DOE explain in the final rulemaking that effects should not be considered significant if they are remote in time, geographically remote, or the result of a lengthy causal chain. The commenter indicated that DOE should also state that for any required analysis of effects, ''a 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.'' [34] In response, DOE reiterates that the relationship between DOE's authorization decision and potential end use impacts is too attenuated to define end use impacts as reasonably foreseeable effects requiring NEPA review.

Additionally, commenters alleged that DOE's commissioning of Energy Information Administration (EIA) analyses of export impacts on domestic energy markets, including the 2018 study ''Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports,'' show that DOE considers the upstream impacts of its export decisions. The EIA studies informed DOE's public interest analysis under the NGA, but they do not analyze potential environmental impacts and have not been included as part of DOE's NEPA analyses supporting the natural gas export decision-making process.

Commenters stated that DOE could rely on the locations of interstate pipelines to develop a reasonable estimate of where increased upstream production of natural gas may occur as a result of an authorization of natural gas exports. DOE disagrees with this comment. The question of whether upstream production impacts should be

and FLNG Liquefaction, LLC, DOE/FE Order No. 3282, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations (May 17, 2013)) (''receiving a non-FTA authorization from DOE does not guarantee that a particular facility would be financed and built; nor does it guarantee that, even if built, market conditions would continue to favor export once the facility is operational.'').

[28] *Sierra Club* v *Bosworth,* 510 F.3d 1016 (9th Cir. 2007).

[29] U.S. Forest Service, FSH 1909.15, at 31.3 (May 28, 2014).

[30] 40 CFR 1501.9.

[31] *See* Texas LNG Brownsville LLC, DOE/FE Order No. 4489, FE Docket No. 15–62–LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 40–42 (Feb. 10, 2020) (reviewing the content of the life cycle analyses (LCAs) and Addendum; noting that the information in the LCA is too general to play a direct role in the NGA public interest analysis, and explaining that the Addendum supports the public interest analysis, but that environmental concerns should be addressed directly through environmental regulation, and that ''section 3(a) of the NGA is too blunt an instrument to address these environmental concerns efficiently.'').

[32] *Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 198 (''The Department offered a reasoned explanation as to why it believed the indirect effects pertaining to increased gas production were not reasonably foreseeable.'').

[33] 40 CFR 1508.1(g).

[34] *Quechan Indian Tribe of the Fort Yuma Indian Reservation* v. *U.S. Dept. of the Interior,* 547 F. Supp. 2d 1033, 1042 (D. Ariz. 2008) (citing *Public Citizen,* 541 U.S. 767).

included in the scope of DOE's NEPA analyses has been addressed by the D.C. Circuit. The D.C. Circuit has held that DOE has provided ''a reasoned explanation as to why it believe(s) the indirect effects pertaining to increased gas production were not reasonably foreseeable'' and therefore not subject to NEPA review.[35] The court found that ''(b)ecause the Department could not estimate the locale of production, it was in no position to conduct an environmental analysis of corresponding local-level impacts, which inevitably would be more misleading than informative.'' [36] The current CEQ NEPA regulations confirm that effects must be ''reasonably foreseeable and have a reasonably close causal relationship to the proposed action'' to be considered under NEPA, and note that ''effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain.'' [37] Under this standard, consideration of upstream impacts is not required.

Commenters suggested that DOE prepare a programmatic environmental impact statement to streamline NEPA review of natural gas export authorizations. DOE has identified no information to indicate that natural gas export authorizations pose the potential for significant environmental impacts.[38] Therefore, a CX is the appropriate level of NEPA review, and preparation of a programmatic environmental impact statement is not required, nor is it necessary.[39]

Other commenters suggested that DOE should continue to evaluate NGA Section 3 export authorizations on a case-by-case basis to determine whether an EA or EIS is appropriate. As described in the section of this final rule titled ''How does DOE make a CX determination?,'' the proposed CX would be applied on a case-by-case basis. For any request for export authorization, DOE would apply the CX only after determining that the subject authorization complies with 10 CFR 1021.410, including that it presents no extraordinary circumstances warranting preparation of an EA or EIS, and with the integral elements listed in appendix B of DOE's NEPA regulations.

Some commenters argued that DOE should be assessing the potential environmental impacts stemming from the construction or operation of natural gas export facilities. As noted in the ''Background'' section of this document, under Section 3 of the Natural Gas Act, DOE's authority is limited to reviewing applications for natural gas exports; FERC (or, in the case of a facility falling outside FERC jurisdiction, MARAD or BOEM) reviews applications to construct and operate natural gas import and export facilities. Because DOE lacks the authority to prevent effects stemming from the construction and operation of such a facility, it has appropriately focused its environmental review on proposals over which it has approval authority, as required by NEPA.

Finally, some commenters noted that CEQ was, at the time of the comment period on the Notice of Proposed Rulemaking, in the process of revising its NEPA regulations. These commenters stated that DOE must comply with the CEQ regulations in effect, rather than proposed revisions. DOE prepared the Notice of Proposed Rulemaking consistent with the CEQ regulations in effect at the time the Notice of Proposed Rulemaking was published. DOE has prepared this final rule in light of the current CEQ regulations, which became effective on September 14, 2020, and DOE has determined, in consultation with CEQ, that the rule is consistent with those regulations.

C. Comments Regarding DOE's Reading of Public Citizen

Certain commenters challenged DOE's reading of *Public Citizen* as overly broad, arguing that DOE is incorrect in its conclusion that the case permits DOE to focus exclusively on the marine transport related effects of its export authorizations. In DOE's view, *Public Citizen* held that an agency has no obligation to ''gather or consider environmental information if it has no statutory authority *to act on that information.*'' [40] This final rule is fully consistent with that holding.

D. Comments Regarding Indirect and Cumulative Impacts and Related DOE Authority

Some commenters suggested that by establishing a CX for exports of natural gas, DOE is evading the obligation to perform NEPA review. As identified in the CEQ and DOE NEPA regulations, a CX is a form of NEPA review, and DOE has complied with the requirements of NEPA by determining that this class of actions normally does not have a significant effect on the human environment.[41] Application of the revised CX B5.7 will occur on a case-by-case basis as described in the section of this final rule titled ''How does DOE make a CX determination?'' As explained previously, DOE is tailoring its environmental review consistent with the court's holding in *Public Citizen.*

In further delineating agencies' NEPA review obligations, the D.C. Circuit in *Freeport II* agreed with DOE's rationale that effects pertaining to increased gas production were not reasonably foreseeable. Under this standard, DOE's analysis is properly limited to impacts stemming directly from decisions made pursuant to its statutory authority. The D.C. Circuit has held that local idiosyncrasies coupled with the limitations of estimating geology at the local level, and the uncertainty of predicting local regulation, land use patterns, and the development of supporting infrastructure are all local environmental issues presented by unconventional gas production. Accordingly, DOE's review of potential environmental impacts begins at the point of export, and is limited to the marine transport effects covered by the revised CX. The CX, which provides DOE with an option for full NEPA compliance, does not evade NEPA review.

E. Comments Regarding DOE's LCA

As discussed in the Notice of Proposed Rulemaking, this rulemaking is consistent with—but not dependent upon—two LCAs that DOE commissioned to calculate the life cycle greenhouse gas (GHG) emissions for LNG exported from the United States. DOE commissioned both the original LCA, published in 2014,[42] and an updated LCA, published in 2019,[43] to evaluate environmental aspects of LNG export applications under NGA section 3(a). Both LCAs concluded that the use of U.S. LNG exports for power production in European and Asian markets will not increase global GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power

[35] *Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 198.

[36] *Id.* at 199 (internal citations omitted).

[37] 40 CFR 1508.1(g).

[38] *See* Technical Support Document.

[39] 40 CFR 1501.4.

[40] *Sierra Club* v. *Federal Energy Regulatory Comm'n,* 867 F.3d 1357, 1372 (D.C. Cir. 2017) (stating that rule was the touchstone of *Public Citizen*).

[41] 40 CFR 1508.1(d).

[42] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States, 79 FR 32260 (June 4, 2014) (LCA GHG Report).

[43] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States; Notice of Availability of Report Entitled Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update and Request for Comments, 84 FR 49278 (Sept. 19, 2019) (LCA GHG Update).

production.[44] These reports are not part of DOE's NEPA review process, inasmuch as the regasification and ultimate combustion of regasified U.S. LNG in foreign countries are beyond the scope of appropriate NEPA review in this context.

Some commenters on the Notice of Proposed Rulemaking stated that the LCAs are deficient because they underestimate methane emissions associated with natural gas production and do not account for the rise of renewable energy in overseas markets. As noted, the LCA is not a NEPA document. Comments regarding its adequacy do not address DOE's NEPA analysis and related regulations, or the proposed changes in the Notice of Proposed Rulemaking.

Furthermore, comments stating that the LCAs are deficient parallel comments that DOE received on the 2019 LCA GHG update regarding methane emission estimates. DOE responded to those comments before finalizing the 2019 LCA GHG update.[45] Among other relevant points, DOE explained in its earlier response the basis for use of 0.7% as the average methane leakage rate in the LCA GHG update, how DOE's analysis considered the natural gas supply chain, differences in top-down and bottom-up methodologies, and how studies cited by commenters relate to DOE's analysis. DOE directs readers to that document for additional background information and discussion. Commenters on the Notice of Proposed Rulemaking have not raised information or arguments that were not raised and responded to in the 2019 GHG LCA update.

With regard to the second point—the rise of renewable energy in overseas markets—DOE also received and responded to similar comments on the 2019 LCA GHG update. DOE explained its use of coal-fired power as a comparative scenario to natural gas. DOE also explained limitations on expanding the analysis to include a broader array of fuel types and on modeling the effect that U.S. LNG exports would have on net global GHG emissions. Commenters also suggested that U.S. LNG exports would compete with renewable energy sources, while other commenters noted that natural gas-fueled power plants, because of their ability to power up quickly, may be used as a backup to renewable energy sources. DOE acknowledges these comments, but notes that these comments are beyond the reasonable scope of analysis for this rulemaking.

F. Comments Regarding DOE's Technical Support Document

Commenters stated that the Technical Support Document only considered one pathway for potential environmental impacts (leaks during natural gas transportation) and did not address potential impacts to wildlife during marine transport from noise and ship strikes, air pollutants and greenhouse gas emissions from the marine vessels, and impacts from invasive species that travel in ballast water. The Technical Support Document is focused on the potential impacts associated with transporting the LNG cargo. The Technical Support Document includes consideration of accidents (including spills and fires), safety and security during transport, and some 50 years of experience transporting LNG on marine vessels. With regard to comments related to potential environmental impacts of shipping generally, DOE's approval of export authorizations for natural gas has the potential to contribute only a very small amount to total shipping. More than 82,000 oceangoing vessels called at U.S. ports in 2015.[46] LNG shipments associated with DOE export authorizations numbered 209 in 2017, 330 in 2018, and 563 in 2019.[47] These LNG shipments comprise less than one percent of vessel calls from U.S. ports annually. Even with increased LNG exports, the relative proportion of LNG shipments to total shipping is not expected to change substantially. Thus, marine transport from DOE's actions does not have the potential to markedly affect the global environmental impacts associated with the commercial shipping industry.

Some commenters further stated that the Technical Support Document downplays significant spill and terrorism-related safety concerns. DOE's Technical Support Document includes a discussion of these concerns, as the commenters noted. The studies referenced in the Technical Support Document analyzed a number of scenarios, most involving fires, and provided information and recommendations to help manage and reduce hazards. Commenters pointed to a 2007 report[48] by the U.S. Government Accountability Office that identified additional areas for research into LNG spills and fires. That report resulted in recommendations that DOE accepted and incorporated into a study conducted by Sandia National Laboratories.[49] DOE's technical studies and related research by others to examine the hazards of potential fires and the consequences of malevolent acts is part of the process used by regulatory agencies and industry to understand and mitigate risks.

Commenters suggested that DOE cannot rely on certifications and requirements from other Federal agencies (*e.g.,* FERC, the Department of Transportation, and the Department of Homeland Security) and that doing so in the Technical Support Document amounted to a refusal to look at the potential environmental impacts associated with transportation of LNG by marine vessel. DOE notes that it is common practice to consider regulatory requirements (in this case, requirements intended to minimize any environmental impacts of marine transport of LNG), as well as analyses and determinations by other Federal agencies and external parties, in determining the potential impacts of the activity that is the focus of an agency's NEPA review. Also, DOE did not rely in the Technical Support Document only on the safety aspects of existing regulations. Rather, the effectiveness of those regulations and industry practices over decades of LNG transport provide strong evidence that there is normally no potential for significant environmental impacts due to marine transport of LNG.

G. Comments Regarding Review by the Federal Energy Regulatory Commission

Some commenters discussed the nature of DOE's interaction with FERC when approving natural gas exports. One commenter stated that DOE must actively participate in FERC's environmental review process. DOE intends to continue to participate as a cooperating agency in FERC's environmental review of natural gas export facilities.

Several commenters noted that DOE's proposed revision reflects an appropriate approach to balancing FERC

[44] *See, e.g.,* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 78, 85 (Jan. 2, 2020).

[45] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020).

[46] Bureau of Transp. Stat., U.S. Dep't of Transp., Freight Facts and Figures 2017, *https://rosap.ntl.bts.gov/view/dot/34923.*

[47] Office of Fossil Energy, U.S. Dep't of Energy, LNG Monthly 2020, *https://www.energy.gov/fe/downloads/lng-monthly-2020.*

[48] U.S. Gov't Accountability Office, Maritime Security: Public Safety Consequences of a Terrorist Attack on a Tanker Carrying Liquefied Natural Gas Need Clarification, GAO-07–316 (Feb. 2007), *https://www.gao.gov/new.items/d07316.pdf.*

[49] U.S. Dep't of Energy, Liquefied Natural Gas Safety Research: Report to Congress, (May 2012), *https://www.energy.gov/fe/downloads/lng-safety-research-report-congress.*

and DOE's respective responsibilities. They explain that the proposed revisions do not impede FERC's ability to carry out its responsibilities and do not reflect an intention to hinder environmental review of facilities subject to section 3 of the NGA. One commenter noted that DOE's jurisdiction rests solely with the export of natural gas, and that DOE lacks the authority to approve the construction or operation of the natural gas facility itself, which rests with FERC. The commenter stated that because DOE lacks authority over construction and operation, it need not review potential environmental impacts associated with the facilities themselves. Instead, the commenter maintained that under *Public Citizen,* DOE should limit its review to the potential environmental impacts within DOE's authority, namely the impacts that occur at or after the point of export. DOE acknowledges these comments and has revised its NEPA regulations consistent with the view expressed in the comments.

Commenters suggested that there will be a regulatory gap when an export facility does not fall within FERC jurisdiction. DOE lacks the statutory authority to authorize construction and operation of export facilities, regardless of whether these facilities are deemed jurisdictional by FERC. Therefore, DOE need not review environmental impacts associated with those authorizations. For a proposed export facility outside FERC jurisdiction, another Federal agency, such as MARAD or BOEM, would typically be responsible for completing the NEPA review.

III. Procedural Requirements

A. Review Under Executive Order 12866

This final rule has been determined not to be a significant regulatory action under E.O. 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under National Environmental Policy Act

The Department's NEPA procedures assist the Department in fulfilling its responsibilities under NEPA and the CEQ regulations, but are not themselves final determinations of the level of environmental review required for particular proposed actions. The CEQ regulations do not direct agencies to prepare an EA or EIS before establishing agency procedures that supplement the CEQ regulations to implement NEPA (40 CFR 1507.3). *See Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000). In establishing this CX, DOE is following the requirements of CEQ's procedural regulations, which include publishing the Notice of Proposed Rulemaking in the **Federal Register** for public review and comment, considering public comments, and consulting with CEQ to obtain CEQ's written determination of conformity with NEPA and the CEQ regulations. (*See* 40 CFR 1507.3(b)(2)).

Furthermore, DOE notes that this rulemaking is also categorically excluded under DOE's NEPA regulations (A6, Procedural rulemakings). In any case, the Department does not anticipate any significant environmental impacts from this final rule, and there are no extraordinary circumstances present.

C. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website: *https://energy.gov/gc.*

DOE has reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule does not directly regulate small entities. The revisions to 10 CFR part 1021 revise the scope of CX B5.7 by removing reference to operation of natural gas facilities and adding ''transportation of natural gas by marine vessel.'' The revisions also focus on the export of natural gas because imports are deemed by law to be in the public interest. The revisions are intended to appropriately focus DOE's NEPA analysis for natural gas export applications, and do not impose any new requirements on small entities. DOE anticipates that the rule could reduce the burden on applicants for conducting environmental reviews.

On the basis of the foregoing, DOE certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. DOE's certification and supporting statement of factual basis was provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b). DOE received no comments on its certification or any potential economic impact of the proposed rule, and did not make changes in this final rule to the rule as proposed.

D. Review Under Paperwork Reduction Act

This rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on state, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon state, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to state, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation) (2 U.S.C. 1532(a) and (b)). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of state, local, and tribal governments (2 U.S.C. 1534).

This final rule amends DOE's existing regulations governing compliance with NEPA to update DOE's regulations for the reasons described in Section I. Background, of this document. This

final rule will not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Review Under Executive Order 13132

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

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the regulation's preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

I. Review Under Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) Is a significant regulatory action under E.O. 12866, or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, nor was it determined to be a significant energy action by the OIRA Administrator, and it is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 12630

DOE has determined pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 18, 1988), that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

L. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' E.O. 13771 states that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 states that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued E.O. 13777, ''Enforcing the Regulatory Reform Agenda.'' E.O. 13777 requires the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are

insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE concludes that this rulemaking is consistent with the directives set forth in these Executive Orders. This final rule will update and improve efficiency in DOE's implementation of NEPA by appropriately focusing DOE's NEPA analysis for natural gas export applications and eliminating certain requirements of its existing regulations that are unnecessary.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Signing Authority

This document of the Department of Energy was signed on November 24, 2020, by William S. Cooper III, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 25, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends part 1021 of Chapter X of Title 10 of the Code of Federal Regulations as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 continues to read as follows:

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

■ 2. Appendix B to subpart D of part 1021 is amended by:
■ a. Revising section B5.7; and
■ b. Removing and reserving section B5.8.

The revision reads as follows:

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

* * * * *

B5. * * *

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

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

B5.8 [Removed and Reserved]

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Appendix C to Subpart D of Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

C13 [Removed and Reserved]

■ 3. Remove and reserve section C13.

Appendix D to Subpart D of Part 1021—Classes of Actions That Normally Require EISs

D8 and D9 [Removed and Reserved]

■ 4. Remove and reserve sections D8 and D9.

[FR Doc. 2020–26459 Filed 12–3–20; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AH04

SBA Supervised Lenders Application Process

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending the regulations applicable to Small Business Lending Companies (SBLCs) and state-regulated lenders (Non-Federally Regulated Lenders (NFRLs) (collectively referred to as SBA Supervised Lenders). The key amendments to the regulations include a new application and review process for SBA Supervised Lenders, including for transactions involving a change of ownership or control. Other amendments to the regulations include updating the minimum capital maintenance requirements, clarifying the factors SBA will consider in its evaluation of an SBA Supervised Lender application and limiting the 7(a) lending area for NFRLs.

DATES: This rule is effective January 4, 2021.

FOR FURTHER INFORMATION CONTACT: Paul Kirwin, Chief, SBA Supervised Lender Oversight Team, Office of Credit Risk Management, Office of Capital Access, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416; telephone: (202) 205–7261; email: *paul.kirwin@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The 7(a) Loan Program is a business loan program authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and is governed primarily by the regulations in part 120 of title 13 of the Code of Federal Regulations (CFR). The core mission of the 7(a) Loan Program is to provide SBA-guaranteed financial assistance to small businesses that lack access to capital on reasonable terms and conditions to support our nation's economy.

Most Lenders participating in the 7(a) Loan Program are depository institutions that have a primary Federal Financial Institution Regulator (as defined in 13 CFR 120.10) that oversees the Lender's lending activities. SBA has statutory authority under section 7(a)(17) of the Small Business Act to authorize non-federally regulated entities to make 7(a) loans, including entities that have state regulators. Under this authority, SBA has authorized SBA Supervised Lenders to make loans in the 7(a) Loan Program. SBA Supervised Lenders are defined in 13 CFR 120.10 to include SBLCs and NFRLs, and are subject to regulation, oversight, and enforcement by SBA.

SBLCs are non-depository lending institutions that are authorized only to make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. SBLCs are regulated, supervised, and examined solely by SBA, except for the subset of SBLCs defined as Other Regulated SBLCs in 13 CFR 120.10. SBA imposed a moratorium on issuing additional SBA lending

$55,000 for compliance activities; and $20,000 for research and studies. Budgeted expenditures for the 2022–2023 crop year were $3,592,000; $1,232,000; $703,900; $55,000; and $45,000, respectively. The increased assessment rate is necessary to help cover the expenditures for the 2023–2024 crop year, while reducing the amount of money needing to be expended from reserves.

The Order provides authority for the Committee to formulate an annual budget of expenses and propose an assessment rate to cover such expenses authorized by AMS. Prior to arriving at this budget and assessment rate, the Committee considered alternative spending levels at its June 28, 2023, meeting but ultimately decided that the recommended budget and assessment rate were reasonable and necessary to properly administer the Order.

This proposed rulemaking would increase the assessment obligation imposed on handlers. While the increased assessment rate would impose some additional costs on handlers, the costs are minimal and applied uniformly on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the industry from the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The raisin industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 28, 2023, meeting was public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit comments on this proposed rulemaking, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rulemaking would not impose any additional reporting or recordkeeping requirements on either small or large California raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rulemaking.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this proposed rulemaking is consistent with and will effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rulemaking. All written comments timely received will be considered before a final determination is made on this proposed rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 989 as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2023, an assessment rate of $24 per ton is established for assessable raisins produced from grapes in California.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–25247 Filed 11–15–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 1021

[DOE–HQ–2023–0063]

RIN 1990–AA48

National Environmental Policy Act Implementing Procedures

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (DOE or the Department) proposes to amend its implementing procedures (regulations) governing compliance with the National Environmental Policy Act (NEPA). The proposed changes would add a categorical exclusion for certain energy storage systems and revise categorical exclusions for upgrading and rebuilding transmission lines and for solar photovoltaic systems, as well as make conforming changes to related sections of DOE's NEPA regulations. The proposed changes are based on the experience of DOE and other Federal agencies, current technologies, regulatory requirements, and accepted industry practice. DOE invites public comments on the proposed changes.

DATES: DOE must receive comments by January 2, 2024 to ensure consideration.

ADDRESSES: Documents relevant to this proposed rulemaking are posted at *www.regulations.gov* (*Docket: DOE–HQ–2023–0063*). Documents posted to this docket include: this notice of proposed rulemaking and DOE's Technical Support Document, which provides additional information regarding certain proposed changes and a redline/strikeout version of affected sections of the DOE NEPA regulations indicating the changes in this proposed rule.

Submit comments, labeled ''DOE NEPA Implementing Procedures, RIN 1990–AA48,'' by one of the following methods:

1. *www.regulations.gov:* Enter ''Docket ID DOE–HQ–2023–0063'' in the search box. Click on ''Comment'' to submit comments, which you may enter directly on the web page or by uploading in a file.

2. *Postal Mail:* Mail comments to NEPA Rulemaking Comments, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Because security screening may delay mail sent through the U.S. Postal Service, DOE encourages electronic submittal of

comments through *www.regulations.gov.*

3. *Email:* send comments to *DOE-NEPA-Rulemaking@hq.doe.gov.*

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation—Submission of Comments'' (section IV) of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning how to comment on this proposed rule, contact Ms. Carrie Abravanel, Office of NEPA Policy and Compliance, at *DOE-NEPA-Rulemaking@hq.doe.gov* or 202–586–4600.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Background

The National Environmental Policy Act, as amended, (42 U.S.C. 4321 *et seq.*) requires Federal agencies to provide a detailed statement regarding the environmental impacts of proposals for major Federal actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508) require agencies to develop their own NEPA implementing procedures to apply the CEQ regulations to their specific programs and decision-making processes (40 CFR 1507.3). DOE's NEPA procedures are contained in 10 CFR part 1021.

NEPA establishes three types of review for proposed actions—environmental impact statement, environmental assessment, and categorical exclusion—each involving different levels of information and analysis. An environmental impact statement is a detailed analysis of reasonably foreseeable environmental effects prepared for a major Federal action significantly affecting the quality of the human environment (42 U.S.C. 4332(2)(C) and 40 CFR part 1502 and section 1508.1(j)). An environmental assessment is a concise public document prepared by a Federal agency to set forth the basis for its finding of no significant impact or its determination that an environmental impact statement is necessary (42 U.S.C. 4336(b)(2) and 40 CFR 1501.5, 1501.6, and 1508.1(h)). A categorical exclusion is a category of actions that the agency has determined, in its agency NEPA procedures, normally does not have a significant effect on the human environment and therefore does not require preparation of an environmental assessment or environmental impact statement (40 CFR 1501.4, 1507.3(e)(2)(ii), and 1508.1(d)). DOE's procedures for applying categorical exclusions require the agency to consider whether extraordinary circumstances exist due to which a normally excluded action may have a significant environmental effect.

A. Establishment and Use of Categorical Exclusions

DOE establishes and revises categorical exclusions pursuant to a rulemaking, such as this one, for defined classes of actions that the Department determines are supported by a record showing that the actions normally do not have significant environmental impacts, individually or cumulatively. The rulemaking process provides the public with an opportunity to review and comment on DOE's proposed changes. DOE will consider the comments received during the public comment period.

Once established in DOE's NEPA procedures, use of a categorical exclusion requires evaluation of a proposed action against several conditions. DOE must determine, in accordance with 10 CFR 1021.410(b), that: (1) the proposed action fits within a categorical exclusion listed in appendix A or B to subpart D of part 1021; (2) there are no extraordinary circumstances [1] related to the proposal that may affect the significance of the environmental impacts of the proposed action and require preparation of an environmental assessment or environmental impact statement, consistent with 40 CFR 1501.4(b)(1) and (b)(2); and (3) the proposal has not been improperly segmented [2] to meet the definition of a categorical exclusion, there are no connected or related actions with cumulatively significant impacts, and the proposed action is not precluded by 40 CFR 1506.1 or 10 CFR 1021.211 as an impermissible interim action.

In addition, DOE evaluates whether the proposed action satisfies conditions included within the text of the individual categorical exclusion and the conditions known as ''integral elements'' that apply to all categorical exclusions listed in appendix B to subpart D of part 1021 (appendix B, paragraphs (1) through (5)). Together, these conditions limit the types of proposals that fit within a categorical exclusion and help ensure that adverse environmental impacts are avoided or reduced. These conditions are discussed generally in this section and also in section II of this document, which describes each of DOE's proposed changes.

The categorical exclusions discussed in this proposed rulemaking include conditions specific to the categorical exclusion. For example, the proposed action must follow applicable codes and best management practices. These codes and practices vary by technology and location (*e.g.,* fire protection codes that differ by state). Also, they change over time to reflect lessons learned and to address emerging technology and practices. The Technical Support Document provides links to and summarizes information on some of the relevant codes and best practices for the categorical exclusions that are included in this proposed rulemaking. As another example, the changes proposed in this rulemaking specify conditions regarding siting proposed actions on previously disturbed or developed land and on land contiguous to previously disturbed and developed land. DOE defines previously disturbed or developed as

[1] DOE defines extraordinary circumstances as ''unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources.'' (10 CFR 1021.410(b)(2))

[2] Segmentation can occur when a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. (10 CFR 1021.410(b)(3))

''land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.'' (10 CFR 1021.410(g)(1)) As DOE explained in a 2011 notice of proposed rulemaking, ''In DOE's experience, the potential for certain types of actions to have significant impacts on the human environment is generally avoided when that action takes place within a previously disturbed or developed area, *i.e.,* land that has been changed such that the former state of the area and its functioning ecological processes have been altered.'' (76 FR 218; January 3, 2011) DOE's experience reviewing proposed projects across the United States since 2011 supports this same conclusion. DOE also has experience implementing categorical exclusions that allow construction on land that is contiguous to previously disturbed or developed areas and proposes to make certain siting on contiguous land part of one of the proposed categorical exclusions. The area of contiguous land affected would be small as discussed in 10 CFR 1021.410(g)(2). Any proposed use of contiguous land is subject to review against all the conditions relevant to the categorical exclusion, including the integral elements that require consideration of effects on threatened species, historic properties, and other environmentally sensitive resources. The Technical Support Document includes summaries of environmental assessments for projects proposed on previously disturbed or developed land and on contiguous land.

In addition to conditions within an individual categorical exclusion, the proposed action also must satisfy conditions known as ''integral elements.'' Integral elements are part of each categorical exclusion in appendix B. These conditions appear at the beginning of the appendix and are not repeated for each categorical exclusion. Integral elements require that, to fit within a categorical exclusion, the proposed action must not threaten a violation of applicable environment, safety, and health requirements; require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities; disturb hazardous substances, pollutants, or contaminants that preexist in the environment such that there would be uncontrolled or unpermitted releases; have the potential to cause significant impacts on environmentally sensitive resources; or involve governmentally designated noxious weeds or invasive species, unless certain conditions are met.[3] In appendix B, DOE defines ''environmentally sensitive resource'' as a resource that has typically been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian tribe. Environmentally sensitive resources include historic properties, threatened and endangered species, floodplains, and wetlands, among others. (10 CFR part 1021, subpart D, appendix B)

Only if DOE determines that all the applicable conditions have been met may it issue a categorical exclusion determination. DOE posts its categorical exclusion determinations at *www.energy.gov/nepa/doe-categorical-exclusion-cx-determinations.*

B. Development of the Proposed Changes

In this proposed rulemaking, DOE proposes to add a categorical exclusion for certain energy storage systems and revise categorical exclusions for upgrading and rebuilding transmission lines and for solar photovoltaic (PV) systems, as well as make conforming changes to related sections of DOE's NEPA regulations. DOE last made changes to its categorical exclusions in these areas in 2011 (76 FR 63764; October 13, 2011). Since then, DOE has developed a better understanding of the potential environmental impacts of these types of actions through research, conducting environmental reviews, and engaging with industry, local communities, and other government agencies. The proposed changes are based on the experience of DOE and other Federal agencies, current technologies, regulatory requirements, and accepted industry practice. DOE consulted with CEQ during the development of these proposed changes.

DOE has documented the technical substantiation for the proposed changes in this preamble and in an accompanying Technical Support Document. The Technical Support Document summarizes environmental assessments for the types of projects addressed in this proposed rulemaking and other information. The environmental assessments demonstrate how DOE and other Federal agencies evaluated potential environmental impacts of these projects and determined that they would not result in a significant environmental effect. To be clear, not every environmental assessment discussed in the Technical Support Document reflects a project that would have qualified for a categorical exclusion proposed in this rulemaking. Such determinations would have to be made on a case-by-case basis.

DOE developed its support for this proposed rulemaking consistent with CEQ's 2010 guidance on establishing, applying, and revising categorical exclusions under NEPA (75 FR 75628; December 6, 2010). DOE also considered climate impacts and greenhouse gas (GHG) emissions in preparing these proposals consistent with CEQ's 2023 interim guidance on the consideration of GHG emissions and climate change (88 FR 1196; January 9, 2023). The description of the proposed changes in section II of this document includes a discussion of how the proposed changes may affect GHG emissions.

The public made suggestions for revising DOE's categorical exclusions in response to a Request for Information (RFI) published in the **Federal Register** on November 15, 2022. (87 FR 68385). Those suggestions, along with others made by DOE's NEPA Compliance Officers and other staff, led to the proposals included in this proposed rulemaking. DOE evaluated the proposals by reviewing environmental assessments prepared by DOE and by other Federal agencies, categorical exclusions established by other Federal agencies, technical reports, applicable requirements and industry practices, and other publicly available information.

Thirty-three individuals or entities responded to the Request for Information. The Request for Information and these comments are available at *www.regulations.gov/docket/DOE-HQ-2023-0002/comments.* Relevant to this proposed rulemaking, commenters asked DOE to add energy storage systems to its categorical exclusions, to expand the scope of its categorical exclusion for upgrading and rebuilding powerlines, and to expand its categorical exclusion for solar photovoltaic systems to at least 200 acres within previously disturbed or developed areas. DOE addresses these and related comments in its discussion of proposed changes in section II.B of this document. The identification number for individual commenter documents used on *www.regulations.gov* and the page(s) where a particular comment appears are

[3] This is a summary description of the integral elements. *See* 10 CFR part 1021, subpart D, appendix B for the full text.

included in section II.B of this document.

II. Description of Proposed Changes

A. Overview

DOE proposes to establish a new categorical exclusion for certain energy storage systems and to revise existing categorical exclusions for upgrading and rebuilding transmission lines and for solar photovoltaic systems. DOE's proposal also includes conforming changes to other categorical exclusions, to a class of actions normally requiring an environmental assessment, and to a class of actions normally requiring an environmental impact statement (10 CFR part 1021, subpart D, appendices B, C, and D). These proposed changes are discussed in sections II.B through II.D of this document.

These proposed changes, if finalized, would not require any changes to or otherwise affect categorical exclusion determinations completed prior to the effective date of any final rule.

B. Proposed Changes to Categorical Exclusion B4.13 for Upgrading and Rebuilding Existing Powerlines

Powerlines are a critical component of the electric grid that moves electricity from facilities that generate electricity to our communities, businesses, and factories. Upgrading and rebuilding [4] powerlines extends their useful life. Upgrades and rebuilds can also help reduce the need for new powerlines and can allow the replacement of components with newer, more efficient and resilient technology.

One example is reconductoring. Conductors are the wires that carry electricity. Most of the existing electric grid uses conductors with a steel core for strength surrounded by aluminum for the electrical current. More recently, conductor designs (called advanced conductors) with composite or carbon cores, in place of steel, have come into use. Advanced conductors provide a variety of benefits including increased capacity, which can be used to integrate renewable energy and other sources into the grid without the need to build new transmission lines. Use of advanced conductors reduces line losses (*i.e.,* power lost during transmission and distribution of electricity) relative to traditional conductors, thereby improving efficiency.[5] Improvements to capacity and efficiency can help to ensure reliability, reduce costs to consumers, and reduce GHG emissions associated with electricity generation, transmission, and distribution.

Upgrading and rebuilding powerlines also can avoid or reduce adverse environmental impacts, such as by relocating small [6] segments of the existing line to avoid a sensitive environmental resource. Upgrading and rebuilding powerlines also can enhance resilience. For example, an upgrade or rebuild project might convert segments of existing overhead powerlines to underground lines or replace old transmission poles to ensure continued safe operations.

Categorical exclusion B4.13 currently applies to upgrading or rebuilding ''approximately 20 miles in length or less'' of existing powerlines and allows for minor relocations of small segments of powerlines. DOE proposes to remove the mileage limitation, add options for relocating within an existing right of way or within otherwise previously disturbed or developed lands, and add new conditions.

The potential significance of environmental impacts from upgrading or rebuilding powerlines is more related to local environmental conditions than to the length of the powerlines. For example, the presence of environmentally sensitive resources along the existing right-of-way is more pertinent than the length of the existing powerlines to be upgraded or rebuilt. DOE reviewed environmental assessments for transmission line upgrades and rebuilds of various lengths. (*See* Technical Support Document, page 4.) The length of the projects is based on the endpoints, which are commonly substations (*e.g.,* rebuild the transmission line from substation A to substation B). Environmental assessments and other information summarized in the Technical Support Document, as well as DOE's experience with powerline upgrades and rebuilds do not indicate a particular mileage limit that would mark a threshold for significant impacts.

DOE also proposes to clarify options for relocating powerlines within the scope of categorical exclusion B4.13. Relocating segments of a powerline can improve resilience, avoid sensitive resources, or serve other purposes. (*See,* in the Technical Support Document, page 6, DOE/EA–1912 for an example of relocation to avoid cultural resources and DOE/EA–1967 to avoid a rock fall and landslide area.) Currently, B4.13 allows ''minor relocations of small segments of the powerlines.'' DOE proposes to delete ''minor'' because it is unnecessary to qualify ''relocations of small segments'' with ''minor.'' DOE also proposes to specify that, under the proposed revisions, small segments of powerlines may be relocated ''within an existing right of way or within otherwise previously disturbed or developed lands.'' This change would provide additional flexibility without increasing adverse environmental impacts. Any proposed relocation would be subject to all the conditions with the proposed categorical exclusion B4.13, including conformity to the integral elements that require consideration or potential impacts on environmentally sensitive resources and other potential impacts.

DOE's review of environmental assessments and other information in preparing this proposed rulemaking identified conditions that would be appropriate to add to categorical exclusion B4.13. Proposals to upgrade or rebuild powerlines normally incorporate practices that avoid or reduce potential land disturbance, erosion, disturbance of environmentally sensitive resources, and take other measures to protect the local environment. To account for this, DOE proposes to add a condition that the proposed project would be in accordance with applicable requirements and would incorporate appropriate design and construction standards, control technologies, and best management practices. This condition, together with the integral elements and consideration of extraordinary circumstances (described in section I.A of this document), would ensure that DOE considers whether a proposed upgrade or rebuild of an existing powerline would be sited and designed appropriately prior to determining whether categorical exclusion B4.13 applies.

DOE proposes a conforming change to its class of action, C4, that normally requires an environmental assessment for upgrading and rebuilding existing powerlines more than approximately 20 miles in length. That proposed change would remove the reference to powerline length and, instead, clarify that an environmental assessment

[4] A transmission line rebuild is typically a replacement of conductor and equipment without increasing capacity. Transmission line design and new materials and equipment would meet current standards and electrical clearance requirements. A transmission line upgrade is typically a replacement of conductor and equipment, or the addition of sensors or other advanced technology, to increase the line's capacity, such as by increasing the operating voltage or increasing the temperature rating.

[5] Grid Strategies, LLC, ''Advanced Conductors on Existing Transmission Corridors to Accelerate Low Cost Decarbonization,'' March 2022, available at: *https://acore.org/wp-content/uploads/2022/03/Advanced_Conductors_to_Accelerate_Grid_Decarbonization.pdf.*

[6] *See* 10 CFR 1021.410(g)(2) for a discussion of ''small'' in the context of determining the applicability of a DOE categorical exclusion.

normally would be prepared when the proposal does not qualify for categorical exclusion B4.13.

In response to DOE's November 2022 Request for Information,[7] Edison Electric Institute (EEI) suggested that DOE increase the length of powerlines in categorical exclusion B4.13 to ''at least 100 miles'' within previously disturbed or developed rights-of-way. (EEI (RFI 0010), pages 7–8) EEI stated that, ''Such [rights-of-way] are already managed from an environmental, safety, and reliability standpoint and thus, projects in these areas should not result in significant effects on the human environment.'' (EEI (RFI 0010), page 8) EEI further stated that this change would ''prioritize projects in existing [rights-of-way] over new greenfield projects'' and that utilizing existing rights-of-way would ''more efficiently build the transmission infrastructure necessary for the clean energy transformation.'' (EEI (RFI 0010), page 8) The Cross-Cutting Issues Group suggested that DOE omit the 20-mile limitation in B4.13 and stated that, ''Projects in previously disturbed or developed [rights-of-way] will not significantly impact the human environment regardless of the length of the powerlines.'' (Cross-Cutting Issues Group (RFI 0012), page 5) DOE's proposed changes to categorical exclusion B4.13 are consistent with these comments.

The Cross-Cutting Issues Group requested that DOE confirm that categorical exclusion B4.13 covers all types of powerlines, including ''gen-tie lines'' and ''powerlines that feed into a federal electric transmission system (*e.g.,* Tennessee Valley Authority)'' and related project elements such as access roads. (Cross-Cutting Issues Group (RFI 0012), pages 4–5) DOE interprets B4.13 to encompass all types of powerlines, including those identified by the commenter. In regard to access roads and other project elements, DOE's NEPA regulations explain, ''A class of actions [*e.g.,* a categorical exclusion] includes activities foreseeably necessary to proposals encompassed within the class of actions (such as award of implementing grants and contracts, site preparation, purchase and installation of equipment, and associated transportation activities).'' (10 CFR 1021.410(d))

[7] The Request for Information and these comments are available at *www.regulations.gov/docket/DOE-HQ-2023-0002/comments.*

C. Proposed New Categorical Exclusion B4.14 for Certain Energy Storage Systems

For purposes of this proposed rulemaking, an energy storage system is a device or group of devices assembled together, capable of storing energy in order to supply electrical energy at a later time. Energy storage can be used to integrate renewable energy (such as wind and solar energy) into the electric grid, help generation facilities operate at optimal levels to meet customer demand, and reduce the use of less efficient generating units that would otherwise run only at peak times. An energy storage system also provides protection from power interruptions and serves as reserve power in case of power outages or fluctuations. The most familiar type of energy storage system is a group of electrochemical batteries and associated equipment referred to as a battery energy storage system. Another form uses a flywheel, which converts excess electricity from the grid to kinetic energy in a fast-spinning rotor. As needed, the stored energy is converted back to electricity and returned to the grid or put to other use.

DOE and others have been developing large-scale energy storage systems for decades. Deployment of these systems has increased over the past decade. Today, energy storage systems support the operation of electric transmission facilities, microgrids, energy generation facilities, and commercial and industrial facilities.[8]

DOE proposes to establish new categorical exclusion B4.14 for the construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small area contiguous to a previously disturbed or developed area. Section I.A of this document includes discussion of DOE's definition of previously disturbed or developed area and DOE's experience referring to contiguous areas in its categorical exclusions. The total acreage used for an energy storage system will be defined by the needs of the proposed project. Based on past experience, DOE anticipates that energy storage systems typically require 15 acres or less and would be sited close to energy, transmission, or industrial facilities. (*See* Technical Support Document, page 24.) Consistent with this expectation and because contiguous land might be undisturbed and undeveloped, DOE proposes that siting outside a previously disturbed or developed be limited to a ''small'' contiguous area. DOE would consider whether a contiguous area is small ''in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, DOE would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action.'' (10 CFR 1021.410(g)(2)) In addition, the proposed categorical exclusion includes conditions that the proposed project be in accordance with applicable requirements (such as land use [9] and zoning requirements) and would incorporate appropriate design and construction standards, control technologies, and best management practices. In addition, DOE would review the proposed project against the criteria, including integral elements and extraordinary circumstances, described in section I.A of this document. This review would ensure that DOE considers the potential environmental effects of a proposed energy storage system prior to determining whether categorical exclusion B4.14 applies. In proposing this categorical exclusion, DOE has evaluated environmental assessments and findings of no significant impact prepared by DOE and other Federal agencies, categorical exclusion determinations made by DOE, and other information. (*See* Technical Support Document, page 24.)

DOE also proposes conforming changes to three related categorical exclusions. Based on its past experience with energy storage systems, in 2011, DOE added ''power storage (such as flywheels and batteries, generally less than 10 MW)'' as an example of conservation actions to categorical

[8] The U.S. Energy Information Administration published information about large-scale energy storage for electricity generation (*www.eia.gov/energyexplained/electricity/energy-storage-for-electricity-generation.php*) and market trends for battery storage (*www.eia.gov/analysis/studies/electricity/batterystorage/*). Also, DOE published an energy storage market report in 2020 (*www.energy.gov/sites/prod/files/2020/12/f81/Energy%20Storage%20Market%20Report%202020_0.pdf*).

[9] On DOE sites and in other locations, land use planning may be documented in a site land use plan, or be subject to siting processes or other comparable systems. Use of land use and zoning requirements is inclusive of these processes.

exclusion B5.1, Actions to conserve energy or water. DOE also added ''load shaping projects (such as the installation and use of flywheels and battery arrays)'' to the list of example actions in categorical exclusion B4.6, Additions and modifications to transmission facilities. DOE now proposes to delete ''power storage'' from the examples in B5.1. DOE would not include the 10 MW (megawatt) limit in new categorical exclusion B4.14 because capacity, whether denominated in megawatts as a measure of instantaneous output or megawatt-hours as a measure of the total amount of energy capable of being stored, is not a reliable indicator of potential environmental impacts. Including a capacity limit within the categorical exclusion could mean that technology improvements resulting in more power storage within the same physical footprint may not qualify for the categorical exclusion even though the potential environmental impacts have not changed. DOE also proposes to delete the example of flywheels and battery arrays from B4.6 but retain the reference to ''load shaping projects'' and add ''reducing energy use during periods of peak demand'' as a new example. DOE would add a note to B4.6 that energy storage systems are addressed in B4.14. DOE also would add this note to categorical exclusion B4.4, Power marketing services and activities, which was established in 1992 and lists storage and load shaping as examples. These conforming changes would avoid confusion over which categorical exclusion and associated conditions apply to energy storage systems.

In response to DOE's November 2022 Request for Information,[10] three commenters (Cross-Cutting Issues Group, Duke Energy, and EEI) requested that DOE include energy storage systems, and the installation and operation of such systems, in categorical exclusions B4.4 and B4.6. Cross-Cutting Issues Group explained that including energy storage systems explicitly in B4.4 and B4.6 would ''provide more certainty'' as project proponents explore different types of energy storage system technologies (such as compressed air energy storage and molten salt storage), ''particularly the timing and costs associated with deploying such projects.'' (Cross-Cutting Issues Group (RFI 0012), page 6) EEI and Cross-Cutting Issues Group asked DOE to explicitly include the addition or modification of a ''battery array or other energy storage device(s)'' as part of these categorical exclusions. (EEI (RFI 0010), pages 9–10; Cross-Cutting Issues Group (RFI 0012), page 6)

DOE's proposed changes address these comments. DOE believes that the best way to ensure consistency is to have a single categorical exclusion for energy storage systems. DOE is proposing that new categorical exclusion B4.14 be limited to electrochemical-battery and flywheel energy storage systems. At this time, DOE has not identified sufficient information to conclude that compressed air energy storage, thermal energy storage (*e.g.,* molten salt storage), or other technologies normally do not present the potential for significant environmental impacts. DOE welcomes comments that provide analytic support for whether these other energy storage technologies meet the requirements for a categorical exclusion. If DOE identifies sufficient support, DOE may revise the categorical exclusion in the final rule to include additional energy storage technologies.

D. Proposed Changes to Categorical Exclusion B5.16 for Solar Photovoltaic Systems

Solar photovoltaic (PV) technology converts sunlight into electrical energy. Individual PV cells, which may produce only 1 or 2 watts of electricity, are connected together to form modules (otherwise known as panels). The modules are combined with other components (*e.g.,* to convert electricity from direct current (DC) to alternating current (AC)) to create a solar PV system. These systems can be located in a wide variety of locations and sized for an individual home or business up to utility-scale, generating hundreds of megawatts.[11]

Solar PV systems do not release GHGs while operating, though, as with any industrial activity, manufacturing and installing solar PV systems can release GHGs. The U.S. Energy Information Administration reports that, ''Studies conducted by a number of organizations and researchers have concluded that PV systems can produce the equivalent amount of energy that was used to manufacture the systems within 1 to 4 years. Most PV systems have operating lives of up to 30 years or more.'' [12] Thus, on a life-cycle basis, solar PV systems provide many years of electricity generation without GHG emissions.

DOE's current categorical exclusion B5.16, Solar photovoltaic systems, includes the installation, modification, operation, and removal of solar PV systems located on a building or other structure or, if located on land, within a previously disturbed or developed area generally comprising less than 10 acres. DOE proposes to change ''removal'' of a solar PV system to ''decommissioning.'' Decommissioning encompasses recycling and other types of actions that occur when a facility is taken out of service. DOE also proposes to remove the acreage limitation for proposed projects. Based on DOE's experience, acreage is not a reliable indicator of potential environmental impacts. As discussed in section I.B of this document, the potential significance of environmental impacts is more related to local environmental conditions than to acreage. DOE's review of various environmental assessments indicate that an acreage limit would not serve as an appropriate indicator of significant impacts. This conclusion is illustrated, for example, by environmental assessments for solar PV projects larger than 1,000 acres on previously disturbed or developed land that would not result in significant environmental impacts. (*See* Technical Support Document, page 42.)

The nature and significance of environmental impacts is determined by a proposed project's proximity to and potential effects on environmentally sensitive resources and other conditions accounted for in categorical exclusion B5.16 and in the integral elements, extraordinary circumstances, and other factors described in section I.A of this document. If the proposed changes are finalized, DOE would consider the integral elements and the presence of any extraordinary circumstances when reviewing proposed solar PV projects' eligibility for this categorical exclusion. This review would ensure that DOE considers potential environmental impacts of a proposed solar PV system prior to determining whether categorical exclusion B5.16 applies. For example, in preparing the Technical Support Document, DOE observed that some large solar PV systems have been proposed for agricultural land. While integrating solar PV systems with farms may provide a variety of economic and environmental benefits to farmers,[13]

[10] The Request for Information and these comments are available at *www.regulations.gov/docket/DOE-HQ-2023-0002/comments.*

[11] DOE's Solar Energy Technologies Office has a website that describes solar PV technologies (*www.energy.gov/eere/solar/solar-photovoltaic-technology-basics*).

[12] U.S. Energy Information Administration ''Solar explained'' available at *www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php;* retrieved August 27, 2023.

[13] U.S. Energy Information Administration ''Solar explained'' available at *www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php;* retrieved August 27, 2023.

doing so also raises questions about land use and the protection of important farmlands. One of the integral elements ensures that DOE considers the potential impacts on prime or unique farmland, or other farmland of statewide or local importance. (10 CFR part 1021, appendix B, paragraph (4)(v).)

DOE also proposes to make conforming changes in appendix C, Classes of Actions that Normally Require EAs but not Necessarily EISs, and in appendix D, Classes of Actions that Normally Require EISs. These appendices each include a class of actions, C7 and D7, that associates the level of NEPA review for interconnection requests and power acquisition with the power output of the electric generation resource. In 2011, DOE proposed for C7 that an environmental assessment normally would be required for the interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts ''and that would not be eligible for categorical exclusion under 10 CFR part 1021.'' (76 FR 233; January 3, 2011) DOE did not receive public comment on the proposed addition regarding categorical exclusion eligibility. In the 2011 final rule, DOE did not include the condition regarding eligibility for a categorical exclusion. DOE explained this decision by stating ''to improve clarity, DOE is removing the previously proposed condition that the new generation resource 'would not be eligible for categorical exclusion under this part.' DOE normally would not prepare an environmental assessment when a categorical exclusion would apply. Therefore, the condition is unnecessary and potentially confusing.'' (76 FR 63784; October 13, 2011) DOE's practice continues to be that it ''normally would not prepare an environmental assessment when a categorical exclusion would apply.'' DOE is again proposing to add a condition regarding the applicability of a categorical exclusion to C7, however. In light of the proposed change to B5.16—which would remove the acreage restriction for solar PV systems, thereby allowing the categorical exclusion to apply to systems generating up to hundreds of megawatts—DOE believes that including a condition in C7 is appropriate and helpful. It will clarify DOE's practice that an environmental assessment is normally required ''unless the generation resource is eligible for a categorical exclusion.'' DOE did not propose a similar condition in 2011 for D7, which applies to new generation resources greater than 50 average megawatts. DOE is now proposing to add the same condition to both C7 and D7 for the reasons previously described. For D7, DOE also is proposing to specify that an environmental impact statement is not required when an environmental assessment was prepared that resulted in a finding of no significant impact. This is standard practice, and DOE proposes to add this text only to avoid any potential confusion.

In response to DOE's November 2022 Request for Information,[14] EEI suggested that DOE revise categorical exclusion B5.16 to apply to ''solar photovoltaic systems, both large- and small-scale, and increase the acreage to at least 200 acres within previously disturbed or developed areas to fully capture the extent of large-scale solar installation that utilize more than 10 areas and may not be contiguous.'' (EEI (RFI 0010), page 10) DOE's proposal in this rulemaking is consistent with this comment.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. Many benefits and costs associated with this proposed rule are not quantifiable. The direct benefits include reduced cost and time for environmental analysis incurred by DOE, project proponents, and the public. Indirect benefits are expected to include deployment of technologies that improve the reliability and resilience of the nation's electric grid and that expand electricity generation capacity while reducing emissions of GHGs. For the reasons stated in this preamble, this proposed regulatory action is consistent with these principles.

This regulatory action has been determined not to be ''a significant regulatory action'' under E.O. 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive order by OIRA of OMB.

B. Review Under Executive Orders 12898 and 14096

E.O. 12898, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' as supplemented and amended by E.O. 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All,'' requires each Federal agency, consistent with its statutory authority, to make achieving environmental justice part of its mission. E.O. 14096 directs Federal agencies to carry out environmental reviews under NEPA in a manner that ''(A) analyzes direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns; (B) considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards, such as information related to the race, national origin, socioeconomic status, age, disability, and sex of the individuals exposed; and (C) provides opportunities for early and meaningful involvement in the environmental review process by

[14] The Request for Information and these comments are available at *www.regulations.gov/docket/DOE-HQ-2023-0002/comments.*

communities with environmental justice concerns potentially affected by a proposed action, including when establishing or revising agency procedures under NEPA.'' DOE is providing opportunities for public engagement in this proposed rulemaking, including opportunities for communities with environmental justice concerns. Also, in determining whether the proposed categorical exclusions apply to a future proposed action, DOE will consider whether the proposed action threatens a violation of these Executive Orders, consistent with the first integral element listed in appendix B of DOE's NEPA procedures.

C. Review Under National Environmental Policy Act

The Department's NEPA procedures assist the Department in fulfilling its responsibilities under NEPA and the CEQ regulations but are not themselves final determinations of the level of environmental review required for any proposed action. The CEQ regulations do not direct agencies to prepare an environmental assessment or environmental impact statement before establishing agency procedures that supplement the CEQ regulations to implement NEPA (40 CFR 1507.3). In establishing a new categorical exclusion and making other changes as described in this notice, DOE is following the requirements of CEQ's procedural regulations, which include publishing the Notice of Proposed Rulemaking in the **Federal Register** for public review and comment, considering public comments, and consulting with CEQ regarding conformity with NEPA and the CEQ regulations. (*See* 40 CFR 1507.3(b)).

In this proposed rule, DOE proposes amendments that establish, modify, and clarify procedures for considering the environmental effects of DOE actions within DOE's decisionmaking process, thereby enhancing compliance with the letter and spirit of NEPA. DOE has preliminarily determined that this proposed rule would qualify for categorical exclusion under 10 CFR part 1021, subpart D, appendix A6, because it is a strictly procedural rulemaking, and no extraordinary circumstances exist that require further environmental analysis. Therefore, DOE has preliminarily determined that promulgation of these amendments is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

D. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website: *https://energy.gov/gc under Resources.*

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed revisions to 10 CFR part 1021 streamline the environmental review for proposed actions, resulting in a decrease in burdens associated with carrying out such reviews. For example, the proposed revisions to DOE's categorical exclusions are expected to reduce the number of environmental assessments that applicants would need to pay to have prepared for DOE's consideration. Applicants may sometimes incur costs in providing environmental information that DOE requires when making a categorical exclusion determination. The Government Accountability Office found in 2014 that there is little data available on the costs for preparing NEPA reviews and that agencies ''generally do not reports costs that are 'paid by the applicant' because these costs reflect business transactions between applicants and their contractors and are not available to agency officials.'' [15] In 2011, DOE estimated the cost of preparing environmental assessments over the prior decade at an average of $100,000 and a median of $65,000.[16] DOE does not have more current cost data. The costs of making a categorical exclusion determination are less than those to prepare an EA. Although DOE does not have data on what percentage of EAs were funded by applicants that qualified as small entities, a beneficial cost impact is expected to accrue to entities of all sizes.

Based on the foregoing, DOE certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

E. Review Under Paperwork Reduction Act

This proposed rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

F. Review Under Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of UMRA requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation) (2 U.S.C. 1532(a) and (b)). Section 204 of UMRA requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments (2 U.S.C. 1534).

The proposed rule would amend DOE's existing regulations governing compliance with NEPA to better align DOE's regulations, including its categorical exclusions, with its current activities and recent experiences. The proposed rule would not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the UMRA.

[15] GAO–14–369, NATIONAL ENVIRONMENTAL POLICY ACT: Little Information Exists on NEPA Analyses, April 2014, available at *www.gao.gov/assets/gao-14-369.pdf.*

[16] 76 FR 237, January 3, 2011.

G. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 13132

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

I. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of E.O. 12988.

J. Review Under Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under E.O. 12866, or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Executive Order 12630

DOE has determined pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 18, 1988), that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

IV. Public Participation—Submission of Comments

DOE will accept comments, data, and information regarding this notice of proposed rulemaking no later than the date provided in the **DATES** section at the beginning of this document. Interested individuals are invited to submit data, views, or arguments with respect to the specific sections addressed in this proposed rule using the methods described in the **ADDRESSES** section at the beginning of this document.

1. *Submitting comments via www.regulations.gov.* Your contact information will be viewable by DOE's Office of the General Counsel staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through *www.regulations.gov* will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

2. *Submitting comments via email or mail.* Comments and documents submitted via email or mail will also be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

3. *Confidential Business Information.* Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: One copy of the document marked ''CONFIDENTIAL'' including all the information believed to be confidential, and one copy of the document marked ''NON-CONFIDENTIAL'' with the information believed to be confidential deleted. Submit these documents via email to *DOE-NEPA-Rulemaking@hq.doe.gov.* DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

4. *Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Signing Authority

This document of the Department of Energy was signed on November 8, 2023, by Samuel T. Walsh, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 9, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE proposes to amend part 1021 of chapter X of title 10, Code of Federal Regulations, as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 continues to read as follows:

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

■ 2. Appendix B of subpart D of part 1021 is amended by:

■ a. Revising B4.4, B4.6, and B4.13;

■ b. Adding B4.14; and

■ c. Revising B5.1 and B5.16.

The revisions and addition read as follows:

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

* * * * *

B4. * * *

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B4.4 Power marketing services and activities

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

* * * * *

.6 Additions and modifications to transmission facilities

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

* * * * *

B4.13 Upgrading and rebuilding existing powerlines

Upgrading or rebuilding existing electric powerlines, which may involve relocations of small (as discussed at 10 CFR 1021.410(g)(2)) segments of the powerlines within an existing right of way or within otherwise previously disturbed or developed lands (as discussed at 10 CFR 1021.410(g)(1)). Covered actions would be in accordance with applicable requirements, including the integral elements listed at the start of appendix B of this part; and would incorporate appropriate design and construction standards, control technologies, and best management practices.

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

Construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small (as discussed at 10 CFR 1021.410(g)(2)) area contiguous to a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of this part, and would incorporate appropriate design and construction standards, control technologies, and best management practices.

* * * * *

B5. * * *

B5.1 Actions to conserve energy or water

(a) Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy efficiency that would not have the potential to cause significant changes in the indoor or outdoor

concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as state, local, and tribal). Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors. Covered actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) and (c) of this appendix.

(b) Covered actions include rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not:

(1) Have the potential to cause a significant change in manufacturing infrastructure (such as construction of new manufacturing plants with considerable associated ground disturbance);

(2) Involve significant unresolved conflicts concerning alternative uses of available resources (such as rare or limited raw materials);

(3) Have the potential to result in a significant increase in the disposal of materials posing significant risks to human health and the environment (such as RCRA hazardous wastes); or

(4) Have the potential to cause a significant increase in energy consumption in a state or region.

(c) Covered actions also include rulemakings that establish energy conservation standards for new Federal buildings and Federal buildings undergoing major renovation, provided that the actions would not have the potential to:

(1) Result in a significant decrease in indoor air quality; or

(2) Result in a significant increase in emissions of air pollutants.

* * * * *

B5.16 Solar photovoltaic systems

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

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

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

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

■ 3. Amend Appendix C of subpart D of part 1021 by revising C4 and C7 to read as follows:

C to Subpart D of Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

* * * * *

C4 Upgrading, Rebuilding, or Construction of Powerlines

(a) Upgrading or rebuilding existing powerlines when the action does not qualify for categorical exclusion B4.13; or construction of powerlines:

(1) More than approximately 10 miles in length outside previously disturbed or developed powerline or pipeline rights-of-way; or

(2) More than approximately 20 miles in length within previously disturbed or developed powerline or pipeline rights-of-way.

* * * * *

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

(a) Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve:

(1) The interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts, unless the generation resource is eligible for a categorical exclusion;

(2) Changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or

(3) Service to discrete new loads of less than 10 average megawatts over a 12-month period.

* * * * *

■ 4. Amend Appendix D to subpart D of part 1021 by revising D7 to read as follows:

Appendix D to Subpart D of Part 1021—Classes of Actions That Normally Require EISs

* * * * *

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

(a) Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve:

(1) The interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts, unless the generation resource is eligible for a categorical exclusion or was evaluated in an environmental assessment resulting in a finding of no significant impact;

(2) Changes in the normal operating limits of generation resources greater than 50 average megawatts; or

(3) Service to discrete new loads of 10 average megawatts or more over a 12-month period.

* * * * *

[FR Doc. 2023–25174 Filed 11–15–23; 8:45 am]

BILLING CODE 6450–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2022–5]

Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Supplemental notice of proposed rulemaking; extension of comment period.

SUMMARY: The U.S. Copyright Office is extending the deadline to submit reply comments in connection with a supplemental notice of proposed rulemaking regarding the applicability of the derivative works exception to termination rights under the Copyright Act to the new statutory mechanical blanket license established by the Music Modernization Act and other matters relevant to identifying the proper payee to whom the mechanical licensing collective must distribute royalties.

DATES: The comment period for the proposed rule published September 26, 2023, at 88 FR 65908, is extended. Written reply comments are due no later than 11:59 p.m. Eastern Time on Tuesday, December 5, 2023.

ADDRESSES: For reasons of governmental efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://copyright.gov/rulemaking/mma-termination.* If electronic submission of comments is not feasible due to lack of access to a computer or the internet,

subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3521.

G. Congressional Review Act

This action pertains to agency organization, procedure, or practice, and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' as that term is used in the Congressional Review Act, 5 U.S.C. 804(3)(C), and the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 120

Administrative practice and procedure.

PART 120 [REMOVED AND RESERVED]

■ For the reasons stated in the preamble, and under the authority of 5 U.S.C. 301 and E.O. 13992, OPM removes and reserves 5 CFR part 120.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–09192 Filed 4–29–24; 8:45 am]

BILLING CODE 6325–67–P

DEPARTMENT OF ENERGY

10 CFR Part 1021

[DOE–HQ–2023–0063]

RIN 1990–AA48

National Environmental Policy Act Implementing Procedures

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is revising its National Environmental Policy Act (NEPA) implementing procedures (regulations) to add a categorical exclusion for certain energy storage systems and revise categorical exclusions for upgrading and rebuilding powerlines and for solar photovoltaic systems, as well as to make conforming changes to related sections of DOE's NEPA regulations. These changes will help ensure that DOE conducts an appropriate and efficient environmental review of proposed projects that normally do not result in significant environmental impacts.

DATES: This rule is effective May 30, 2024.

ADDRESSES: Documents relevant to this rulemaking are posted at *www.regulations.gov* (*Docket: DOE–HQ–2023–0063*). These documents include: the notice of proposed rulemaking, public comments, this final rule, and DOE's Technical Support Document, which provides additional information regarding the changes and a redline/strikeout version of affected sections of the DOE NEPA regulations indicating the changes made by this rule.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's NEPA regulations, contact Ms. Carrie Abravanel, Deputy Director, Office of NEPA Policy and Compliance, at *carrie.abravanel@hq.doe.gov* or 202–586–4798.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Background

The National Environmental Policy Act, as amended, (42 U.S.C. 4321 *et seq.*) requires Federal agencies to provide a detailed statement regarding the environmental impacts of proposals for major Federal actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508) require agencies to develop their own NEPA implementing procedures to apply the CEQ regulations to their specific programs and decision-making processes (40 CFR 1507.3). DOE promulgated its regulations entitled ''National Environmental Policy Act Implementing Procedures'' (10 CFR part 1021) on April 24, 1992 (57 FR 15122), revised these regulations on five subsequent occasions,[1] and now revises these regulations again with this rule.

NEPA establishes three types of environmental review for Federal proposed actions—environmental impact statement, environmental assessment, and categorical exclusion—each involving different levels of information and analysis. An environmental impact statement is a detailed analysis of reasonably foreseeable environmental effects prepared for a major Federal action significantly affecting the quality of the human environment (42 U.S.C. 4332(2)(C) and 40 CFR part 1502 and section 1508.1(j)). An environmental assessment is a concise public document prepared by a Federal agency to set forth the basis for its finding of no significant impact or its determination that an environmental impact statement is necessary (42 U.S.C. 4336(b)(2) and 40 CFR 1501.5, 1501.6, and 1508.1(h)). A categorical exclusion is a category of actions that the agency has determined, as established in its agency NEPA procedures, normally does not have a significant effect on the human environment and therefore does not require preparation of an environmental assessment or environmental impact statement (40 CFR 1501.4, 1507.3(e)(2)(ii), and 1508.1(d)). DOE's procedures for applying categorical exclusions require the Department to consider several conditions (described in section II of this document), including whether extraordinary circumstances exist such that a normally excluded action may have a significant environmental effect.

II. Establishment and Use of Categorical Exclusions

CEQ issued guidance in 2010 on establishing, applying, and revising categorical exclusions under NEPA (75 FR 75628; December 6, 2010). CEQ explained, ''Categorical exclusions are

[1] July 9, 1996 (61 FR 36222), December 6, 1996 (61 FR 64603), August 27, 2003 (68 FR 51429), October 13, 2011 (76 FR 63764), and December 4, 2020 (85 FR 78197).

not exemptions or waivers of NEPA review; they are simply one type of NEPA review. To establish a categorical exclusion, agencies determine whether a proposed activity is one that, on the basis of past experience, normally does not require further environmental review. Once established, categorical exclusions provide an efficient tool to complete the NEPA environmental review process for proposals that normally do not require more resource intensive [environmental assessments or environmental impact statements]. The use of categorical exclusions can reduce paperwork and delay, so that [environmental assessments or environmental impact statements] are targeted toward proposed actions that truly have the potential to cause significant environmental effects.''

DOE establishes and revises categorical exclusions pursuant to a rulemaking, such as this one, for defined classes of actions that the Department determines are supported by a record showing that the actions normally do not have significant environmental impacts, individually or cumulatively. To establish the record in this rulemaking, DOE evaluated environmental assessments prepared by DOE and by other Federal agencies, categorical exclusions established by DOE and by other Federal agencies, categorical exclusion determinations, technical reports, applicable requirements, industry practices, and other publicly available information. DOE summarized this information in the preamble to the notice of proposed rulemaking and in a Technical Support Document that was issued alongside the notice of proposed rulemaking (88 FR 78681; November 16, 3023). DOE provided the public with an opportunity to review and comment on DOE's proposed changes. DOE reviewed all comments received on the notice of proposed rulemaking, added information to the Technical Support Document, revised the categorical exclusions addressed in this rule (section III of this document), and prepared responses to public comments (section IV of this document).

In addition to developing a substantiation record to support the establishment or revision of a categorical exclusion, DOE also conducts a project-specific environmental review when determining whether one or more categorical exclusions applies to a proposed action. This entails evaluation of a proposed action against several requirements included in DOE's NEPA regulations. DOE must determine on a case-by-case basis, in accordance with 10 CFR 1021.410(b), that: (1) the proposed action fits within a categorical exclusion listed in appendix A or B to subpart D of part 1021, including (in the case of categorical exclusions listed in appendix B) the integral elements set forth in appendix B; (2) there are no extraordinary circumstances [2] related to the proposal that may affect the significance of the environmental impacts of the proposed action and require preparation of an environmental assessment or environmental impact statement, consistent with 40 CFR 1501.4(b)(1) and (b)(2); and (3) the proposal has not been improperly segmented [3] to meet the definition of a categorical exclusion, there are no connected or related actions with cumulatively significant impacts, and the proposed action is not precluded by 40 CFR 1506.1 or 10 CFR 1021.211 as an impermissible interim action.

As part of its determination of whether the proposed action fits within a categorical exclusion, DOE evaluates whether the proposed action satisfies conditions included within the text of the individual categorical exclusion. These conditions are discussed generally in this section and in more detail in section III of this document, which describes the changes that DOE is making in this final rule. For example, each of the categorical exclusions included in this rulemaking contains requirements that the proposed action incorporate applicable standards and follow best management practices. These standards and practices can vary by technology and location. Also, they change over time to reflect lessons learned and to address emerging technologies and practices. The Technical Support Document provides links to and summarizes information on some of the relevant standards and best management practices for the categorical exclusions that are included in this rulemaking. As another example, the changes included in this rulemaking specify conditions regarding siting proposed actions on previously disturbed or developed land. DOE defines previously disturbed or developed as ''land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available'' (10 CFR 1021.410(g)(1)). As DOE explained in a 2011 notice of proposed rulemaking, ''In DOE's experience, the potential for certain types of actions to have significant impacts on the human environment is generally avoided when that action takes place within a previously disturbed or developed area, *i.e.,* land that has been changed such that the former state of the area and its functioning ecological processes have been altered'' (76 FR 218; January 3, 2011). DOE's experience reviewing proposed projects across the United States since 2011 supports this same conclusion. As another example, in categorical exclusion B4.14 for certain energy storage systems, DOE allows siting within a small area contiguous to a previously disturbed or developed area. DOE also has more than a decade of experience implementing categorical exclusions that allow construction on land that is contiguous to previously disturbed or developed areas. The area of contiguous land affected would be small as discussed in 10 CFR 1021.410(g)(2). Any proposed use of contiguous land is subject to review against all the conditions relevant to the categorical exclusion, including the integral elements that require consideration of effects on threatened and endangered species and their habitat, historic properties, and other environmentally sensitive resources. The Technical Support Document includes summaries of environmental assessments for projects proposed on previously disturbed or developed land and on contiguous land.

As previously noted, DOE's NEPA regulations also include ''integral elements'' that apply to all categorical exclusions listed in appendix B to subpart D of part 1021 (appendix B, paragraphs (1) through (5)). Although the integral elements are not repeated for each categorical exclusion, they are part of the definition of each categorical exclusion listed in appendix B, and DOE must consider them as part of its determination whether the proposed action fits within a categorical exclusion (10 CFR 1021.410(b)(1)). Integral elements require that, to fit within a categorical exclusion, the proposed action must not threaten a violation of applicable environment, safety, and

[2] DOE defines extraordinary circumstances as ''unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources.'' (10 CFR 1021.410(b)(2))

[3] Segmentation can occur when a proposal is broken down into smaller parts in order to avoid the appearance of significance of the total action. (10 CFR 1021.410(b)(3))

health requirements; require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities; disturb hazardous substances, pollutants, or contaminants that preexist in the environment such that there would be uncontrolled or unpermitted releases; have the potential to cause significant impacts on environmentally sensitive resources; or involve governmentally designated noxious weeds or invasive species, unless certain conditions are met.[4] DOE defines ''environmentally sensitive resource'' as a resource that has typically been identified as needing protection through Executive order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian tribe. Environmentally sensitive resources include historic properties, threatened and endangered species or their habitat, floodplains, and wetlands, among others (10 CFR part 1021, subpart D, appendix B).

In determining whether a proposed action fits within a categorical exclusion, DOE may review information provided by an applicant, in its application and during follow-up requests; information from systems maintained by DOE, another Federal agency, or external party (*e.g.,* geographic information systems); information from site visits; information from discussions or consultations with Federal, state, local, or tribal governments; and information from other sources as needed. At any point during this review, DOE can determine that additional information is needed to make a categorical exclusion determination or decide to prepare an environmental assessment or environmental impact statement.

Only if DOE determines that all the applicable requirements and conditions of the categorical exclusion (including the integral elements, as applicable) have been met will it proceed to review the proposed action for extraordinary circumstances, and potentially proceed to issue a categorical exclusion determination. DOE regularly posts its categorical exclusion determinations at *www.energy.gov/nepa/doe-categorical-exclusion-cx-determinations.*

III. Changes Made in This Final Rule

A. Overview

In this final rule, DOE adds a categorical exclusion for certain energy storage systems and revises categorical exclusions for upgrading and rebuilding powerlines and for solar photovoltaic (PV) systems. DOE also makes conforming changes to other categorical exclusions, to a class of actions normally requiring an environmental assessment, and to a class of actions normally requiring an environmental impact statement (10 CFR part 1021, subpart D, appendices B, C, and D). DOE's process for developing the proposed changes is described in the notice of proposed rulemaking. The final changes, including differences from what was included in the notice of proposed rulemaking, are discussed in sections III.B through III.D of this final rule. These changes do not require any changes to or otherwise affect categorical exclusion determinations completed prior to the effective date of this final rule.

In addition, the notice of proposed rulemaking mistakenly included the text of paragraph (b) of categorical exclusion B5.1, Actions to conserve energy or water, and a new paragraph at B5.1(c). DOE did not intend to include that regulatory text in the notice of proposed rulemaking and has removed it from this final rule. DOE is not making changes to categorical exclusion B5.1 paragraph (b) or adding paragraph (c) at this time but may propose such changes in a future rulemaking.

B. Changes to Categorical Exclusion B4.13 for Upgrading and Rebuilding Existing Powerlines and Related Provisions

Powerlines are a critical component of the electric grid that move electricity from facilities that generate electricity to our communities, businesses, and factories. Upgrading and rebuilding[5] powerlines extends their useful life. Upgrades and rebuilds also can help reduce the need for new powerlines and can allow the replacement of components with newer, more efficient and resilient technology.

One example is reconductoring. Conductors are the wires that carry electricity. Most of the existing electric grid uses conductors with a steel core for strength surrounded by aluminum for the electrical current. More recently, conductor designs (referred to as advanced conductors) with composite or carbon cores, in place of steel, have come into use. Advanced conductors provide a variety of benefits including increased capacity. By increasing the capacity of powerlines it is possible to integrate renewable energy and other sources of electricity into the grid without the need to build new powerlines. Use of advanced conductors reduces line losses (*i.e.,* power lost during transmission and distribution of electricity) relative to traditional conductors, thereby improving efficiency.[6] Improvements to capacity and efficiency can help to ensure reliability, reduce costs to consumers, and reduce greenhouse gas (GHG) emissions associated with electricity generation, transmission, and distribution.

Upgrading and rebuilding powerlines also can avoid or reduce adverse environmental impacts, such as by relocating small[7] segments of the existing line to avoid a sensitive environmental resource. Upgrading and rebuilding powerlines also can enhance resilience. For example, an upgrade or rebuild project might convert segments of existing overhead powerlines to underground lines or replace old powerline poles to ensure continued safe operations.

Categorical exclusion B4.13 currently applies to upgrading or rebuilding ''approximately 20 miles in length or less'' of existing powerlines and allows for minor relocations of small segments of powerlines. With this final rule, DOE removes the mileage limitation, adds options for relocating within an existing right-of-way or within otherwise previously disturbed or developed lands, specifies conditions for widening a right-of-way under this categorical exclusion to comply with applicable electrical standards, and adds new conditions.

The potential significance of environmental impacts from upgrading or rebuilding powerlines is more related to local environmental conditions than to the length of the powerlines. For example, the presence of environmentally sensitive resources along the existing right-of-way is more pertinent than the length of the existing powerlines to be upgraded or rebuilt. DOE reviewed environmental assessments for powerline upgrades and rebuilds of various lengths. (*See*

[4] This is a summary description of the integral elements. *See* 10 CFR part 1021, subpart D, appendix B for the full text.

[5] A transmission line rebuild is typically a replacement of conductor and equipment without increasing capacity. Transmission line design and new materials and equipment would meet current standards and electrical clearance requirements. A transmission line upgrade is typically a replacement of conductor and equipment, or the addition of sensors or other advanced technology, to increase the line's capacity, such as by increasing the operating voltage or increasing the temperature rating.

[6] Grid Strategies, LLC, ''Advanced Conductors on Existing Transmission Corridors to Accelerate Low Cost Decarbonization,'' March 2022, available at: *https://acore.org/wp-content/uploads/2022/03/Advanced_Conductors_to_Accelerate_Grid_Decarbonization.pdf.*

[7] *See* 10 CFR 1021.410(g)(2) for a discussion of ''small'' in the context of determining the applicability of a DOE categorical exclusion.

Technical Support Document, p. 2.) The length of the projects is based on the endpoints, which are commonly substations (*e.g.,* rebuild the powerline from substation A to substation B). Environmental assessments and other information summarized in the Technical Support Document, as well as DOE's experience with powerline upgrades and rebuilds, do not indicate a particular mileage limit that would mark a threshold for significant impacts. DOE's experience comes from operating transmission systems for more than 50 years that currently include more than 25,000 miles of powerlines.

In this final rule, DOE clarifies options for relocating powerlines within the scope of categorical exclusion B4.13. Relocating segments of a powerline can improve resilience, avoid sensitive resources, or serve other purposes. (*See* Technical Support Document, p. 13, DOE/EA–1967 for an example of relocation to avoid a rock fall and landslide area, thereby moving the powerline to a more stable area.) The prior version of B4.13 encompassed ''minor relocations of small segments of the powerlines.'' This final rule makes the change included in the notice of proposed rulemaking to delete ''minor'' because it is unnecessary to qualify ''relocations of small segments'' with ''minor.'' Also, DOE is revising B4.13 to specify that small segments of powerlines may be relocated ''within an existing powerline right of way or within otherwise previously disturbed or developed lands.'' The prior version of B4.13 did not include this limitation. In addition, DOE is making three clarifying changes in response to public comment on the notice of proposed rulemaking (discussed in section IV.B of this document). In this final rule, DOE adds ''powerline'' before ''right-of-way'' such that B4.13 now specifies that the categorical exclusion applies to projects ''within an existing powerline right-of way.'' The final rule also specifies that upgrading or rebuilding powerlines might include widening of an existing right-of-way to comply with electrical standards (*e.g.,* increasing voltage may require a wider clearance to either side of the powerline to avoid fires or other accidents).

Commenters sought clarification regarding whether and how B4.13 includes widening of a right-of-way. A right-of-way may need to be widened to meet electrical standards due to a variety of factors associated with powerline upgrades and rebuilds such as changes in voltage, type of conductor (wires carrying the electrical current), and span length (distance between poles or towers). This widening keeps the area around a powerline clear of vegetation and other potential hazards to reduce risk of fires, power outages, and other accidents. (*See* Technical Support Document, p. 36.) Widening a right-of-way was part of the scope of the version of categorical exclusion B4.13 in effect prior to this final rule. (*See,* Technical Support Document, p. 18, Categorical Exclusion Determination for the Palisades-Swan Valley Transmission Line Rebuild for a project requiring widening in some areas of the rebuild project.) In this final rule, DOE has added to categorical exclusion B4.13 that, ''Upgrading or rebuilding existing electric powerlines also may involve widening an existing powerline right-of-way to meet current electrical standards if the widening remains within previously disturbed or developed lands and only extends into a small area beyond such lands as needed to comply with applicable electrical standards.''

Finally, DOE clarifies that the ''categorical exclusion does not apply to underwater powerlines.'' These changes in the final rule better state DOE's intention for the changes included in the notice of proposed rulemaking.

The revisions to categorical exclusion B4.13 included in this final rule provide additional flexibility for powerline upgrade and rebuild projects consistent with the requirements for a categorical exclusion. While DOE has removed the mileage limit, DOE will continue to apply the conditions, including integral elements, described in section II of this document when deciding whether a particular proposed action qualifies for categorical exclusion B4.13. This review includes consideration of extraordinary circumstances and integral elements, such as the potential for significant impacts on environmentally sensitive resources, amongst other considerations. At any point during the review of a proposed action, DOE may determine that it must prepare an environmental assessment or environmental impact statement, rather than apply categorical exclusion B4.13 to the proposed action. In other words, inclusion of the revised categorical exclusion B4.13 in DOE's regulations does not bring all powerline upgrade or rebuild projects within the scope of the revised categorical exclusion.

DOE's review of environmental assessments and other information in preparing this rulemaking revealed that proposals to upgrade or rebuild powerlines normally incorporate practices that avoid or reduce potential land disturbance, erosion, disturbance of environmentally sensitive resources, and take other measures to protect the environment in the project area. To account for this, DOE has added a condition requiring that, to qualify for the categorical exclusion, the proposed project be in accordance with applicable requirements and incorporate appropriate design and construction standards, control technologies, and best management practices. This condition, together with the integral elements and consideration of extraordinary circumstances (described in section II of this document), will help to ensure that a proposed upgrade or rebuild of an existing powerline would be sited and designed appropriately.

DOE also is making a conforming change to its class of action, C4, that normally requires an environmental assessment for upgrading and rebuilding existing powerlines more than approximately 20 miles in length. That conforming change removes the reference to powerline length and, instead, clarifies that an environmental assessment normally would be prepared when the proposed action does not qualify for categorical exclusion B4.13.

C. New Categorical Exclusion B4.14 for Certain Energy Storage Systems and Related Provisions

For purposes of this rulemaking, an energy storage system is a device or group of devices assembled together, capable of storing energy in order to supply electrical energy at a later time. Energy storage can be used to integrate renewable energy (such as wind and solar energy) into the electric grid, help generation facilities operate at optimal levels to meet customer demand, and reduce the use of less efficient generating units that would otherwise run only at peak times. An energy storage system also provides protection from power interruptions and serves as reserve power in case of power outages or fluctuations. The most familiar type of energy storage system is a group of electrochemical batteries and associated equipment referred to as a battery energy storage system. Another form uses a flywheel, which converts excess electricity from the grid to kinetic energy in a fast-spinning rotor. As needed, the stored energy is converted back to electricity and returned to the grid or put to other use.

DOE and others have been developing large-scale energy storage systems for decades. Deployment of these systems has increased over the past decade. Today, energy storage systems support the operation of electric transmission facilities, microgrids, energy generation

facilities, and commercial and industrial facilities.[8]

In this rule, DOE establishes a new categorical exclusion, B4.14, for the construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small area contiguous to a previously disturbed or developed area. Section II of this document includes discussion of DOE's definition of previously disturbed or developed area and DOE's experience referring to contiguous areas in its categorical exclusions. The total acreage used for an energy storage system will be defined by the needs of the proposed project. Based on past experience, DOE anticipates that energy storage systems typically require 15 acres or less and would be sited close to energy, transmission, or industrial facilities. (*See* Technical Support Document, p. 41.) Consistent with this expectation and because contiguous land might be undisturbed and undeveloped, DOE proposed that siting outside a previously disturbed or developed area be limited to a ''small'' contiguous area. DOE would determine whether a contiguous area is small, based on the criteria discussed in 10 CFR 1021.410(g)(2), ''in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, DOE would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action.'' In addition, the notice of proposed rulemaking included conditions that the proposed project be in accordance with applicable requirements (such as land use[9] and zoning requirements) and incorporate appropriate design and construction standards, control technologies, and best management practices. For this final rule, DOE includes those conditions and, in response to public comment, adds a condition that the proposed project also incorporate appropriate ''safety standards (including the current National Fire Protection Association 855, Standard for the Installation of Stationary Energy Storage Systems).'' (*See* section IV.C of this document and Technical Support Document, p. 56.) In addition, DOE would ensure that the proposed project satisfies the integral elements and review the proposal for extraordinary circumstances, as described in section II of this document. This review ensures that DOE considers the potential environmental effects of a proposed energy storage system prior to determining whether categorical exclusion B4.14 applies. In proposing this categorical exclusion, DOE evaluated environmental assessments and findings of no significant impact prepared by DOE and other Federal agencies, categorical exclusion determinations made by DOE, and other information. In response to public comment on the notice of proposed rulemaking, DOE also reviewed additional information on accidents, fires, and other safety considerations, including guidance to improve safety and minimize the risk of fires. (*See* Technical Support Document, p. 41.)

For consistency with the new categorical exclusion B4.14, DOE made changes to three related categorical exclusions. Based on its past experience with energy storage systems, in 2011, DOE added ''power storage (such as flywheels and batteries, generally less than 10 MW)'' as an example of conservation actions in categorical exclusion B5.1, Actions to conserve energy or water. DOE also added ''load shaping projects (such as the installation and use of flywheels and battery arrays)'' to the list of example actions in categorical exclusion B4.6, Additions and modifications to transmission facilities. In this final rule, DOE has deleted ''power storage (such as flywheels and batteries, generally less than 10 MW)'' from the examples in B5.1. DOE does not include the 10 MW (megawatt) limit in new categorical exclusion B4.14 because capacity, whether denominated in megawatts as a measure of instantaneous output or megawatt-hours as a measure of the total amount of energy capable of being stored, is not a reliable indicator of potential environmental impacts. Including a capacity limit within the categorical exclusion could mean that technology improvements resulting in more power storage within the same physical footprint may not qualify for the categorical exclusion even though the potential environmental impacts have not changed. DOE also deleted the example of flywheels and battery arrays from B4.6 but retained the reference to ''load shaping projects'' and added ''reducing energy use during periods of peak demand'' as a new example. DOE added a note to B4.6 that energy storage systems are addressed in B4.14. DOE also added this note to categorical exclusion B4.4, Power marketing services and activities, which was established in 1992 and lists storage and load shaping as examples. These conforming changes will avoid confusion over which categorical exclusion and associated conditions apply to energy storage systems.

D. Changes to Categorical Exclusion B5.16 for Solar Photovoltaic Systems and Related Provisions

Solar PV technology converts sunlight into electrical energy. Individual PV cells, which may produce only 1 or 2 watts of electricity, are connected together to form modules (otherwise known as panels). The modules are combined with other components (*e.g.,* to convert electricity from direct current (DC) to alternating current (AC)) to create a solar PV system. These systems can be located in a wide variety of locations and sized for an individual home or business up to utility-scale, generating hundreds of megawatts.[10]

Solar PV systems do not release GHGs while operating, though, as with any industrial activity, manufacturing and installing solar PV systems can release GHGs. The U.S. Energy Information Administration reports that, ''Studies conducted by a number of organizations and researchers have concluded that PV systems can produce the equivalent amount of energy that was used to manufacture the systems within 1 to 4 years. Most PV systems have operating lives of up to 30 years or more.'' [11] Thus, on a life-cycle basis, solar PV systems provide many years of electricity generation without GHG emissions.

DOE established categorical exclusion B5.16, Solar photovoltaic systems, in 2011 to include the installation,

[8] The U.S. Energy Information Administration published information about large-scale energy storage for electricity generation (*www.eia.gov/energyexplained/electricity/energy-storage-for-electricity-generation.php*) and market trends for battery storage (*www.eia.gov/analysis/studies/electricity/batterystorage/*). Also, DOE published an energy storage market report in 2020 (*www.energy.gov/sites/prod/files/2020/12/f81/Energy%20Storage%20Market%20Report%202020_0.pdf*).

[9] On DOE sites and in other locations, land use planning may be documented in a site land use plan, or be subject to siting processes or other comparable systems. Use of land use and zoning requirements is inclusive of these processes.

[10] DOE's Solar Energy Technologies Office has a website that describes solar PV technologies (*www.energy.gov/eere/solar/solar-photovoltaic-technology-basics*).

[11] U.S. Energy Information Administration ''Solar explained'' available at *www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php;* retrieved March 21, 2024.

modification, operation, and removal of solar PV systems located on a building or other structure or, if located on land, within a previously disturbed or developed area generally comprising less than 10 acres. In this final rule, DOE changes ''removal'' of a solar PV system to ''decommissioning.'' Decommissioning encompasses recycling and other types of actions that occur when a facility is taken out of service. DOE also removes the acreage limitation for proposed projects. Based on DOE's experience, acreage is not a reliable indicator of potential environmental impacts. As discussed in section II of this document, the potential significance of environmental impacts is more related to local environmental conditions than to acreage. DOE's review of various environmental assessments indicate that an acreage limit would not serve as an appropriate indicator of significant impacts. This conclusion is illustrated, for example, by environmental assessments for solar PV projects larger than 1,000 acres on previously disturbed or developed land that would not result in significant environmental impacts. (*See* Technical Support Document, p. 74.)

The nature and significance of environmental impacts is determined by a proposed project's proximity to and potential effects on environmentally sensitive resources and other conditions that are accounted for in categorical exclusion B5.16, including in the integral elements and in extraordinary circumstances, as described in section II of this document. DOE will consider the integral elements and the presence of any extraordinary circumstances when reviewing a proposed solar PV project's eligibility for this categorical exclusion. This review would ensure that DOE considers potential environmental impacts of a proposed solar PV system prior to determining whether categorical exclusion B5.16 applies. For example, in preparing the Technical Support Document, DOE observed that some large solar PV systems have been proposed for agricultural land. While integrating solar PV systems with farms may provide a variety of economic and environmental benefits to farmers,[12] doing so also raises questions about land use and the protection of important farmlands. One of the integral elements requires that the project must not be one that would have the potential to cause significant impacts on environmentally sensitive resources, including on prime or unique farmland, or other farmland of statewide or local importance (10 CFR part 1021, appendix B, paragraph (4)(v)). The requirement to consider extraordinary circumstances also will help ensure that DOE considers potential impacts on farmland and surrounding communities when deciding whether to apply the categorical exclusion.

Public comments raised concern about impacts of solar PV systems on wildlife and habitat. (*See* section IV.D.2 of this document.) In response to those concerns and to clarify DOE's intent, DOE has added a condition that the proposed project be ''consistent with applicable plans for the management of wildlife and habitat, including plans to maintain habitat connectivity.'' Further, one of the integral elements applicable to categorical exclusion B5.16 requires that the project must not be one that would have the potential to cause significant impacts on environmentally sensitive resources, including threatened or endangered species or their habitat (10 CFR part 1021, appendix B, paragraph (4)(ii)). The conditions added to B5.16 better ensure that solar PV systems are installed and operated in a manner that is protective of all species and their habitat.

DOE also has made conforming changes in appendix C, Classes of Actions that Normally Require EAs but not Necessarily EISs, and in appendix D, Classes of Actions that Normally Require EISs. These appendices each include a class of actions, C7 and D7, that associates the level of NEPA review for interconnection requests and power acquisition with the power output of the electric generation resource. In 2011, DOE proposed for C7 that an environmental assessment normally would be required for the interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts ''and that would not be eligible for categorical exclusion under 10 CFR part 1021'' (76 FR 233; January 3, 2011). DOE did not receive public comment on the proposed addition regarding categorical exclusion eligibility. In the 2011 final rule, DOE did not include the condition regarding eligibility for a categorical exclusion. DOE explained this decision by stating ''to improve clarity, DOE is removing the previously proposed condition that the new generation resource 'would not be eligible for categorical exclusion under this part.' DOE normally would not prepare an environmental assessment when a categorical exclusion would apply. Therefore, the condition is unnecessary and potentially confusing'' (76 FR 63784; October 13, 2011). DOE's practice continues to be that it ''normally would not prepare an environmental assessment when a categorical exclusion would apply.'' However, in light of the change to B5.16—which removes the acreage restriction for solar PV systems, thereby allowing the categorical exclusion to apply to systems generating up to hundreds of megawatts—DOE believes that including a condition in C7 is appropriate and helpful. It will clarify DOE's practice that an environmental assessment is normally required ''unless the generation resource is eligible for a categorical exclusion.'' DOE did not propose a similar condition in 2011 for D7, which applies to new generation resources greater than 50 average megawatts. DOE has added the same condition to both C7 and D7 for the reasons previously described. For D7, DOE also specifies that an environmental impact statement is not required when an environmental assessment was prepared that resulted in a finding of no significant impact. This is standard practice, and DOE added this text only to avoid any potential confusion.

IV. Comments Received and DOE's Responses

DOE published a Request for Information (RFI) in the **Federal Register** on November 15, 2022 (87 FR 68385), to help DOE identify activities associated with clean energy projects and clean energy infrastructure that should be considered for new or revised categorical exclusions. Thirty-three individuals or entities responded to the Request for Information.[13] DOE responded to those comments relevant to this rulemaking in the notice of proposed rulemaking and does not repeat those responses here.

The notice of proposed rulemaking (88 FR 78681; November 16, 3023) announced a public review period ending on January 2, 2024. In response to public requests, DOE subsequently extended the public review period through January 16, 2024 (88 FR 88854; December 26, 2023). DOE received approximately 115 comment submittals from individuals, industry trade groups, environmental and community organizations, state, Tribal, and local governments, and other entities. DOE has considered the comments on the proposed rulemaking received during the public comment period as well as all late comments. DOE has incorporated

[12] U.S. Energy Information Administration ''Solar explained'' available at *www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php;* retrieved March 21, 2024.

[13] The Request for Information and public comments are available at *www.regulations.gov/docket/DOE-HQ-2023-0002/comments.*

some revisions suggested in these comments into the final rule. The following discussion describes the comments received, provides DOE's response to the comments, and describes changes to the rule resulting from public comments. Section IV.A of this document includes comment summaries and responses that address DOE's proposed revisions collectively or address related topics such as NEPA implementation. Sections IV.B, IV.C, and IV.D include comment summaries and DOE's responses regarding powerline upgrades and rebuilds, energy storage systems, and solar photovoltaic systems, respectively.

A. General Comments on Proposed Amendments

DOE received comments that expressed support for the rulemaking, as well as comments in opposition to the proposed rulemaking. DOE appreciates the commenters adding their perspectives to the rulemaking process. DOE responds to those comments that included detailed feedback on the proposed rulemaking.

1. Comments Supporting An Expansion of the Rulemaking

Some commenters requested that DOE expand this rulemaking to add additional categorical exclusions for clean energy technologies, electricity transmission, and related programs. These comments include suggestions to add categorical exclusions for carbon capture, utilization, and storage, including the installation of direct air capture technologies; geothermal exploration, permitting, and development; hydrogen pipelines, production, and combustion; adding capacity and making improvements to existing water power facilities; energy generation projects that qualify for investment or production tax credits under the Inflation Reduction Act; small-scale, renewable natural gas projects; small-scale nuclear power reactors (generally less than 350 megawatts); wind power; and other clean energy projects. Comments also suggested that DOE add categorical exclusions for interstate and interregional transmission lines; high-voltage direct current transmission lines; and microgrids. In addition, comments suggested that DOE add new categorical exclusions for vegetation management and expand the list of examples included in DOE's existing categorical exclusion for actions to conserve energy or water (B5.1).

DOE considered each of these comments and decided not to modify this rule to include these suggested new or revised categorical exclusions. DOE currently lacks sufficient technical support to determine whether the suggested activities normally do not result in significant environmental impact. Also, DOE noted that several of the suggestions overlap with DOE's existing categorical exclusions. For example, DOE has applied its existing categorical exclusions to microgrid projects and vegetation management, and DOE's existing categorical exclusions for powerline projects apply to high-voltage direct current lines and alternating current lines. DOE would need to evaluate whether changes to the scope of its existing categorical exclusions would be appropriate. DOE will retain the comments for further consideration in any future rulemaking regarding DOE's NEPA procedures.

2. Comments Regarding NEPA and Other Environmental Requirements

Commenters noted that implementation of DOE's proposed changes may be affected by the pending Phase 2 revisions of the CEQ NEPA Implementing Regulations.[14] Some commenters recommended coordination with CEQ on this rulemaking to ensure consistency, while other commenters requested that this rulemaking not proceed until CEQ has promulgated its final rule. DOE consulted with CEQ while preparing this rule consistent with consultation requirements in the CEQ regulations (40 CFR 1507.3(b). This consultation included consideration of whether DOE's changes are consistent with the CEQ regulations.

Other commenters stated that clear environmental regulations and guidelines for the different technologies are still needed and therefore this rulemaking is premature. DOE recognizes that environmental requirements and practices will continue to change as technology advances and awareness increases about potential impacts and ways to avoid or lessen those impacts. DOE's categorical exclusions, including the ones addressed in this rulemaking, require projects to incorporate the requirements and best practices applicable at the time that DOE is considering whether to apply the categorical exclusion to a particular proposed action. In addition, DOE regularly reviews its categorical exclusions to determine whether they continue to be appropriate in light of new information and requirements.

Commenters recommended that DOE evaluate whether the proposed rulemaking could affect coastal uses or resources in states or territories with a Coastal Zone Management Program pursuant to the Coastal Zone Management Act. Commenters recommended that DOE adopt internal procedures to ensure compliance with the Coastal Zone Management Act regardless of the level of NEPA review. DOE recognizes that compliance with the Coastal Zone Management Act is an independent responsibility regardless of the level of NEPA review. DOE will continue its practice of coordinating with the relevant state agency to ensure compliance with the Coastal Zone Management Act, when applicable.

3. Comments Regarding Public Engagement

Some commenters expressed concern that the public comment periods on the Request for Information and notice of proposed rulemaking overlapped with the winter holiday season. DOE appreciates that there are competing schedule demands and that these may fall hardest on small organizations and community members. DOE provided an initial 45-day comment period for the Request for Information and reopened that public comment period for an additional 30 days, and DOE extended the 45-day comment period for the notice of proposed rulemaking by 14 days to provide interested individuals and organizations additional time to provide comments. DOE received comments from a broad range of organizations and individuals who raised many substantive issues.

Commenters emphasized the importance of public involvement in decision-making, expressing that under NEPA, affected communities must be able to voice their concerns about projects, especially on public lands. Some commenters stated that creating a categorical exclusion removes safeguards for communities and investigation of adverse impacts, including cumulative impacts. Other commenters stated that the applicability criteria of the proposed rule would require substantive review by DOE to identify a project's eligibility for a categorical exclusion followed by DOE's consideration of the individual conditions in the categorical exclusion, which would deprive DOE of anticipated efficiencies at the expense of public participation. Commenters requested that DOE provide public comment opportunities for categorical exclusion determinations. While DOE may choose to provide opportunities for public comment at any time, DOE's normal practice is not to request public comment before making a categorical exclusion determination. This is

[14] *See* CEQ's notice of proposed rulemaking published on July 31, 2023 (88 FR 49924).

consistent with CEQ and DOE NEPA regulations.

Commenters asked DOE to post categorical exclusion determinations (including sufficient information to demonstrate proper use) that rely on the proposed categorical exclusions on the DOE website in a timely fashion for public review. DOE's practice is to post categorical exclusion determinations for actions listed in appendix B of its NEPA regulations, which includes all of the categorical exclusions included in this rulemaking, on the DOE website generally within two weeks of the determination (10 CFR 1021.410(e) and *www.energy.gov/nepa/doe-categorical-exclusion-cx-determinations*). A categorical exclusion determination includes a description of the proposed action, the categorical exclusion(s) applied, and confirmation that conditions associated with the categorical exclusion(s) were satisfied.

4. Comments Regarding Tribal Resources

A federally recognized Indian Tribe expressed concern about the potential impacts of DOE's proposed rule on its treaty reserved rights and cultural resources and practices. As explained in section II of this document, DOE conducts an environmental review at both the stage of establishing or revising a categorical exclusion and at the stage of determining whether one or more categorical exclusions applies to a proposed action. This final rule establishes and revises categorical exclusions in DOE's NEPA procedures; this final rule will not result in environmental impacts and is not a proposal to apply any categorical exclusion to particular proposed actions. When determining whether one or more categorical exclusions applies to a proposed action, DOE conducts a project-specific environmental review. This review includes consideration of extraordinary circumstances and integral elements, including the potential for significant impacts on environmentally sensitive resources, amongst other considerations. ''An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian Tribe'' (10 CFR part 1021, appendix B, paragraph (4)). Environmentally sensitive resources include ''(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, Federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places'', among others (10 CFR part 1021, subpart D, appendix B).

B. Comments Regarding Upgrading and Rebuilding Powerlines

1. Comments Requesting Clarifications Regarding Categorical Exclusion B4.13

Commenters asked DOE to clarify that categorical exclusion B4.13 would apply to projects that receive Federal loans or grants and not only to transmission lines that impact Federal land. Other commenters requested clarification that categorical exclusion B4.13 covers all types of powerlines, including powerlines that feed into a Federal electric transmission system. DOE clarifies here that categorical exclusion B4.13 could apply to proposals for DOE financial assistance, including loans and grants, as well as any other DOE action subject to NEPA, so long as the proposed action satisfies all conditions of the categorical exclusion.

Commenters asked DOE to clarify whether the scope of categorical exclusion B4.13 includes improvements to existing maintenance and repair access roads that are not used for powerline upgrades or rebuilds. Commenters noted that existing access roads may not be suitable for the types of heavy construction equipment associated with rebuilding powerlines and that use of large construction equipment for rebuild projects may require improving existing access roads, such as widening roads, clearing surrounding trees, and adding gravel for stability to allow work under varying weather conditions. DOE responds that categorical exclusion B4.13 could include improvements to, and reconstruction of, access roads, laydown areas, and related work that are part of the proposed action and would take place within the existing right-of-way or relocation area. DOE also could consider whether categorical exclusion B1.13, Pathways, short access roads, and rail lines, would be appropriate for certain needed access roads. Consistent with DOE's NEPA regulations, the full scope of the proposed action must satisfy all conditions of DOE's categorical exclusions, including the integral elements (10 CFR part 1021, subpart D, appendix B) and consideration of extraordinary circumstances, segmentation, and cumulative impacts (10 CFR 1021.410(b)). DOE also notes that where access roads are not suitable for heavy equipment, replacement poles and other equipment sometimes are delivered to the project site by helicopter.

Commenters requested that categorical exclusion B4.13 include use of existing transportation rights-of-way, including those owned by railroads and highways managed on the public's behalf. DOE recognizes that highway and railroad rights-of-way may be appropriate locations for new powerlines. However, different criteria were used to establish highway and railroad rights-of-way than would be used for new powerlines, and DOE does not have sufficient information at this time to support a categorical exclusion for such projects. DOE will retain the comment for potential consideration in a future NEPA rulemaking. Commenters also requested that DOE designate existing transportation rights-of-way as National Interest Electric Transmission Corridors (NIETCs) pursuant to Section 216 of the Federal Power Act. DOE appreciates this suggestion, but designating NIETCs is beyond the scope of this rulemaking.

Commenters asked that DOE ensure that use of categorical exclusion B4.13 be as transparent and clear as possible. Commenters requested that DOE clarify definitions of the applicable conditions, parameter language, and extraordinary circumstances that would determine applicability of the categorical exclusion. DOE responds that to provide transparency in the use of categorical exclusions, DOE began posting categorical exclusion determinations online in 2009. DOE will continue to regularly post categorical exclusion determinations for B4.13 and other categorical exclusions listed in appendix B of DOE's NEPA regulations (10 CFR part 1021, subpart D) at *www.energy.gov/nepa/doe-categorical-exclusion-cx-determinations.* DOE has added discussion of the conditions that apply to categorical exclusions in sections II, III, and IV of this final rule.

The proposed changes to categorical exclusion B4.13 included relocation of small segments of powerlines within an existing right-of-way or within otherwise previously disturbed or developed lands. Commenters requested that DOE narrow the categorical exclusion, such as by including only actions within the powerline's existing right-of-way, within a minor widening of the existing right-of-way within otherwise previously disturbed or developed lands, or within another existing utility or electric power transmission corridor or right-of-way where active utilities and currently used roads are readily available. DOE appreciates these suggestions but finds that they would limit flexibility to

relocate small sections of powerlines to previously disturbed or developed lands that are outside an existing powerline right-of-way and to widen a right-of-way as needed to meet electrical standards, including when the widening extends to a small area beyond previously disturbed or developed lands. Such relocation consistent with the conditions placed on the use of categorical exclusion B4.13 normally would not pose a potential for significant environmental impacts. (*See* Technical Support Document, p. 2.) Moreover, such relocation may allow improvements to environmental protection by moving small sections of a powerline around a sensitive resource.

Commenters requested clarification on whether the limitation that small segments of powerlines may be relocated within an existing right-of-way or within previously disturbed land encompasses rights-of-way other than that of the powerline being relocated. DOE intends this language to encompass other powerline rights-of-way so long as safety, reliability and other conditions are met. To help clarify this point, DOE added ''powerline'' so that the wording in this final rule is ''within an existing powerline right-of-way.'' Commenters asked that DOE clarify what is considered to be a right-of-way and pointed, as an example, to the Department of Transportation's definition of existing right-of-way for highway projects (23 CFR 771.117(c)(22)). The meaning of right-of-way varies by context. The right-of-way for a powerline may be defined through an agreement, such as an easement, with a private landowner, permit from a land management agency, or other mechanism conveying rights to construct and maintain the powerline and associated facilities. For purposes of this rulemaking, DOE is referring to the cleared right-of-way, *i.e.,* the right-of-way where vegetation management and other practices are necessary for safety reasons (*e.g.,* to avoid the potential to cause fire). The width of that cleared right-of-way is based on design criteria (*e.g.,* line voltage). (*See* Technical Support Document, p. 36.)

Commenters explained that when upgrading powerlines to a higher voltage, current electrical standards may require wider rights-of-way than were established when powerlines were built. Commenters recommended that categorical exclusion B4.13 include expansion of an existing right-of-way to meet current electrical standards and that DOE revise the categorical exclusion to state that small segments of powerlines may be relocated ''within or adjacent to'' an existing right-of-way. Commenters also expressed concern about the risk of fire being started by overhead powerlines. DOE includes in this final rule that categorical exclusion B4.13 encompasses widening of the cleared right-of-way to meet current electrical standards. As discussed in section III of this document, the categorical exclusion may only apply when such widening ''remains within previously disturbed or developed lands and only extends into a small area beyond such lands as needed to comply with applicable electrical standards.'' There are existing rights-of-way that are not bounded entirely by previously disturbed or developed lands. In such locations, it may be necessary to extend part of the right-of-way into undisturbed land in order to meet the applicable electrical code for the entire length of the powerline upgrade or rebuild project. It is common for the widening to be only about 40 feet or less (*i.e.,* 20 feet or less on each side of the right-of-way). Before deciding whether to apply categorical exclusion B4.13 for such widening, DOE would review the proposed action against all the conditions applicable to categorical exclusion B4.13, including integral elements and the consideration of extraordinary circumstances.

2. Comments Regarding Effects on Wildlife and Habitat

Some commenters stated that powerline projects may fragment or reduce habitat or otherwise adversely affect wildlife by removing trees, widening the right-of-way, creating greater barriers to animal movement, and in other ways. Commenters stated that some of the environmental assessments included in DOE's Technical Support Document involved projects that would remove hundreds of trees. These commenters suggested that DOE had overlooked the potential for significant environmental impacts from these effects on habitat and that an environmental assessment may be better able to account for these impacts. They referred to research linking habitat loss with declines in wildlife populations and to the deaths of birds by collision with powerlines and from electrocution.

Commenters recommended that relocating powerlines avoid bird travel routes and consider alternative designs and structures, visual cues, and other methods to avoid or reduce impacts to birds and other species and their habitats. DOE responds that these are common considerations in planning upgrades and rebuilds of existing powerlines, including relocating or widening rights-of way. DOE's integral elements require that the project must not be one that would have the potential to cause significant impacts on environmentally sensitive resources, including threatened or endangered species or their habitat or species protected under the Migratory Bird Treaty Act (10 CFR part 1021, appendix B, paragraph (4)(ii)). Categorical exclusion B4.13 also requires projects to incorporate appropriate design and construction standards, control technologies, and best management practices, which may include measures to reduce effects on birds. In addition, applicants must comply with all applicable state and Federal laws, including applicable requirements imposed by state wildlife agencies or Federal land management agencies, including to identify potential high-risk bird strike areas, identify shifts in bird flight patterns, and develop marking plans and design features to reduce associated risks. These requirements ensure that projects covered by categorical exclusion B4.13 will not have significant effects on birds.

Other commenters stated that managed lands in forested areas, including transmission line corridors, can provide early successional habitat for native bees and other pollinators, substantially improving species richness and abundance of bees relative to adjacent forest areas. Commenters also stated that transmission corridors can benefit some species of birds, deer, and plants. The ability of these corridors to provide areas for food, nesting, and shelter are enhanced with habitat management practices (such as leaving habitat trees, planting low-growing native vegetation, and removing invasive plant species), which typically accompany transmission development.

DOE recognizes that a combination of adverse and beneficial impacts can accompany upgrades and rebuilds of existing electric powerlines. As described in section II of this document, the terms of categorical exclusion B4.13, including the integral elements, ensure that projects would not have a significant effect on species and habitat. If a project does not satisfy these elements, or extraordinary circumstances exist that make significant effects likely, DOE must prepare an environmental assessment or environmental impact statement, rather than apply a categorical exclusion.

3. Comments Regarding Sulfur Hexafluoride

Commenters stated that transmission lines leak sulfur hexafluoride, a greenhouse gas 26,000 more times potent than carbon dioxide. For this final rule, DOE supplemented the

Technical Support Document with information regarding sulfur hexafluoride, a potent greenhouse gas that has a high global warming potential. Sulfur hexafluoride is used in gas-insulated switchgears, breakers, and lines in the transmission sector. Transmission operators follow manufacturer guidelines, state requirements, and federal handling and reporting requirements, including the Greenhouse Gas Reporting Program under the Clean Air Act, as applicable, for use and handling of sulfur hexafluoride. Improved engineering and equipment design, advances in leak detection and repair, and alternative insulating gases with lower global warming potentials have resulted in the reduction of sulfur hexafluoride emissions from the electric power sector over time. Further, upgrading and rebuilding powerlines with newer equipment that requires less or no sulfur hexafluoride or has reduced leakage rates and improved monitoring further contribute to a reduction in sulfur hexafluoride emissions across the electric transmission sector. (*See* Technical Support Document, p. 40.)

4. Comments Regarding Endangered Species Act Section 7 Consultations

Commenters stated the DOE could encourage programmatic Endangered Species Act Section 7 consultations for specific regions and cited the programmatic biological assessment prepared by DOE's Western Area Power Administration for wind energy development and interconnection requests in the Upper Great Plains Region as a relevant example. DOE responds that the referenced programmatic biological assessment analyzed information and identified a list of conservation measures for 28 species of concern. Western Area Power Administration and the U.S. Fish and Wildlife Service developed a review and approval system based on consistency forms and checklists of conservation measures for each species. If a wind project developer commits to implement the applicable conservation measures, Western Area Power Administration's consultation responsibilities under Section 7 of the Endangered Species Act are concluded when Western Area Power Administration and the U.S. Fish and Wildlife Service review and sign the consistency forms; no separate Section 7 consultation is required unless the particular project involves a listed species, critical habitat, or an effect that was not addressed in the programmatic biological assessment. DOE supports using programmatic consultations and similar approaches to improve the efficiency of implementing the Endangered Species Act, the National Historic Preservation Act, and other laws. These requirements are separate from the requirements of NEPA, and reliance on a categorical exclusion for NEPA compliance does not affect DOE's obligations under other laws.

5. Comments Regarding Effects on Communities

Commenters stated that, by affecting land previously unused as transmission line right-of-way, rerouting transmission lines may affect local land use, affect people's relation with their environment, and impact neighborhoods and communities. DOE recognizes that these are considerations in developing a proposal to reroute powerlines and relies on the terms of categorical exclusion B4.13, including the integral elements, and the consideration of extraordinary circumstances to ensure that projects would not have a significant effect on communities.

6. Comments Regarding Technical Support for Revisions to Categorical Exclusion B4.13

Commenters stated that the environmental assessments included in the Technical Support Document for the notice of proposed rulemaking were prepared for projects in the Bonneville Power Administration and Western Are Power Administration systems. However, the categorical exclusion could be applied to projects in any region of the United States. In response to this comment, DOE reviewed seven additional environmental assessments and findings of no significant impact prepared by other Federal agencies for powerline upgrade or rebuild projects in Kentucky, Minnesota, Mississippi, Missouri, North Dakota, and Wisconsin. These NEPA documents support DOE's determination that powerline upgrade and rebuild projects normally do not pose a potential for significant environmental impacts. DOE added these seven environmental assessments to the Technical Support Document for this final rule.

Commenters also pointed to the environmental assessment for Midway Benton No. 1 Rebuild Project as an example of where project changes were needed to lower potential environmental impacts. DOE included a wide and diverse range of environmental assessments in the Technical Support Document. These environmental assessments and findings of no significant impact demonstrate that, in the aggregate, these types of projects normally do not pose a potential for significant environmental impact and, thus, are appropriate for a categorical exclusion. DOE stated in the Technical Support Document for the notice of proposed rulemaking that, ''Inclusion of these environmental assessments does not mean that the proposed projects would have qualified for any categorical exclusion as proposed in this rulemaking. That determination would be made on a case-by-case basis.'' (*See* Technical Support Document, p. 1.) DOE did not intend to indicate that it had determined that a categorical exclusion would have been appropriate for that project. Rather, DOE found that consideration of the environmental assessment for the Midway Benton No. 1 Rebuild Project, along with other information in the Technical Support Document, helped DOE understand whether the proposed revisions to categorical exclusion B4.13 are appropriate. DOE will continue to consider each proposed project on its own merits in deciding whether to apply a categorical exclusion or prepare an environmental assessment or environmental impact statement.

7. Comments Regarding Underwater Powerlines

Commenters stated that the scope of categorical exclusion B4.13 should not include upgrading and rebuilding existing offshore, underwater powerlines. These commenters referred to potential adverse environmental impacts resulting from the propellers on boats used during upgrade and rebuild projects, trenching, turbidity, boulder relocation, and electric fields. DOE did not intend that categorical exclusion B4.13 would include underwater powerlines. DOE has added a statement in this final rule specifying that the categorical exclusion does not apply to underwater powerlines.

8. Comments Regarding NEPA Implementation

One commenter recommended that DOE consider NEPA efficiencies, such as utilizing programmatic regional reviews for transmission projects. The commenter also recommended that DOE streamline NEPA processes to support designation of transmission corridors and financial assistance for transmission projects. DOE supports taking steps to improve the efficiency of NEPA and other environmental review requirements, without undermining the purposes of these processes, to support timely and effective decision making.

Some commenters stated that a categorical exclusion is inappropriate for transmission line upgrade or rebuild

projects. DOE responds that these comments express a misunderstanding of the purpose of categorical exclusions and how categorical exclusions are applied to particular proposed actions. For example, some commenters stated that a categorical exclusion determination does not require any environmental documentation beyond that a proposed action belongs in a specific category. As explained in section II of this document, to qualify for the categorical exclusion, a proposed action must satisfy all the conditions in the categorical exclusion, including integral elements, and DOE must evaluate for any extraordinary circumstances. Some commenters pointed to one environmental assessment included in the Technical Support Document that considered impacts on cultural resources and suggested that such analysis would not have been required under a categorical exclusion. In fact, for all categorical exclusions listed in appendix B of its NEPA regulations (10 CFR part 1021), DOE requires consideration of whether the proposed action would violate any applicable environmental requirements and whether the proposed action would have the potential to cause significant impacts on environmentally sensitive resources, including ''Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, Federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places'' (10 CFR part 1021, subpart D, appendix B, paragraph (4)(i)). In addition, DOE's responsibility to comply with the National Historic Preservation Act is independent of its NEPA responsibilities. With the revised categorical exclusion B4.13, DOE would have considered the potential impacts on cultural resources before making a decision and could determine that an environmental assessment is more appropriate than applying a categorical exclusion.

Some commenters described the purpose of a categorical exclusion in an overly limiting way, for example, as for actions that are benign or have no adverse effect whatsoever. CEQ, however, defines a categorial exclusion as ''a category of actions that the agency has determined, in its agency NEPA procedures (§ 1507.3 of this chapter), normally do not have a significant effect on the human environment'' (40 CFR 1508.1(d)). The categorical exclusions included in this rulemaking are consistent with CEQ's regulations.

Some commenters questioned whether additional NEPA review would be necessary for powerlines that already have been reviewed under NEPA. In general, a proposed project in which DOE is financing, undertaking, or providing other support for the upgrade or rebuild of a powerline has the potential to cause environmental effects. The NEPA review process provides methods for DOE to evaluate the potential significance of those impacts. Any documentation from past NEPA or other environmental reviews can inform, and potentially simplify, the required environmental review of the currently proposed project.

C. Comments Regarding Energy Storage Systems

1. Comments Regarding Accidents at Battery Energy Storage Systems

Commenters expressed concern regarding the safety of lithium-ion battery energy storage systems, including risks associated with a thermal runaway event. Commenters stated that DOE's Technical Support Document did not address risks from thermal runaway.

A thermal runaway event is when lithium-ion batteries become unstable, potentially resulting in high temperatures, battery failure, venting of gas or particulates, smoke, or fire. As one way to help control the impacts of such an event, a battery energy storage system is comprised of modules that physically isolate and control thermal runaway events from the larger battery energy storage system. Government agencies, including DOE, and standard setting organizations such as the National Fire Protection Association conduct research on thermal runaway events and other accident scenarios involving lithium-ion and other battery technologies. These organizations recommend practices and develop standards to lessen the likelihood and consequence of such events, and to respond to thermal runaway events and other accidents if they occur. For example, to stay current with best practices and knowledge, the National Fire Protection Association updates its standards every three to five years.

Commenters stated that fires at battery energy storage systems are challenging to extinguish and must be allowed to burn out for days. Commenters also stated that fires can emit large volumes of toxic gases, such as hydrogen fluoride, hydrogen cyanide, and hydrogen chloride. Commenters stated that these releases of toxic fumes can result in large plumes that necessitate evacuations of nearby populations and that there is insufficient time to implement a shelter-in-place approach because there is no mechanism to communicate quickly enough to surrounding communities. Commenters further stated that safety standards in the Technical Support Document for the notice of proposed rulemaking did not consider the public health risk of toxic gas released during a battery energy storage system fire.

DOE has supplemented the Technical Support Document in response to these comments. DOE reviewed and added information on hazard consequences analyses that address toxic gas plume dispersion modeling in the event of a battery energy storage system fire or thermal runaway event, including characterization of those toxic gases and potential health effects. These analyses evaluated toxic gas dispersion, including hydrogen fluoride, hydrogen cyanide, and carbon monoxide, using site-specific factors to determine the maximum distance that may result in a level of concern for nearby residents or first responders. These analyses identified the endpoint distances as 30, 51, and 210 feet from the release point. The maximum airborne concentration estimated at these distances is such that nearly all individuals could be exposed to for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms that could impair an individual's ability to take protective action. The analyses indicated that assumptions were chosen that tended to overstate the expected consequences. A hazard consequence analysis is a site-specific analysis, and the examples provided in the Technical Support Document indicate that a safety incident at a battery energy storage facility would generally not result in adverse health impacts beyond the facility's property line. (*See* Technical Support Document, p. 63.) Further, DOE notes that battery energy storage facilities that qualify for the new categorical exclusion would be required to incorporate appropriate safety standards including the current National Fire Protection Association 855 Standard. National Fire Protection Association Standard 855 requires the development of emergency response plans.

Commenters also stated that toxic chemicals could be used to put out battery energy storage system fires. Commenters expressed concern about runoff from fire suppression water or fire retardant, the lack of containment systems for this runoff, the resulting risk of soil and groundwater pollution, and

potential impacts to water resources. Commenters stated that fire-extinguishing water used at the East Hampton Energy Storage Center in East Hampton, NY, contaminated a sole-source aquifer used for drinking water with toxic chemicals. Commenters stated that fighting battery energy storage system fires could require up to 2 million gallons of water over a three-day period and that there are no spill containment systems in place at battery energy storage systems to catch fire water suppression runoff.

DOE has supplemented the Technical Support Document to include best management practices regarding spill control plans from individual projects as well as requirements from National Fire Protection Association Standard 855 to minimize spill risk during normal operation and in the event of a fire. (*See* Technical Support Document, p. 41.) Site-specific spill prevention plans are typically developed for individual projects as a standard best practice. DOE further notes that the emerging consensus in the firefighting community is that water should be used sparingly in responding to battery energy storage system fires to minimize potential risk of contamination to water resources.

Commenters stated that there is a lack of appropriate training for emergency responders in the event of an incident at a battery energy storage system and that available training and resources are limited. National Fire Protection Association Standard 855 requires the development of emergency response plans, mandates initial and annual training, and recommends inclusion of emergency response personnel in these trainings. The Technical Support Document also includes recommendations from the American Clean Power Association and the New York Battery and Energy Storage Technology Consortium and Fire and Risk Alliance for the development of emergency response plans and pre-incident planning and incident response.

Commenters stated that the chance of fire at a utility-scale battery energy storage system is 1 in 30 to 1 in 50 and that the average age of a battery that catches fire is 18 months. Several commenters pointed to past battery energy storage system fires including those in Surprise, AZ, Chandler, AZ, Moss Landing, CA, and in New York State. DOE responds that a recent Pacific Northwest National Laboratory report [15] noted that the Electric Power Research Institute's (EPRI's) database identifies 14 fires involving large, grid-connected battery energy storage systems in the U.S. ''To place that number in context, there were 491 large, utility-scale projects in the U.S. as of April 2023, for a fire incidence rate of about 2.9 percent. No [battery energy storage system] fire in the U.S. has resulted in loss of life, and many of the affected facilities were able to resume operation.'' DOE acknowledges that battery energy storage facilities present safety risks if not managed properly and have resulted in past safety incidents. DOE reviewed the U.S. fires reported in the EPRI database and confirmed that few if any injuries occurred, apart from the 2019 Surprise, AZ, incident that involved multiple severe injuries. Lessons learned from that 2019 event have since led to improvements in safety standards and first responder training. The battery energy storage systems that qualify for categorical exclusion B4.14 would be built and operated using the most current safety standards, including those identified in the National Fire Protection Association 855 Standard.

Commenters stated that DOE's Technical Support Document included small-scale projects (less than 10 megawatts) and mobile facilities and thus did not consider that the risk of thermal runaway increases with the number of battery cells and facility size. DOE notes that the Technical Support Document for the notice of proposed rulemaking also included environmental assessments for battery energy storage systems ranging from approximately 20 megawatts up to 225 megawatts storage capacity. For this final rule, DOE supplemented the Technical Support Document with information to clarify that appropriate battery energy storage system designs can prevent fire risk from increasing with facility size. Energy storage system failures are designed to be contained to the unit of origin, for example, by providing sufficient spacing between modules or enclosures to avoid a fire from spreading. Systems also may include fire suppression, smoke detectors, sprinkler systems, and fire barriers, as applicable to the design. Because of these safety features, the risk of a fire incident at a battery energy storage project does not increase with project size; the two are decoupled in a well-designed system that prevents a fire in one unit from spreading to neighboring units. (*See* Technical Support Document, p. 56.)

Commenters stated that DOE's Technical Support Document was inadequate because the battery energy storage systems included have not been built, and operational safety has not yet been proven. Commenters also asserted that design standards and best management practices cited in the Technical Support Document, such as UL 9540A, are not sufficient to mitigate the risk of thermal runaway. DOE notes that battery energy storage systems have experienced rapid growth in recent years. According to the U.S. Energy Information Administration, currently planned and operational U.S. utility-scale battery capacity totaled around 16 gigawatts at the end of 2023. (*See* Technical Support Document, p. 41.) This growth in deployment of battery energy storage systems provides real-world information on design and operation that feeds into efforts to continuously improve the safety of these facilities, such as through the ongoing development and revision of applicable safety standards.

DOE is aware that battery energy storage facilities present a risk of safety incidents, including the risk of a thermal runaway event that may result in fire. To ensure that battery energy storage systems are designed and operated using layers of protection, current best practices, and the most up-to-date standards, categorical exclusion B4.14 may only be used for proposed battery energy storage systems that comply with appropriate safety standards, including the current National Fire Protection Association Standard 855. The requirements and depth of National Fire Protection Association Standard 855 would ensure that battery energy storage systems are designed using current best practices to minimize the potential for a safety incident that could result in a thermal runaway. Also, the National Fire Protection Association Standard 855 requires the development of a hazard mitigation analysis, which is a method to evaluate potential failure modes and their cause and effects, in order to develop methods to prevent failure during system operation. Further, the National Fire Protection Association updates its standards every 3 to 5 years, ensuring that its standards continue to reflect current best practices.

Commenters stated that meeting the including UL 9540A standard cited in DOE's Technical Support Document would not prevent a thermal runaway event once started. DOE notes that in a UL 9540A test a thermal runaway event is intentionally created to better understand how the cell performs under failure, which helps to design fire safety

[15] Energy Storage in Local Zoning Ordinances (Pacific Northwest National Laboratory, 2023): *www.pnnl.gov/main/publications/external/technical_reports/PNNL-34462.pdf.*

features to limit the propagation of fire from one cell to another, in the event of a failure. Systems that meet UL 9540A, in addition to all the other requirements included in the National Fire Protection Association Standard 855 would ensure layers of protection to prevent accidents and mitigate safety risk. (*See* Technical Support Document, p. 56.)

Commenters also stated that DOE's Technical Support Document should not include information from the American Clean Power Association because a lobbyist organization is not an appropriate source for safety standards. DOE includes three reference documents from the American Clean Power Association in the Technical Support Document: a compilation of relevant codes and standards for battery energy storage systems prepared by other organizations, guidelines for first responders in the event of an accident, and a summary of information related to battery energy storage systems. DOE has reviewed these documents and finds them helpful in explaining useful information about the safe operation of battery energy storage systems.

Commenters also requested that DOE issue a new policy that addresses how the public safety risks posed by lithium-based battery energy storage systems should be accounted for in future NEPA actions. DOE will consider whether there is a need for guidance on the consideration of battery energy storage systems in NEPA reviews. However, that is outside the scope of this rulemaking.

Commenters also stated that battery energy storage systems should have sensors that provide information on the presence of flammable gases onsite and that information should be available to emergency responders. DOE has supplemented the Technical Support Document to include information that battery energy storage systems contain fire and gas detection systems. Further, DOE notes that the current National Fire Protection Association Standard 855 contains a variety of provisions related to gas detection; fire control and suppression, measures to prevent explosions and safely contain fires, hazard mitigation analysis, emergency response plans, and requirements for initial and annual training. (*See* Technical Support Document, p. 56.)

Commenters requested that DOE investigate whether these energy storage systems emit toxins or carcinogens during normal operation. DOE has supplemented the Technical Support Document with additional information explaining that energy storage systems do not leak chemicals or emit toxic or carcinogenic gases during normal operation. (*See* Technical Support Document, p. 41.)

2. Comments Regarding Siting of Battery Energy Storage Systems

Commenters stated that battery energy storage systems should not be sited near earthquake fault zones, sole-source aquifers, residential areas, densely populated areas, schools, daycare facilities, hospitals, nursing homes, threatened and endangered species, recreational areas, or transportation corridors. Commenters stated that battery energy storage systems should be sited only in desolate areas. Commenters expressed concern that battery energy storage systems would be sited in fire-prone landscapes and that sparks from a fire originating at a battery energy storage system would spread to nearby areas. Commenters stated that disruption to nearby communities should be mitigated, and expressed concern that without adequate planning and siting, important emergency routes, such as to and from hospitals and between nursing homes and hospitals, could be disrupted. Commenters requested that DOE include measures to ensure energy storage systems are not sited on areas of prime or sensitive habitat. DOE incorporates siting considerations into its decision whether to apply categorical exclusion B4.14 to any proposed action. This includes conditions within the categorical exclusion regarding the type of land on which the proposed project may be located, the requirement to be in accordance with land use and zoning requirements, and the integral elements that include the requirement not to pose a significant impact to environmentally sensitive resources. Categorical exclusion B4.14 also requires that, to apply it to a particular proposed project, the proposed action must incorporate safety standards and other specified conditions that reduce the risk of accidents. As noted in the Pacific Northwest National Laboratory's October 2023 report, *Energy Storage in Local Zoning Ordinances,* there is variation in local siting and zoning considerations for energy storage systems. This report notes that safety is frequently the most important concern expressed in local zoning proceedings for energy storage projects and identifies several case studies for how local planners have mitigated impacts from various jurisdictions. (*See* Technical Support Document, p. 59.) At any point during DOE's review of whether categorical exclusion B4.14 applies, DOE can determine that additional information is needed to make a categorical exclusion determination or decide to prepare an environmental assessment or environmental impact statement.

Commenters stated that a battery energy storage system should never be sited in an undeveloped area. Other commenters expressed concern that siting battery energy storage systems on undisturbed land could significantly impact the environment and surrounding communities and requested additional support for DOE's inclusion of undisturbed areas contiguous to previously disturbed or developed areas. Commenters stated that DOE's supporting information relied on an environmental assessment for the Vonore Project that included mitigation measures to reach a finding of no significant impact. DOE responds that, as explained in section III.C of this document, based on past experience, DOE anticipates that energy storage systems typically require 15 acres or less and would be sited close to energy, transmission, or industrial facilities. Consistent with this expectation and because contiguous land might be undisturbed and undeveloped, siting outside a previously disturbed or developed in the new categorical exclusion would be limited to a ''small'' contiguous area. DOE would consider whether a contiguous area is small, based on the criteria discussed in 10 CFR 1021.410(g)(2)). DOE has revised its Technical Support Document to clarify that there are three EAs and FONSIs that evaluate battery energy storage systems ranging in size up to 225 megawatts located on sites contiguous to previously disturbed and developed areas. (*See* Technical Support Document, p. 42.) Further, DOE reviewed the Vonore Project that the commenter suggested relied on mitigation measures in an environmental assessment to reach a finding of no significant impact and notes that the Tennessee Valley Authority indicated that two ''non-routine measures would be applied during the construction, operation, and maintenance of the proposed Vonore [battery energy storage system], transmission lines, and access roads to reduce the potential for adverse environmental effects'', not that those measures were necessary to reach a finding of no significant impact. (*See* Technical Support Document, p. 50.) Commenters stated that DOE's supporting information included an environmental assessment tiered from a programmatic environmental impact statement. DOE removed this environmental assessment from the Technical Support Document.

5. Comments Regarding Siting Contiguous to a Previously Disturbed or Developed Area

Commenters stated that DOE should not limit the categorical exclusion to a ''small'' or 15-acre area contiguous to previously disturbed or developed areas and that DOE should clarify that there would be no acreage limitation. Commenters stated that DOE's supporting information did not accurately reflect the acreage required and that 25 MW per acre is a more accurate assumption for battery energy storage systems. Commenters also stated that an acreage limitation could result in more densely packed battery energy storage systems with greater risk of thermal runaway. Similarly, other commenters recommended that DOE remove reference to specific acreages that were included in the preamble to DOE's Notice of Proposed Rulemaking and instead use the definition of ''small'' in 10 CFR 1021.410(g)(2). DOE responds that section II of this document includes discussion of DOE's definition of previously disturbed or developed area and DOE's experience referring to contiguous areas in its categorical exclusions. The total acreage used for an energy storage system will be defined by the needs of the proposed project. Based on past experience, DOE anticipates that energy storage systems typically require 15 acres or less and would be sited close to energy, transmission, or industrial facilities. However, this recognition of that past experience does not indicate an acreage limit on the scope of categorical exclusion B4.14. (*See* Technical Support Document, p. 41.) As previously explained, DOE would consider whether a contiguous area is small, based on the criteria discussed in 10 CFR 1021.410(g)(2).

Other commenters stated that 15 acres or less should be added as a numeric limit in the categorical exclusion. DOE considered this suggestion but has concluded that an acreage limit is not an appropriate method for determining whether a project normally would result in significant environmental effects. Rather, the terms of categorical exclusion B4.14, including the integral elements and need to consider extraordinary circumstances, provide a reasoned basis for the categorical exclusion.

Commenters stated that areas contiguous to previously disturbed or developed land may have particular conservation values or be more likely to be located in communities that have historically experienced disproportionate impacts. Commenters requested that DOE require that contiguous areas be evaluated separately under a land use plan, a programmatic environmental impact statement or environmental analysis, or other equivalent decisions that provide detailed analysis and opportunity for public engagement. Similarly, another commenter requested that DOE revise the categorical exclusion conditions to include limitations regarding site dimensions, land use history, and proximate uses and resources to indicate a preference for siting locations where fewer impacts would be expected to occur. Commenters requested that DOE include measures to ensure energy storage systems are not sited on areas of prime or sensitive habitat. Because contiguous land might be undisturbed and undeveloped, DOE proposes that siting outside a previously disturbed or developed area be limited to a ''small'' contiguous area. DOE would consider whether a contiguous area is small, based on the criteria discussed in 10 CFR 1021.410(g)(2)), ''in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, DOE would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action.'' In addition, the proposed project must be ''in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of this part, and would incorporate appropriate safety standards (including the current National Fire Protection Association 855, Standard for the Installation of Stationary Energy Storage Systems), design and construction standards, control technologies, and best management practices.''

4. Comments Regarding Other Potential Impacts of Energy Storage Systems

Commenters stated battery energy storage systems would result in noise and light pollution and visual impacts for nearby residents. Commenters expressed concern about adverse socioeconomic impacts of battery energy storage systems, stating that the risk of fire, toxic chemical releases, and emergency lockdowns would negatively affect home values, quality of life, and the local economy. DOE has supplemented the Technical Support Document to include additional information regarding potential noise and light pollution impacts from proposed projects. (*See* Technical Support Document, p. 41).

Commenters expressed concern regarding disposal of batteries at the end of their useful life and questioned if the batteries would be recycled or taken to hazardous waste landfills. Commenters stated that battery energy storage systems should not be categorically excluded due to the associated environmental impact of rare earth mining for battery materials, as well as the transport of hazardous materials to and from the facility upon decommissioning. Commenters stated that battery energy storage systems are waste-generating facilities with large quantities of hazardous, flammable materials stored onsite. DOE has supplemented the Technical Support Document to include additional information regarding waste management and decommissioning plans for proposed projects. For example, a decommissioning plan should be prepared during project planning that details what will happen when a battery energy storage system reaches its end of life. Decommissioning plans generally should include removal of all structures; recycling of equipment to the greatest extent possible; the proper disposal of non-recyclable equipment in accordance with manufacturer specifications and applicable local, state, and Federal requirements; and re-establishment of vegetation and restoration of the project site. (*See* Technical Support Document, p. 41.) In addition, National Fire Protection Association Standard 855 mandates a decommissioning plan for removing and disposing of the system at the end of its useful life.

Commenters stated that a battery energy storage system operating as a new entrant to the electrical grid introduces security vulnerabilities that could adversely affect the electrical grid. DOE has supplemented the Technical Support Document to include additional information regarding the North American Electric Reliability Corporation Critical Infrastructure Protection security requirements for system integrators of certain battery energy storage equipment, including cyber systems, asset categorization, and security system management. DOE also notes that the use of energy storage systems has increased substantially in recent years. This has demonstrated

through real world experience that energy storage systems can be safely integrated into the electrical grid and provides experience that is used to improve related guidance and practices. (*See* Technical Support Document, p. 56.)

Commenters recommended that if categorical exclusion B4.14 is applied to a proposed project that is within or would affect a state's coastal zone, DOE continue to comply with relevant requirements of the Coastal Zone Management Act. DOE recognizes its responsibility to comply with the Coastal Zone Management Act and will continue to do so. DOE also notes that one of the conditions, or integral elements, for applying categorical exclusion B4.14 to a proposed action is that the proposed action would not ''Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders'' (10 CFR part 1021, subpart D, appendix B). This condition includes compliance with relevant requirements of the Coastal Zone Management Act.

5. Comments Regarding Public Scoping and Alternatives Analysis

Commenters explained that DOE's categorical exclusion for battery energy storage systems removes transparency for communities and explained that there is a lack of public outreach for proposed battery energy storage systems when applying a categorical exclusion. Some commenters specified that communities should have public review and comment for proposed battery energy storage systems, including for example, potential environmental and safety risks, evacuation plans, and mitigation strategies. DOE responds that to provide transparency in the use of categorical exclusions, DOE began posting categorical exclusion determinations online in 2009. DOE will continue to regularly post categorical exclusion determinations for B4.14 and other categorical exclusions listed in appendix B of DOE's NEPA regulations (10 CFR part 1021, subpart D) at *www.energy.gov/nepa/doe-categorical-exclusion-cx-determinations.*

Commenters further stated that an alternatives analysis should be required to compare alternatives to battery energy storage system technology, as well as alternative siting locations. DOE considers alternatives, as appropriate, in NEPA reviews and in its decision making. Whether DOE evaluates alternatives for a particular proposed action, and the nature of those alternatives, depends on several factors including the potential for significant impacts and the purpose and need for DOE's action.

6. Comments Requesting That DOE Expand Categorical Exclusion B4.14

In explaining why categorical exclusion B4.14 is limited to electrochemical-battery and flywheel energy storage systems, DOE stated in the notice of proposed rulemaking that, ''At this time, DOE has not identified sufficient information to conclude that compressed air energy storage, thermal energy storage (*e.g.,* molten salt storage), or other technologies normally do not present the potential for significant environmental impacts. DOE welcomes comments that provide analytic support for whether these other energy storage technologies meet the requirements for a categorical exclusion.'' Commenters recommended that DOE expand categorical exclusion B4.14 to include any energy storage system that is technologically feasible or was developed either by a DOE laboratory or with financial support from the Federal Government. Commenters also recommended expansion of categorical exclusion B4.14 to include specific energy storage technologies, including above-ground compressed air energy storage; thermal energy storage, including molten salt storage; solid-state thermal batteries; pumped storage hydropower; gravity storage; underground hydrogen storage. DOE appreciates these suggestions, including the rationale provided by the commenters. DOE has determined, however, that it does not currently have sufficient information to determine that these technologies normally do not pose a potential for significant impacts. DOE will retain the comments for consideration in a future rulemaking.

Commenters recommended that categorical exclusion B4.14 include the use of iron-air batteries. Iron-air batteries are a type of electrochemical battery and, therefore, included within the scope of categorical exclusion B4.14.

Commenters suggested that DOE add a new categorical exclusion for combined battery and solar projects. DOE may apply more than one categorical exclusion to a proposed action so long as the potential effects of the total project are analyzed and the proposed action fulfills all the conditions, including integral elements, of each categorical exclusion applied. For example, it could be appropriate to apply categorical exclusions B4.14, Construction and operation of electrochemical-battery or flywheel energy storage systems, and B5.16, Solar photovoltaic systems, to the same proposed action, depending on project- and site-specific conditions. Given this practice, the commenters' suggested addition is unnecessary.

7. Comments Regarding Specific Energy Storage System Projects

Commenters expressed opposition to specific battery energy storage system projects including those in Morro Bay, CA, East Hampton, NY, Warwick, NY, Holtsville, NY, Covington, WA, and in Eldorado near Santa Fe, NM. Commenters requested to be informed of all future battery energy storage systems. This rulemaking does not involve decisions or actions related to any particular proposed battery energy storage system. As described in section II of this document, before DOE may apply categorical exclusion B4.14 to a particular proposed action, DOE must conduct a project-specific environmental review to determine whether all conditions applicable to the categorical exclusion are met. DOE does not review or have a decision-making role regarding all battery energy storage systems and has no mechanism to inform local residents of all future battery energy storage systems.

D. Comments Regarding Solar Photovoltaic Systems

1. Comments Regarding the Lake Effect Hypothesis (LEH)

There is a potential that birds, particularly waterfowl, perceive large solar PV facilities as water bodies. Underlying this lake effect hypothesis is the possibility that solar panels and water polarize light in a similar way. This might cause birds to try to land or feed on solar PV panels, which could cause bird fatalities and other harms. Some commenters raised this concern and stated that birds may mistake solar panels for water bodies and be stranded, injured, or killed. Commenters requested that best management practices, such as non-reflective coating, increased panel spacing, and vertical positioning of the panels at night for panels on rotating axes, be incorporated into solar facilities to minimize this risk. Other commenters added that certain mitigation measures may depend on the species of bird and other animal being affected, and that mitigation is best addressed in an environmental impact statement. DOE is aware of this potential impact and is one of the Federal agencies sponsoring research to better understand whether birds mistake solar panels for water, whether that might affect behavior, and what effective mitigation is available. (*See* Technical Support Document, p. 103.)

Categorical exclusion B5.16 includes conditions that require that the proposed project not have significant effects on protected species. At any point in its environmental review of a particular project, DOE can decide to prepare an environmental assessment or environmental impact statement rather than relying on a categorical exclusion.

2. Comments Regarding Wildlife and Habitat

Commenters stated that insect populations may be at risk from solar PV facilities and that PV panels produce polarized light that may confuse insects seeking water for feeding or breeding purposes, potentially leading to reproductive failure and possible ecosystem effects. DOE has supplemented the Technical Support Document to include research that summarizes the potential for negative impacts, including potential light pollution that may adversely impact aquatic insect breeding, as well as the positive impacts of solar PV systems on insect populations. (*See* Technical Support Document, p. 103.) The Technical Support Document summarizes research regarding siting considerations that demonstrate that use of previously disturbed or developed lands, such as former agricultural fields, is preferable to siting on undisturbed land. In addition, use of native mixes of flowering plants and grasses during revegetation can improve the biodiversity of both plant and insect populations, including pollinators, as the habitat matures post-construction. Proper siting of proposed solar PV systems and revegetation plans that use diverse, pollinator-friendly seed mixes would ensure that adverse impacts to insect populations are not significant. Categorical exclusion B5.16 includes conditions that require that the proposed project not have significant effects on protected species. At any point in its environmental review of a particular project, DOE can decide to prepare an environmental assessment or environmental impact statement rather than relying on a categorical exclusion.

Commenters stated that habitat fragmentation and the spread of non-native, invasive species could result from building solar projects along linear corridors such as utility rights-of-way, particularly in cases where the projects are fully fenced. These commenters further stated that land and wildlife managers must assess current wildlife habitat connectivity in the proposed project area, as well as future connectivity needs in light of climate change. DOE appreciates commenters raising concerns about habitat connectivity. DOE's integral elements and consideration of extraordinary circumstances would ensure consideration of these impacts. Nonetheless, to better highlight potential effects on habitat, in this final rule, DOE added conditions to categorical exclusion B5.16 to ensure that proposed solar PV projects would be consistent with applicable plans for management of wildlife and habitat, including plans to maintain habitat connectivity.

Commenters stated that the Wild Springs Solar Project included in the Technical Support Document is not a typical design because the fencing encloses blocks of panels, rather than surrounding the entire project. These commenters stated that the project was designed and sited to avoid prairie dog colony areas. These commenters asserted that if a categorical exclusion had been applied to this project, these protective measures are unlikely to have been taken. Categorical exclusion B5.16 requires that the proposed project not have significant effects on species, habitat, and other local environmental conditions, as well as the use of best management practices. DOE disagrees with the assertion that the protective design elements would not have been included in the project if a categorical exclusion would have been used for NEPA review.

3. Comments Regarding Various Environmental Effects

Commenters expressed concerns regarding impacts from toxic dust during construction, visual impacts, lower property values, harm to tourism economies, and a heat island effect. Commenters expressed concern over water use during construction and for dust control and the cumulative impact of dust emissions, both during construction and operation. Commenters stated that categorical exclusion B5.16 must include provisions for effective dust control in desert and dry, wind-prone areas. DOE is aware of these concerns. Dust control and limitations on other effects are encompassed in the requirement that the proposed project be in ''accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of this part, and would be consistent with applicable plans for the management of wildlife and habitat, including plans to maintain habitat connectivity, and incorporate appropriate control technologies and best management practices.''

One individual expressed concern about fire risk due to electrical lines associated with solar energy systems. DOE responds that any electrical lines associated with a solar PV system would be required to meet all applicable standards for vegetation management, system design, and other conditions to prevent the lines from causing fires.

4. Comments Regarding Cumulative Effects

Commenters expressed concern over the cumulative effects of removing the 10-acre size limit for solar PV systems in categorical exclusion B5.16, suggesting that the impacts could extend to tens of thousands of acres in a concentrated area. Commenters also stated that the categorical exclusion must not apply to utility-scale solar developments larger than 500 acres because of cumulative impacts. DOE considers cumulative impacts in determining whether to apply a categorical exclusion to a proposed action. DOE's regulations list conditions that must be met before making a categorical exclusion determination. Among these conditions is a requirement to consider ''connected and cumulative actions, that is, the proposal is not connected to other actions with potentially significant impacts (40 CFR 1508.25(a)(1)), [and] is not related to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1508.27(b)(7)).'' DOE might also consider cumulative impacts in the context of extraordinary circumstances, integral elements, or other conditions such as consistency with applicable plans for the management of wildlife and habitat, including plans to maintain habitat connectivity. In regard to the suggested 500-acre limit for the categorical exclusion, as explained in section II of this document, DOE does not have a basis for identifying a particular acreage limit for categorical exclusion B5.16. Local conditions are the appropriate basis for assessing the significance of environmental impacts for a particular proposed project.

5. Comments Regarding the Need for Additional Guidance and Regulation

Commenters identified a need for further guidance on responsible solar buildout, particularly regarding critical wildlife habitats and productive agricultural lands. DOE appreciates this recommendation and expects that guidance and best practices will continue to improve as the technology advances. Categorical exclusion B5.16 includes flexibility to accommodate these changes (*e.g.,* by providing for

consideration of the best practices relevant at the time the proposed action is reviewed).

Other commenters stated that categorical exclusion B5.16 requires that actions ''would be in accordance with applicable requirements (such as land use and zoning requirements)'' but noted that not all jurisdictions have current planning and zoning that expressly addresses siting of large-scale solar PV projects. Commenters asserted that a large-scale PV solar project, therefore, could be permitted in a corridor or right-of-way without meaningful NEPA review simply because it is not prohibited in those areas under the current zoning and planning requirements. DOE disagrees with this characterization. As explained in section II of this document and in response to comments, DOE must consider several conditions related to environmental impacts before deciding whether to apply categorical exclusion B5.16 to a particular proposed action. In an area without applicable land use and zoning requirements, DOE still would consider whether the proposed project location is on previously disturbed or developed land, applicable requirements and plans for the management of wildlife and habitat, including plans to maintain habitat connectivity, whether the proposed project incorporates appropriate control technologies and best management practices, the integral elements listed in DOE's regulations, and other conditions required of every categorical exclusion, such as consideration of any extraordinary circumstances.

6. Comments Regarding the Definition of Previously Disturbed or Developed Lands

Some commenters proposed edits to narrow DOE's definition of ''previously disturbed or developed lands.'' DOE considered these suggestions and concluded that the changes are unnecessary. DOE has successfully applied the current definition over more than a decade for a variety of projects involving several DOE categorical exclusions that use the phrase ''previously disturbed or developed.'' This phrase and definition are only part of the criteria that must be met to use categorical exclusion B5.16. As described in section II of this document and in response to other comments, the use of the categorical exclusion is dependent upon successfully satisfying several conditions related to environmental effects.

7. Comments Regarding Scope

Commenters suggested that DOE extend categorical exclusion B5.16 to include agricultural lands, especially where the project developers agree to follow certain practices to protect native habitats and manage stormwater. DOE considers agricultural land potentially within the scope of categorical exclusion B5.16 so long as the proposed action meets all applicable conditions. Those conditions include avoiding significant impacts on habitat and following applicable plans for the management of wildlife and habitat, including plans to maintain habitat connectivity, among others.

Commenters stated that large, solar PV power plants built on water decrease photosynthesis and primary productivity and may have adverse ecosystem effects. Categorical exclusion B5.16 does not apply to solar PV projects proposed to be located on water. In DOE's NEPA regulations, the term '' 'previously disturbed or developed' refers to land'' (10 CFR 1021.410(g)(1)).

8. Comments Regarding Solar Panel Production and Decommissioning

Commenters expressed concern about environmental impacts of solar panel production, citing the environmental effects and carbon emissions of raw material sourcing, mining, smelting, and refining. The effects of solar panel production are not within DOE's control or responsibility and are therefore outside the scope of DOE's NEPA review for solar PV systems. The scope of categorical exclusion B5.16 includes of installation, modification, and decommissioning of solar PV systems, and the related environmental effects are within the scope of DOE's NEPA review.

Commenters stated that use of the categorical exclusion would prevent public review of materials used in solar panels with potential to leach into landfills and impact water quality. Commenters stated that potential carcinogens such as PFAS (per- and polyfluoroalkyl substances) and metals such as silver, cadmium, and tellurium may be used in solar PV panels. DOE has supplemented the Technical Support Document regarding the safe operation and maintenance of solar PV panels. PV panels are sealed and do not leach chemicals during normal operation. Maintenance and repair of PV panels ensures that broken or cracked PV panels do not leach metals or other potentially hazardous contaminants. Recycling PV panels keeps PV panels out of landfills. (*See* Technical Support Document, p. 52.)

Commenters stated that consideration has not been given to the safe decommissioning and recycling of PV panels. DOE conducts research on the safe decommissioning and recycling of PV panels. Categorical exclusion B5.16 includes decommissioning of a solar PV system, and the environmental effects of decommissioning are considered as part of this rulemaking. (*See* Technical Support Document, p. 74.) DOE has supplemented the Technical Support Document to include additional information regarding waste management and decommissioning plans for proposed projects. For example, a decommissioning plan should be prepared during project planning and best practices for what will happen when the solar PV project reaches its end of life. Decommissioning plans generally should include removal of all structures, including solar panels and all related equipment; recycling of PV panels and related equipment to the greatest extent possible; the proper disposal of non-recyclable equipment in accordance with manufacturer specifications and applicable local, state, and Federal requirements; and re-establishment of vegetation and restoration of the project site. (*See* Technical Support Document, p. 74.) In addition, National Fire Protection Association Standard 855 mandates a decommissioning plan for removing and disposing of the system at the end of its useful life.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including

potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. Many benefits and costs associated with this final rule are not quantifiable. The direct benefits include reduced cost and time for environmental analysis incurred by DOE, project proponents, and the public. Indirect benefits are expected to include deployment of technologies that improve the reliability and resilience of the Nation's electric grid and that expand electricity generation capacity while reducing emissions of GHGs. For the reasons stated in this preamble, this regulatory action is consistent with these principles.

This regulatory action has been determined not to be ''a significant regulatory action'' under E.O. 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by OIRA of OMB.

B. Review Under Executive Orders 12898 and 14096

E.O. 12898, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' as supplemented and amended by E.O. 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All,'' requires each Federal agency, consistent with its statutory authority, to make achieving environmental justice part of its mission. E.O. 14096 directs Federal agencies to carry out environmental reviews under NEPA in a manner that ''(A) analyzes direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns; (B) considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards, such as information related to the race, national origin, socioeconomic status, age, disability, and sex of the individuals exposed; and (C) provides opportunities for early and meaningful involvement in the environmental review process by communities with environmental justice concerns potentially affected by a proposed action, including when establishing or revising agency procedures under NEPA.'' DOE provided opportunities for public engagement in this rulemaking, including opportunities for communities with environmental justice concerns, and DOE considered and responded to comments raising environmental justice concerns (section IV of this document). Also, in determining whether the categorical exclusions apply to a future proposed action, DOE will consider whether the proposed action threatens a violation of these Executive Orders, consistent with the first integral element listed in appendix B of DOE's NEPA procedures.

C. Review Under National Environmental Policy Act

The Department's NEPA procedures assist the Department in fulfilling its responsibilities under NEPA and the CEQ regulations but are not themselves final determinations of the level of environmental review required for any proposed action. The CEQ regulations do not direct agencies to prepare an environmental assessment or environmental impact statement before establishing agency procedures that supplement the CEQ regulations to implement NEPA (40 CFR 1507.3). In establishing a new categorical exclusion and making other changes as described in this final rule, DOE followed the requirements of CEQ's procedural regulations, which include publishing the notice of proposed rulemaking in the **Federal Register** for public review and comment, considering public comments, and consulting with CEQ regarding conformity with NEPA and the CEQ regulations (40 CFR 1507.3(b)).

In this final rule, DOE finalizes amendments that establish, modify, and clarify procedures for considering the environmental effects of DOE actions within DOE's decisionmaking process, thereby enhancing compliance with the letter and spirit of NEPA. DOE has determined that this final rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix A6, because it is a strictly procedural rulemaking, and no extraordinary circumstances exist that require further environmental analysis. Therefore, DOE has determined that promulgation of these amendments is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

D. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website: *https://energy.gov/gc* under Resources.

DOE has reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The revisions to 10 CFR part 1021 streamline the environmental review for proposed actions, resulting in a decrease in burdens associated with carrying out such reviews. For example, the revisions to DOE's categorical exclusions are expected to reduce the number of environmental assessments that applicants would need to pay to have prepared for DOE's consideration. Applicants may sometimes incur costs in providing environmental information that DOE requires when making a categorical exclusion determination. The Government Accountability Office found in 2014 that there is little data available on the costs for preparing NEPA reviews and that agencies ''generally do not reports costs that are 'paid by the applicant' because these costs reflect business transactions between applicants and their contractors and are not available to agency officials.'' [16] In 2011, DOE estimated the cost of preparing

[16] GAO–14–369, NATIONAL ENVIRONMENTAL POLICY ACT: Little Information Exists on NEPA Analyses, April 2014, available at *www.gao.gov/assets/gao-14-369.pdf.*

environmental assessments over the prior decade at an average of $100,000 and a median of $65,000.[17] DOE does not have more current cost data. The costs of making a categorical exclusion determination are less than those to prepare an EA. Although DOE does not have data on what percentage of EAs were funded by applicants that qualified as small entities, a beneficial cost impact is expected to accrue to entities of all sizes.

Based on the foregoing, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

E. Review Under Paperwork Reduction Act

This rulemaking imposes no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act (5 CFR 1320.1 *et seq*).

F. Review Under Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of UMRA requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation) (2 U.S.C. 1532(a) and (b)). Section 204 of UMRA requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments (2 U.S.C. 1534).

This final rule amends DOE's existing regulations governing compliance with NEPA to better align DOE's regulations, including its categorical exclusions, with its current activities and recent experiences. This final rule will not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the UMRA.

G. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 13132

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

I. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

J. Review Under Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under E.O. 12866, or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action does not have a

[17] 76 FR 237, January 3, 2011.

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

L. Review Under Executive Order 12630

DOE has determined pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 18, 1988), that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that the Office of Information and Regulatory Affairs has determined that this action meets the criteria set forth in 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of final rulemaking.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Signing Authority

This document of the Department of Energy was signed on April 24, 2024, by Samuel T. Walsh, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 24, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

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

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 continues to read as follows:

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

■ 2. Appendix B of subpart D of part 1021 is amended by:
■ a. Revising B4.4, B4.6, and B4.13;
■ b. Adding B4.14; and
■ c. Revising B5.1 and B5.16.

The revisions and addition read as follows:

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

* * * * *

B4. * * *

* * * * *

B4.4 Power Marketing Services and Activities

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

* * * * *

B4.6 Additions and Modifications To Transmission Facilities

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

* * * * *

B4.13 Upgrading and Rebuilding Existing Powerlines

Upgrading or rebuilding existing electric powerlines, which may involve relocations of small segments of the powerlines within an existing powerline right-of-way or within otherwise previously disturbed or developed lands (as discussed at 10 CFR 1021.410(g)(1)). Upgrading or rebuilding existing electric powerlines also may involve widening an existing powerline right-of-way to meet current electrical standards if the widening remains within previously disturbed or developed lands and only extends into a small area beyond such lands as needed to comply with applicable electrical standards. Covered actions would be in accordance with applicable requirements, including the integral elements listed at the start of appendix B of this part; and would incorporate appropriate design and construction standards, control technologies, and best management practices. This categorical exclusion does not apply to underwater powerlines. As used in this categorical exclusion, ''small'' has the meaning discussed at 10 CFR 1021.410(g)(2).

B4.14 Construction and Operation of Electrochemical-Battery or Flywheel Energy Storage Systems

Construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small (as discussed at 10 CFR 1021.410(g)(2)) area contiguous to a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of this part, and would incorporate appropriate safety standards (including the current National Fire Protection Association 855, Standard for the Installation of Stationary Energy Storage Systems), design and construction standards, control technologies, and best management practices.

* * * * *

B5. * * *

B5.1 Actions To Conserve Energy or Water

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

actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) of this appendix.

* * * * *

B5.16 Solar Photovoltaic Systems

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

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

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

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

■ 3. Amend Appendix C of subpart D of part 1021 by revising C4 and C7 to read as follows:

Appendix C to Subpart D of Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

* * * * *

C4 Upgrading, Rebuilding, or Construction of Powerlines

(a) Upgrading or rebuilding existing powerlines when the action does not qualify for categorical exclusion B4.13; or construction of powerlines:

(1) More than approximately 10 miles in length outside previously disturbed or developed powerline or pipeline rights-of-way; or

(2) more than approximately 20 miles in length within previously disturbed or developed powerline or pipeline rights-of-way.

* * * * *

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

(a) Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve:

(1) The interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts, unless the generation resource is eligible for a categorical exclusion;

(2) Changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or

(3) Service to discrete new loads of less than 10 average megawatts over a 12-month period.

* * * * *

■ 4. Amend Appendix D to subpart D of part 1021 by revising D7 to read as follows:

Appendix D to Subpart D of Part 1021—Classes of Actions That Normally Require EISs

* * * * *

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

(a) Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve:

(1) The interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts, unless the generation resource is eligible for a categorical exclusion or was evaluated in an environmental assessment resulting in a finding of no significant impact;

(2) Changes in the normal operating limits of generation resources greater than 50 average megawatts; or

(3) Service to discrete new loads of 10 average megawatts or more over a 12-month period.

* * * * *

[FR Doc. 2024–09186 Filed 4–29–24; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 109, 115, 120, and 123

RIN 3245–AI03

Criminal Justice Reviews for the SBA Business Loan Programs, Disaster Loan Programs, and Surety Bond Guaranty Program

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: On September 15, 2023 the U.S. Small Business Administration (SBA or Agency) published a notice of proposed rulemaking (''NPRM'' or ''proposed rule'') to amend regulations governing SBA's business loan programs (7(a) Loan Program, 504 Loan Program, Microloan Program, Intermediary Lending Pilot Program (ILP), Surety Bond Guarantee Program, and the Disaster Loan Program (except for the COVID–19 Economic Injury Disaster Loan (EIDL) Program) for criminal background reviews. The proposed rule introduced amendments to improve equitable access based on criminal background review of applicants seeking to participate in one or more of these programs. This final rule implements proposed regulatory changes and addresses comments SBA received.

DATES: This final rule is effective May 30, 2024.

FOR FURTHER INFORMATION CONTACT: Alejandro C. Contreras, Acting Director, Office of Financial Assistance, Small Business Administration, at (202) 205–6436 or *alejandro.contreras@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The mission of SBA is to ''aid, counsel, assist and protect'' the interests of small business concerns to ''preserve free competitive enterprise'' and ''maintain and strengthen the overall economy of our nation.'' 15 U.S.C. 631(a). SBA accomplishes this mission, in part, through Capital Access programs that bridge the financing gap in the private market and help businesses of all sizes to recover from disasters. Further, 15 U.S.C. 636(a)(1)(B) states that the Administrator may verify the criminal background of the applicant, which grants SBA the flexibility to determine whether and how to consider criminal history in the context of issuing loan guarantees, so long as the loans are of sound value. Congress provided SBA with authority to promulgate rules to carry out these provisions. See 15 U.S.C. 634(b)(6).

SBA has comprehensively reviewed its capital programs' current policies on individuals with criminal history records to ensure that the policies promote SBA's statutory mandates that recognize the importance of small business development in general as well as the responsibility to increase opportunities for certain groups that may not historically have had equitable opportunities for small business ownership. See 15 U.S.C. 631(a), 636(a)(1)(B), 636(b)(1)(A), 636(l), 636(m), 694(b), and 695. It is SBA's position that this final rule supports these Federal statutory mandates. The final rule also supports and reflects changing conditions in how State and local governments and the private sector have broadened access to business capital for qualified people with certain criminal history records and Federal laws and policies, including bipartisan legislation, such as the Second Chance Act of 2008 and the First Step Act of 2018, that have reduced barriers to successful reentry in order to reduce the risk of future criminal justice system involvement. This final rule helps facilitate employment opportunities for individuals with criminal history records and is supported by data and empirical research demonstrating the public safety and economic benefits of doing so.

Based on its review of SBA capital programs' current policies on individuals with criminal history records, SBA recognizes the need to update regulations to reduce barriers to participation in these programs for equitable support for qualified small

[3128-01]

DEPARTMENT OF ENERGY

[10 CFR Part 1022]

COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

Proposed Rulemaking; Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) hereby gives notice of a proposal to establish Part 1022 of Chapter X of Title 10 of the Code of Federal Regulations, providing for compliance with Executive Order (E.O.) 11988—Floodplain Management, and E.O. 11990—Protection of Wetlands. Written comments will be received and a public hearing will be held with respect to this proposal.

The proposed regulations are designed to be coordinated with the environmental review requirements established at 10 CFR Part 1021[1] with respect to DOE's compliance with the National Environmental Policy Act (NEPA). The regulations will be applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC).

DATES: Comments must be received on or before August 28, 1978; request to speak by August 7, 1978; hearing testimony by August 17, 1978; hearing date: August 18, 1978.

ADDRESSES: Comments and requests to speak to Box TP, Department of Energy, Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Hearing location: Room 2105, 2000 M Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Robert J. Stern or Carol Borgstrom, Office of the Assistant Secretary for Environment, Room 7119, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9760

SUPPLEMENTARY INFORMATION:

I. Background

A. Executive Order 11988—Floodplain Management

E.O. 11988—Floodplain Management, issued May 24, 1977, requires each Federal agency to take action to reduce the risk of flood loss; to minimize the impact of floods on human safety, health and welfare; and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities. The Order establishes a Federal policy to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. Agencies are required to issue or amend existing regulations and procedures to comply with the Order.

B. Executive Order 11990—Protection of Wetlands

E.O. 11990—Protection of Wetlands, issued May 24, 1977, requires each Federal agency to take action to minimize the destruction, loss, or degradation of wetlands; and to preserve and enhance the natural and beneficial values of wetlands in carrying out its responsibilities. The Order establishes a Federal policy to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct and indirect support of new construction in wetlands wherever there is a practicable alternative.

C. Coordination and Consultation

To the extent possible, agencies are required to utilize existing processes, such as those for compliance with NEPA, to fulfill the requirements of these Orders. Therefore, the regulations proposed herein have been designed to be implemented in conjunction with the environmental review requirements established at 10 CFR Part 1021, the proposed DOE regulations for compliance with NEPA.

E.O. 11988 also requires agencies to consult with the Water Resources Council (WRC), the Federal Insurance Administration, and the Council on Environmental Quality (CEQ) in the preparation of their floodplain regulations. DOE has circulated a draft of these regulations to the above agencies and, at the request of CEQ, has also circulated a draft to the Environmental Protection Agency and the Corps of Engineers. In addition, DOE has utilized the guidance provided by the WRC in its Floodplain Management Guidelines, published in the Federal Register on February 10, 1978.

II. The Proposed Regulations

In establishing policies and procedures for DOE compliance with Executive Orders 11988 and 11990, the regulations attempt to assure that floodplain and wetlands factors are considered by DOE in its planning and decisionmaking. To the extent possible, these environmental review requirements shall be carried out through the DOE NEPA process.

A. Applicability

The regulations shall apply to all organizational units of DOE except FERC. They shall apply to all proposed DOE actions, except as provided in § 1022.5. In cases where wetlands are located in a floodplain, the floodplain management procedures shall be followed. With respect to wetlands not located in a floodplain, the regulations do not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands which are located on non-Federal property, as provided in section 1 of E.O. 11990.

In accordance with section 8 of Executive Order 11990, the regulations do not apply to actions in wetlands with respect to projects under construction prior to October 1, 1977; projects for which all of the funds have been appropriated through fiscal year 1977; or projects and programs for which a draft or final EIS was filed prior to October 1, 1977. With respect to ongoing projects and programs in floodplains for which the environmental review has been completed prior to the effective date of these regulations, the alternatives considered in that review shall be assessed for potential impacts on floodplains. If DOE determines to take action in a floodplain, the selected alternative shall be designed or modified to minimize adverse floodplain impacts and to restore and preserve floodplain values.

Actions related to floodproofing and maintenance of existing DOE structures and facilities are considered exempt from the requirements of this Part, except in unusual circumstances, because they will have little or no effect on floodplains and wetlands.

B. Procedures for Floodplain/Wetlands Review

Subpart B of Part 1022 establishes DOE procedures for determining whether a proposed action will be located in a floodplain/wetlands, preparing floodplain/wetlands assessments, providing for early public review of proposed DOE actions in floodplains and/or wetlands, and issuing a statement of findings in cases where there is no practicable alternative to taking an action in a floodplain.

1. *Floodplain/Wetlands Determination.*—DOE shall determine whether a proposed action is located in a floodplain/wetlands concurrent with its environmental impact review pursuant to 10 CFR Part 1021. DOE will utilize maps prepared by the Federal Insurance Administration, Fish and Wildlife Service, and other appropriate agencies to determine if a proposed action is located in a floodplain/wetlands.

2. *Floodplain/Wetlands Assessment.*—For proposed floodplain/wet-

[1] DOE proposed regulations for compliance with NEPA, which appeared in the Federal Register at 43 FR 7232 (February 21, 1978).

lands actions, a floodplain/wetlands assessment shall be prepared, in accordance with the requirements of § 1022.12. In those cases where an environmental assessment (EA) or environmental impact statement (EIS) is also required, in accordance with 10 CFR Part 1021, the EA or EIS shall include the floodplain/wetlands assessment. If an EA or EIS is not required, the floodplains/wetlands assessment shall be issued as a separate document.

3. *Public Review.*—For proposed floodplain/wetlands actions for which an EA or EIS is required, the opportunity for early public review will be provided through existing DOE NEPA procedures. For proposed floodplain/wetlands actions for which no EA or EIS is required, DOE shall provide for public review through publication of a notice in the FEDERAL REGISTER, and circulation of that notice to appropriate agencies and interested persons.

4. *Statement of Findings.*—If no practicable alternative to locating in the floodplain/wetlands is available, DOE shall design or modify its action so as to minimize potential harm to or within the floodplain/wetlands. In addition, DOE shall publish a brief statement of findings for actions taken in a floodplain which explains why the action is proposed to be located in the floodplain, lists the alternatives considered, indicates whether the action conforms to applicable State or local floodplain protection standards, and describes measures to be taken to minimize harm to or within the floodplain. DOE shall endeavor to provide a brief comment period after publication of the statement of findings, prior to implementing the proposed action.

5. *Other Responsibilities.*—For floodplain/wetlands actions, DOE shall verify that the implementation of the selected alternative, particularly with regard to any mitigating measures included in the action, is proceeding as described in the floodplain/wetlands assessment and the statement of findings.

III. COMMENT PROCEDURE

A. WRITTEN COMMENTS

Interested persons are invited to submit written comments with respect to the proposed regulations to Box TP, Public Hearing Management, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Compliance with Floodplain/Wetlands Environmental Review Requirements." Fifteen (15) copies should be submitted. All comments and related information should be received by DOE by August 28, 1978, in order to ensure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine to confidential status of the information or data and to treat it according to its determination.

B. PUBLIC HEARING

1. *Participation Procedure.*—A public hearing on the proposed regulations will be held at 9:30 a.m., on August 18, 1978, in Room 2105, 2000 M Street NW., Washington, D.C., to received oral presentations from interested persons.

Any person who has an interest in the proposed regulations or who is a representative of a group of class of persons which has an interest in them may make a written request for an opportunity to make oral presentation. Such a request should be directed to the Public Hearing Management, Box TP, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461, before 4:30 p.m., August 7, 1978. The person making the request should describe his or her interest in the proceeding and provide a concise summary of the proposed oral presentative and a phone number where he or she may be reached. Each person who in DOE's judgment proposed to present relevant and material information shall be selected to be heard, shall be notified by DOE of his participation before 4:30 p.m., August 10, 1978, and shall submit 15 copies of his or her proposed statement to the Public Hearing Management, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461, on or before August 17, 1978.

2. *Conduct of Hearings.*—DOE reserves the right to arrange the schedule of presentations to be heard, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated as presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

NOTE.—DOE has determined that that because this document does not constitute a significant regulation within the meaning of Executive Order 12044, preparation of a regulatory analysis is not required.

Issued in Washington, D.C., July 13, 1978.

WILLIAM P. DAVIS,
Deputy Director
of Adminstration.

In consideration of the foregoing, it is proposed that Chapter X of Title 10 of the Code of Federal Regulations be amended as provided below:

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Subpart B—Procedures for Floodplain/Wetlands Review

AUTHORITY: National Environmental Policy Act of 1969, Pub. L. 91-190, as amended; the National Flood Insurance Act of 1968, Pub. L. 90-448, as amended; the Flood Disaster Protection Act of 1975, Pub. L. 93-234; E.O. 11988 (May 24, 1977); and E.O. 11990 (May 24, 1977).

Subpart A—General

§ 1022.1 Background.

Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977), requires each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated, and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the order is provided in the Floodplain Management Guidelines of the U.S. Water Resources Council, dated Feb-

ruary 10, 1978 (40 FR 6030). Executive Order 11990—Protection of Wetlands (May 24, 1977), requires all Federal agencies to issue or amend existing procedures to insure consideration of wetlands protection in decisionmaking. It is the intent of both executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures, such as those established to implement the National Environmental Policy Act (NEPA) of 1969. In those instances where the impacts of actions in floodplains and/or wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities with respect to compliance with E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain/wetlands factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in floodplain/wetlands, providing opportunity for early public review of such proposed actions, preparing floodplain/wetlands assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE will accommodate the requirements of E.O. 11988 and E.O. 11990 through existing DOE NEPA procedures.

§ 1022.3 Policy.

DOE shall:

(a) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative;

(b) Incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the hazard and risk of flood loss,

(2) Minimize the impact of floods on human safety, health, and welfare,

(3) Restore and preserve natural and beneficial values served by floodplains,

(4) Require the construction of DOE structures and facilities to be in accordance with the standards and criteria, and consistent with the intent, of the regulations promulgated pursuant to the National Flood Insurance Program,

(5) Minimize the destruction, loss, or degradation of wetlands,

(6) Preserve and enhance the natural and beneficial values of wetlands;

(c) Undertake a careful evaluation of the potential effects of any DOE action taken in a floodplain and any new construction undertaken by DOE in wetlands not located in a floodplain;

(d) Identify, evaluate, and implement, as appropriate, alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts; and

(e) Provide opportunity for public review of actions proposed in floodplains and wetlands.

§ 1022.4 Definitions.

For purposes of this Part:

(a) "Action" means any DOE activity.

(b) "Base Flood" means that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood).

(c) "Critical Action" means any activity for which even a slight chance of flooding would be too great. Such actions may include the storage of highly volatile, toxic, or water reactive materials.

(d) "Environmental Assessment" (EA) means a document prepared by DOE, pursuant to 10 CFR Part 1021, which assesses whether a proposed DOE action would be "major" and would "significantly affect" the quality of the human environment, and which serves as the basis for a determination as to whether an environmental impact statement is required.

(e) "Environmental Impact Statement" (EIS) means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA.

(f) "Facility" means any man-made or man-placed item other than a structure.

(g) "Flood or Flooding" means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters.

(h) "Floodplain" means lowlands adjoining inland and coastal waters including, at a minimum, that area inundated by a 1 percent or greater chance flood in any given year. The base floodplain is defined as the 100-year (1.0 percent) floodplain. The critical action floodplain is defined as the 500-year (0.2 percent) floodplain.

(i) "Floodplain Action" means any DOE action which takes place in a floodplain.

(j) "Floodplain/Wetlands Assessment" means an evaluation consisting of a description of a proposed action, a discussion of its effect on the floodplain/wetlands, and consideration of alternatives.

(k) "Floodproofing" means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce the effects of water entry.

(l) "High Hazard Area" means those portions of riverine and coastal floodplains nearest the source of flooding which are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

(m) "Minimize" means to reduce to the smallest degree practicable.

(n) "Negative Determination" (ND) means a document prepared pursuant to 10 CFR Part 1021 to certify a decision that an EIS will not be prepared for a proposed DOE action.

(o) "New Construction" for the purpose of compliance with E.O. 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after October 1, 1977.

(p) "Practicable" means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, and implementation time.

(q) "Public Notification" (PN) means a brief notice published in the FEDERAL REGISTER which describes a proposed floodplain/wetlands action and affords the opportunity for public review.

(r) "Preserve" means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.

(s) "Restore" means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

(t) "Statement of Findings" means a statement issued pursuant to E.O. 11988 which explains why a DOE action is proposed in a floodplain, lists alternatives considered, indicates whether the action conforms to State and local floodplain standards, and describes steps to be taken to minimize harm to or within the floodplain.

(u) "Structure" means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

(v) "Wetlands" means those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

(w) "Wetlands Action" means an action undertaken by DOE in a wet-

lands not located in a floodplain, subject to the exclusions specificed at § 1022.5(d).

§ 1022.5 Applicability.

(a) This Part shall apply to all organizational units of DOE, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This Part shall apply to all proposed floodplain/wetlands actions, including those sponsored jointly with other agencies, where practicable modifications of or alternatives to the proposed action are still available. With respect to programs and projects for which the appropriate environmental review has been completed or a final EIS filed prior to the effective date of these regulations, DOE shall, in lieu of the procedures set forth in this Part, review the alternatives identified in the environmental review or in the final EIS for potential impacts on floodplains. If project or program implementation has progressed to the point where review of alternatives is no longer practicable, or if DOE determines after a review of alternatives to take action in a floodplain, DOE shall design or modify the selected alternative in order to minimize potential harm to or within the floodplain and to restore and preserve floodplain values. DOE shall publish in the FEDERAL REGISTER a brief description of measures to be employed and shall endeavor to notify appropriate Federal, State, and local agencies and persons or groups known to be interested in the action.

(c) This Part shall not apply to wetlands projects under construction prior to October 1, 1977; wetlands projects for which all of the funds have been appropiated through fiscal year 1977; or wetlands projects and programs for which a draft or final EIS was filed prior to October 1, 1977. With respect to proposed actions located in wetlands (not located in a floodplain), this Part shall not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands which are located on non-Federal property.

(d) This Part is specifically applicable to activities in furtherance of DOE responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to, water and related land resources planning, regulating, and licensing activities.

(e) This Part ordinarily shall not apply to the following actions which generally have minimal or no adverse effect on floodplains/wetlands:

(1) Floodproofing or flood protection of existing DOE structures or facilities within the floodplain;

(2) Maintenance of existing facilities and structures on DOE property within a floodplain.

However, where unusual circumstances exist, DOE shall consider the need for a floodplain/wetlands assessment for these types of actions.

(f) The policies and procedures of this Part which are applicable to floodplain actions shall apply to all proposed actions which occur in a wetlands located in a floodplain.

SUBPART B—PROCEDURES FOR FLOODPLAIN/WETLANDS REVIEW

§ 1022.11 Floodplain/wetlands determination.

(a) Concurrent with its review of a proposed action to determine the applicability of the procedural requirements of 10 CFR Part 1021, DOE shall determine the applicability of the floodplain management and wetlands protection requirements of this Part.

(b) In making the floodplain determination, DOE shall utilize the Flood Insurance Rate Maps (FIRM's) or the Flood Hazard Boundary Maps (FHBM's) prepared by the Federal Insurance Administration of the Department of Housing and Urban Development to determine if a proposed action is located in the base or critical action floodplain, as appropriate. For a proposed action in an area of predominantly Federal or State land holdings where FIRM or FHBM maps are not available, information shall be sought from the land administering agency (e.g., Bureau of Land Management, Soil Conservation Service, etc.) or from agencies with floodplain analysis expertise.

(c) In making the wetlands determination, DOE shall utilize U.S. Fish and Wildlife Service National Wetlands Inventory maps, where available.

§ 1022.12 Floodplain/wetlands assessment.

(a) If DOE determines, pursuant to § 1022.5 and § 1022.11, that this Part is applicable to the proposed action, DOE shall prepare a floodplain/wetlands assessment, which shall contain the following information:

(1) Project Description—This section shall describe the nature and purpose of the proposed action, and shall include a map showing its location with respect to the floodplain and/or wetlands. For actions located in a floodplain, the high hazard areas shall be delineated and their relationship to the proposed action shall be discussed.

(2) Floodplain/Wetlands Effects.—This section shall discuss the positive and negative and long- and short-term effects of the proposed action on the floodplain and/or wetlands. The effects of a proposed floodplain action on lives and property, and on natural and beneficial floodplain values shall be evaluated. For actions taken in wetlands, the effects on the survival, quality, and natural and beneficial values of wetlands shall be evaluated.

(3) Alternatives.—Alternatives to the proposed action shall be considered including alternate sites and no action. Measures that mitigate the adverse effects of actions in a floodplain or wetlands, including, but not limited to, requirements for minimum grading, runoff controls, design and construction constraints, and protection of ecology-sensitive areas shall be included.

(b) For proposed floodplain or wetlands actions for which an EA or EIS is required, the floodplain/wetlands assessment shall be prepared concurrent with the NEPA analysis specified in 10 CFR Part 1021 and included in the EA or EIS.

(c) For floodplain/wetlands actions for which an EA or EIS is not prepared, an independent document shall be issued as the floodplain/wetlands assessment.

§ 1022.13 Public review.

(a) For proposed floodplain/wetlands actions for which an EA or EIS is required, the opportunity for early public review will be provided through the existing NEPA procedures specified in 10 CFR Part 1021. In these cases, either the Notice of Intent to prepare an EIS (10 CFR 1021.25), or the Negative Determination (10 CFR 1021.14), shall be used to satisfy the requirements for early public notification.

(b) For proposed floodplain/wetlands actions for which no EA or EIS is required, DOE shall provide the opportunity for early public review through preparation of a Public Notification (PN), which shall be published in the FEDERAL REGISTER. In addition, DOE shall endeavor to send the PN to appropriate Federal, State, and local agencies and to persons or groups known to be interested in the floodplain/wetlands implications of the proposed action. The PN shall include a description of the proposed action with a location map.

(c) Following publication of the PN, DOE shall wait 15 days prior to making its decision on the proposed action, except as specified in § 1022.16. After this period, DOE shall reevaluate the practicability of alternatives to the proposed floodplain/wetlands action and mitigating measures, taking into account all substantive comments received.

§ 1022.14 Notification of decision.

(a) If no practicable alternative to locating in the floodplain/wetlands is available, DOE shall design or modify its action in order to minimize potential harm to or within the floodplain/wetlands.

(b) For actions which will be located in a floodplain, DOE shall publish a

brief (not to exceed three pages) statement of findings which shall contain:

(1) An explanation indicating why the action is proposed to be located in the floodplain,

(2) A list of alternatives considered,

(3) A statement indicating whether the action conforms to applicable State or local floodplain protection standards, and

(4) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

For floodplain actions which require an EIS, the statement of findings may be incorporated into the final EIS or issued as a separate notice in the FEDERAL REGISTER. Where no EIS is required, DOE shall publish the statement of findings in the FEDERAL REGISTER and distribute copies to Federal, State, and local agencies and others who submitted comments as a result of the PN or ND. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, DOE shall send the statement of findings to the State and areawide A-95 clearinghouses for the geographic area affected.

(c) DOE shall indicate in any requests for new authorizations or appropriations transmitted to OMB whether the proposed action is in accord with the requirements of E.O. 11990 and E.O. 11988.

§ 1022.15 Follow-up.

For those DOE actions taken in floodplain/wetlands, DOE shall verify that the implementation of the selected alternative, particularly with regard to any mitigating measures, is proceeding as described in the floodplain/wetlands assessment and statement of findings.

1022.16 Timimg of floodplain/wetlands actions.

(a) Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

(b) With respect to wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the PN in the FEDERAL REGISTER.

(c) Where emergency circumstances, statutory deadlines, or overriding considerations of expense or effectiveness exist, the minimum time periods may be waived.

§ 1022.17 Selection of a lead agency and consultation among participating agencies.

When DOE and one or more other Federal agencies are directly involved in a floodplain/wetlands action, DOE shall consult with such other agencies to determine if a floodplain/wetlands assessment is required, to identify the appropriate lead or joint agency responsibilities, and to establish procedures for interagency coordination during the environmental review process.

[FR Doc. 78-19908 Filed 7-18-78; 8:45 am]

[6450-01-M]

Title 10—Energy

CHAPTER X—DEPARTMENT OF ENERGY (GENERAL PROVISIONS)

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

AGENCY: Department of Energy.

ACTION: Final rulemaking.

SUMMARY: The Department of Energy (DOE) hereby establishes Part 1022 of Chapter X of title 10 of the Code of Federal Regulations, providing for compliance with Executive Order (E.O.) 11988—Floodplain Management, and E.O. 11990—Protection of Wetlands.

The regulations are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC), and are designed to be coordinated with the environmental review requirements established pursuant to the National Environmental Policy Act (NEPA). The final regulations published herein contain certain revisions to the proposed regulations, published in the FEDERAL REGISTER on July 19, 1978 (43 FR 31108), based on DOE's consideration of comments received.

EFFECTIVE DATE: March 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 6229, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, 202-376-5998.

Mr. Stephen H. Greenleigh, Acting Assistant General Counsel for Environment, Room 8217, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, 202-376-4266.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On July 19, 1978, DOE published in the FEDERAL REGISTER (43 FR 31108) a notice of proposed rulemaking to establish 10 CFR Part 1022, DOE regulations for compliance with floodplain/wetlands environmental review requirements. The proposed regulations were drafted in response to Executive Orders 11988 and 11990 regarding floodplain management and wetlands protection, respectively, which were issued on May 24, 1977. The regulations were proposed to be applicable to all organizational units of DOE, except the FERC.

A public hearing was scheduled to be held on August 17, 1978, but only one request to speak was received. The hearing was cancelled by subsequent notice in the FEDERAL REGISTER, and the requesting party, the Sierra Club, met informally with DOE representatives to discuss its views on the proposed regulations. The formal comment period closed on August 28, 1978; DOE has, however, considered late comments in the preparation of these final regulations.

II. COMMENTS RECEIVED

Written comments were received from 12 organizations and agencies, including the Department of the Interior (DOI), Army Corps of Engineers, Environmental Protection Agency (EPA), Water Resources Council (WRC), Federal Insurance Administration (FIA), Council on Environmental Quality (CEQ), Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, Georgia State Department of Planning and Budget, State of Vermont Agency of Environmental Conservation, and Marathon Oil Company.

DOE has carefully considered all comments received, and has modified the proposed regulations, as appropriate, to assure that the final regulations represent sound policy and procedures for floodplain management and wetlands protection. DOE's analysis and treatment of the major substantive comments are summarized below.

III. DOE RESPONSE

A. RELATIONSHIP TO DOE NEPA PROCEDURES AND CEQ NEPA REGULATIONS

In accordance with the intent of both Executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures, such as those established to implement NEPA, DOE designed its proposed floodplain/wetlands regulations to be implemented in conjuction with its proposed regulations for compliance with NEPA, originally intended to be codified at 10 CFR Part 1021 (FEDERAL REGISTER, February 21, 1978). Several commenters questioned the relationship of the floodplain/wetlands regulations to the NEPA regulations, given the fact that the DOE NEPA regulations had not been promulgated.

DOE had intended to finalize 10 CFR Part 1021 prior to the promulgation of floodplain/wetlands regulations. However, due to the recent publication of final CEQ NEPA regulations (FEDERAL REGISTER, November 29, 1978), DOE no longer intends to finalize the rules which were proposed in February. Instead, DOE is preparing implementing procedures as required by the CEQ NEPA regulations. The basic approach of coordinating the floodplain/wetlands review procedures with existing (and future) DOE NEPA procedures remains intact. However, specific references to 10 CFR Part 1021 have been deleted. In addition, DOE has modified certain floodplain/wetlands requirements and definitions of NEPA documentation used herein to be consistent with the CEQ NEPA regulations and the anticipated DOE NEPA procedures.

A related comment pertained to the administrative framework for assuring DOE compliance with its floodplain/wetlands responsibilities. DOE intends to utilize the internal framework established with respect to NEPA compliance to fulfill its floodplain/wetlands responsibilities. Such internal authorities and responsibilities are embodied in internal DOE Orders and memoranda and are not included in these regulations, in order to maintain necessary flexibility. To address this concern, however, a new provision (§ 1022.18) has been added to identify the Assistant Secretary for Environment as the central point of contact for inquiries concerning DOE's floodplain/wetlands activities.

B. DETAILED STANDARDS AND PROCEDURES

In combined comments, WRC, CEQ, and FIA suggested that the final regulations establish "specific standards" for key substantive and procedural requirements of the floodplains Order. For example, it was suggested that specific standards be provided with respect to what constitutes a "practicable alternative" to siting in a floodplain. DOI also commented that the "spirit and intent" of the two Orders requires "considerably more details" in agency procedures "to provide a higher level of consideration to the natural and beneficial values of floodplains and wetlands."

While DOE is sympathetic to the goals expressed in these comments, it believes that the evaluation of floodplain/wetlands impacts is inherently site-specific in nature, and that the determination of what constitutes a "practicable alternative" can only be made after balancing relevant factors on a case-by-case basis. DOE believes that these regulations adequately provide the framework within which this process can take place, and that these regulations, as revised, fully satisfy the requirements of both Executive orders. Additional detailed guidance will be provided, as appropriate, through internal DOE Orders, guidelines and memoranda.

C. DEFINITIONS

Several comments were received regarding DOE's definitions of terms (§ 1022.4), which differed somewhat from the definitions set forth in WRC's Floodplain Management Guidelines (40 FR 6030, February 10, 1978). Two commenters objected to the definition of "action" as "any DOE activity," and suggested that DOE adopt WRC's definition, which specifies the kinds of activities covered by the term "action." DOE had included such language in the applicability section [§ 1022.5(d)] of the proposed regulations. Moreover, it was felt that the DOE definition of action assured broad application of the floodplain/wetlands review requirements. Nevertheless, to alleviate this concern, DOE has restructured the regulations so as to include the WRC language in the definition of "action."

Several commenters objected to DOE's definition of "minimize" as "to reduce to the smallest degree practicable," again suggesting that DOE use the WRC definition, i.e., "to reduce to the smallest degree." DOE believes that its definition is justified, and notes that the WRC Guidelines explain that:

> while minimize means to reduce to the smallest amount or degree, there is an implicit acceptance of practical limitations. Agencies are required to use all *practicable* (WRC's emphasis) means and measures to minimize harm. The Order does not expect agencies to employ unworkable means to meet this goal.

In light of the WRC qualification and to avoid possible confusion concerning the intended meaning of "minimize," DOE believes it is appropriate to reaffirm the practicable nature of the term "minimize" in its definition.

Another commenter objected to DOE's addition of implementation time to WRC's definition of "practicable." The WRC Guidelines listed cost, environment and technology as pertinent factors in judging practicability. In DOE's view, implementation time is an appropriate consideration in determining practicability since it may bear directly on the achievement of program objectives. Accordingly, implementation time has been retained in the definition of "practicable."

WRC expressed particular concern over the variance in DOE's definition of "floodplain." In response to this and similar comments, DOE has modified its definitions of "floodplain," "structure," and "flood or flooding" to conform with WRC's definitions.

In order to be consistent with the terminology established in the CEQ NEPA regulations, DOE has eliminated the term "Negative Determination" (a public notice that no environmental impact statement (EIS) will be prepared) from these regulations and substituted the term "Finding of No Significant Impact" (FONSI), which is used in 40 CFR Part 1500. Until the effective date of the CEQ regulations, a Negative Determination prepared pursuant to currently applicable DOE NEPA regulations will be considered synonymous with the FONSI used herein. Similarly, the definition of an environmental assessment (EA) for purposes of these regulations, has been modified to conform with the CEQ definition.

D. APPLICABILITY

Several commenters questioned the exclusion of FERC from the applicability of these regulations [§ 1022.4(a)]. In this regard, it should be noted that FERC is an independent regulatory commission within DOE and is not "subject to the supervision or direction of any officer, employee, or agent of any other part of the Department" (DOE Organization Act, 42 USC 7171). FERC has indicated its intention to incorporate floodplain/wetlands considerations into its NEPA compliance process, which is also administered independently from that of DOE.

Other commenters questioned DOE's application of the regulations to floodplain/wetlands actions "where practicable modifications of/or alternatives to the proposed action are still available" [§ 1022.5(b)]. The reviewers could not envision a situation in which alternatives had been foreclosed and in which it was no longer possible to *modify* an activity. DOE agrees that there may be circumstances in which it is still practicable to modify a proposed activity even after implementation has begun. DOE has therefore made a change in §1022.5(b) to specify that where the review of alternatives is no longer practicable or where DOE determines to take action in a floodplain, DOE shall design or modify the selected alternative to reduce adverse effects and mitigate flood hazard. This should also eliminate the confusion some reviewers experienced concerning the meanings of "modifications" and "alternatives."

Three commenters objected to the exemptions provided in § 1022.5(c) for floodproofing and flood protection of existing DOE structures or facilities, and maintenance activities. The commenters felt that such activities may indeed have long- and short-term adverse impacts on floodplains and wetlands. In response to these comments, DOE has eliminated the exemption of floodproofing and flood protection activities, and has modified the exemption of maintenance activities to include only routine maintenance [§ 1022.5(g)]. DOE has retained language which enables consideration of the need for a floodplain/wetlands assessment for routine maintenance involving unusual circumstances.

E. PUBLIC NOTIFICATION PROCEDURES

Several commenters felt that reliance on the publication of a notice in the FEDERAL REGISTER (§ 1022.14) with respect to a proposed floodplain/wetlands action does not satisfy the requirements for early public review and and does not encourage public participation in the floodplain/wetlands decisionmaking process. It is DOE's intent to incorporate floodplain/wetlands notification requirements into the current (and future) applicable NEPA procedures and documentation. DOE believes that these public notification requirements, including the enhanced notification and scoping requirements specified in the CEQ NEPA regulations, will assure an adequate public notification process for those DOE actions, requiring an EIS. Pending the effective date of the CEQ NEPA regulations and DOE implementing procedures, DOE shall, to the extent practicable, issue a Notice of Intent (NOI) to prepare an EIS for proposed floodplain/wetlands actions, where appropriate, and shall circulate the NOI to persons and agencies known to be interested in or affected by the proposed action. New language has been added to § 1022.14 to assure that similar policies and procedures apply to floodplain/wetlands actions, for which no EIS is prepared.

DOE has retained the proposed comment periods following publication of the early public notice and the statement of findings rather than expand these periods as suggested by several commenters. It is believed that the periods allotted in the proposed regulations will permit adequate public participation without unduly delaying agency decisionmaking.

F. OMISSIONS

Four commenters cited omissions in the proposed regulations concerning certain specific requirements of the Executive orders, including policies and procedures with respect to:

1. Consideration of flood hazards for actions involving licenses, permits, loans, grants, or other forms of financial assistance;
2. Delineation of past and probable flood height on DOE property;
3. Lease, easement, right-of-way, or disposal of property to non-Federal entities;
4. Leadership to reduce the risk of flood loss and to minimize the impact of floods on human safety, health and welfare; and
5. Periodic review and update of these regulations.

DOE notes that these items were inadvertently omitted and has, therefore, included provisions in § 1022.3 to

address items 1, 2, and 4 above; § 1022.5 to assess items 1 and 3; and § 1022.21 to address item 5.

G. MISCELLANEOUS

Four commenters cited the proposed regulations failure to identify compliance with National Flood Insurance Program (NFIP) standards as a *minimum* requirement, as stated in E.O. 11988. In response, § 1022.3(b) has been modified.

Two commenters were concerned with the procedures for making a wetlands determination in areas where the U.S. Fish and Wildlife Service National Wetlands Inventory maps are not yet available. Several possible alternate sources of information were recommended; these have been added to § 1022.11(c).

The WRC objected to the use of the final EIS as the vehicle to transmit the statement of findings because the final EIS is a pre-decisional document. WRC believes that E.O. 11988 requires the statement of findings to be issued *after* a decision is made. However, section 2(a)(2) of E.O. 11988 requires only that the statement of findings be prepared and circulated for brief public review *prior to taking action*. The final EIS is also issued for review prior to taking action. DOE believes it is useful to incorporate the statement of findings in a final EIS, where possible. Moreover, EPA in its comments, suggested it would be beneficial to issue a draft statement of findings in a draft EIS. Since E.O. 11988 provides for a period of public comment on the statement of findings, DOE feels that this document is most meaningful if it precedes the Agency's final decision.

Several commenters suggested that DOE delete the proposed requirement to review mitigation measures in the floodplain/wetlands assessment because of the Executive orders prohibition against actions in the floodplain/wetlands unless no practicable alternative is available. While DOE is aware of that requirement, it believes that the decisionmaking process as well as public participation in the decisionmaking process will be best served by a review of all relevant considerations in one document. Thus, DOE has continued the requirement that mitigation measures be reviewed along with practicable alternatives in the floodplain/wetlands assessment.

IV. EFFECTIVE DATE

Executive Order 11988 required agencies to issue or amend existing regulations and procedures within one year of its issuance to comply with the Order. DOE has exceeded the time allotted for promulgation of regulations and consequently believes that the goals of the Order will be best served by waiving the normal 30-day transition period prior to effectiveness of the regulations. Accordingly, these regulations will become effective March 7, 1979.

NOTE.—DOE has determined that because this document does not constitute a significant regulation within the meaning of E.O. 12044, preparation of a regulatory analysis is not required.

In consideration of the foregoing, Chapter X of Title 10 of the Code of Federal Regulations is amended as set forth below, effective upon publication.

Issued in Washington, D.C. February 28, 1979.

RUTH C. CLUSEN,
Assistant Secretary for Environment.

Part 1022 is added to Title 10, Chapter X, of the Code of Federal Regulations to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Sec.
1022.1 Background.
1022.2 Purpose and scope.
1022.3 Policy.
1022.4 Definitions.
1022.5 Applicability.

Subpart B—Procedures for Floodplain/Wetlands Review

1022.11 Floodplain/wetlands determination.
1022.12 Floodplain/wetlands assessment.
1022.13 Applicant responsibilities.
1022.14 Public review.
1022.15 Notification of decision.
1022.16 Requests for authorizations and appropriations.
1022.17 Follow-up.
1022.18 Timing of floodplain/wetlands actions.
1022.19 Selection of lead agency and consultation among participating agencies.
1022.20 Public inquiries.
1022.21 Updating regulations.

AUTHORITY: E.O. 11988 (May 24, 1977); and E.O. 11990 (May 24, 1977).

Subpart A—General

§ 1022.1 Background.

Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977), requires each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the Order is provided in the Floodplain Management Guidelines of the U.S. Water Resources Council (40 FR 6030, February 10, 1978). Executive Order 11990—Protection of Wetlands (May 24, 1977), requires all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking. It is the intent of both Executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures such as those established to implement the National Environmental Policy Act (NEPA) of 1969. In those instances where the impacts of actions in floodplains and/or wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities with respect to compliance with E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain/wetlands factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in floodplain/wetlands, providing opportunity for early public review of such proposed actions, preparing floodplain/wetlands assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE will accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures.

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative.

(b) Incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the hazard and risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with the standards and criteria set forth in, and consistent with the intent of, the regulations promulgated by the Federal In-

surance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*;

(5) Minimize the destruction, loss, or degradation of wetlands;

(6) Preserve and enhance the natural and beneficial values of wetlands;

(7) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property which has suffered flood damage or is in an identified flood hazard area and which is used by the general public; and

(8) Prior to the completion of any financial transaction related to an area located in a floodplain, which is guaranteed, approved, regulated or insured by DOE, inform any private participating parties of the flood-related hazards involved.

(c) Undertake a careful evaluation of the potential effects of any DOE action taken in a floodplain and any new construction undertaken by DOE in wetlands not located in a floodplain.

(d) Identify, evaluate, and, as appropriate implement alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts; and

(e) Provide opportunity for early public review of any plans or proposals for actions in floodplains and new construction in wetlands.

§ 1022.1 Definitions.

For purposes of this part:

(a) "Action" means any DOE activity, including, but not limited to:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) DOE-undertaken, financed, or assisted construction and improvements; and

(3) The conduct of DOE activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities.

(b) "Base Flood" means that flood which has a 1 percent chance of occurrence in any given year (also known as a 100-year flood).

(c) "Critical Action" means any activity for which even a slight chance of flooding would be too great. Such actions may include the storage of highly volatile, toxic, or water reactive materials.

(d) "Environmental Assessment" (EA) means a document for which DOE is responsible that serves to: (1) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, (2) aid DOE compliance with NEPA when no EIS is necessary, and (3) facilitate preparation of an EIS when one is necessary. The EA shall include brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(e) "Environmental Impact Statement" means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA.

(f) "Facility" means any man-placed item other than a structure.

(g) "Finding of No Significant Impact" (FONSI) means a document prepared by DOE which briefly presents the reasons why an action will not significantly effect on the human environment and for which an EIS therefore will not be prepared.

(h) "Flood or Flooding" means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(i) "Floodplain" means the lowlands adjoining inland and coastal waters and relatively flat areas and flood-prone areas of offshore islands including, at a minimum, that area inundated by a 1 percent or greater chance flood in any given year. The base floodplain is defined as the 100-year (1.0 percent) floodplain. The critical action floodplain is defined as the 500-year (0.2 percent) floodplain.

(j) "Floodplain Action" means any DOE action which takes place in a floodplain.

(k) "Floodplain/Wetlands Assessment" means an evaluation consisting of a description of a proposed action, a discussion of its effects on the floodplain/wetlands, and consideration of alternatives.

(l) "Floodproofing" means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce the effects of water entry.

(m) "High Hazard Areas" means those portions of riverine and coastal floodplains nearest the source of flooding which are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

(n) "Minimize" means to reduce to the smallest degree practicable.

(o) "New Construction" for the purpose of compliance with E.O. 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after October 1, 1977.

(p) "Practicable" means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, and implementation time.

(q) "Public Notice" means a brief notice published in the FEDERAL REGISTER, and circulated to affected and interested persons and agencies, which describes a proposed floodplain/wetlands action and affords the opportunity for public review.

(r) "Preserve" means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.

(s) "Restore" means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

(t) "Statement of Findings" means a statement issued pursuant to E.O. 11988 which explains why a DOE action is proposed in a floodplain, lists alternatives considered, indicates whether the action conforms to State and local floodplain standards, and describes steps to be taken to minimize harm to or within the floodplain.

(u) "Structure" means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

(v) "Wetlands" means those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflow, mudflats, and natural ponds.

(w) "Wetlands Action" means an action undertaken by DOE in a wetlands not located in a floodplain, subject to the exclusions specified at § 1022.5(c).

§ 1022.5 Applicability.

(a) This part shall apply to all organizational units of DOE, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part shall apply to all proposed floodplain/wetlands actions, including those sponsored jointly with other agencies, where practicable alternatives to the proposed action are still available. With respect to programs and projects for which the appropriate environmental review has been completed or a final EIS filed prior to the effective date of these regulations, DOE shall, in lieu of the procedures set forth in this part, review the alternatives identified in the environmental review or in the final EIS to determine whether an alternative action may avoid or minimize impacts on the floodplain/wetlands. If project or program implementation has progressed to the point where review of alternatives is no longer practicable, or if DOE determines after a review of al-

ternatives to take action in a floodplain, DOE shall design or modify the selected alternative in order to minimize potential harm to or within the floodplain and to restore and preserve floodplain values. DOE shall publish in the FEDERAL REGISTER, a brief description of measures to be employed and shall endeavor to notify appropriate Federal, State, and local agencies and persons or groups known to be interested in the action.

(c) This part shall not apply to wetlands projects under construction prior to October 1, 1977; wetlands projects for which all of the funds have been appropriated through fiscal year 1977; or wetlands projects and programs for which a draft or final EIS was filed prior to October 1, 1977. With respect to proposed actions located in wetlands (not located in a floodplain), this part shall not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands which are located on non-Federal property.

(d) This part applies to activities in furtherance of DOE responsibilities for acquiring, managing, and disposing of Federal lands and facilities. When property in a floodplain or wetlands is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, DOE shall: (1) identify those uses that are restricted under Federal, State, or local floodplains or wetlands regulations; (2) attach other appropriate restrictions to the uses of the property; or (3) withhold the property from conveyance.

(e) This part applies to activities in furtherance of DOE responsibilities for providing federally undertaken, financed, or assisted construction and improvements. Applicants for assistance shall provide DOE with an analysis of the impacts which would result from any proposed wetland or floodplain activity.

(f) This part applies to activities in furtherance of DOE responsibilities for conducting Federal activities and programs affecting land use, including but not limited to, water and related resource planning, regulating and licensing activity.

(g) This part ordinarily shall not apply to routine maintenance of existing facilities and structures on DOE property within a floodplain/wetlands since such actions normally have minimal or no adverse impact on a floodplain/wetlands. However, where unusual circumstances indicate the possibility of impact on a floodplain/wetlands, DOE shall consider the need for a floodplain/wetlands assessment for such actions.

(h) The policies and procedures of this part which are applicable to floodplain actions shall apply to all proposed actions which occur in a wetlands located in a floodplain.

Subpart B—Procedures for Floodplain/Wetlands Review

§ 1022.11 Floodplain/wetlands determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA requirements, DOE shall determine the applicability of the floodplain management and wetlands protection requirements of this part.

(b) In making the floodplain determination, DOE shall utilize the Flood Insurance Rate Maps (FIRM's) or the Flood Hazard Boundary Maps (FHBM's) prepared by the Federal Insurance Administration of the Department of Housing and Urban Development to determine if a proposed action is located in the base or critical action floodplain, as appropriate. For a proposed action in an area of predominantly Federal or State land holdings where FIRM or FHBM maps are not available, information shall be sought from the land administering agency (e.g., Bureau of Land Management, Soil Conservation Service, etc.) or from agencies with floodplain analysis expertise.

(c) In making the wetlands determination, DOE shall utilize information available from the following sources, as appropriate: (1) U.S. Fish and Wildlife Service National Wetlands Inventory; (2) U.S. Department of Agriculture Soil Conservation Service Local Identification Maps; (3) U.S. Geological Survey Topographic Maps; (4) State wetlands inventories; and (5) regional or local government-sponsored wetland or land use inventories.

§ 1022.12 Floodplain/wetlands assessment.

(a) If DOE determines, pursuant to §§ 1022.5 and 1022.11, that this part is applicable to the proposed action, DOE shall prepare a floodplain/wetlands assessment, which shall contain the following information:

(1) *Project Description.* This section shall describe the nature and purpose of the proposed action, and shall include a map showing its location with respect to the floodplain and/or wetlands. For actions located in a floodplain, the high hazard areas shall be delineated and the nature and extent of the potential hazard shall be discussed.

(2) *Floodplain/Wetlands Effects.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetlands. The effects of a proposed floodplain action on lives and property, and on natural and beneficial floodplain values shall be evaluated. For actions taken in wetlands, the effects on the survival, quality, and natural and beneficial values of the wetlands shall be evaluated.

(3) *Alternatives.* Alternatives to the proposed action which may avoid adverse effects and incompatible development in the floodplain/wetlands shall be considered, including alternate sites, actions, and no action. Measures that mitigate the adverse effects of actions in a floodplain or wetlands, including but not limited to minimum grading requirements, runoff controls, design and construction constraints, and protection of ecology-sensitive areas shall be addressed.

(b) For proposed floodplain or wetlands actions for which an EA or EIS is required, the floodplain/wetlands assessment shall be prepared concurrent with and included in the appropriate NEPA document.

(c) For floodplain/wetlands actions for which neither an EA or EIS is prepared, a separate document shall be issued as the floodplain/wetlands assessment.

§ 1022.13 Applicant responsibilities.

DOE may require applicants for a DOE permit, license, certificate, financial assistance, contract award, allocation or other entitlement to submit a report on a proposed floodplain/wetlands action. The report shall contain the information specified at § 1022.12 and shall be prepared in accordance with the guidance contained in this part.

§ 1022.14 Public review.

(a) For proposed floodplain/wetlands actions for which an EIS is required, the opportunity for early public review will be provided through applicable NEPA procedures. A Notice of Intent to prepare an EIS may be used to satisfy this requirement.

(b) For proposed floodplain/wetlands actions for which no EIS is required, DOE shall provide the opportunity for early public review through publication of a Public Notice, which shall be published in the FEDERAL REGISTER, as soon as practicable after a determination that a floodplain/wetlands may be affected and at least 15 days prior to the issuance of a statement of findings with respect to a proposed floodplain action. DOE shall take appropriate steps to inform Federal, State, and local agencies and persons or groups known to be interested in or affected by the proposed floodplain/wetlands action. The Public Notice shall include a description of the proposed action and its location and may be incorporated with other notices issued with respect to the proposed action.

(c) Following publication of the Public Notice, DOE shall allow 15 days

for public comment prior to making its decision on the proposed action, except as specified in § 1022.18(c). At the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed floodplain/wetlands action and the mitigating measures, taking into account all substantive comments received.

§ 1022.15 Notification of decision.

(a) If DOE finds that no practicable alternative to locating in the floodplain/wetlands is available, consistent with the policy set forth in E.O. 11988, DOE shall, prior to taking action, design or modify its action in order to minimize potential harm to or within the floodplain/wetlands.

(b) For actions which will be located in a floodplain, DOE shall publish a brief (not to exceed three pages) statement of findings which shall contain:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable State or local floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

For floodplain actions which require preparation of an EA or EIS, the statement of findings may be incorporated into the FONSI or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, DOE shall publish the statement of findings in the FEDERAL REGISTER and distribute copies to Federal, State, and local agencies and others who submitted comments as a result of the Public Notice. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, DOE shall send the statement of findings to the State and areawide A-95 Clearinghouses for the geographic area affected.

§ 1022.16 Requests for authorizations or appropriations.

DOE shall indicate in any requests for new authorizations or appropriations transmitted to OMB, if a proposed action will be located in a floodplain or wetlands, whether the proposed action is in accord with the requirements of E.O. 11990 E.O. 11988, and these regulations.

§ 1022.17 Follow-up.

For those DOE actions taken in floodplain/wetlands, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigating measures, is proceeding as described in the floodplain/wetlands assessment and statement of findings.

§ 1022.18 Timing of floodplain/wetlands actions.

(a) Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

(b) With respect to wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the Public Notice in the FEDERAL REGISTER.

(c) Where emergency circumstances, statutory deadlines, of overriding considerations of program or project expense or effectiveness exist, the minimum time periods may be waived.

§ 1022.19 Selection of a lead agency, and consultation among participating agencies.

When DOE and one or more other Federal agencies are directly involved in a floodplain/wetlands action, DOE shall consult with such other agencies to determine if a floodplain/wetlands assessment is required, to identify the appropriate lead or joint agency responsibilities, to identify the applicable regulations, and to establish procedures for interagency coordination during the environmental review process.

§ 1022.20 Public inquiries.

Inquiries regarding DOE's floodplain/wetlands activities may be directed to the Assistant Secretary for Environment, Department of Energy, Washington, D.C. 20545.

§ 1022.21 Updating regulations.

DOE shall periodically review these regulations, evaluate their effectiveness, and make appropriate revisions.

[FR Doc. 79-6855 Filed 3-6-79; 8:45 am]

Proposed Rules

Federal Register
Vol. 67, No. 222
Monday, November 18, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 1021 and 1022

RIN 1901–AA94

Compliance With Floodplain and Wetland Environmental Review Requirements

AGENCY: Department of Energy.

ACTION: Proposed rule; opportunity for public comment.

SUMMARY: This proposed rule would revise the Department of Energy's (DOE's) floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens by: Simplifying DOE public notification procedures for proposed floodplain and wetland actions; exempting additional actions from the floodplain and wetland assessment provisions of these regulations; providing for immediate action in an emergency; expanding the existing list of sources that may be used in determining the location of floodplains and wetlands; and allowing floodplain and wetland assessments for actions proposed to be taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to be coordinated with the CERCLA environmental review process rather than the National Environmental Policy Act (NEPA) process. In addition, the proposed revisions would make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer necessary. The proposed revisions would streamline existing procedures and add no new or additional requirements. This proposed revision also would provide a conforming change to 10 CFR part 1021 to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

DATES: Interested persons should submit comments by January 14, 2003.

ADDRESSES: You should address written comments on the proposed revisions to Carolyn Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance, 1000 Independence Avenue SW., Washington, DC 20585–0119. You also may e-mail written comments to: *carolyn.osborne@eh.doe.gov* or submit them by facsimile to (202) 586–7031.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or these proposed revisions, contact Carolyn Osborne at the above address. Telephone (202) 586–4600 or leave a message at (800) 472–2756.

For information on DOE's NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background

We published our regulations entitled ''Compliance with Floodplain/Wetlands Environmental Review Requirements'' (10 CFR Part 1022) on March 7, 1979 (44 FR 12596) to implement the requirements of Executive Order 11988, ''Floodplain Management'' (42 FR 2951, May 24, 1977), and Executive Order 11990, ''Protection of Wetlands'' (42 FR 26961, May 24, 1977).

A. Executive Orders 11988 and 11990

Executive Orders 11988 and 11990 direct Federal agencies to consider and protect the beneficial values of floodplains and wetlands, and Executive Order 11988 also requires Federal agencies to consider, and implement protection from, the risk of loss from floods. The Executive Orders direct that Federal agencies evaluate the potential impacts of, and look for alternatives to, actions proposed in a floodplain or wetland. The Executive Orders also direct that agencies locate any new development outside floodplains and any new construction outside wetlands whenever there is a practicable alternative for doing so. When the action must proceed in a floodplain or wetland, the responsible agency is to implement steps to mitigate any potential harm. The assessment process under the Executive Orders is to include an opportunity for public review, and the Executive Orders are to be implemented through existing procedures, including those used to comply with NEPA, to the extent possible. The Executive Orders contain other informational requirements, including that Federal agencies notify the White House Office of Management and Budget (OMB) when new budget requests involve actions proposed to be in a floodplain or wetland and that Federal agencies provide certain information during transfers of property to non-Federal parties.

While this basic framework is the same in both Executive Orders, they differ in three important ways. First, Executive Order 11988 requires an assessment for any action proposed in a floodplain, whereas Executive Order 11990 only requires an assessment for new construction in a wetland. Second, Executive Order 11988 directs that if an agency finds that there is no practicable alternative to undertaking the action in a floodplain, then the agency will circulate a brief notice explaining the basis for its finding. Executive Order 11990 contains no similar provision for actions in wetlands. Finally, Executive Order 11988 requires the use of certain building standards and related measures for development in a floodplain. There is nothing comparable in Executive

Order 11990 related to construction in a wetland.

B. 10 CFR Part 1022

Central to our implementation of Executive Orders 11988 and 11990 are the floodplain and wetland assessment processes contained in subpart B of 10 CFR part 1022. The assessments ensure that we fulfill the substantive provisions of the Executive Orders to examine alternatives to undertaking actions in a floodplain or wetland, potential impacts on the beneficial values of floodplains and wetlands, and possible mitigation measures. As required by the Executive Orders, we look for practicable alternatives to locating a proposed action in a floodplain or wetland and only conduct a floodplain or wetland assessment when no alternative location is practicable. Our processes also ensure that we fulfill the procedural provisions of the Executive Orders to allow early public review of our proposals for certain activities in a floodplain or wetland, provide notice of a finding that there are no practicable alternatives to undertaking an action in a floodplain, and make use of existing processes, including those used to implement NEPA.

Our floodplain and wetland assessment process has five steps. First, we determine early in the planning process for all proposals if a floodplain or wetland assessment is required, based on the location of the proposed action and the applicability provisions in our regulation, which are taken from the Executive Orders. As noted above, Executive Order 11988 requires an assessment for a broader set of actions proposed in a floodplain than Executive Order 11990 requires for actions proposed in a wetland. Our requirements in part 1022 reflect this difference. When an action is proposed in a wetland that is located in a floodplain, we apply the more encompassing requirements for an action proposed in a floodplain.

Second, if a floodplain or wetland assessment is required, we provide public notice and allow at least 15 days for public review of our proposal. If we are preparing an EIS for the proposal, then we may incorporate this announcement into the EIS notice of intent required under applicable NEPA regulations. Otherwise, we announce the opportunity for early public review through a public notice that describes the proposed action and its location and is published in the **Federal Register** as soon as practicable after we determine that an assessment is required. The public review process itself is integrated with the NEPA process to the extent possible or else conducted separately.

Third, we prepare the floodplain or wetland assessment. If we are also preparing an EIS or environmental assessment (EA), then we usually incorporate the floodplain or wetland assessment into the NEPA documentation. Otherwise, we separately document the floodplain or wetland assessment. In either case, we describe the proposed action and include a map showing the location of the proposed action with respect to the floodplain or wetland. We discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain or wetland. For actions proposed in a floodplain, the assessment evaluates effects of the proposed action on lives and property and evaluates natural and beneficial floodplain values. For actions proposed in a wetland, the assessment evaluates effects on the survival, quality, and natural and beneficial values of the wetland. The floodplain or wetland assessment also considers alternatives that may avoid adverse effects and incompatible development in floodplains or wetlands and addresses mitigation measures.

Fourth, we determine whether there are any practicable alternatives to locating the proposed action in a floodplain or wetland. If we find that there are not, then before taking action in a floodplain we publish a brief statement of findings describing the proposed action, explaining why the action is proposed in a floodplain, listing alternatives considered, stating whether the action conforms to state or local floodplain protection standards, and describing steps to be taken to minimize potential harm to or within the floodplain. The statement of findings may be incorporated into the finding of no significant impact (FONSI) or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, we publish the statement of findings in the **Federal Register** and distribute copies to appropriate government agencies and to those who commented during the public review of our proposal. We endeavor to allow at least 15 days of public review of the statement of findings before implementing a proposed action in a floodplain. There is no similar format or procedure for findings regarding whether there are any practicable alternatives to locating a proposed action in a wetland.

Fifth, we follow up decisions to locate actions in a floodplain or wetland through methods appropriate for the circumstances of each action.

The current rule contains one exemption from the requirement to prepare a floodplain or wetland assessment, which is for routine maintenance of existing facilities and structures on DOE property within a floodplain or wetland. By routine maintenance, we mean those activities needed as a normal part of operations to maintain and preserve facilities and structures in a condition suitable for continued use for their designated purpose. Routine maintenance does not include upgrades, improvements, or replacements that significantly extend the originally intended useful life of a facility or structure or that change its purpose. Where unusual circumstances indicate the possibility of adverse impacts on a floodplain or wetland, though, we will consider the need for a floodplain or wetland assessment even for routine maintenance activities.

Other requirements in 10 CFR part 1022 that implement aspects of Executive Orders 11988 and 11990 address building standards, providing floodplain and wetland information to external parties, property management, and budget requests. Although these requirements are designed to promote awareness of the values of floodplains and wetlands and the risks of flood loss, they are not part of the floodplain and wetland assessment process.

II. Purpose of the Revisions to 10 CFR Parts 1021 and 1022

The Secretary of Energy has approved issuance and publication of this notice of proposed rulemaking.

We propose to revise 10 CFR part 1022 to add flexibility to our implementation of the Executive Orders, remove unnecessary procedural burdens, and make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer needed. These changes stem from our experience implementing the existing requirements over the past 20 years. We expect these changes to improve our ability to meet our goals for floodplain and wetland protection in a timely and cost-effective manner. We propose to revise 10 CFR part 1021 to allow floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we propose would: (1) Simplify our public notification procedures for proposed floodplain and wetland actions by emphasizing local publication as opposed to publication in the **Federal Register**, (2) exempt additional actions from the floodplain and wetland

assessment provisions of these regulations, (3) provide for immediate action in an emergency with documentation to follow, (4) expand the existing list of credible sources that may be used in determining the location of floodplains and wetlands, and (5) allow floodplain and wetland assessments for actions proposed to be taken under CERCLA to be coordinated with the CERCLA environmental review process rather than the NEPA process. The proposed revisions would make the rule easier to use by reordering sections to parallel the assessment process, clarifying requirements (such as the differences between floodplain and wetland actions and their respective assessment requirements), and simplifying the rule by deleting provisions that are no longer applicable. The proposed revisions would streamline existing procedures and add no new requirements.

Rather than require publication in the **Federal Register** of every public notice announcing a proposed action in a floodplain or wetland or describing the findings of our floodplain assessment, we propose to allow case-by-case decisions on how to issue notices to best meet local needs (in proposed sections 1022.12 and 1022.14). We would continue to integrate our floodplain and wetland notices with other public notices related to the proposed action, such as a notice of intent to prepare an EIS on the proposal. We also would continue to distribute notices directly to interested parties, such as government and non-government agencies, as appropriate. We would, however, only require publication of a notice and a floodplain statement of findings in the **Federal Register** if our proposal may result in effects of national concern on a floodplain or wetland. A hypothetical example of an action that could have effects of national concern because of its national prominence and ecological function and the potential environmental effects of such a proposal would be a proposal for a project in the Everglades.

As noted above, part 1022 currently does not ordinarily require a floodplain or wetland assessment for routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland. We propose to exempt four additional classes of floodplain and wetland actions from subpart B, Procedures for Floodplain and Wetland Reviews. At proposed section 1022.5(d)(2), we would add exemptions for three similar classes of activities (site characterization, environmental monitoring, and environmental research activities) on DOE or non-DOE property in a floodplain or wetland, unless the activities would involve building a structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem. At proposed section 1022.5(d)(3), we would add an exemption for minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions, unless the modification would result in a significant change in the expected useful life of the facility or structure or would involve building a structure or draining, dredging, channelizing, filling, diking, impounding, or related activities. Our experience with these classes of actions is that they are of short duration with very small intrusion in a floodplain or wetland and have very small or no adverse impact on a floodplain or wetland. Additionally, these classes of actions typically lead to improved environmental protection or public and worker safety. For each of these exemptions, if unusual circumstances arise, we would consider the need for a floodplain or wetland assessment in order to consider any unusual circumstances associated with a particular proposal that indicate the possibility of adverse impact on a floodplain or wetland (proposed section 1022.5(e)).

We propose to clarify our provision for immediate action in the event of an emergency (proposed section 1022.16(a)). The existing rule allows minimum time periods prior to implementation of a proposal to be waived in response to emergency circumstances. We propose that action may be taken during an emergency without complying with provisions of these regulations. We also propose, however, that after taking action, we would assess the environmental impacts of our emergency actions and consider potential mitigation in conjunction with our NEPA regulations for emergency actions (10 CFR 1021.343(a)) or our CERCLA procedures.

The existing rule establishes a 15-day waiting period between issuance of the notice of proposed floodplain action and issuance of the floodplain statement of findings, and another 15-day waiting period after issuance of the floodplain statement of findings before implementing the proposed floodplain action. For a proposed wetland action, the existing rule requires a 15-day waiting period after issuance of the notice of proposed action before implementing the action. In the event of statutory deadlines or overriding considerations of program or project expense or effectiveness, the existing rule provides for waiving any of the waiting periods except the 15-day period between issuing a notice of proposed floodplain action and the floodplain statement of findings. We propose to add a provision allowing the waiver of all minimum waiting periods under the same exigent circumstances (*i.e.*, in the event of statutory deadlines or overriding considerations of program or project expense or effectiveness) (proposed section 1022.16(b)). This change would allow us additional flexibility when a floodplain assessment is not being prepared as part of a NEPA or CERCLA review. The waiver of a waiting period under this rule would not affect timing requirements of our NEPA regulations or of CERCLA procedures.

We propose to expand the existing list of sources that may be used in determining the location of floodplains and wetlands (proposed sections 1022.11(b) and (c)). For floodplain determinations we have relied upon Flood Insurance Rate Maps, Flood Hazard Boundary Maps, and information from the relevant land administering agency or from agencies with floodplain determination expertise. We propose to also use information in safety basis documents as defined at 10 CFR part 830 and in DOE environmental documents, *e.g.*, NEPA and CERCLA documents. For wetland determinations, we have relied upon the U.S. Fish and Wildlife Service National Wetlands Inventory, other government-sponsored wetland or land-use inventories, U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps, and U.S. Geological Survey Topographic Maps. We propose to also use the U.S. Army Corps of Engineers ''Wetlands Delineation Manual'' (Wetlands Research Program Technical Report Y–87–1, January 1987) or successor document and DOE environmental documents, *e.g.,* NEPA and CERCLA documents. These changes would allow us to take advantage of information sources that were not available when this regulation was first promulgated and to use better the considerable research and documentation completed for safety, planning, and other purposes at DOE sites. When there are differences among these information sources, we will use the most authoritative information available relative to site conditions.

We propose adding provisions acknowledging that floodplain and wetland assessments for actions proposed to be taken under CERCLA would be coordinated with the CERCLA

environmental review process, not the NEPA process (proposed sections 1022.2(b), 1022.11(a), and 1022.13(c)). As we first promulgated our 10 CFR Part 1022 requirements approximately two years before CERCLA became law, this change would update the rule to be consistent with our current policy and practice regarding environmental reviews under CERCLA.

To make the rule simpler and easier to use, we propose to reorder sections, add clarifications, delete text, and make numerous stylistic changes. These proposed changes would not alter applicable requirements. The existing rule has two subparts, A and B. We propose reordering sections in Subpart B to only address provisions associated with floodplain and wetland assessment processes. All other requirements currently in Subpart B would be moved to a proposed new subpart (Subpart C, Other Requirements).

We propose to clarify how this regulation applies differently to actions proposed in a floodplain, and actions proposed in a wetland but not in a floodplain, consistent with provisions in Executive Orders 11988 and 11990 and our existing regulation. We would not change any requirements in this regard; rather we propose to revise definitions of floodplain, floodplain action, and wetland action (proposed section 1022.4) to better describe our intent and the way we implement this regulation. These changes, and related changes to maintain consistency throughout the regulation, clarify that we treat a proposal that would be located in both a wetland and a floodplain as we would any other action proposed to be located in a floodplain.

We propose to delete text that is repeated between sections in the existing rule, and in one case, we would delete an entire section (existing section 1022.21) that specifies we will periodically review these regulations and make revisions. Existing section 1022.21 is not required for us to propose additional changes to this rule at a future date, and therefore, we propose deleting it as unnecessary. We also propose to delete language that was needed to transition the rule into effect but that is no longer needed (proposed section 1022.5).

The details of these and other proposed changes are described below in section III, Description of Proposed Revisions to the Existing Rule. Because we often reference our existing rule to describe our proposed changes, you may want to refer to it. Our existing 10 CFR Part 1022 regulations are available on the Internet at *http://tis.eh.doe.gov/nepa/tools/tools.htm* under the heading ''NEPA Regulations'' or you may request a copy from Carolyn Osborne at either of the telephone numbers listed above under **FOR FURTHER INFORMATION CONTACT.**

III. Description of Proposed Revisions to the Existing Rules

A. Proposed Changes to 10 CFR Part 1021

We propose to revise section 1021.313 to make it consistent with our proposed new section 1022.14(c), as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, and below. Currently, section 1021.313(c) requires a DOE final EIS to include any floodplain statement of findings required by Part 1022. This requirement is overly prescriptive and is inconsistent with the flexibility afforded under existing section 1022.15 and proposed section 1022.14(c) to include a floodplain statement of findings in a final EIS or to issue the statement of findings separately. Under our proposal, section 1021.313(c) would track the language at the new section 1022.14(c).

B. Proposed changes to 10 CFR 1022 Subpart A—General

Section 1022.1 Background

To provide guidance on implementing Executive Order 11988, Floodplain Management, we propose adding a reference to the Federal Interagency Floodplain Management Taskforce document, ''A Unified National Program for Floodplain Management'' (FEMA 248, June 1994). We also propose adding words from Executive Orders 11988 and 11990 emphasizing two purposes of the regulation: That Federal agencies are to avoid development in a floodplain or new construction in a wetland wherever there is a practicable alternative and to ensure the evaluation of potential impacts associated with proposed new construction in wetlands. These changes would add no new requirements.

Section 1022.2 Purpose and Scope

As described above in section II, we propose identifying the CERCLA review process as an alternative mechanism for implementing the regulation. Sections 1022.11(a) and 1022.13(c) (detailed below) would be revised to reflect this additional flexibility.

Section 1022.3 Policy

To better group floodplain and wetland policy statements, we propose reordering paragraphs within this section. We also propose updating the reference to construction requirements in proposed paragraph (a)(4) from ''regulations promulgated by the Federal Insurance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*'' to ''the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program building standards.'' Also, we propose moving a requirement concerning transactions to a new section 1022.21(b) in a new Subpart C, Other Requirements, discussed below, so that proposed paragraph (a)(6) would only state policy: ''Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain.''

Section 1022.4 Definitions

We propose to change our definition of ''action'' to clarify that it includes any activity necessary to carry out DOE's responsibilities for the tasks listed in Executive Orders 11988 and 11990, rather than that it includes any activity ''including, but not limited to,'' those tasks listed in the Executive Orders. This proposed language more closely parallels the Executive Orders.

We propose deleting the definition of ''base flood'' and incorporating it into the definition of ''base floodplain.''

We propose to revise the definitions of ''environmental assessment,'' ''environmental impact statement,'' and ''finding of no significant impact'' to reference the Council on Environmental Quality's (CEQ's) and DOE's NEPA regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021, respectively. Our NEPA regulations were not in place when 10 CFR part 1022 was promulgated.

We propose to simplify the definition of ''floodplain'' by creating separate definitions for ''base floodplain'' and ''critical action floodplain.'' We also propose to define the critical action floodplain as, at a minimum, the 500-year floodplain. While for most proposed actions, we prepare a floodplain assessment if the action would be located in the 100-year floodplain, for a proposed critical action (*i.e.*, an action for which even a slight chance of flooding poses an unacceptable risk) we prepare a floodplain assessment if it would be located in the critical action floodplain. We normally define the critical action floodplain in terms of the estimated 500-year flood for an area. We would add the option to define the critical action floodplain in terms of a less frequent (and therefore more severe) flood when another requirement applicable to the proposal requires consideration of the less frequent flood event. For example, if the hazard

assessment for a proposal considers the consequences of a less frequent flood (*e.g.*, the 10,000-year flood), then we would use that less frequent flood to define the critical action floodplain for the proposal.

We propose to clarify the definition of ''floodplain action'' by adding ''including any DOE action in a wetland that is also within the floodplain.''

We propose to add a definition for ''floodplain and wetland values'' to describe the range of issues to be addressed in a floodplain or wetland assessment under the existing section 1022.12(a)(2) and proposed section 1022.13(a)(2). We adapted the proposed definition from that used by FEMA (44 CFR 9.4) and terms used in Executive Orders 11988 and 11990.

We propose to delete the definition of ''floodproofing,'' because the term is not used in the rule.

We propose simplifying our definition of ''new construction'' by deleting the reference to October 1, 1977, as the starting point for applicability of the definition. That clause appropriately exempted certain actions underway before Executive Order 11990 became effective, but it is no longer necessary.

We propose to change the name and definition of ''public notice.'' We would call the notice a ''notice of proposed floodplain action'' or a ''notice of proposed wetland action'' to better reflect its purpose to announce that a proposed action would be in a floodplain or wetland, respectively, the location of the floodplain or wetland, and the opportunity for public review. We also propose to delete any requirements on how to issue the notice from the definition and instead to include such requirements in proposed section 1022.12, Notice of proposed action.

We propose to change the name ''statement of findings'' to ''floodplain statement of findings'' and to delete any requirements from the definition and instead to include such requirements in proposed section 1022.14, Findings.

We propose changing our definition of ''wetland'' to make it consistent with the Clean Water Act implementing regulations of both the U.S. Army Corps of Engineers (33 CFR 328.3(b)) and the U.S. Environmental Protection Agency (40 CFR 230.41(a)(1)), as the definition in the existing rule was taken from Executive Order 11990. This proposed revision would involve deleting the examples of ''similar areas such as sloughs, potholes, wet meadows, river outflow, mudflats and natural ponds.'' An important note about the proposed definition is that it is more broadly defined than the wetlands over which the U.S. Army Corps of Engineers has regulatory jurisdiction (33 CFR 328.3(a) and 328.4). The broader definition we use for this rule is consistent with Executive Order 11990 in order to ensure that we apply appropriate protections to valuable wetlands that might not qualify as wetlands subject to the Corps' jurisdiction (*e.g.,* some wet meadows, forested wetlands, playas, Carolina bays).

We propose to modify the definition of ''wetland action'' to specify that it applies to any DOE action ''related to new construction'' that takes place in a wetland not located in a floodplain. This change would make the definition consistent with Executive Order 11990, which requires a wetland assessment only for activities related to new construction in a wetland.

Section 1022.5 Applicability

We propose deleting a significant portion of text from the existing section 1022.5 because it is outdated or redundant of other sections of the rule. The result would be a more concise section, reduced from eight to four paragraphs, which is easier to read. We propose deleting text from existing paragraphs (b) and (c) that exempts actions that were underway when the rule was issued. Any such actions have since been completed, and the text is no longer necessary. We would delete text from existing paragraphs (d), (e), and (f) that repeats parts of the definition of ''action'' (proposed section 1022.4); this results in deletion of the entirety of paragraph (f). We would also delete existing paragraph (h) since it is repetitive of the definition of floodplain action (proposed section 1022.4).

We propose relocating requirements regarding license, easement, lease, transfer, or disposal of property to non-Federal public or private parties from existing section 1022.5(d) to proposed section 1022.21(a), Property management, in a new Subpart C, Other Requirements. From existing section 1022.5(e), we propose moving the requirements for applicants for assistance into proposed section 1022.23, Applicant responsibilities (proposed redesignation from existing section 1022.13), described below.

We propose adding four exemptions from the requirements for preparing a floodplain or wetland assessment to paragraph (d). These proposed exemptions are described above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

Section 1022.6 Public Inquiries

We propose moving this section from Subpart B (where it had been designated section 1022.20) to Subpart A because it is more appropriately a part of general statements related to this rule. We also propose updating the contact to which inquiries may be directed from the Assistant Secretary for Environment to the Office of NEPA Policy and Compliance.

C. Proposed Changes to 10 CFR 1022 Subpart B—Procedures for Floodplain and Wetland Reviews

We propose reordering the sections in this subpart to better reflect the sequence of events in our process for preparing a floodplain or wetland assessment and to relocate to subparts A and C those requirements not directly related to the preparation of a floodplain or wetland assessment. The particular changes are described below for each section in proposed subpart B.

Section 1022.11 Floodplain or Wetland Determination

We propose to change section 1022.11(a) by adding a reference to environmental review requirements under the CERCLA process to conform to the proposed change in section 1022.2(b), discussed above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

As also discussed above in section II, we propose to expand the list of information sources that may be used to determine if a proposed action would be located in a floodplain or wetland (proposed sections 1022.11(b) and (c)). We also propose to update references to two information sources. FEMA, rather than the Federal Insurance Administration of the Department of Housing and Urban Development, would be cited because FEMA currently maintains primary responsibility for interagency planning to address Federal floodplain management requirements (proposed section 1022.11(b)). We also propose to change the existing reference to the Soil Conservation Service to the Natural Resources Conservation Service to reflect the agency's current name (proposed sections 1022.11(b) and (c)).

We propose to add a new section (proposed 1022.11(d)) that would specify whether a floodplain or wetland assessment is required based on the location of the proposed action. This paragraph would clarify existing requirements by associating the determination made pursuant to sections 1022.11(b) and (c) with the definitions of critical action, floodplain action, and wetland action.

Section 1022.12 Notice of Proposed Action (Proposed Redesignation From Section 1022.14 Public Review)

We propose to change, in proposed section 1022.12 and throughout the rule, all references to ''public notice'' to ''notice of proposed floodplain action'' or ''notice of proposed wetland action'' to better reflect the purpose of the notice.

We propose to change existing sections 1022.14(b) and (c) by deleting the requirement that DOE always publish a notice in the **Federal Register** for floodplain or wetland actions for which no EIS is required. This proposal is explained above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022. We also propose to move the requirement regarding timing for issuance of a notice of proposed action from existing section 1022.14(b) to proposed section 1022.15, Timing. This would consolidate requirements related to timing of steps in the floodplain and wetland assessment processes, as discussed below.

Section 1022.13 Floodplain or Wetland Assessment (Proposed Redesignation From Existing Section 1022.12)

We propose emphasizing in proposed paragraph (a)(2) that the assessment shall incorporate floodplain and wetland values that are appropriate to the location under evaluation. This would underscore the need to focus only on those values most appropriate to local conditions and also to clarify that when evaluating a proposal for an action within a wetland located in a floodplain, we consider both floodplain and wetland values, as appropriate. This proposed revision would reference a new definition of floodplain and wetland values (described above for proposed section 1022.4) that lists several topics that might be included in the assessment. Although these changes do not add any new requirement, they do add further guidance about how the assessment should be performed.

We propose adding to proposed paragraph (c) that when an EA or EIS is not being prepared for the proposed floodplain or wetland action, the assessment ''shall be prepared separately or incorporated when appropriate into another environmental review process (*e.g.*, CERCLA).'' This revision highlights our flexibility to incorporate compliance with these regulations within processes other than NEPA, as appropriate and as discussed in other sections above.

Section 1022.14 Findings (Proposed Redesignation From Section 1022.15 Notification of Decision)

We propose a new section (1022.14(c)) to describe how to issue a statement of findings for floodplain actions for which no EA or EIS is being prepared. For these floodplain actions, we would distribute copies of the floodplain statement of findings to government agencies and to others who submitted comments on the proposed action. We propose to publish the floodplain statement of findings in the **Federal Register** only when the proposed floodplain action may result in effects of national concern to a floodplain or wetland or both. The proposed change would parallel the process described in the CEQ regulations on Public Involvement (40 CFR 1506.6(b)(2)) and is reflected in the proposed changes to section 1022.4. We also propose that when a floodplain statement of findings is published in the **Federal Register** the statement does not need to contain a map (as otherwise required) but that the statement should indicate where a location map is available. A wetland finding may be prepared and distributed at DOE's discretion.

We also propose a new section (1022.14(d)) regarding the distribution of floodplain statements of findings to state governments. We propose to update the existing reference to Office of Management and Budget Circular A–95 (from the existing section 1022.15) and refer instead to Executive Order 12372, Intergovernmental Review of Federal Programs, and DOE's implementing regulations at 10 CFR part 1005, Intergovernmental Review of *Department of Energy Programs.* Executive Order 12372 directs Federal agencies to rely on state and local processes for state and local government coordination and for review of proposed Federal financial assistance and direct Federal development.

Section 1022.15 Timing (Proposed Redesignation From Section 1022.18 Timing of Floodplain/Wetlands Actions)

We propose to relocate the requirements regarding timing in sections 1022.14(c) and 1022.18 of the existing rule to proposed section 1022.15. This would consolidate references to the time periods for DOE to consider public comments after issuing a notice of proposed floodplain action or a notice of proposed wetland action or a floodplain statement of findings.

Section 1022.16 Variances

We propose to add a section providing a variance for emergency actions (proposed section 1022.16(a)) that would, as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, reflect provisions in our NEPA procedures (10 CFR 1021.343(a)). We also propose to incorporate into this section as paragraph (b) the existing variance (1022.18(c) in the existing rule) that allows abbreviated schedules in some circumstances and to broaden the applicability of this variance as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022. We also propose to add a section 1022.16(c) requiring consultation with the Office of NEPA Policy and Compliance whenever this section is being implemented.

Subpart C—Other Requirements

We propose adding a new subpart to consolidate requirements that are not general policy (subpart A) nor a part of the floodplain and wetland assessment processes (subpart B).

Section 1022.21 Property Management

We propose a new section that would consolidate existing requirements from sections 1022.5(d) and 1022.3(b)(8) of the existing rule. These sections address property in a floodplain or wetland that is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties and any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain. There are no substantive changes in this new consolidated section.

Section 1022.22 Requests for Authorizations or Appropriations (Proposed Redesignation From Section 1022.16)

We propose to move this section into Subpart C, Other Requirements, for the reasons stated above.

Section 1022.23 Applicant Responsibilities (Proposed Redesignated From Section 1022.13)

We propose revising this section to allow flexibility in what information we request of applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland. The section currently states that DOE may require the applicant to prepare a report that satisfies the floodplain or

wetland assessment provisions of this regulation. We propose revising this section to state that we may require applicants to provide information necessary for DOE to comply with the requirements of this regulation. This change emphasizes that we will ask for that information necessary and appropriate for us to comply with the requirements of this regulation relative to each particular application.

Section 1022.24 Interagency Cooperation (Proposed Redesignation From

Section 1022.19 Selection of a Lead Agency and Consultation Among Participating Agencies)

No substantive changes to this section are proposed.

IV. Procedural Review Requirements

A. Review Under Executive Order 12866

Today's proposed regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, today's proposed regulatory action would not be subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Assistant Secretary for Environment, Safety and Health has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 13132

Today's regulatory action has been determined not to be a ''policy that has federalism implications,'' that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no ''federalism summary impact statement'' was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''tribal implications'' and imposes substantial direct compliance costs on Indian tribal governments. DOE's Assistant Secretary for Environment, Safety and Health has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

E. Reviews Under the Regulatory Flexibility Act

The proposed revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The Act requires preparation of an initial regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. Today's proposed revisions to 10 CFR Parts 1021 and 1022 would amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed actions would neither increase the incidence of floodplain and wetland assessments nor increase burdens associated with carrying out such an assessment. Therefore, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

F. Review Under the Paperwork Reduction Act

No additional information or recordkeeping requirements are imposed by this proposed rulemaking. The proposed changes would actually reduce paperwork requirements by eliminating a requirement that public notices always be published in the **Federal Register** and by adding to the number of exemptions from requirements for preparing a floodplain or wetland assessment. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these proposed revisions to existing regulations falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the proposed revisions to 10 CFR parts 1021 and 1022 would amend DOE's policies to streamline and simplify existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed regulations are covered under the categorical exclusion in paragraph A6, ''Rulemakings, Procedural'' (rulemakings that are strictly procedural) to Appendix A to Subpart D, 10 CFR part 1021. Accordingly, neither an EA nor an EIS is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE

has determined that the proposed revisions to 10 CFR parts 1021 and 1022 published today do not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs in the Office of Management and Budget a Statement of Energy Effects for any significant energy action. Today's proposed rule is not a significant energy action, as that term is defined in the Executive Order. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any proposed rule that may affect family well-being. The proposed rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE's Assistant Secretary for Environment, Safety and Health has concluded that it is not necessary to prepare a Family Policymaking Assessment.

V. Public Comment Procedures

You should submit comments by January 17, 2003, but we will consider comments received after that date to the extent practicable. We continue to experience occasional mail delays due to extra processing required for the delivery of mail to Federal agencies, and we will take this into consideration. However, you are encouraged to submit comments electronically or via a service offering a guaranteed delivery date. Comments should be submitted to the street address, e-mail address, or fax number indicated in the **ADDRESSES** section of this notice. Written comments should be identified on the documents themselves and on the outside of the envelope, on the fax cover page, or in the e-mail message with the designation ''Compliance with Floodplain and Wetland Environmental Review Requirements.'' We are not scheduling any public meetings on the proposed revisions, but we will arrange a public meeting if the public expresses sufficient interest. Comments will not be accepted on provisions of 10 CFR part 1021 that are not subject to change by this revision.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Office Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. The Department is responsible for the final determination with regard to disclosure or non-disclosure of the information and for treating it accordingly under the Freedom of Information Act section on ''Handling Information of a Private Business, Foreign Government, or an International Organization'' (10 CFR 1004.11).

List of Subjects in 10 CFR Part 1022

Flood plains, Wetlands.

Issued in Washington, DC, on November 12, 2002.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

For the reasons set forth in the preamble, parts 1021 and 1022 of chapter III of title 10, Code of Federal Regulations are proposed to be amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

§ 1021.313 [Amended]

2. In § 1021.313, paragraph (c), the last sentence is amended as follows:

a. Remove the word ''shall'' and insert in its place the word ''may''.

b. Remove the period and add the words '', or may be issued separately.'' at the end of the sentence.

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

3. Part 1022 is revised to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Subpart B—Procedures for Floodplain and Wetland Reviews

Subpart C—Other Requirements

Authority: E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

Subpart A—General

§ 1022.1 Background.

(a) Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977) directs each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the E.O. is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 FR 6030, February 10, 1978) and in ''A Unified National Program for Floodplain Management'' prepared by the Federal Interagency Floodplain Management Taskforce (Federal Emergency Management Agency, FEMA 248, June 1994). E.O. 11990—Protection of Wetlands (May 24, 1977) directs all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking and to ensure the evaluation of the potential impacts of any new construction proposed in a wetland.

(b) It is the intent of the E.O.s that Federal agencies implement both the floodplain and the wetland provisions through existing procedures such as those established to implement the National Environmental Policy Act

(NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In those instances where the impacts of the proposed action are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain or wetland evaluation procedures are to be established. As stated in the E.O.s, Federal agencies are to avoid direct or indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities under E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain and wetland factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in a floodplain or wetland, providing opportunity for early public review of such proposed actions, preparing floodplain or wetland assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE shall accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures or, when appropriate, the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with FEMA National Flood Insurance Program building standards;

(5) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property that has suffered flood damage or is in an identified floodplain and that is used by the general public;

(6) Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain;

(7) Minimize the destruction, loss, or degradation of wetlands; and

(8) Preserve and enhance the natural and beneficial values of wetlands.

(b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.

(c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

(d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.

(e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

§ 1022.4 Definitions.

The following definitions apply to this part:

Action means any DOE activity necessary to carry out its responsibilities for:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing DOE-undertaken, -financed, or -assisted construction and improvements; and

(3) Conducting activities and programs affecting land use, including but not limited to water- and related land-resources planning, regulating, and licensing activities.

Base floodplain means the 100-year floodplain that is a floodplain with a 1.0 percent chance of flooding in any given year.

Critical action means any DOE action for which even a slight chance of flooding would be too great. Such actions may include, but are not limited to, the storage of highly volatile, toxic, or water reactive materials.

Critical action floodplain means, at a minimum, the 500-year floodplain that is a floodplain with a 0.2 percent chance of flooding in any given year.

Environmental assessment (EA) means a document prepared in accordance with the requirements of 40 CFR 1501.4(b), 40 CFR 1508.9, 10 CFR 1021.320, and 10 CFR 1021.321.

Environmental impact statement means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA and its implementing regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021.

Facility means any human-made or -placed item other than a structure.

FEMA means the Federal Emergency Management Agency.

Finding of no significant impact means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322 that briefly presents the reasons why an action will not have a significant effect on the human environment and for which an EIS therefore will not be prepared.

Flood or flooding means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands including, at a minimum, that area inundated by a 1.0 percent or greater chance flood in any given year.

Floodplain action means any DOE action that takes place in a floodplain, including any DOE action in a wetland that is also within the floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

Floodplain and wetland values means the qualities of or functions served by floodplains and wetlands that can include, but are not limited to, water resource values (*e.g.*, natural moderation of floods, water quality maintenance, groundwater recharge), living resource values (*e.g.*, conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability), cultural resource values (*e.g.*, open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation), and cultivated resource values (*e.g.*, agriculture, aquaculture, forestry).

Floodplain or wetland assessment means an evaluation consisting of a description of a proposed action, a discussion of its potential effects on the floodplain or wetland, and consideration of alternatives.

Floodplain statement of findings means a brief document issued pursuant to section 1022.14(b) and (c) of this part that describes the results of a floodplain assessment.

High-hazard areas means those portions of riverine and coastal floodplains nearest the source of flooding that are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

Minimize means to reduce to the smallest degree practicable.

New construction, for the purpose of compliance with E.O. 11990 and this part, means the building of any structures or facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

Notice of proposed floodplain action and notice of proposed wetland action mean a brief notice that describes a proposed floodplain or wetland action, respectively, and its location and that affords the opportunity for public review.

Practicable means capable of being accomplished within existing constraints, depending on the situation and including consideration of many factors, such as the existing environment, cost, technology, and implementation time.

Preserve means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain or wetland can again operate.

Structure means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

Wetland means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

Wetland action means any DOE action related to new construction that takes place in a wetland not located in a floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

§ 1022.5 Applicability.

(a) This part applies to all organizational units of DOE, including the National Nuclear Security Administration, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part applies to all proposed floodplain or wetland actions, including those sponsored jointly with other agencies.

(c) This part does not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving a wetland that are located on non-Federal property.

(d) Subject to paragraph (e) of this section, subpart B of this part does not apply to:

(1) Routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland;

(2) Site characterization, environmental monitoring, or environmental research activities in a floodplain or wetland, unless these activities would involve building any structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem; and

(3) Minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would result in a significant change in the expected useful life of the facility or structure or involve building any structure or draining, dredging, channelizing, filling, diking, impounding, or related activities.

(e) Although the actions listed in paragraphs (d)(1), (d)(2), and (d)(3) of this section normally have very small or no adverse impact on a floodplain or wetland, where unusual circumstances indicate the possibility of adverse impact on a floodplain or wetland, DOE shall determine the need for a floodplain or wetland assessment.

§ 1022.6 Public inquiries.

Inquiries regarding DOE's floodplain and wetland environmental review requirements may be directed to the Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, or a message may be left at 1–800–472–2756, toll free.

Subpart B—Procedures for Floodplain and Wetland Reviews

§ 1022.11 Floodplain or wetland determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA or CERCLA process requirements, DOE shall determine the applicability of the floodplain management and wetland protection requirements of this part.

(b) DOE shall determine whether a proposed action would be located within a base or critical action floodplain consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by FEMA;

(2) Information from a land-administering agency (*e.g.*, Bureau of Land Management, Natural Resources Conservation Service) or from other government agencies with floodplain-determination expertise (*e.g.*, U.S. Army Corps of Engineers);

(3) Information contained in safety basis documents as defined at 10 CFR part 830; and

(4) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(c) DOE shall determine whether a proposed action would be located within a wetland consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) U.S. Army Corps of Engineers ''Wetlands Delineation Manual,'' Wetlands Research Program Technical Report Y–87–1, January 1987, or successor document;

(2) U.S. Fish and Wildlife Service National Wetlands Inventory or other government-sponsored wetland or land-use inventories;

(3) U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps;

(4) U.S. Geological Survey Topographic Maps; and

(5) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(d) Pursuant to § 1022.5 of this part and paragraphs (b) and (c) of this section, DOE shall prepare:

(1) A floodplain assessment for any proposed floodplain action in the base floodplain or for any proposed floodplain action that is a critical action located in the critical action floodplain; or

(2) A wetland assessment for any proposed wetland action.

§ 1022.12 Notice of proposed action.

(a) For a proposed floodplain or wetland action for which an EIS is required, DOE shall use applicable NEPA procedures to provide the opportunity for early public review of the proposed action. A notice of intent to prepare the EIS may be used to satisfy the requirement for DOE to publish a notice of proposed floodplain or wetland action.

(b) For a proposed floodplain or wetland action for which no EIS is required, DOE shall take appropriate steps to send a notice of proposed floodplain or wetland action to appropriate government agencies and to persons or groups known to be interested in or potentially affected by the proposed floodplain or wetland action. DOE also shall distribute the notice in the area where the proposed action is to be located (*e.g.*, by publication in local newspapers, through public service announcements,

by posting on- and off-site). In addition, for a proposed floodplain or wetland action that may result in effects of national concern to the floodplain or wetland or both, DOE shall publish the notice in the **Federal Register**.

§ 1022.13 Floodplain or wetland assessment.

(a) A floodplain or wetland assessment shall contain the following information:

(1) *Project Description.* This section shall describe the proposed action and shall include a map showing its location with respect to the floodplain and/or wetland. For actions located in a floodplain, the nature and extent of the flood hazard shall be described, including the nature and extent of hazards associated with any high-hazard areas.

(2) *Floodplain or Wetland Impacts.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetland. This section shall include impacts on the natural and beneficial floodplain and wetland values (§ 1022.4) appropriate to the location under evaluation. In addition, the effects of a proposed floodplain action on lives and property shall be evaluated. For an action proposed in a wetland, the effects on the survival, quality, and function of the wetland shall be evaluated.

(3) *Alternatives.* DOE shall consider alternatives to the proposed action that avoid adverse impacts and incompatible development in the floodplain and/or wetland, including alternate sites, alternate actions, and no action. DOE shall evaluate measures that mitigate the adverse effects of actions in a floodplain and/or wetland including, but not limited to, minimum grading requirements, runoff controls, design and construction constraints, and protection of ecologically-sensitive areas.

(b) For proposed floodplain or wetland actions for which an EA or EIS is required, DOE shall prepare the floodplain or wetland assessment concurrent with and included in the appropriate NEPA document.

(c) For floodplain or wetland actions for which neither an EA nor an EIS is prepared, DOE shall prepare the floodplain or wetland assessment separately or incorporated when appropriate into another environmental review process (*e.g.*, CERCLA).

§ 1022.14 Findings.

(a) If DOE finds that no practicable alternative to locating or conducting the action in the floodplain or wetland is available, then before taking action DOE shall design or modify its action in order to minimize potential harm to or within the floodplain or wetland, consistent with the policies set forth in E.O. 11988 and E.O. 11990.

(b) For actions that will be located in a floodplain, DOE shall issue a floodplain statement of findings, normally not to exceed three pages, that contains:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

(c) For floodplain actions that require preparation of an EA or EIS, DOE may incorporate the floodplain statement of findings into the finding of no significant impact or final EIS, as appropriate, or issue such statement separately.

(d) DOE shall send copies of the floodplain statement of findings to appropriate government agencies and to others who submitted comments on the proposed floodplain action.

(e) For proposed floodplain actions that may result in effects of national concern, DOE shall publish the floodplain statement of findings in the **Federal Register**, describing the location of the action and stating where a map is available.

(f) For floodplain actions subject to E.O. 12372—Intergovernmental Review of Federal Programs (July 14, 1982, 47 FR 30959), DOE shall send the floodplain statement of findings to the State in accordance with 10 CFR Part 1005—Intergovernmental Review of Department of Energy Programs and Activities.

§ 1022.15 Timing.

(a) For a proposed floodplain action, DOE shall allow 15 days for public comment following issuance of a notice of proposed floodplain action. DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received, after the close of the public comment period and before issuing a floodplain statement of findings. After issuing a floodplain statement of findings, DOE shall endeavor to allow at least 15 days of public review before implementing a proposed floodplain action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

(b) For a proposed wetland action, DOE shall allow 15 days for public comment following issuance of a notice of proposed wetland action. After the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed wetland action and the mitigating measures, taking into account all substantive comments received, before implementing a proposed wetland action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

§ 1022.16 Variances.

(a) *Emergency actions.* DOE may take actions without observing all provisions of this part in emergency situations that demand immediate action. To the extent practicable prior to taking an emergency action, or as soon as possible after taking such an action, DOE shall document the emergency actions in accordance with NEPA procedures at 10 CFR 1021.343(a) or CERCLA procedures in order to identify any adverse impacts from the actions taken and any further necessary mitigation.

(b) *Timing.* If statutory deadlines or overriding considerations of program or project expense or effectiveness exist, DOE may waive the minimum time periods in § 1022.15 of this subpart.

(c) *Consultation.* To the extent practicable prior to taking an action pursuant to paragraphs (a) or (b) of this section, or as soon as possible after taking such an action, the cognizant DOE program or project manager shall consult with the Office of NEPA Policy and Compliance.

§ 1022.17 Follow-up.

For those DOE actions taken in a floodplain or wetland, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigation measures, is proceeding as described in the floodplain or wetland assessment and the floodplain statement of findings.

Subpart C—Other Requirements

§ 1022.21 Property management.

(a) If property in a floodplain or wetland is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties, DOE shall:

(1) Identify those uses that are restricted under applicable floodplain or wetland regulations and attach other

appropriate restrictions to the uses of the property; or

(2) Withhold the property from conveyance.

(b) Before completing any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain, DOE shall inform any private party participating in the transaction of the hazards associated with locating facilities or structures in the floodplain.

§ 1022.22 Requests for authorizations or appropriations.

It is DOE policy to indicate in any requests for new authorizations or appropriations transmitted to the White House Office of Management and Budget, if a proposed action is located in a floodplain or wetland and whether the proposed action is in accord with the requirements of E.O. 11988 and E.O. 11990 and this part.

§ 1022.23 Applicant responsibilities.

DOE may require applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland of the requirements of this part to provide information necessary for DOE to comply with this part.

§ 1022.24 Interagency cooperation.

If DOE and one or more agencies are directly involved in a proposed floodplain or wetland action, in accordance with DOE's NEPA or CERCLA procedures, DOE shall consult with such other agencies to determine if a floodplain or wetland assessment is required by Subpart B of this part, identify the appropriate lead or joint agency responsibilities, identify the applicable regulations, and establish procedures for interagency coordination during the environmental review process.

[FR Doc. 02–29071 Filed 11–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B Series Airplanes Equipped With Hamilton Sundstrand Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers. This proposal would require a one-time inspection of two remote controlled circuit breakers (RCCB), located in specific electrical compartments, to identify the part number, and replacement of the RCCBs with new RCCBs having a different part number if necessary. This action is necessary to ensure removal of 35-ampere (amp) RCCBs on a 50-amp electrical circuit. Incorrect RCCBs on an electrical circuit could result in erroneous tripping of the RCCBs (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–200–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–200–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

Rules and Regulations

Federal Register
Vol. 68, No. 166
Wednesday, August 27, 2003

DEPARTMENT OF ENERGY

10 CFR Parts 1021 and 1022

RIN 1901–AA94

Compliance With Floodplain and Wetland Environmental Review Requirements

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is revising its floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens by simplifying DOE public notification procedures for proposed floodplain and wetland actions, exempting additional actions from the floodplain and wetland assessment provisions of these regulations, providing for immediate action in an emergency, expanding the existing list of sources that may be used in determining the location of floodplains and wetlands, and allowing floodplain and wetland assessments for actions proposed to be taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to be coordinated with the CERCLA environmental review process rather than the National Environmental Policy Act (NEPA) process. DOE also is making a conforming change to its NEPA implementing regulations to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

EFFECTIVE DATE: These rule changes will become effective September 26, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or this rulemaking, or for copies of the final rule, contact Carolyn M. Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Telephone (202) 586–4600 or leave a message at (800) 472–2756; facsimile to (202) 586–7031; e-mail to *carolyn.osborne@eh.doe.gov.* The final rule also will be available after the effective date specified above on the DOE NEPA Web at *http://tis.eh.doe.gov/nepa.*

For information on DOE's NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background

We published on November 18, 2002 (67 FR 69480), proposed revisions to our regulations entitled "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022), which were promulgated originally on March 7, 1979 (44 FR 12596), to implement the requirements of Executive Order (E.O.) 11988, "Floodplain Management" (42 FR 2951; May 24, 1977), and E.O. 11990, "Protection of Wetlands" (42 FR 26961; May 24, 1977). We also published in our November 18, 2002, **Federal Register** notice a proposed conforming change to our "National Environmental Policy Act Implementing Procedures" (10 CFR 1021.313).

Publication of the Notice of Proposed Rulemaking began a 60-day public comment period, ending January 17, 2003. Comments were received from three sources: A State, a county, and a member of the public. Copies of these comments are available for public inspection at the DOE Freedom of Information Office Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0101, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

This document adopts the revisions proposed on November 18, 2002, with certain changes discussed below, and codifies them at 10 CFR parts 1021 and 1022. In accordance with 40 CFR 1507.3, the Council on Environmental Quality (CEQ) reviewed this notice of final rulemaking and concluded that the proposed amendment to the DOE regulations implementing NEPA is in conformance with NEPA and the CEQ regulations. The Secretary of Energy has approved this notice of final rulemaking for publication.

II. Statement of Purpose

We are revising 10 CFR part 1022 based on our experience implementing the existing requirements for over 20 years. We expect these changes to improve our ability to meet our goals for floodplain and wetland protection in a timely and cost-effective manner. We are revising 10 CFR 1021.313 to conform with 10 CFR 1022.14(c) by allowing floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we are implementing will: (1) Simplify our public notification procedures for proposed floodplain and wetland actions by emphasizing local publication as opposed to publication in the **Federal Register**, (2) exempt additional actions from the floodplain and wetland assessment provisions of these regulations, (3) provide for immediate action in an emergency with documentation to follow, (4) expand the existing list of credible sources that may be used in determining the location of floodplains and wetlands, and (5) allow floodplain and wetland assessments for actions proposed to be taken under CERCLA to be coordinated with the CERCLA environmental review process rather than the NEPA process. The revisions also will make the rule easier to use by reordering sections to parallel the assessment process, clarifying requirements (such as the differences between floodplain and wetland actions and their respective assessment requirements), and simplifying the rule by deleting provisions that are no longer applicable. The revisions streamline existing procedures and add no new requirements.

III. Comments Received and DOE's Responses

We have considered and evaluated the comments received during the public comment period. A number of revisions suggested in these comments have been incorporated into the final rule. The following discussion describes the comments received, provides our response to the comments, and describes any resulting changes to the rule. We also have made editorial and stylistic revisions for clarity and consistency.

A. General Comments

In addition to a comment supporting our intent to simplify and restructure the rule, we received one comment objecting to our streamlining effort on the ground that it would make it easier to sabotage environmental protection before the public could know about potential impacts. This comment is speculative. It does not provide any example to show a potentially adverse effect from any of the proposed amendments to the regulations in 10 CFR parts 1021 and 1022. We believe the revised rule will improve our ability to meet our goals for floodplain and wetland protection. We will be able to focus our resources, and those of the public, on the types of proposed actions that our experience demonstrates are most likely to benefit from an examination of alternatives and mitigating measures and increase the efficiency of our environmental reviews (thereby, for example, allowing earlier identification of mitigation actions).

We received a comment pointing to DOE's obligation to comply with the Coastal Zone Management Act, NEPA, and applicable state laws and regulations. We recognize our legal responsibilities and note that it is the intent of the E.O.'s upon which this regulation is based, and the regulation itself, that implementation be coordinated, and when appropriate, integrated with procedures for implementing other requirements, such as those of NEPA. (*See* §§ 1022.1(b) and 1022.2(b).) We also note that this rulemaking is not a proposal to conduct any activity that would affect any coastal resource. We will comply with 10 CFR part 1022 and all other applicable requirements if we propose any such activity in the future.

B. Comments on Definitions (§ 1022.4)

Two comments requested clarification of "effects of national concern" as used in determining whether we are required to publish in the **Federal Register** a notice of proposed action (§ 1022.12(b)) or a floodplain statement of findings (§ 1022.14(e)). In response, we have added a definition to state that effects of national concern are those effects that because of the high quality or function of the affected resource or because of the wide geographic range of effects could create concern beyond the locale or region of the proposed action. The lack of potential effects of national concern does not excuse us from our public notification and participation responsibilities (§§ 1022.3(e), 1022.12, and 1022.14).

C. Comments on Exemptions (§ 1022.5)

One comment recommended that we define terms associated with the exemptions described in § 1022.5(d) to "ensure that the activities contemplated by the proposed rule changes will have only minimal and temporary adverse impacts on the aquatic environment." We do not believe it is practical or useful to attempt to define all the activities that might fall within the rule's three exemptions. We have, however, added examples for each exemption.

The rule now states that routine maintenance activities (§ 1022.5(d)(1)) are those, such as reroofing, plumbing repair, and door and window replacement, needed to maintain and preserve existing facilities and structures for their designated purpose. We believe that the restrictive conditions stated in § 1022.5(d)(2) and § 1022.5(d)(3) help describe the types of activities that could be exempted, but also have added examples in both sections. For site characterization, environmental monitoring, or environmental research activities (§ 1022.5(d)(2)), the rule now includes the examples of sampling and surveying water and air quality, flora and fauna abundance, and soil properties. For minor modification of an existing facility or structure to improve safety or environmental conditions (§ 1022.5(d)(3)), the rule now includes the examples of upgrading lighting, heating, ventilation, and air conditioning systems; installing or improving alarm and surveillance systems; and adding environmental monitoring or control systems.

D. Comments on Public Notification and Information Dissemination (§§ 1022.12 and 1022.14)

We received one comment asking that, when providing public notification, consideration be given to the interest of state government, in addition to local interest, in a proposed action. This has been our practice and is our intent. For clarification, in this final rule, we have added the parenthetical phrase "(*e.g.*, FEMA [Federal Emergency Management Agency, Department of Homeland Security] regional offices, host and affected states, and tribal and local governments)" after "government agencies" in §§ 1022.12(b) and 1022.14(d). Distribution to these parties, and to others as appropriate for a specific proposed action, facilitates public participation.

One comment questioned whether language in § 1022.14(f) would limit distribution of floodplain statements of findings to only those state agencies identified in a particular list of state contacts maintained by the Office of Management and Budget. To clarify our intent to continue to distribute statements of findings to parties interested in or potentially affected by a proposed action, in § 1022.14(f) of the final rule, we have added the word "also." The rule now states that for actions subject to E.O. 12372, "Intergovernmental Review of Federal Programs," DOE "also" shall send the floodplain statement of findings to the state in accordance with 10 CFR part 1005 (DOE's regulations for implementing the E.O.).

With regard to a comment that DOE must establish contacts and maintain current information on them, DOE Order 451.1B, "National Environmental Policy Act Compliance Program," requires each DOE Program and Field Office with NEPA responsibilities to have a Public Participation Plan. With regard specifically to state contacts, we established ongoing relationships with State Clearinghouses in 1990 through contact with the Governors, and we update our State Clearinghouse contacts in the "Directory of Potential Stakeholders for Department of Energy Action under the National Environmental Policy Act," which is distributed broadly within the Department and made available on the DOE NEPA Web site (*http://tis.eh.doe.gov/nepa/guidance.html*, under "Public Participation").

One comment opposed our change to allow discretion in whether to include a floodplain statement of findings within a final EIS. We agree with the commenter that information relevant to potential floodplain and wetland impacts is integral to the evaluation of a proposed action and alternatives within an EIS. A final EIS would consider those impacts and mitigations. For example, both the final EIS and the floodplain assessment would evaluate mitigation measures to minimize harm to or within the floodplain. Nonetheless, a floodplain statement of findings may be issued separately as there may be times when it is not appropriate to incorporate the statement within the final EIS (*e.g.*, when steps to be taken to minimize harm are not determined until after the final EIS is issued, or a phased decision involving sequential records of decision is being made and the findings would not be relevant to the initial record of decision). Moreover, E.O. 11988, upon which the floodplain management portions of this regulation are based, does not specify when in the NEPA process the statement of findings

should be published, and E.O. 11990, which addresses wetlands protection, does not require a statement of findings. The E.O.'s allow Federal agencies substantial latitude in implementing the requirements as deemed most appropriate for individual agencies.

E. Comments on Variances (§ 1022.16)

One comment sought clarification of the conditions under which we could waive time limits between various steps in the floodplain or wetland environmental review process and requested a definition of emergency actions and emergency situations. The rule allows us to alter the floodplain or wetland assessment process in response to emergencies and in some non-emergency situations.

Section 1022.16(a) allows us to take immediate action in the event of an emergency, forgoing the assessment process required by this rule until after the emergency has been addressed. We will continue to determine what constitutes an emergency (an emergency action or emergency situation) on a case-by-case basis, as is consistent with the manner in which an emergency has been declared in the past in regard to compliance with these and other requirements (*e.g.*, NEPA). We have declared only three emergency exceptions to our NEPA procedures in the past 25 years.

Section 1022.16(b) allows shortening the review process in non-emergency situations in response to "statutory deadlines or overriding considerations of program or project expense or effectiveness." This section does not allow any exception from completing a required floodplain or wetland assessment nor from following any other provision of this rule or any other applicable requirement before taking action. This provision has been in place since we first promulgated our floodplain and wetland environmental review requirements in 1979, and in practice, we have not experienced difficulty in its implementation.

The comment also asked who determines whether a variance is to be granted. The cognizant DOE official responsible for NEPA or CERCLA implementation, as applicable, normally would consult with the Office of NEPA Policy and Compliance pursuant to § 1022.16(c) before determining whether to grant a variance.

F. Other Revisions

Notable among the editorial and stylistic revisions we made are changes to the definitions of "floodplain and wetland values" and "critical action floodplain" in §1022.4. We reorganized the examples of floodplain and wetland values to improve readability.

We have added to the definition of critical action floodplain a clarification that was included in the preamble to this proposed rule in November 2002. This clarification regards when we will consider a flood with an expected frequency of less than once in a 500-year period, and thus a larger floodplain, in evaluating potential impacts associated with a critical action (*i.e.*, any DOE action for which even a slight chance of flooding would be too great). In this final rule, and as proposed, we define a critical action floodplain as "at a minimum, the 500-year floodplain, that is, a floodplain with a 0.2 percent chance of flooding in any given year." To this, we have added the clarification that when another requirement applicable to the proposed action requires evaluation of a less frequent flood (*i.e.*, a more severe flood that would inundate a larger floodplain), then we may use the less frequent flood to determine the floodplain for purposes of this rule. For example, where the safety basis documentation under 10 CFR part 830 for a proposed action requires consideration of a 100,000-year flood, then the 100,000-year floodplain could be the critical action floodplain for the proposed action for purposes of this rule.

IV. Procedural Review Requirements

A. Review Under Executive Order 12866

This rule has been determined not to be a "significant regulatory action" under E.O. 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993), as amended by E.O. 13258 (67 FR 9385; February 28, 2002). Accordingly, today's final regulatory action was not subject to review under that E.O. by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform" (61 FR 4779; February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of E.O. 12988.

C. Review Under Executive Order 13132

Today's regulatory action has been determined not to be a "policy that has federalism implications," that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under E.O. 13132, "Federalism" (64 FR 43255; August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the E.O. by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under E.O. 13175 (65 FR 67249; November 9, 2000) on "Consultation and Coordination with Indian Tribal Governments," DOE may not issue a discretionary rule that has "tribal implications" and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that this rule would not have such effects and concluded that E.O. 13175 does not apply to this rule.

E. Review Under the Regulatory Flexibility Act

The revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C.601 *et seq.*) and related provisions of E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461; August 16, 2002) and DOE's procedures and policies (68 FR 7990; February 19, 2003). The Act requires preparation of an initial regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. Today's revisions to 10 CFR parts 1021 and 1022 amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two E.O.s. The actions would

neither increase the incidence of floodplain and wetland assessments nor increase burdens associated with carrying out such an assessment. Therefore, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared. We received no comments on our decision not to prepare a regulatory flexibility analysis.

F. Review Under the Paperwork Reduction Act

No additional information or recordkeeping requirements are imposed by this rulemaking. The changes would actually reduce paperwork requirements by eliminating a requirement that public notices always be published in the **Federal Register** and by increasing the number of exemptions from requirements for preparing a floodplain or wetland assessment. Accordingly, no clearance by the Office of Management and Budget was required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these revisions to existing regulations falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the revisions to 10 CFR parts 1021 and 1022 would amend DOE's policies to streamline and simplify existing procedures for environmental review of actions proposed in a floodplain or wetland under two E.O.s. The proposed regulations are covered under the categorical exclusion in paragraph A6, "Rulemakings, Procedural" (rulemakings that are strictly procedural) to Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an EIS is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by state, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the revisions to 10 CFR parts 1021 and 1022 published today do not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs in the Office of Management and Budget a Statement of Energy Effects for any significant energy action. Today's rule is not a significant energy action, as that term is defined in the E.O. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a "Family Policymaking Assessment" for any proposed rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget. The Office ofManagement and Budget guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the Office of Management and Budget and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that is has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Parts 1021 and 1022

Floodplains, Wetlands.

Issued in Washington, DC, August 19, 2003.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

■ For the reasons set forth in the preamble, parts 1021 and 1022 of chapter III of title 10, Code of Federal Regulations, are amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 is revised to read as follows:

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

§ 1021.313 [Amended]

■ 2. In § 1021.313, paragraph (c), the last sentence is amended as follows:

■ a. Remove the word "shall" and add in its place the word "may".

■ b. Remove the phrase "Floodplain/Wetlands" and add in its place "Floodplain and Wetland".

■ c. Remove the period and add the words ", or a Statement of Findings may be issued separately." at the end of the sentence.

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

■ 3. Part 1022 is revised to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Sec.

Authority: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121; E.O. 12372, 47 FR 30959, 3 CFR, 1982 Comp., p. 197.

Subpart A—General

§ 1022.1 Background.

(a) Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977) directs each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the E.O. is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 FR 6030; February 10, 1978) and in "A Unified National Program for Floodplain Management" prepared by the Federal Interagency Floodplain Management Taskforce (Federal Emergency Management Agency, FEMA 248, June 1994). E.O. 11990—Protection of Wetlands (May 24, 1977) directs all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking and to ensure the evaluation of the potential impacts of any new construction proposed in a wetland.

(b) It is the intent of the E.O.s that Federal agencies implement both the floodplain and the wetland provisions through existing procedures such as those established to implement the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In those instances where the impacts of the proposed action are not significant enough to require the preparation of an EIS under section 102(2)(C) of NEPA, alternative floodplain or wetland evaluation procedures are to be established. As stated in the E.O.s, Federal agencies are to avoid direct or indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities under E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain and wetland factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in a floodplain or wetland, providing opportunity for early public review of such proposed actions, preparing floodplain or wetland assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE shall accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures or, when appropriate, the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with FEMA National Flood Insurance Program building standards;

(5) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property that has suffered flood damage or is in an identified floodplain and that is used by the general public;

(6) Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain;

(7) Minimize the destruction, loss, or degradation of wetlands; and

(8) Preserve and enhance the natural and beneficial values of wetlands.

(b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.

(c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

(d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.

(e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

§ 1022.4 Definitions.

The following definitions apply to this part:

Action means any DOE activity necessary to carry out its responsibilities for:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing DOE-undertaken, -financed, or -assisted construction and improvements; and

(3) Conducting activities and programs affecting land use, including but not limited to water- and related land-resources planning, regulating, and licensing activities.

Base floodplain means the 100-year floodplain, that is, a floodplain with a 1.0 percent chance of flooding in any given year.

Critical action means any DOE action for which even a slight chance of flooding would be too great. Such actions may include, but are not limited to, the storage of highly volatile, toxic, or water reactive materials.

Critical action floodplain means, at a minimum, the 500-year floodplain, that is, a floodplain with a 0.2 percent chance of flooding in any given year. When another requirement directing evaluation of a less frequent flood event also is applicable to the proposed action, a flood less frequent than the 500-year flood may be appropriate for determining the floodplain for purposes of this part.

Effects of national concern means those effects that because of the high quality or function of the affected resource or because of the wide geographic range of effects could create concern beyond the locale or region of the proposed action.

Environmental assessment (EA) means a document prepared in accordance with the requirements of 40 CFR 1501.4(b), 40 CFR 1508.9, 10 CFR 1021.320, and 10 CFR 1021.321.

Environmental impact statement (EIS) means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA and its

implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021.

Facility means any human-made or -placed item other than a structure.

FEMA means the Federal Emergency Management Agency, Department of Homeland Security.

Finding of no significant impact means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322.

Flood or flooding means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands.

Floodplain action means any DOE action that takes place in a floodplain, including any DOE action in a wetland that is also within the floodplain, subject to the exclusions specified at § 1022.5(c) and (d) of this part.

Floodplain and wetland values means the qualities of or functions served by floodplains and wetlands that can include, but are not limited to, living values (*e.g.*, conservation of existing flora and fauna including their long-term productivity, preservation of diversity and stability of species and habitats), cultural resource values (*e.g.*, archeological and historic sites), cultivated resource values (*e.g.*, agriculture, aquaculture, forestry), aesthetic values (*e.g.*, natural beauty), and other values related to uses in the public interest (*e.g.*, open space, scientific study, outdoor education, recreation).

Floodplain or wetland assessment means an evaluation consisting of a description of a proposed action, a discussion of its potential effects on the floodplain or wetland, and consideration of alternatives.

Floodplain statement of findings means a brief document issued pursuant to § 1022.14 of this part that describes the results of a floodplain assessment.

High-hazard areas means those portions of riverine and coastal floodplains nearest the source of flooding that are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

Minimize means to reduce to the smallest degree practicable.

New construction, for the purpose of compliance with E.O. 11990 and this part, means the building of any structures or facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

Notice of proposed floodplain action and notice of proposed wetland action mean a brief notice that describes a proposed floodplain or wetland action, respectively, and its location and that affords the opportunity for public review.

Practicable means capable of being accomplished within existing constraints, depending on the situation and including consideration of many factors, such as the existing environment, cost, technology, and implementation time.

Preserve means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain or wetland can again operate.

Structure means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

Wetland means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

Wetland action means any DOE action related to new construction that takes place in a wetland not located in a floodplain, subject to the exclusions specified at § 1022.5(c) and (d) of this part.

§ 1022.5 Applicability.

(a) This part applies to all organizational units of DOE, including the National Nuclear Security Administration, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part applies to all proposed floodplain or wetland actions, including those sponsored jointly with other agencies.

(c) This part does not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving a wetland that are located on non-Federal property.

(d) Subject to paragraph (e) of this section, subpart B of this part does not apply to:

(1) Routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland. Maintenance is routine when it is needed to maintain and preserve the facility or structure for its designated purpose (*e.g.*, activities such as reroofing, plumbing repair, door and window replacement);

(2) Site characterization, environmental monitoring, or environmental research activities (*e.g.*, sampling and surveying water and air quality, flora and fauna abundance, and soil properties) in a floodplain or wetland, unless these activities would involve building any structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem; and

(3) Minor modification (*e.g.*, upgrading lighting, heating, ventilation, and air conditioning systems; installing or improving alarm and surveillance systems; and adding environmental monitoring or control systems) of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would result in a significant change in the expected useful life of the facility or structure, or involve building any structure or involve draining, dredging, channelizing, filling, diking, impounding, or related activities.

(e) Although the actions listed in paragraphs (d)(1), (d)(2), and (d)(3) of this section normally have very small or no adverse impact on a floodplain or wetland, where unusual circumstances indicate the possibility of adverse impact on a floodplain or wetland, DOE shall determine the need for a floodplain or wetland assessment.

§ 1022.6 Public inquiries.

Inquiries regarding DOE's floodplain and wetland environmental review requirements may be directed to the Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, 202–586–4600, or a message may be left at 1–800–472–2756, toll free.

Subpart B—Procedures for Floodplain and Wetland Reviews

§ 1022.11 Floodplain or wetland determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA or CERCLA process requirements, DOE shall determine the applicability of the floodplain management and wetland protection requirements of this part.

(b) DOE shall determine whether a proposed action would be located within a base or critical action floodplain consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by FEMA;

(2) Information from a land-administering agency (*e.g.*, Bureau of Land Management) or from other government agencies with floodplain-determination expertise (*e.g.*, U.S. Army Corps of Engineers, Natural Resources Conservation Service);

(3) Information contained in safety basis documents as defined at 10 CFR part 830; and

(4) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(c) DOE shall determine whether a proposed action would be located within a wetland consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) U.S. Army Corps of Engineers "Wetlands Delineation Manual," Wetlands Research Program Technical Report Y–87–1, January 1987, or successor document;

(2) U.S. Fish and Wildlife Service National Wetlands Inventory or other government-sponsored wetland or land-use inventories;

(3) U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps;

(4) U.S. Geological Survey Topographic Maps; and

(5) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(d) Pursuant to § 1022.5 of this part and paragraphs (b) and (c) of this section, DOE shall prepare:

(1) A floodplain assessment for any proposed floodplain action in the base floodplain or for any proposed floodplain action that is a critical action located in the critical action floodplain; or

(2) A wetland assessment for any proposed wetland action.

§ 1022.12 Notice of proposed action.

(a) For a proposed floodplain or wetland action for which an EIS is required, DOE shall use applicable NEPA procedures to provide the opportunity for early public review of the proposed action. A notice of intent to prepare the EIS may be used to satisfy the requirement for DOE to publish a notice of proposed floodplain or wetland action.

(b) For a proposed floodplain or wetland action for which no EIS is required, DOE shall take appropriate steps to send a notice of proposed floodplain or wetland action to appropriate government agencies (*e.g.*, FEMA regional offices, host and affected States, and tribal and local governments) and to persons or groups known to be interested in or potentially affected by the proposed floodplain or wetland action. DOE also shall distribute the notice in the area where the proposed action is to be located (*e.g.*, by publication in local newspapers, through public service announcements, by posting on- and off-site). In addition, for a proposed floodplain or wetland action that may result in effects of national concern to the floodplain or wetland or both, DOE shall publish the notice in the **Federal Register**.

§ 1022.13 Floodplain or wetland assessment.

(a) A floodplain or wetland assessment shall contain the following information:

(1) *Project Description.* This section shall describe the proposed action and shall include a map showing its location with respect to the floodplain and/or wetland. For actions located in a floodplain, the nature and extent of the flood hazard shall be described, including the nature and extent of hazards associated with any high-hazard areas.

(2) *Floodplain or Wetland Impacts.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetland. This section shall include impacts on the natural and beneficial floodplain and wetland values (§ 1022.4) appropriate to the location under evaluation. In addition, the effects of a proposed floodplain action on lives and property shall be evaluated. For an action proposed in a wetland, the effects on the survival, quality, and function of the wetland shall be evaluated.

(3) *Alternatives.* DOE shall consider alternatives to the proposed action that avoid adverse impacts and incompatible development in the floodplain and/or wetland, including alternate sites, alternate actions, and no action. DOE shall evaluate measures that mitigate the adverse effects of actions in a floodplain and/or wetland including, but not limited to, minimum grading requirements, runoff controls, design and construction constraints, and protection of ecologically-sensitive areas.

(b) For proposed floodplain or wetland actions for which an EA or EIS is required, DOE shall prepare the floodplain or wetland assessment concurrent with and included in the appropriate NEPA document.

(c) For floodplain or wetland actions for which neither an EA nor an EIS is prepared, DOE shall prepare the floodplain or wetland assessment separately or incorporate it when appropriate into another environmental review process (*e.g.*, CERCLA).

§ 1022.14 Findings.

(a) If DOE finds that no practicable alternative to locating or conducting the action in the floodplain or wetland is available, then before taking action DOE shall design or modify its action in order to minimize potential harm to or within the floodplain or wetland, consistent with the policies set forth in E.O. 11988 and E.O. 11990.

(b) For actions that will be located in a floodplain, DOE shall issue a floodplain statement of findings, normally not to exceed three pages, that contains:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

(c) For floodplain actions that require preparation of an EA or EIS, DOE may incorporate the floodplain statement of findings into the finding of no significant impact or final EIS, as appropriate, or issue such statement separately.

(d) DOE shall send copies of the floodplain statement of findings to appropriate government agencies (*e.g.*, FEMA regional offices, host and affected states, and tribal and local governments) and to others who submitted comments on the proposed floodplain action.

(e) For proposed floodplain actions that may result in effects of national concern, DOE shall publish the floodplain statement of findings in the **Federal Register**, describing the location of the action and stating where a map is available.

(f) For floodplain actions subject to E.O. 12372—Intergovernmental Review of Federal Programs (July 14, 1982), DOE also shall send the floodplain statement of findings to the State in accordance with 10 CFR part 1005—Intergovernmental Review of Department of Energy Programs and Activities.

§ 1022.15 Timing.

(a) For a proposed floodplain action, DOE shall allow 15 days for public comment following issuance of a notice of proposed floodplain action. After the close of the public comment period and

before issuing a floodplain statement of findings, DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received. After issuing a floodplain statement of findings, DOE shall endeavor to allow at least 15 days of public review before implementing a proposed floodplain action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register.**

(b) For a proposed wetland action, DOE shall allow 15 days for public comment following issuance of a notice of proposed wetland action. After the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed wetland action and the mitigating measures, taking into account all substantive comments received, before implementing a proposed wetland action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register.**

§ 1022.16 Variances.

(a) *Emergency actions.* DOE may take actions without observing all provisions of this part in emergency situations that demand immediate action. To the extent practicable prior to taking an emergency action (or as soon as possible after taking such an action) DOE shall document the emergency actions in accordance with NEPA procedures at 10 CFR 1021.343(a) or CERCLA procedures in order to identify any adverse impacts from the actions taken and any further necessary mitigation.

(b) *Timing.* If statutory deadlines or overriding considerations of program or project expense or effectiveness exist, DOE may waive the minimum time periods in § 1022.15 of this subpart.

(c) *Consultation.* To the extent practicable prior to taking an action pursuant to paragraphs (a) or (b) of this section (or as soon as possible after taking such an action) the cognizant DOE program or project manager shall consult with the Office of NEPA Policy and Compliance.

§ 1022.17 Follow-up.

For those DOE actions taken in a floodplain or wetland, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigation measures, is proceeding as described in the floodplain or wetland assessment and the floodplain statement of findings.

Subpart C—Other Requirements

§ 1022.21 Property management.

(a) If property in a floodplain or wetland is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties, DOE shall:

(1) Identify those uses that are restricted under applicable floodplain or wetland regulations and attach other appropriate restrictions to the uses of the property; or

(2) Withhold the property from conveyance.

(b) Before completing any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain, DOE shall inform any private party participating in the transaction of the hazards associated with locating facilities or structures in the floodplain.

§ 1022.22 Requests for authorizations or appropriations.

It is DOE policy to indicate in any requests for new authorizations or appropriations transmitted to the Office of Management and Budget, if a proposed action is located in a floodplain or wetland and whether the proposed action is in accord with the requirements of E.O. 11988 and E.O. 11990 and this part.

§ 1022.23 Applicant responsibilities.

DOE may require applicants for any use of real property (*e.g.,* license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland to provide information necessary for DOE to comply with this part.

§ 1022.24 Interagency cooperation.

If DOE and one or more agencies are directly involved in a proposed floodplain or wetland action, in accordance with DOE's NEPA or CERCLA procedures, DOE shall consult with such other agencies to determine if a floodplain or wetland assessment is required by subpart B of this part, identify the appropriate lead or joint agency responsibilities, identify the applicable regulations, and establish procedures for interagency coordination during the environmental review process.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM262; Special Conditions No. 25–244–SC]

Special Conditions: Avions Marcel Dassault-Breguet Aviation Model Falcon 10 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 series airplanes modified by Elliott Aviation Technical Products Development, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) with the IS&S Air Data Sensor and an analog interface unit (AIU) that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 19, 2003.

Comments must be received on or before September 26, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM262, 1601 Lind Avenue SW., Renton Washington, 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: Docket No. NM262.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: