

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 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 an 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 18 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.

- 1021.100 Purpose.
- 1021.101 Policy.
- 1021.102 Applicability.
- 1021.103 Adoption of CEQ NEPA regulations.
- 1021.104 Definitions.
- 1021.105 Oversight of Agency NEPA activities.

Subpart B—DOE Planning and Decisionmaking

- 1021.200 DOE planning.
- 1021.210 DOE decisionmaking.
- 1021.211 Interim actions.
- 1021.12 Research, development, demonstration, and testing.
- 1021.213 Rulemaking.
- 1021.214 Adjudicatory proceedings.
- 1021.215 Applicant process.
- 1021.216 Procurement and financial assistance.

Subpart C—Implementing Procedures

- 1021.300 General requirements.
- 1021.301 Agency review and public participation.
- 1021.310 Environmental impact statements.
- 1021.311 Notice of intent and scoping.
- 1021.312 EIS implementation plan.
- 1021.313 Public review of environmental impact statements.

- 1021.314 Supplemental environmental impact statements.
 1021.315 Records of decision.
 1021.320 Environmental assessments.
 1021.321 Requirements for environmental assessments.
 1021.322 Findings of no significant impact.
 1021.330 Programmatic NEPA documents.
 1021.331 Site-wide NEPA documents.
 1021.332 Mitigation action plans.
 1021.340 Classified, confidential and otherwise exempt information.
 1021.341 Coordination with other environmental review requirements.
 1021.342 Interagency cooperation.
 1021.343 Variances.

Subpart D—Typical Classes of Action

- 1021.400 Level of NEPA review.
 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

Appendix A to Subpart D—Categorical Exclusions that Do Not Require Documentation

Appendix B to Subpart D—Categorical Exclusions that Require Documentation

Appendix C to Subpart D—Classes of Action that Normally Require EAs but Not Necessarily EISs

Appendix D to Subpart D—Classes of Action that Normally Require EISs

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 subpart 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 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) 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 1508.5(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 make 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 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.

(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 FONSI's 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) *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 environmental 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 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 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 FONSI's 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 EIS's for certain large, multiple-facility DOE sites; DOE may prepare EIS's 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).

Appendix A to Subpart D—Categorical Exclusions that Do Not Require Documentation

Table of Contents

1. Categorical exclusions applicable to facility operation
 - 1.1 Administrative procurements
 - 1.2 Routine financial transactions
 - 1.3 Grant/contracts for categorically-excluded and some interim actions
 - 1.4 Contract interpretations, amendments
 - 1.5 Pass-throughs
 - 1.6 Rate increases less than inflation (not power marketing, but see 4.4)
 - 1.7 Administrative enforcement actions
 - 1.8 Certain actions by Office of Hearings and Appeals
 - 1.9 Interpretations/rulings for existing regulations
 - 1.10 Clarifying rules and regulations
 - 1.11 Rulemaking for technical and pricing proposals
 - 1.12 Rulemaking for grants and cooperative agreements

- 1.13 Rulemaking for categorically-excluded actions**
- 1.14 Procedural rulemakings**
- 1.15 Transfer of property, use unchanged or categorically-excluded**
- 1.16 Personnel actions/personal service contracts**
- 1.17 Document preparation**
- 1.18 Information gathering/analysis/dissemination**
- 1.19 Reports or recommendations on non-DOE legislation**
- 1.20 Technical advice and assistance to organizations**
- 1.21 Classroom training and informational programs**
- 1.22 Emergency preparedness**
- 1.23 Training exercises and simulation**
- 1.24 Changes in inspection, maintenance requirements**
- 1.25 Business support activities**
- 1.26 Routine maintenance/custodial services for buildings, structures, equipment**
- 1.27 Siting/construction/operation of storage area for maintenance/administrative supplies/equipment**
- 1.28 Replacement/extension of existing utility systems for categorically-excluded actions**
- 1.29 Installation/modification of air conditioning systems for existing equipment**
- 1.30 Improvements to cooling water systems within existing building, structure**
- 1.31 Installation of/improvements to liquid retention tanks, small basins**
- 1.32 Acquisition/installation/operation of communication systems, data processing equipment**
- 1.33 Modifications to screened water intake structures**
- 1.34 Routine testing/calibration of facility components**
- 1.35 Routine decontamination, not part of decommissioning**
- 1.36 Airway safety markings/painting (not lighting) of existing lines, antennas**
- 1.37 On-site storage of activated material at existing facility**
- 1.38 Fencing, no adverse effect on wildlife movement**
- 1.39 Actions to conserve energy, not affecting air exchange, not increasing potentially harmful substances**
- 1.40 Detonation of high explosives in reserved areas**
- 1.41 Acquisition or minor relocation of access roads**
- 1.42 Routine transportation of nonhazardous materials and nonradioactive, nonwaste hazardous materials**
- 1.43 Routine transportation of waste (not transuranic, not high level)**
- 1.44 Temporary shutdown/restart of a facility for inventory, routine maintenance**
- 1.45 Temporary shutdown/restart of a nuclear reactor for refueling**
- 1.46 Shutdown of an operating facility**
- 2. Categorical exclusions applicable to safety and health**
- 2.1 Modifications to enhance workplace habitability**
- 2.2 Installation of/improvements to instrumentation**
- 2.3 Establishment of/improvements to emergency warning systems, monitors, evacuation routes**
- 2.4 Promotion/maintenance of employee health**
- 2.5 Equipment Qualification Programs**
- 3. Categorical exclusions applicable to site characterization, monitoring, and general research**
- 3.1 Site characterization/environmental monitoring**
- 3.2 Geochemical surveys/geological mapping/geophysical investigation**
- 3.3 Archeological/cultural resource identification**
- 3.4 Aviation activities for survey/monitoring/security**
- 3.5 Research related to conservation of fish and wildlife**
- 3.6 Transport packaging tests for radioactive/hazardous material**
- 3.7 Tank car tests**
- 3.8 Indoor bench-scale research projects/conventional laboratory operation**
- 4. Categorical exclusions applicable to the Power Marketing Administrations and to all of DOE with regard to power resources**
- 4.1 Contracts/marketing plans/policies for the short term**
- 4.2 Leasing of existing transmission facilities**
- 4.3 Export of electricity over existing transmission lines**
- 4.4 Power marketing rate changes less than inflation**
- 4.5 Power marketing services within normal operating limits**
- 4.6 Buffer rights-of-way at existing transmission facilities**
- 4.7 Minor substation modifications/expansions**
- 4.8 Temporary adjustments to river operations**
- 4.9 Additions/modifications to transmission facilities within previously developed area**
- 4.10 Adding/burying fiber optic cable**
- 5. Categorical exclusions applicable to fossil, conservation, and renewable energy activities**
- 5.1 Modifications to oil/gas/geothermal pumps and piping**
- 5.2 Modification (not expansion)/abandonment of oil storage access/brine injection/geothermal wells, not part of site closure**
- 5.3 Repair/replacement of sections of pipeline within permitted maintenance provisions**
- 5.4 Removal of oil field waste to permitted disposal facility**
- 6. Categorical exclusions applicable to international activities**
- 6.1 Approval of technical exchange arrangements**
- 6.2 Umbrella agreements for cooperation in energy research and development**
- 6.3 Emergency measures under the International Energy Program**
- 1. Categorical Exclusions Applicable to Facility Operation**
- 1.1 Administrative procurements (including, but not limited to, general administrative supplies, and computer and supercomputer systems).**
- 1.2 Routine financial transactions, including payment of salaries, expenses, or fees.**
- 1.3 Grants, contracts (that is, procurements), cooperative agreements or other authorizations for actions that are (a) categorically excluded in appendix A or in appendix B to this subpart, or (b) permitted by § 1021.211 of this part and 40 CFR 1508.1(a).**
- 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, firefighter 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 meteorological 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.

6.3 Planning and implementation of emergency measures pursuant to the International Energy Program.

Appendix B to Subpart D—Categorical Exclusions that Require Documentation

Table of Contents

1. Categorical exclusions applicable to facility operation

1.1 Siting/construction/operation of support structures

1.2 Removal of contamination, not decommissioning project

1.3 Removal of asbestos from existing buildings

1. 4 Removal of polychlorinated biphenyl-containing items from buildings, other above-ground locations
1. 5 Construction/operation of additional/replacement water supply wells
1. 6 Construction/operation of microwave/radio communication towers
1. 7 Actions to conserve energy, affecting air exchange, not increasing potentially harmful substances
1. 8 Protect/restore/improve fish and wildlife habitat
1. 9 Restart of facility after categorically-excluded safety-environmental improvements
- 2. Categorical exclusions applicable to safety and health**
2. 1 Improvement of a facility, replacement/upgrade of facility components
- 3. Categorical exclusions applicable to site characterization, monitoring, and general research**
3. 1 Siting/construction/operation of small-scale laboratory building or renovation of room for sample analysis for site characterization/environmental monitoring
3. 2 New infill exploratory, experimental oil/gas/geothermal wells
3. 3 Outdoor ecological/environmental research activities
3. 4 Certain Clean Coal Technology Demonstration Program activities
3. 5 Research and development activities/small-scale testing at existing facility, preceding demonstration
3. 6 Outdoor reliability/quality assurance tests and experiments, nonradioactive
- 4. Categorical exclusions applicable to the Power Marketing Administrations and to DOE with regard to power resources**
4. 1 New electricity transmission agreements, system operation within normal operating limits
4. 2 Multiple use of DOE transmission line rights-of-way
4. 3 Dismantling and removal of transmission lines
4. 4 Construction or modification of customer service substations
4. 5 Construction of tap lines (less than 10 miles in length), not integrating major new sources
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
5. 3 Import/export natural gas, no new construction
5. 4 Import/export natural gas requiring short gas pipeline segments for cogeneration powerplant
5. 5 Temporary exemption for electric powerplant, fuel-burning installation
5. 6 Certain permanent exemptions for electric powerplant, fuel-burning installation
5. 7 Permanent exemption for mixed natural gas and petroleum
5. 8 Permanent exemption for new peak-load powerplant
5. 9 Permanent exemption for emergency operations
5. 10 Permanent exemption for meeting scheduled equipment outages
5. 11 Permanent exemption due to lack of alternative fuel supply
5. 12 Permanent exemption for new cogeneration powerplant
- 6. Categorical exclusions applicable to environmental restoration and waste management**
6. 1 CERCLA removals/similar actions under RCRA or other authorities
6. 2 Siting/construction/operation of temporary pilot-scale waste collection/treatment facilities
6. 3 Improvements to environmental control systems
6. 4 Siting/construction/operation of waste storage facility (not transuranic, high level)
6. 5 Modification (not expansion) of existing transuranic waste storage facility
6. 6 Granting/denying petitions for allocation of commercial disposal capacity
6. 7 Relocation/demolition/disposal of buildings
6. 8 Modifications for waste minimization/reuse of materials
- 7. Categorical exclusions applicable to international activities**
7. 1 Import/export of special nuclear or isotopic materials
7. 2 Retransfers of source, special nuclear, and byproduct materials
- 1. Categorical Exclusions Applicable to Facility Operation**
1. 1 Siting, construction (and/or modification), and operation of buildings and support structures (including trailer 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 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), § 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 facility 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 or 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 local 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 only 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 260, 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 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).

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 EIAs

Table of Contents

1. Major Projects
2. Protection of fish and wildlife habitat
3. Rate increases more than inflation, not power marketing
4. Rate increases more than inflation, power marketing

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**
- Table of Contents*
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 part 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)).

[FR Doc. 90-25892 Filed 10-30-90; 11:12 am]

BILLING CODE 6450-01-M