

DEPARTMENT OF ENERGY**10 CFR Part 1021****National Environmental Policy Act
Implementing Procedures****AGENCY:** Department of Energy.**ACTION:** Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE or the Department) proposes to amend its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The proposed amendments are based upon three years of experience with the existing regulations and are intended to maintain quality while improving DOE's efficiency in implementing NEPA requirements by reducing costs and preparation time. In addition, because DOE's missions, programs, and policies have evolved in response to changing national priorities since the current regulations were issued in 1992, corresponding changes in the Department's NEPA procedures are needed.

The Department is proposing changes in subparts A, C and D of the existing regulations. Among the proposed changes are various revisions to the lists of "typical classes of actions" (appendices A, B, C, and D to subpart D), including the addition of new categorical exclusions, modifications that expand or remove existing categorical exclusions, and clarifications. Other proposed changes pertain to the DOE requirement for an implementation plan for each environmental impact statement and DOE's required content for findings of no significant impact. DOE also proposes to clarify its public notification requirements for records of decision.

DATES: Comments must be received by April 5, 1996, to ensure consideration. Late comments will be considered to the extent practicable. DOE is not scheduling any public meetings on the proposed amendments, but will arrange a public meeting if the public expresses sufficient interest.

ADDRESSES: Comments on the proposed rule should be addressed to Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH-42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C., 20585-0119. Comments may be hand-delivered to the same address on workdays between the hours of 8:00 a.m. and 4:30 p.m. Comments may also be sent by electronic mail to the following internet address: neparule@spok.oh.doe.gov.

FOR FURTHER INFORMATION CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, at the above address; telephone (202) 586-4600 or leave a message at (800) 472-2756.

SUPPLEMENTARY INFORMATION:**I. Background**

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires that Federal agencies prepare environmental impact statements for major Federal actions that may "significantly affect the quality of the human environment." NEPA also created the President's Council on Environmental Quality, which issued regulations in 1978 implementing the procedural provisions of NEPA. Among other requirements, the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500-1508) require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations. DOE's implementing procedures (regulations) are codified at 10 CFR Part 1021.

II. Purpose of the Proposed Amendments

The proposed amendments are intended to maintain quality while improving the efficiency of DOE's implementation of NEPA by clarifying and streamlining certain DOE requirements, thereby reducing implementation costs and time. This approach is consistent with the DOE Secretarial Policy Statement on NEPA (June 1994), which encourages actions to streamline the NEPA process and make the process more useful to decision makers and the public without sacrificing quality. Full compliance with the letter and spirit of NEPA is an essential priority for DOE. In addition, DOE's missions, programs, and policies have evolved in response to changing national priorities since the current DOE NEPA regulations were issued in 1992, and DOE needs to make conforming changes in its NEPA regulations.

III. Description of the Proposed Amendments

This section describes and explains the proposed amendments to the existing DOE NEPA regulations at 10 CFR Part 1021. The proposed changes reflect DOE's three years of experience with the existing regulations. DOE has consulted with the Council on Environmental Quality regarding these proposed amendments to the regulations, in accordance with 40 CFR 1507.3.

A. Proposed Amendments to Subpart A—General

Subpart A contains, among other provisions, the definitions of terms that are used in the regulations and assigns responsibility for overall review of DOE NEPA compliance. DOE proposes to remove the definition of "EIS Implementation Plan" in section 1021.104, to be consistent with a proposed change to subpart C, section 1021.312 that is explained below. DOE also proposes to update the name and address of its Office of NEPA Policy and Assistance in section 1021.105.

B. Proposed Amendments to Subpart C—Implementing Procedures

DOE proposes to remove two requirements and clarify a third requirement in subpart C. DOE proposes to remove the requirements to (1) prepare an implementation plan for an environmental impact statement, and (2) summarize an environmental assessment in a finding of no significant impact. DOE also proposes to modify its procedures regarding public notice of its records of decision. Each of the proposed changes is consistent with the Council on Environmental Quality NEPA regulations. The reasons for these proposed deletions and modifications are presented below.

**Environmental Impact Statement
Implementation Plan**

The existing DOE NEPA regulations require DOE to prepare an implementation plan for each environmental impact statement (section 1021.312) to guide the preparation of the environmental impact statement and to record the results of the scoping process. The plan must be completed as soon as possible after the close of the public scoping process, but in any event before issuing the draft environmental impact statement. A DOE implementation plan must include: a statement of the planned scope and content of the environmental impact statement; the purpose and need for action; a description of the scoping process and the results, including a summary of comments received and their disposition; target schedules; anticipated consultations with other agencies; and a disclosure statement (as required at 40 CFR 1506.5(c)) executed by any contractors assisting in the preparation of the environmental impact statement. DOE must make implementation plans (and any revisions) available in public reading rooms and other appropriate locations for inspection, and provide copies upon written request. DOE appears to be the

only Federal agency that requires the preparation of an environmental impact statement implementation plan.

To simplify the DOE NEPA process, DOE proposes to eliminate the requirement to prepare an implementation plan for an environmental impact statement, which would have the effect of making such plans optional. DOE believes that eliminating the implementation plan requirement would result in cost and time savings, without meaningfully reducing public involvement in the DOE environmental impact statement process.

The requirement to prepare an environmental impact statement implementation plan has been part of DOE's NEPA procedures since 1979. Implementation plans can serve useful functions in DOE's environmental impact statement planning and in documenting public concerns before issuing the draft environmental impact statement. In practice, however, implementation plans often have contained more detail than was originally envisioned, and have diverted resources from the more important task of preparing the environmental impact statement itself.

With the Department's emphasis on improving its NEPA process by cutting process time (among other measures put forth in the Secretarial Policy Statement on NEPA), the formal implementation plan requirements have in some cases hindered rather than facilitated progress toward the prompt issuance of an environmental impact statement. Under the proposed amendment, DOE would continue to encourage its managers to use brief implementation plans as internal management tools, particularly for complex or broad proposed actions, but would not require that such plans be prepared for all environmental impact statements as a matter of rule. The proposed amendment would not preclude the Department from implementing, as part of its internal procedures, other options for environmental impact statement planning.

Elimination of the requirement for an implementation plan would not diminish the requirement to consider public comments received during scoping. DOE would continue to conduct public scoping activities before preparing draft environmental impact statements, and provide transcripts or notes of the public scoping meetings in public reading rooms. DOE would fully consider public comments and factor them into preparation of the draft environmental impact statement as appropriate, and would execute

contractor disclosure statements in accordance with 40 CFR 1506.5(c).

Record of Decision

DOE proposes to revise section 1021.315(c) in two respects concerning public notification procedures for records of decision. First, to reduce Federal Register publication costs, DOE proposes to amend the current requirement to publish all records of decision in the Federal Register in favor of an option to publish only a notice that provides a summary of the record of decision and an announcement of the availability of the full record of decision. Copies of the full record of decision containing all the information required under the Council on Environmental Quality's regulations (specifically, 40 CFR 1502.2) would remain available upon request. Second, DOE proposes to clarify that, if the decision has been publicized by other means (e.g., press releases or announcements in local media), DOE need not defer taking action until its record of decision or the notice has been published in the Federal Register. This clarification as to when DOE may take an action does not reflect any change in DOE's current practices, but simply reduces the chance that the meaning of the current section 1021.315(c) could be misinterpreted.

Finding of No Significant Impact

DOE proposes to remove the current § 1021.322(b)(1) relating to the requirement that a DOE finding of no significant impact must summarize the supporting environmental assessment, including a brief description of the proposed action and alternatives considered, environmental factors considered, and projected impacts. Instead, on a case-by-case basis and in accordance with 40 CFR 1508.13, DOE would either incorporate the environmental assessment by reference into the finding of no significant impact and attach the environmental assessment to the finding of no significant impact, or summarize the environmental assessment in the finding. The elimination of the requirement for a summary would give DOE flexibility, with potential for time and cost savings, in preparing findings of no significant impact.

C. Proposed Amendments to Subpart D—Typical Classes of Action

Four appendices to subpart D set forth the classes of DOE actions that normally would be categorically excluded (appendices A and B), that normally would require preparation of an environmental assessment but not

necessarily an environmental impact statement (appendix C), and that normally would require preparation of an environmental impact statement (appendix D). A categorical exclusion is defined as a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor environmental impact statement is required.

Proposed changes in appendices A through D of subpart D are intended to adjust normal levels of DOE's NEPA review and to add, modify (expand or remove), and clarify classes of actions based on DOE experience under the existing regulations. In considering the proposed revisions, reviewers should bear in mind that listing a class of actions in these appendices does not constitute a conclusive determination regarding the appropriate level of NEPA review for a proposed action. Rather, the listing creates a presumption that the defined level of review is appropriate for the listed actions. As indicated in § 1021.400(c), that presumption does not apply when there are extraordinary circumstances related to the proposed action that may affect the significance of the environmental effects of the action.

The following conversion table shows the relation of listings in the existing Appendices to the proposed revisions. The conversion table shows whether listings have been modified, clarified, removed, or added. The numbering of some categorical exclusions would change due to the deletion or consolidation of existing categorical exclusions and, in one case, the division of one current categorical exclusion into two separate exclusions. The numbers of deleted categorical exclusions would be reused. Any existing categorical exclusions not listed are not affected by any proposed changes.

Conversion Table

Existing	Proposed	
A.7	A.7	Clarified.
B1.3	B1.3	Clarified.
B1.8	B1.8	Modified.
B1.13	B1.13	Modified.
B1.15	B1.15	Modified.
B1.18	B1.18	Modified.
B1.21	B1.21	Modified.
B1.22	B1.22 & B1.23	Clarified.
	B1.24–B1.33	Added.
	B2.6	Added.
B3.1	B3.1	Clarified.
B3.3	B3.3	Clarified.
B3.6	B3.6	Modified.
B3.10	B3.6	Modified.
	B3.10	Added.
	B3.12–B3.13	Added.
B4.1	B4.1	Modified.

Conversion Table—Continued

Existing	Proposed	
B4.2	B4.2	Modified.
B4.3	B4.3	Modified.
B4.6	B4.6	Clarified.
B4.10–B4.13 .	B4.10–B4.13 .	Modified.
B5.3	B5.3	Modified.
B5.5	B5.5	Modified.
B5.9–B5.11 ...	B5.9–B5.11 ...	Clarified.
B5.12–B5.16 .	B5.12	Removed.
	B5.12	Added.
B6.1	B6.1	Modified.
B6.4	B6.4	Removed.
	B6.4	Added.
B6.5	B6.5	Clarified.
	B6.9	Added.
C1	C1	Reserved.
C4	C4	Modified.
C7	C7	Modified.
C9	C9	Modified.
C10	C10	Reserved.
C11	C11	Modified.
C14	C14	Modified.
C16	C16	Modified.
D1	D1	Modified.
D7	D7	Modified.
D10	D10	Modified.

Most of the proposed changes in appendices A through D relate to categorical exclusions. Reviewers should evaluate these proposed changes in the full context of the DOE regulations for categorical exclusions. Under the regulations, before a proposed action may be categorically excluded, DOE must determine in accordance with § 1021.410(b) that: (1) The proposed action fits within a class of actions listed in appendix A or B to subpart D, (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the action, and (3) there are no connected or related actions with cumulatively significant impacts and, as appropriate, the proposed action is a permissible interim action. In addition, to fit within a class of actions that is normally categorically excluded, a proposed action must include certain conditions as integral elements (appendix B, paragraphs B(1) through (4)). Briefly, these conditions ensure that an excluded action will not: Threaten violation of applicable requirements, require siting and construction of waste management facilities, disturb hazardous substances such that there would be uncontrolled or unpermitted releases, or adversely affect environmentally sensitive resources.

DOE believes that the proposed amendments to appendices A and B constitute classes of action that do not individually or cumulatively have a significant effect on the human environment. After DOE considers

public comments on the proposals, any such final categorical exclusions that are codified in the NEPA regulations would be covered by a finding to that effect in section 1021.410(a).

Classes of Actions Listed in Appendix A

The only proposed amendment to appendix A is a clarification of paragraph A7.

- Proposed Clarification A7—Transfer of property, use unchanged. DOE is proposing to clarify the meaning of “property” in paragraph A7 by explicitly including both personal property (e.g., equipment and materials) and real property (e.g., permanent structures and land), and to clarify that the intent has always been that the impacts would remain essentially the same after the transfer.

Classes of Actions Listed in Appendix B

The proposed amendments to appendix B are of three types: (1) New categorical exclusions, (2) modifications (expansion or removal) of categorical exclusions, and (3) clarifications of categorical exclusions.

(1) New Categorical Exclusions

Seventeen new categorical exclusions are proposed for sections B1, B2, B3, B5, and B6, as described below. In three cases, the number designating a current categorical exclusion (B3.10, B5.12, and B6.4) is used for a proposed categorical exclusion. The current B3.10 would be incorporated into proposed B3.6. The current B5.12 and B6.4 would be replaced with new categorical exclusions.

- Proposed B1.24—Transfer of property/residential, commercial, industrial use. This proposed categorical exclusion applies to the transfer, lease, disposition, or acquisition of interests in uncontaminated facilities (and accompanying land); that is, the facilities and accompanying land do not contain contaminants at a level or in a form that would pose a threat to public health or the environment. Unlike under categorical exclusion A7, the use of the facilities may change, but the new use must result in generally similar environmental impacts and must not result in greater environmental discharges. That is, there may not be decreases in quality, or increases in the volumes, concentrations, or discharge rates of wastes, air emissions, or water effluents compared to those before the transfer, lease, disposition, or acquisition of interests. Based on DOE's experience, these types of actions normally would not have the potential for significant impact.

- Proposed B1.25—Transfer of property/habitat preservation, wildlife management.

This proposed categorical exclusion applies to the transfer, lease, disposition, or acquisition of interests in uncontaminated land for habitat preservation or wildlife management. DOE has engaged in many habitat preservation and wildlife management actions. In DOE's judgment, these types of actions normally would not have the potential for significant impact. Any action that would change the habitat would be subject to NEPA analysis.

- Proposed B1.26—Siting/construction/operation/decommissioning of small water treatment facilities, generally less than 250,000 gallons per day capacity.

This proposed categorical exclusion applies to small wastewater, potable water, surface water, and sewage treatment facilities that generally do not exceed 250,000 gallons per day capacity. DOE's experience with siting and construction (including expansion, modification and replacement) of small-scale water treatment projects shows that they are often associated with environmental improvements at DOE sites and that they normally have no potential for significant impacts. The Department is also proposing to categorically exclude temporary groundwater contaminant containment measures that could include the small-scale construction of water treatment facilities (proposed paragraph B6.9).

- Proposed B1.27—Facility deactivation.

This proposed categorical exclusion applies to facility deactivation, specifically the disconnection of utilities such as water, steam, telecommunications, and electrical power. DOE has extensive experience in facility deactivation and believes that such activities normally do not have the potential for significant impact.

- Proposed B1.28—Minor activities to place a facility in an environmentally safe condition, no proposed uses.

This proposed categorical exclusion applies to minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination and removing materials, equipment or waste, such as final defueling of a reactor, where there are adequate existing facilities for treatment, storage, or disposal of the materials. These activities would not include conditioning, treatment or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

DOE's experience with such environmentally beneficial activities indicates that the activities normally do not pose a potential for significant environmental impact.

- Proposed B1.29—Siting/construction/operation/decommissioning of onsite disposal facility for construction and demolition waste.

This proposed categorical exclusion applies to establishing and operating a small (generally less than 10-acre) disposal site for uncontaminated construction and demolition waste as defined in the Environmental Protection Agency's regulations under the Resource Conservation and Recovery Act at 40 CFR 243.101. In DOE's experience and judgment, small-scale disposal of such materials normally would pose no potential for significant impacts.

- Proposed B1.30—Transfer actions.

This proposed categorical exclusion applies to transfer actions, in which materials, equipment, or wastes are moved to a new location. The categorical exclusion would apply to actions in which transportation is the predominant proposed activity and the amount and type of relocated materials, equipment, or waste is incidental to the amount of that material, equipment, or waste that is already a part of operations at the receiving site. The transfers that would be categorically excluded are not regularly scheduled as part of routine operations, and could include, for example, moving a few drums of waste to an authorized disposal facility, or moving replacement equipment or supplies. DOE's experience indicates that transportation activities under DOE's standard practices pose no potential for significant impacts.

- Proposed B1.31—Relocation/operation of machinery and equipment.

The proposed categorical exclusion applies to the relocation and subsequent operation of machinery and equipment including, but not limited to, analytical laboratory apparatus, electronic hardware, maintenance equipment, and health and safety equipment, where use of the relocated items is similar to their former use, and consistent with the missions of the receiving facility. In DOE's experience, there is no material change in the environmental status quo and no potential for significant impact from use of relocated machinery and equipment.

- Proposed B1.32—Restoration, creation, or enhancement of small wetlands.

The proposed categorical exclusion applies to the restoration, creation, or enhancement of small wetlands, but

only when the action does not adversely affect any other environmental resources. In addition, the Department would coordinate the action with cognizant Federal and State regulators to assure compliance with other land use plans and to benefit from their advice. In DOE's judgment, the restoration, creation, or enhancement of a small wetland as described, which is normally considered to be an environmentally beneficial measure, is inherently unlikely to pose the potential for significant environmental impact. (Also see the proposed modification to C9 below.)

- Proposed B1.33—Traffic flow adjustments, existing roads.

This proposed categorical exclusion applies to traffic flow adjustments on existing roads at DOE sites, such as installation of stop signs or traffic lights and changes in traffic direction (e.g., changing a two-way street to a one-way street.) Such an action normally would not pose the potential for significant environmental impacts.

- Proposed B2.6—Packaging/transportation/storage of radioactive sources upon request by the Nuclear Regulatory Commission or other cognizant agency.

This proposed categorical exclusion applies to the exercise of DOE's responsibilities under the Atomic Energy Act relating to certain requests by the Nuclear Regulatory Commission or other cognizant agencies in the interest of protecting the public from exposure to radiation. For example, on occasion, the Nuclear Regulatory Commission has requested that DOE retrieve discrete radioactive sources from a Commission-licensed private person or company that would not or could not safely manage the material. The categorical exclusion applies to all types of radioactive materials that the Nuclear Regulatory Commission categorically excludes for possession and use by its licensees. DOE believes that for radioactive materials that the Nuclear Regulatory Commission has determined not to require an environmental assessment or environmental impact statement for its licensees' possession and use, DOE's packaging, transportation, and storage of such materials also may normally be categorically excluded. DOE's experience with discrete radioactive sources in responding to Nuclear Regulatory Commission requests clearly supports this conclusion.

- Proposed B3.10—Siting/construction/operation/decommissioning of particle accelerators, including electron beam

accelerators, primary beam energy generally less than 100 MeV.

The proposed categorical exclusion applies to siting, construction, operation, and decommissioning of particle accelerators with primary beam energy generally less than 100 MeV that would be used for research and medical purposes. DOE's experience indicates that construction and operation (or modification) and subsequent decommissioning of such devices normally pose no potential for significant environmental impacts. The categorical exclusion also applies to internal modifications of any accelerators regardless of energy that do not increase primary beam energy or current. Experience has shown that internal modifications to accelerators of any size that do not increase primary beam energy or current pose no potential for significant impacts.

- Proposed B3.12—Siting/construction/operation/decommissioning of microbiological and biomedical facilities.

DOE has performed numerous analyses of the environmental impacts of the siting, construction, operation, and any necessary decommissioning of microbiological and biomedical diagnostic, treatment and research facilities within or contiguous to an already developed area and has found that such activities normally pose no potential for significant environmental impacts. These laboratories generally do not handle extremely dangerous materials. More generally, laboratories that are rated Biosafety Level-1 or Biosafety Level-2 (reference: Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers of Disease Control and Prevention, and the National Institutes of Health; (HHS Publication No. (CDC) 93-8395)) would similarly not pose potential for significant environmental impacts.

- Proposed B3.13—Magnetic fusion experiments, no tritium fuel use.

The proposed categorical exclusion applies to magnetic fusion experiments performed at existing facilities that do not use tritium as fuel, including necessary modifications to the facilities. Analysis of environmental impacts of several such experimental regimens indicates that they normally pose no potential for significant environmental impacts.

- Proposed B5.12—Workover of existing oil/gas/geothermal well.

The proposed categorical exclusion applies to workover (operations to restore production, such as deepening, plugging back, pulling and resetting

lines, and squeeze cementing) of all types of oil, gas, and geothermal wells where the work would be conducted on the existing wellpad and would not disturb adjacent habitat. DOE's experience is that such actions do not pose the potential for significant environmental impacts.

- Proposed B6.4—Siting/construction/operation/decommissioning of small waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

This proposed categorical exclusion applies to siting, construction (or modification), operation and decommissioning of small onsite storage facilities for waste, other than high-level radioactive waste, that is generated onsite or results from activities connected to site operation. The categorical exclusion would not apply to storage of spent nuclear fuel. This categorical exclusion would apply to small facilities, generally up to 50,000 square feet in area, within or contiguous to an already developed area. DOE's evaluations of many such facilities show that they normally pose no potential for significant environmental impacts.

- Proposed B6.9—Small-scale temporary measures to reduce migration of contaminated groundwater.

This proposed categorical exclusion reflects DOE's experience with many small-scale temporary construction actions to reduce the migration of contaminated groundwater, by such means as pumping, treating, storing, and reinjecting water and installing underground barriers. DOE has found that these actions normally have very local and environmentally beneficial effects and pose no potential for significant environmental impacts. The Department is also proposing to categorically exclude the siting, construction, and operation of small water treatment facilities (proposed B1.26).

(2) Modification (Expansion or Removal) of Categorical Exclusions

Proposed modifications to integral elements B(1), B(2) and B(4)(iii) and sections B1, B3, B4, B5, and B6 include 2 modifications to integral elements, expansion of 16 categorical exclusions, and removal of 6 categorical exclusions.

- Proposed Modification B(1). DOE proposes to add Executive Orders to integral element B(1) for completeness.

- Proposed Modification B(2). The integral element B(2), which sets the condition that a categorically excluded action may not require siting, construction, or major expansion of waste storage, disposal, recovery, or

treatment facilities, would be modified to provide an exception for such actions that are themselves categorically excluded. Such actions proposed in this rulemaking include certain water treatment and waste storage facilities. (See discussions above for proposed B1.26, B1.29, B6.4, and B6.9).

- Proposed Modification B(4)(iii). Floodplains and wetlands are listed as an example of environmentally sensitive resources in integral element B(4)(iii). DOE proposes to revise this example to apply to wetlands determined by using the methodology that the U.S. Army Corps of Engineers applies in implementing section 404 of the Clean Water Act, except that it will not apply to wetlands affected by proposed actions covered by a general permit under 33 CFR Part 330. However, one such general permit, #23, covers "Approved Categorical Exclusions". It is not appropriate to use general permit #23 to avoid applying the integral element for DOE categorical exclusions.

- Proposed Modification B1.8—Modifications to screened water intake/outflow structures.

The proposed modification would expand the original categorical exclusion to include outflow structures. In DOE's experience, modifying outflow structures, such that water effluent quality and volumes are consistent with existing permit limits, normally has no potential for significant impact.

- Proposed Modification B1.13—Construction/acquisition/relocation of onsite pathways, spur or access roads/railroads.

The proposed modification would expand the original categorical exclusion that applies to acquisition or minor relocation of access roads to include construction of onsite pathways and onsite spur or access roads and railroads. Such an action would not affect general traffic or rail patterns and, in view of the conditions that are integral elements of the categorical exclusion, such an action normally would not pose the potential for significant environmental impacts.

- Proposed Modification B1.15—Siting/construction/operation of support buildings/support structures.

The proposed modification would no longer restrict this categorical exclusion to "small-scale" support structures. DOE has found that significant environmental impacts would not normally occur when DOE support structures of any size are constructed "within or contiguous to an already developed area."

- Proposed Modification B1.18—Siting/construction/operation of

additional/replacement water supply wells.

The proposed modification would expand the original categorical exclusion to include modifications of an existing water supply well to restore production. The impact of modifying an existing water supply well to restore production is equivalent to or less than that of developing additional or replacement water supply wells. DOE's experience is that such actions, meeting the conditions set forth in the categorical exclusion, normally have no potential for significant impact.

- Proposed Modification B1.21—Noise abatement.

The proposed modification would remove the restriction that the existing categorical exclusion applies to only "minor" noise abatement measures. Based on DOE's experience, noise abatement measures normally would not have a significant environmental impact.

- Proposed Modification B3.6—Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects.

The proposed modification would combine the current paragraphs B3.6 (Indoor bench-scale research projects/conventional laboratory operation) and B3.10 (Small-scale research and development/small-scale pilot projects, at existing facility, preceding demonstration) and expand the scope to include siting, construction, operation, and decommissioning of the facilities in which the research activities would occur. The construction of facilities for the types of research activities addressed normally would not cause any significant environmental effects as long as the integral elements were met and construction occurred within or contiguous to an already developed area.

- Proposed Modification B4.1—Contracts/marketing plans/policies for excess electric power.

The proposed modification, which applies to power marketing administrations, would emphasize limits based on the characteristics of a project rather than the duration of a contract or other agreement. The existing categorical exclusion indirectly limits the potential impacts in part by restricting its application to contracts and other agreements that do not exceed 5 years duration. DOE's project evaluation experience has shown that the potential for environmental impacts is more directly related to market responses, such as changes in generation resources, transmission

systems, and operating limits than to the duration of contracts, policies, marketing plans, or allocations of power. This proposed modification is related to proposed modifications for C7 and D7, discussed below.

- Proposed Modification B4.2—

Export of electric energy.

The proposed expansion would allow DOE to issue permits for the export of electric energy over existing transmission systems or by changing a system in ways that are themselves categorically excluded. Such changes may typically be needed to connect two systems and would involve constructing short segments (generally less than a mile long) of powerline and a substation.

- Proposed Modification B4.3—

Electric power marketing rate changes.

The proposed modification would change the method for determining categorically excluded rate changes. The limits in the modified categorical exclusion focus directly on the power system activities, rather than indirectly on economics. The existing categorical exclusion applies to rate changes that do not exceed inflation. The proposed modification would instead categorically exclude rate changes in which the operations of generation projects would remain within normal operating limits.

- Proposed Modification B4.10—

Deactivation, dismantling and removal of electric powerlines and substations.

The proposed modification would categorically exclude dismantling of substations, switching stations, and other transmission facilities, the construction of which is already categorically excluded. The modification also would categorically exclude the dismantling of all electric powerlines (i.e., both tap lines and transmission lines), because the impacts of removing various types of powerlines are essentially the same. The proposed modification would clarify categorically excludable actions by including deactivation (i.e., shutting off power flowing through existing electric powerlines).

- Proposed Modification B4.11—

Construction or modification of electric power substations.

The proposed changes would expand categorically excluded modification activities to substations of any voltage, provided that the modification does not increase the existing voltage. DOE has found that such modifications normally do not have potential for significant environmental impacts. The proposed changes also would categorically exclude new electric powerline construction of generally less than 10

miles or relocation of generally less than 20 miles of existing electric powerlines to conform with the proposed modification to B4.12 and B4.13, as discussed below.

- Proposed Modification B4.12— Construction of electric powerlines (generally less than 10 miles in length), not integrating major new sources.

The existing categorical exclusion applies to construction and operation only of tap lines. DOE has found that the physical impacts of constructing and operating short segments (generally less than 10 miles in length) of all powerlines are similar and normally are environmentally insignificant when the integral elements are met.

- Proposed Modification B4.13— Reconstruction and minor relocation of existing electric powerlines (generally less than 20 miles in length).

The proposed modification would increase the length of powerlines that can be categorically excluded from 10 miles, as indicated in the existing categorical exclusion, to 20 miles. The categorical exclusion would also include reconstruction within existing corridors. Based on DOE's experience, there is no potential for significant impact when the integral elements are met. Most relocations are proposed to mitigate existing impacts and improve existing environmental conditions. This amendment would require a conforming revision of C4 (discussed below).

- Proposed Modification B5.3— Modification (not expansion)/ abandonment of oil storage access/brine injection/gas/geothermal wells, not part of site closure.

The proposed modification would add gas wells to those wells for which modifications may be categorically excluded. Gas resources normally occur in conjunction with oil resources, and the existing categorical exclusion effectively already applies to gas wells. In general, the environmental impacts of modifying gas wells should be no more than the impacts of modifying other types of wells.

- Proposed Modification B5.5— Construction/operation of short crude oil/gas/steam/geothermal pipeline segments.

The proposed modification adds natural gas and steam pipelines to those pipelines that may be constructed and operated between facilities within a single industrial complex within existing rights of way. These kinds of actions are minor when they are consistent with the conditions (integral elements) of the categorical exclusion. The proposed modification also removes the characterization of the connected facilities as "crude oil"

facilities or "geothermal" facilities because potential impacts of constructing and operating connecting pipeline segments are independent of the end point facilities. In addition, the term "offsite" would be deleted to clarify that the action includes construction and operation of onsite pipelines as connectors to the offsite segments, as DOE originally intended.

- Proposed Modifications (Removals).

- B5.12—Permanent exemption for new peakload powerplant.

- B5.13—Permanent exemption for emergency operations.

- B5.14—Permanent exemption for meeting scheduled equipment outages.

- B5.15—Permanent exemption due to lack of alternative fuel supply.

- B5.16—Permanent exemption for new cogeneration powerplant.

The Powerplant and Industrial Fuel Use Act of 1978 was enacted to preserve oil and gas for certain uses for which alternative fuels could not easily be substituted, to increase use of domestic oil reserves, and to reduce the nation's dependence on imported oil. In order to achieve these goals, the act prohibited the use of oil and gas as primary fuels in new electric power plants and major fuel burning installations, required that new powerplants be constructed so as to be capable of burning coal, and required the conversion of existing powerplants to coal or another alternative to oil and gas fuel by 1990. The statute was amended in 1987 because its impact on fuel choices by both existing and new facilities was less significant than originally expected and because significant reductions in utility and industrial consumption of oil and gas had been achieved. The purpose of the 1987 amendments was, among other things, to repeal the prohibition on the use of oil and natural gas as primary fuels for electric powerplants and major fuel burning installations.

Categorical exclusions B5.12, B5.13, and B5.16 are proposed for removal because the Powerplant and Industrial Fuel Use Act of 1978 now only applies to base load power plants. Therefore, the Act is not applicable to powerplants for peak-load and emergency purposes, or to cogeneration powerplants.

Categorical exclusions B5.14 and B5.15 are proposed for removal because they relate only to major fuel-burning facilities, which are no longer covered by the Powerplant and Industrial Fuel Use Act of 1978.

- Proposed Modification B6.1— Small-scale, short-term cleanup actions under RCRA, Atomic Energy Act, or other authorities.

The proposed revision to B6.1 would delete the current reference to "removal

actions under CERCLA" and would no longer define the scope of excludable actions in terms of the regulatory cost and time limits for CERCLA removal actions (currently \$2 million and 12 months from the time action begins onsite, unless regulatory exemptions are satisfied). Under the Secretarial Policy Statement on NEPA, DOE is generally relying on the CERCLA process (rather than the NEPA process) for review of actions to be taken under CERCLA. The focus of the current paragraph B6.1 on CERCLA removal activities is somewhat confusing in the context of the Secretarial Policy Statement.

Notwithstanding the general approach of relying generally on the CERCLA process for environmental review of CERCLA actions, there may be specific instances in which DOE will choose, after consultation with stakeholders and as a matter of policy, to integrate the NEPA and CERCLA processes. The proposed revised paragraph B6.1 is broad enough to categorically exclude small-scale CERCLA actions as well as similar actions performed under RCRA, the Atomic Energy Act, or other authorities.

Although the regulatory cost and time limits for CERCLA removal actions apply only to fund-financed removals and therefore do not apply to DOE and other Federal agencies that undertake a removal action using the authority delegated to Heads of Federal Agencies by Executive Order 12580, DOE has used the limits as a benchmark for the time and cost of the cleanup actions it normally may categorically exclude. DOE has found, however, that cleanup actions that pose no potential for significant environmental impact often cost more and take more time to complete. Thus, DOE proposes to expand the limits of the categorical exclusion to actions generally costing up to \$5 million over as many as 5 years.

The proposed revision to example B6.1(b) would clarify that the designation of hazardous waste may be based on Environmental Protection Agency regulations (as already indicated in the example) or applicable state requirements. The proposed revision to example B6.1(j) would clarify that segregation of wastes may be categorically excluded when DOE believes, but may not be certain, that the wastes, if not segregated, might react or form a mixture that could result in adverse environmental impacts.

- Proposed Modification (Removal) B6.4—Siting/construction/operation/decommissioning of facility for storing packaged hazardous waste for 90 days or less.

The current categorical exclusion B6.4 is proposed for removal because a more general categorical exclusion for waste storage is proposed (discussed above) that would encompass the activities to which the current B6.4 now applies. DOE believes the scope of the proposed more general categorical exclusion is too broad to be considered a modification of the current B6.4. The proposed waste storage categorical exclusion, however, would also be designated B6.4.

(3) Clarifications of Existing Categorical Exclusions

DOE is proposing certain clarifications to 9 categorical exclusions in sections B1, B3, B4, B5 and B6. To clarify the scope of one categorical exclusion (i.e., B1.22), DOE proposes to divide it into two separate categorical exclusions.

- Proposed Clarification B1.3—Routine maintenance/custodial services for buildings, structures, infrastructures, equipment.

The proposed revisions would clarify the existing B1.3 by providing additional description of the types of areas and improvements (e.g., rights-of-way, pathways, and railroads) and activities (e.g., localized vegetation and pest control) to which the categorical exclusion applies. A sentence would be added to clarify "in-kind replacement," acknowledging that some equipment in older facilities cannot literally be replaced in kind because the equipment is no longer made. A revision to the example B1.3(n) would clarify that this categorical exclusion applies to certain other facility components, such as monitoring wells, lysimeters, weather stations, and flumes. A revision to the example B1.3(o) would clarify that DOE considers all routine surface decontamination, not just "spot" decontamination, as routine maintenance.

- Proposed Clarification B1.22—Relocation of buildings.
- Proposed Clarification B1.23—Demolition/disposal of buildings.

DOE proposes to divide the existing B1.22 (Relocation/demolition/disposal of buildings) into two categorical exclusions to clarify that the two actions included in the existing class of action (building relocations and building demolition and subsequent disposal) are not connected actions.

- Proposed Clarification B3.1—Site characterization/environmental monitoring.

The proposed revision would clarify that this categorical exclusion applies to site characterization and monitoring activities that occur both onsite and off-site, and includes associated small-scale

laboratory buildings and modification of characterization and monitoring devices.

- Proposed Clarification B3.3—Research related to conservation of fish and wildlife.

The proposed revision would clarify that this categorical exclusion includes both field and laboratory research.

- Proposed Clarification B4.6—Additions/modifications to electric power transmission facilities within previously developed area.

The proposed revision would clarify the existing B4.6 by providing additional examples of transmission facility projects (e.g., switchyard grounding upgrades, secondary containment projects, paving projects, and seismic upgrades) to which this categorical exclusion applies.

- Proposed Clarifications B5.9—Temporary exemption for any electric powerplant.

- B5.10—Certain permanent exemptions for any existing electric powerplant.

- B5.11—Permanent exemption for mixed natural gas and petroleum.

The proposed clarifications of B5.9, B5.10, and B5.11 would remove references to "major fuel-burning installation" in order to make these categorical exclusions consistent with the Powerplant and Industrial Fuel Act of 1978, which no longer applies to "major fuel-burning installations." (See discussion above under Proposed Modifications, B5.12 through B5.16.)

- Proposed Clarification B6.5—Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste (not high-level radioactive waste, spent nuclear fuel).

For internal consistency, a reference to B6.4 and B6.6 would be added to this categorical exclusion.

Appendix C

The Department is proposing to amend eight classes of action in appendix C, classes of actions that normally require environmental assessments but not necessarily environmental impact statements, primarily to ensure consistency with changes made to appendix B.

- Proposed Modification (Removal) C1—Major projects.

This class of actions is proposed for removal because DOE no longer uses the designation of "Major Project" in its project management system and has not replaced that designation with a comparable term.

- Proposed Modification C4—Upgrading and constructing electric powerlines.

This revision would be a conforming change necessitated by the proposed change to B4.13, discussed above.

- Proposed Modification C7— Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads.

The proposed modification reflects DOE's project evaluation experience, which has shown that the potential for environmental impacts is more directly related to market responses, such as changes in generation resources, transmission systems, and operating limits, than to the duration of contracts, policies, marketing plans, or allocations of power. This revision also would clarify that this class of action applies not only to DOE power marketing operations but also to other DOE activities as well, and that the impacts of taking the action are independent of the administrative method by which the arrangements are made (e.g., contract, policy, plan, or funding) and of site ownership (e.g., DOE or other). This class of action is related to proposed modification of B4.1 (discussed above) and D7 (discussed below).

- Proposed Modification C9— Restoration, creation, or enhancement of large wetlands.

This proposed revision would conform to proposed B1.32 as discussed above, under which small-scale wetlands projects that do not affect other environmental resources would be categorically excluded.

- Proposed Modification (Removal) C10—Siting/construction/operation/ decommissioning of synchrotron radiation accelerator facility.

- Proposed Modification C11— Siting/construction/operation/ decommissioning of low- or medium-energy particle acceleration facility with primary beam energy generally greater than 100 MeV.

This revision would be a conforming change to make C11 consistent with the proposed categorical exclusion B3.10, as discussed above, and would consolidate C10 and C11 for clarity.

- Proposed Modification C14— Siting/construction/operation of water treatment facilities generally greater than 250,000 gallons per day capacity.

This proposed revision would be a conforming change to make C14 consistent with the proposed categorical exclusion B1.26. Construction and operation of small facilities, those with capacity generally less than 250,000 gallons per day, normally would be categorically excluded; larger facilities normally would need at least an environmental assessment level of review.

- Proposed Modification C16— Siting/construction/operation/ decommissioning of large waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

This proposed revision would be a conforming change to make C16 consistent with the proposed categorical exclusion B6.4 and to clarify the meaning of the term onsite.

Appendix D

The Department is proposing to amend three classes of action in appendix D, classes of actions that normally require an environmental impact statement, as described below.

- Proposed Modification D1— Strategic systems.

This class of actions is revised to reflect changes in DOE's project management system. DOE has replaced the designation "Major Systems Acquisition" with "Strategic System" to describe a project that is a single, stand-alone effort within a program mission area and is regarded by the Department as a primary means to advance the Department's strategic goals. Strategic Systems are designated by the Secretary based on cost, risk factors, international implications, stakeholder interest, or national security.

- Proposed Modification D7— Allocation of electric power, major new generation resources/major changes in operation of power generation resources/major loads.

The proposed modification reflects DOE's project evaluation experience, which has shown that the potential for environmental impacts is more directly related to market responses, such as changes in generation resources, transmission systems, and operating limits than to the duration of contracts, policies, marketing plans, or allocations of power. The proposed revision also would clarify that this class of action applies not only to DOE power marketing operations but to other DOE activities as well, and that the impacts of taking that action are independent of the administrative method by which the arrangements are made (e.g., contract, policy, plan, or funding) and of site ownership (e.g., DOE or other). This class of action is related to proposed modifications of B4.1 and C7, discussed above.

- Proposed Modification D10— Siting/construction/operation/ decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel.

The current paragraph D10 includes certain activities regarding spent nuclear fuel storage facilities within the scope of actions that normally require

an environmental impact statement. Under the proposed modification, DOE would not presume that an EIS is the appropriate level of NEPA review for siting, constructing, operating and decommissioning replacement storage facilities or upgrading storage facilities for spent nuclear fuel. DOE proposals for siting, constructing, operating and decommissioning (or upgrading) spent nuclear fuel storage facilities have varied too widely to support a general conclusion that such proposals normally require an environmental impact statement or normally require an environmental assessment. For example, DOE proposals may range from major new facilities that would store most of the nation's commercial spent nuclear fuel (for which an environmental impact statement clearly would be appropriate), to minor new facilities or upgrades for storing very much smaller quantities of spent fuel that are already in storage at several DOE sites. In addition, this modification is appropriate in light of substantial DOE analyses and experience that show that, even when considered in conjunction with other nuclear-related activities at DOE sites, the environmental impacts of siting, constructing, operating and decommissioning spent nuclear fuel storage facilities at DOE sites generally would be small. The U.S. Nuclear Regulatory Commission and cognizant foreign authorities have reached similar conclusions with respect to spent nuclear fuel storage within their respective jurisdictions. Therefore, DOE believes it may often be appropriate to prepare an environmental assessment rather than an environmental impact statement for replacement spent nuclear fuel storage facilities.

IV. Procedural Review Requirements

A. Environmental Review Under the National Environmental Policy Act

These proposed amendments establish, modify, and clarify procedures for considering the environmental effects of DOE actions within the Department's decision making process, thereby enhancing compliance with the letter and spirit of NEPA. Subpart D, Appendix A6, of the DOE NEPA regulations categorically excludes "rulemakings that are strictly procedural," and applies to these proposed amendments. Therefore, DOE has determined that promulgation of these amendments is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental impact statement or an environmental

assessment. DOE will continue to examine individual proposed actions to determine the appropriate level of review.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This proposed rule would modify existing policies and procedural requirements for DOE compliance with NEPA. It makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that this rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by these amendments. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, "Federalism," requires that regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The final amendments will affect Federal NEPA compliance procedures, which are not subject to state regulation. The proposed amendments to DOE's NEPA regulations will not have any substantial direct effects on states and local governments within the meaning of the Executive Order.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778, "Civil Justice Reform" (October 23, 1991), instructs Federal agencies to adhere to certain requirements when promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b)(2), include eliminating drafting errors and needless ambiguity, drafting

the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulations specify clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describe any administrative proceedings to be available before judicial review and any revisions for the exhaustion of such administrative proceedings; and define key terms. DOE certifies that these proposed amendments to DOE's NEPA regulations meet the requirements of sections 2(a) and 2(b)(2) of Executive Order 12778.

F. Review Under Executive Order 12866

The proposed amendments were reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," which requires a Federal agency to prepare a regulatory assessment, including the potential costs and benefits, of any "significant regulatory action." The order defines "significant regulatory action" as any regulatory action that may have an annual effect on the economy of \$100 million or more and may adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments in a material way, create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or raise novel legal or policy issues arising out of legal mandates (section 3(f)).

This proposal would amend already existing policies and procedures for compliance with NEPA. The amendments contain no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or similar actions, which are the areas in which one might anticipate an economic effect. Therefore, DOE has determined that the incremental effect of these amendments to the DOE NEPA regulations will not have the magnitude of effects on the economy, or any other adverse effects, to bring this proposal within the definition of a "significant regulatory action." Pursuant to the Executive Order, the proposed amendments were submitted to the Office of Management and Budget for regulatory review.

G. Review under the Unfunded Mandates Reform Act

Under section 205 of the Unfunded Mandates Reform Act of 1995, Federal agencies are required to prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Because the DOE NEPA regulations affect only DOE and do not create obligations on the part of any other person or government agency, neither state, local or tribal governments nor the private sector will be affected by amendments to these regulations. Thus, further review by DOE under the Unfunded Mandates Reform Act is not required.

V. Public Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting information, views, suggestions, or arguments with respect to the proposed regulatory amendments set forth in this Notice. Comments should be submitted to the address indicated in the ADDRESSES section of this Notice and identified (on the outside of the envelope and on the comment documents) with the designation "NEPA Rulemaking." DOE will consider all comments received by the date indicated in the DATES section before taking final action on the proposed amendments. Late comments will be considered to the extent practicable.

List of Subjects in 10 CFR Part 1021

Environmental impact statement.

Issued in Washington, D.C., February 9, 1996.

Peter Brush,

Acting Assistant Secretary, Environment, Safety and Health.

For reasons set out in the preamble, 10 CFR Part 1021 is proposed to be amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for Part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

§ 1021.104 [Amended]

2. In section 1021.104(b), the definition for *EIS Implementation Plan* is removed.

3. Section 1021.105 is revised to read as follows:

§ 1021.105 Oversight of Agency NEPA Activities.

The Assistant Secretary for Environment, Safety and Health, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA process and the status of individual NEPA reviews may be obtained upon request from the Office of NEPA Policy and Assistance, US. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119.

§ 1021.312 [Removed and reserved]

4. Section 1021.312 is removed and reserved.

5. Section 1021.315(c) is revised to read as follows:

§ 1021.315 Records of Decision.

* * * * *

(c) In addition to any other public announcements, DOE RODs, or notices of their availability that provide a brief summary of the RODs, shall be published in the Federal Register and the RODs shall be made available to the public as specified in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c) and section 1021.340 of this part. DOE may implement the decision before the ROD, or notice of its availability, is published in the Federal Register if the decision has been made public by other means (e.g., press releases, announcements in local media).

* * * * *

§ 1021.322 [Amended]

6. Section 1021.322 is amended to remove (b)(1), and (b)(2) through (b)(5) are redesignated (b)(1) through (b)(4), respectively.

7. Appendix A, paragraph A7, is revised to read as follows:

Appendix A to Subpart D—Categorical Exclusions Applicable to General Agency Actions

* * * * *

A7 Transfer, lease, disposition, or acquisition of interests in personal property (e.g., equipment and materials) or real property (e.g., permanent structures and land), if property use is to remain unchanged; i.e., the type and magnitude of impacts would remain essentially the same.

* * * * *

8. Appendix B, is amended to revise the Table of Contents entries for B1.8, B1.13, B1.22, B3.6, B3.10, B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12, B4.13, B5.3, B5.5, B5.9, B5.10, B5.12, B6.1, B6.4, and B6.5; add B1.23 through B1.33, B2.6, B3.12, B3.13, and B6.9; and remove B5.13 through B5.16, to read as follows:

Appendix B to Subpart D—Categorical Exclusions Applicable to Specific Agency Actions

* * * * *

B1.8 Modifications to screened water intake/outflow structures.

* * * * *

B1.13 Construction/acquisition/relocation of onsite pathways, spur or access roads/railroads.

* * * * *

B1.22 Relocation of buildings.

B1.23 Demolition/disposal of buildings.

B1.24 Transfer of property/residential, commercial, industrial use.

B1.25 Transfer of property/habitat preservation, wildlife management.

B1.26 Siting/construction/operation/decommissioning of small water treatment facilities, generally less than 250,000 gallons per day capacity.

B1.27 Facility deactivation

B1.28 Minor activities to place a facility in an environmentally safe condition, no proposed uses.

B1.29 Siting/construction/operation/decommissioning of onsite disposal facility for construction and demolition waste.

B1.30 Transfer actions

B1.31 Relocation/operation of machinery and equipment.

B1.32 Restoration, creation, or enhancement of small wetlands.

B1.33 Traffic flow adjustments, existing roads.

* * * * *

B2.6 Packaging/transportation/storage of radioactive sources upon request by the Nuclear Regulatory Commission or other cognizant agency.

* * * * *

B3.6 Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects.

* * * * *

B3.10 Siting/construction/operation/decommissioning of particle accelerators, including electron beam accelerators, primary beam energy generally less than 100 MeV.

* * * * *

B3.12 Siting/construction/operation/decommissioning of microbiological and biomedical facilities.

B3.13 Magnetic fusion experiments, no tritium fuel use.

* * * * *

B4.1 Contracts/marketing plans/policies for excess electric power.

B4.2 Export of electric energy.

B4.3 Electric power marketing rate changes.

* * * * *

B4.6 Additions/modifications to electric power transmission facilities within previously developed area.

* * * * *

B4.10 Deactivation, dismantling and removal of electric powerlines and substations.

B4.11 Construction or modification of electric power substations.

B4.12 Construction of electric powerlines (generally less than 10 miles in length), not integrating major new sources.

B4.13 Reconstruction and minor relocation of existing electric powerlines (generally less than 20 miles in length).

* * * * *

B5.3 Modification (not expansion)/abandonment of oil storage access/brine injection/gas/geothermal wells, not part of site closure.

* * * * *

B5.5 Construction/operation of short crude oil/gas/steam/geothermal pipeline segments.

* * * * *

B5.9 Temporary exemption for any electric powerplant.

B5.10 Certain permanent exemptions for any existing electric powerplant.

* * * * *

B5.12 Workover of existing oil/gas/geothermal well.

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B6.1 Small-scale, short-term cleanup actions under RCRA, Atomic Energy Act, or other authorities.

* * * * *

B6.4 Siting/construction/operation/decommissioning of small waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

B6.5 Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste (not high-level radioactive waste, spent nuclear fuel).

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater.

* * * * *

9. Appendix B, section B is amended by revising paragraphs B(1), B(2), B(4)(iii) to read as follows:

B. Conditions that are Integral Elements of the Classes of Actions in Appendix B

* * * * *

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders.

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators) unless these actions are themselves categorically excluded.

* * * * *

(4) * * *

(iii) Wetlands, as determined by using the methodology that the U.S. Army Corps of Engineers applies in implementing section 404 of the Clean Water Act, except for wetlands affected by proposed actions covered by a general permit under 33 CFR Part 330 (other than Permit #23, "Approved Categorical Exclusions"), and floodplains;

* * * * *

10. Appendix B, section B1, is amended by revising the introductory text to paragraph B1.3, paragraphs B1.3(n) & (o), B1.8, B1.13, B1.15, B1.18, B1.21, and B1.22, and adding paragraphs B1.23 through B1.33, to read as follows:

B1. Categorical Exclusions Applicable to Facility Operation.

* * * * *

B1.3 Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (e.g., pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed. Custodial services are activities to preserve facility appearance, working conditions, and sanitation, such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal. Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that replacement is in kind and is not a substantial upgrade or improvement. In kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

* * * * *

(n) Routine testing and calibration of facility components, subsystems, or portable equipment (including but not limited to, control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes); and

(o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), including removal of contaminated intact equipment and other materials (other than spent nuclear fuel or special nuclear material in nuclear reactors).

* * * * *

B1.8 Modifications to screened water intake and outflow structures such that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits

* * * * *

B1.13 Construction, acquisition, and relocation of onsite pathways and onsite spur or access roads and railways.

* * * * *

B1.15 Siting, construction (or modification), and operation of support

buildings and support structures (including prefabricated buildings and trailers) within or contiguous to an already developed area (where site utilities and roads are available). Covered support buildings and structures include those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; employee health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (including security posts); fire protection; and similar support purposes, but excluding facilities for waste storage activities, except as provided in other parts of this appendix.

* * * * *

B1.18 Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well.

* * * * *

B1.21 Noise abatement measures, such as construction of noise barriers and installation of noise control materials.

B1.22 Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area where site utilities and roads are available.

B1.23 Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces).

B1.24 Transfer, lease, disposition or acquisition of interests in uncontaminated real property (e.g., facilities, support structures and accompanying land) for residential, commercial, or industrial uses (including, but not limited to, office space, warehouses, equipment storage facilities) that do not involve any lessening in quality, or increases in volumes, concentrations, or discharge rates, of wastes, air emissions, or water effluents and that, under reasonably foreseeable uses, would have generally similar environmental impacts compared to those before the transfer, lease, disposition, or acquisition of interests.

B1.25 Transfer, lease, disposition or acquisition of interests in uncontaminated real property (e.g., land and associated buildings) for habitat preservation or wildlife management, but not including any habitat alteration.

B1.26 Siting, construction (including expansion, modification, and replacement), operation, and decommissioning of small water treatment facilities, including facilities for wastewater, potable water, surface water, and sewage, with a total capacity that generally does not exceed 250,000 gallons per day. (Also see B6.9).

B1.27 Activities that are required to deactivate a facility; i.e., disconnect utilities such as water, steam, telecommunications, and electrical power.

B1.28 Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for

the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste, such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste. These activities would not include conditioning, treatment or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Siting, construction, operation, and decommissioning of a small (generally less than 10 acres in area) onsite disposal facility for uncontaminated construction and demolition waste. These wastes, as defined in the Environmental Protection Agency's regulations under the Resource Conservation and Recovery Act, specifically 40 CFR 243.101, include building materials, packaging, and rubble.

B1.30 Transfer actions, in which the predominant activity is transportation, and in which the amount and type of materials, equipment or waste to be moved is incidental to the amount of such materials, equipment, or waste that is already a part of ongoing operations at the receiving site. Such transfers are not regularly scheduled as part of ongoing routine operations.

B1.31 Relocation of machinery and equipment, such as analytical laboratory apparatus, electronic hardware, maintenance equipment, and health and safety equipment, including minor construction necessary for removal and installation, where uses of the relocated items will be similar to their former uses and consistent with the general missions of the receiving structure.

B1.32 Restoration, creation, or enhancement of small wetlands in coordination with the cognizant Federal or State regulators, and where other environmental resources are not adversely affected.

B1.33 Traffic flow adjustments to existing roads at DOE sites (including, but not limited to, stop sign or traffic light installation, and adjusting direction of traffic flow).

11. Appendix B, section B2, is amended by adding B2.6, to read as follows:

B2. Categorical Exclusions Applicable to Safety and Health.

* * * * *

B2.6 Packaging, transportation, and storage of radioactive materials from the public domain, in accordance with the Atomic Energy Act upon a request by the Nuclear Regulatory Commission or other cognizant agency. Covered materials are those for which possession and use by Nuclear Regulatory Commission licensees has been categorically excluded under 10 CFR 51.22(14) or its successors. Examples of these radioactive materials (which may contain source, byproduct or special nuclear materials) are density gauges, therapeutic medical devices, generators, reagent kits, irradiators, analytical instruments, well monitoring equipment, uranium shielding material, depleted uranium military munitions, and packaged radioactive waste not exceeding 50 curies.

12. Appendix B, section B3, is amended to revise the introductory text to paragraph B3.1, B3.3, B3.6, and B3.10, and add new paragraphs B3.12 and B3.13, to read as follows:

B3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research.

B3.1 Onsite and offsite site characterization and environmental monitoring, including siting, construction (or modification), operation, and dismantlement or closing (abandonment) of characterization and monitoring devices and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis. Activities covered include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. Specific activities include, but are not limited to:

* * * * *

B3.3 Field and laboratory research, inventory, and information collection activities that are directly related to the conservation of fish or wildlife resources and that involve only negligible habitat destruction or population reduction.

* * * * *

B3.6 Siting, construction (or modification), operation, and decommissioning of facilities for indoor bench-scale research projects, conventional laboratory operations (for example, preparation of chemical standards and sample analysis); small-scale research and development projects; and small-scale pilot projects to verify a concept before demonstration actions. Construction (or modification) will be within or contiguous to an already developed area (where site utilities and roads are available).

* * * * *

B3.10 Siting, construction, operation, and decommissioning of a particle accelerator, including electron beam accelerator with primary beam energy generally less than 100 MeV, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to an already developed area (where site utilities and roads are available), or internal modification of any accelerator facility regardless of energy that does not increase primary beam energy or current.

* * * * *

B3.12 Siting, construction (including modification), operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4; reference: Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers of Disease Control and Prevention, and the National Institutes of Health (HHS Publication No. (CDC) 93-8395)) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to an already developed area (where utilities and roads are available). Operation may include the purchase, installation, and operation of

biomedical equipment, such as commercially available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation.

B3.13 Performing magnetic fusion experiments that do not use tritium as fuel, with existing facilities (including necessary modifications).

13. Appendix B, section B4, is amended to revise paragraphs B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12 and B4.13, to read as follows:

B4. Categorical Exclusions Applicable to Power Marketing Administrations and to all of DOE with Regard to Power Resources.

B4.1 Establishment and implementation of contracts, marketing plans, policies, allocation plans, or acquisition of excess electric power that does not involve: (1) the integration of a new generation resource, (2) physical changes in the transmission system beyond the previously developed facility area, unless the changes are themselves categorically excluded, or (3) changes in the normal operating limits of generation resources.

B4.2 Export of electric energy as provided by section 202(e) of the Federal Power Act over existing transmission systems or using transmission system changes that are themselves categorically excluded.

B4.3 Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits.

* * * * *

B4.6 Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.

* * * * *

B4.10 Deactivation, dismantling, and removal of electric powerlines, substations, switching stations, and other transmission facilities, and right-of-way abandonment.

B4.11 Construction of electric power substations (including switching stations and support facilities) with power delivery at 230 kV or below, or modification (other than voltage increases) of existing substations and support facilities, that generally would not involve the construction of more than 10 miles of new or relocation of more than 20 miles of existing electric powerlines or the integration of a major new resource.

B4.12 Construction of electric powerlines (less than 10 miles in length) that are not for the integration of major new sources of generation into a main transmission system.

B4.13 Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric powerlines less than 20 miles in length to enhance environmental and land use values. Such actions include

relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

14. Appendix B, section B5, is amended to revise paragraphs B5.3, B5.5, and B5.9 through B5.12 and remove B5.13 through B5.16, to read as follows:

B5. Categorical Exclusions Applicable to Conservation, Fossil, and Renewable Energy Activities

* * * * *

B5.3 Modification (but not expansion) or abandonment (including plugging), which is not part of site closure, of crude oil storage access wells, brine injection wells, geothermal wells, and gas wells.

* * * * *

B5.5 Construction and subsequent operation of short crude oil, steam, geothermal, or natural gas pipeline segments between DOE facilities and existing transportation, storage, or refining facilities within a single industrial complex, if the pipeline segments are within existing rights-of-way.

* * * * *

B5.9 The grant or denial of any temporary exemption under the Powerplant and Industrial Fuel Use Act of 1978 for any electric powerplant.

B5.10 The grant or denial of any permanent exemption under the Powerplant and Industrial Fuel Use Act of 1978 of any existing electric powerplant other than an exemption under (1) section 312(c) relating to cogeneration, (2) section 312(l) relating to scheduled equipment outages, (3) section 312(b) relating to certain state or local requirements, and (4) section 312(g) relating to certain intermediate load powerplants.

B5.11 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 Workover (operations to restore production, such as deepening, plugging back, pulling and resetting lines, and squeeze cementing) of an existing oil, gas, or geothermal well to restore production when workover operations will be restricted to the existing wellpad and not involve any new site preparation or earth work that would disturb adjacent habitat.

15. Appendix B, section B6, is amended to revise the introductory text to paragraph B6.1, paragraph B6.1(b) & (j), B6.4, and B6.5 and add paragraph B6.9, to read as follows:

B6. Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities

B6.1 Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, generally less than 5 million dollars in cost and 5 years duration,

to reduce risk to human health or the environment from the release or threat of release of a hazardous substance, including treatment (e.g., incineration), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

* * * * *

(b) Removal of bulk containers (for example, drums, barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR Part 261 or applicable state requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

* * * * *

(j) Segregation of wastes that may react with one another or form a mixture that could result in adverse environmental impacts;

* * * * *

B6.4 Siting, construction (including modification), operation, and decommissioning of a small facility (generally not to exceed an area of 50,000 square feet) within or contiguous to an already developed area (where site utilities and roads are developed) for storage of waste, other than high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include the storage of spent nuclear fuel.

B6.5 Siting, construction (or modification or expansion), operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, if operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6 and C16) or the handling of spent nuclear fuel.

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water and installing underground barriers. (Also see B1.26.)

16. Appendix C is amended by revising the Table of Contents entries C1, C4, C7, C9, C10, C11, C14 and C16 to read as follows:

Appendix C to Subpart D of Part 1021-Classes of Actions That Normally Require EAs But Not Necessarily EISs

C1 [Reserved]

* * * * *

C4 Upgrading and constructing electric powerlines

* * * * *

C7 Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads

* * * * *

C9 Restoration, creation, or enhancement of large wetlands.

C10 [Reserved]

C11 Siting/construction/operation/decommissioning of low- or medium-energy particle acceleration facility with primary beam energy generally greater than 100 MeV.

* * * * *

C14 Siting/construction/operation of water treatment facilities generally greater than 250,000 gallons per day capacity

* * * * *

C16 Siting/construction/operation/decommissioning of large waste storage facilities (not high-level radioactive waste, spent nuclear fuel)

17. Appendix C to Subpart D of Part 1021 is amended by removing and reserving paragraphs C1 & C10 and by revising C4, C7, C9, C11, C14 and C16, to read as follows:

C1 [Removed and Reserved]

* * * * *

C4 Upgrading (reconstructing) an existing electric powerline generally more than 20 miles in length or constructing a new electric powerline generally more than 10 miles in length.

* * * * *

C7 Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the allocation of electric power that do not involve (1) the addition of new generation resources greater than 50 average megawatts, (2) major changes in the operating limits of generation resources greater than 50 average megawatts, or (3) service to discrete new loads of 10 average megawatts or more over a 12 month period. This applies to power marketing operations and to siting, construction, and operation of power generating facilities at DOE sites.

* * * * *

C9 Restoration, creation, or enhancement of large wetlands, or small wetlands where these actions may adversely affect other environmental resources.

C10 [Removed and Reserved]

C11 Siting, construction (or major modification), operation, and decommissioning of a low- or medium-energy (but greater than 100 MeV primary beam energy) particle acceleration facility, including electron beam acceleration facilities, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to an already developed area (where site utilities and roads are available).

* * * * *

C14 Siting, construction (or expansion), and operation of water treatment facilities generally exceeding 250,000 gallons per day, including facilities for wastewater, potable water, and sewage.

* * * * *

C16 Siting, construction (including modification to increase capacity), operation, and decommissioning of packaging and unpacking facilities (that may include characterization operations) and large storage facilities (generally greater than 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage, packaging, or unpacking of spent nuclear fuel. [Also see B6.4, B6.5, and B6.6.]

18. Appendix D is amended to revise the Table of Contents entries for D1, D7, and D10 to read as follows:

Appendix D to Subpart D of Part 1021-Classes of Actions That Normally Require EISs

D1 Strategic Systems

* * * * *

D7 Allocation of electric power, major new generation resources/major changes in operation of generation resources/major loads

* * * * *

D10 Siting/construction/operation/decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel

* * * * *

19. Appendix D to Subpart D of Part 1021 is amended by revising paragraphs D1, D7 and D10, to read as follows:

D1 Strategic Systems, as defined in DOE Order 430.1, "Life-Cycle Asset Management," and designated by the Secretary.

* * * * *

D7 Establishment and implementation of contracts, policies, marketing plans or allocation plans for the allocation of electric power that involve (1) the addition of new generation resources greater than 50 average megawatts, (2) major changes in the operating limits of generation resources greater than 50 average megawatts, or (3) service to discrete new loads of 10 average megawatts or more over a 12 month period. This applies to power marketing operations and to siting construction, and operation of power generating facilities at DOE sites.

* * * * *

D10 Siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel, including geologic repositories, but not including onsite replacement or upgrades of storage facilities for spent nuclear fuel at DOE sites.

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