

\$55,000 for compliance activities; and \$20,000 for research and studies. Budgeted expenditures for the 2022–2023 crop year were \$3,592,000; \$1,232,000; \$703,900; \$55,000; and \$45,000, respectively. The increased assessment rate is necessary to help cover the expenditures for the 2023–2024 crop year, while reducing the amount of money needing to be expended from reserves.

The Order provides authority for the Committee to formulate an annual budget of expenses and propose an assessment rate to cover such expenses authorized by AMS. Prior to arriving at this budget and assessment rate, the Committee considered alternative spending levels at its June 28, 2023, meeting but ultimately decided that the recommended budget and assessment rate were reasonable and necessary to properly administer the Order.

This proposed rulemaking would increase the assessment obligation imposed on handlers. While the increased assessment rate would impose some additional costs on handlers, the costs are minimal and applied uniformly on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the industry from the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The raisin industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 28, 2023, meeting was public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit comments on this proposed rulemaking, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rulemaking would not impose any additional reporting or recordkeeping requirements on either small or large California raisin handlers. As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rulemaking.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this proposed rulemaking is consistent with and will effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rulemaking. All written comments timely received will be considered before a final determination is made on this proposed rule.

#### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 989 as follows:

#### **PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

- 1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

- 2. Section 989.347 is revised to read as follows:

#### **§ 989.347 Assessment rate.**

On and after August 1, 2023, an assessment rate of \$24 per ton is established for assessable raisins produced from grapes in California.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

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**BILLING CODE P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 1021

[DOE–HQ–2023–0063]

RIN 1990–AA48

#### **National Environmental Policy Act Implementing Procedures**

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The U.S. Department of Energy (DOE or the Department) proposes to amend its implementing procedures (regulations) governing compliance with the National Environmental Policy Act (NEPA). The proposed changes would add a categorical exclusion for certain energy storage systems and revise categorical exclusions for upgrading and rebuilding transmission lines and for solar photovoltaic systems, as well as make conforming changes to related sections of DOE's NEPA regulations. The proposed changes are based on the experience of DOE and other Federal agencies, current technologies, regulatory requirements, and accepted industry practice. DOE invites public comments on the proposed changes.

**DATES:** DOE must receive comments by January 2, 2024 to ensure consideration.

**ADDRESSES:** Documents relevant to this proposed rulemaking are posted at [www.regulations.gov](http://www.regulations.gov) (Docket: DOE–HQ–2023–0063). Documents posted to this docket include: this notice of proposed rulemaking and DOE's Technical Support Document, which provides additional information regarding certain proposed changes and a redline/strikeout version of affected sections of the DOE NEPA regulations indicating the changes in this proposed rule.

Submit comments, labeled "DOE NEPA Implementing Procedures, RIN 1990–AA48," by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Enter "Docket ID DOE–HQ–2023–0063" in the search box. Click on "Comment" to submit comments, which you may enter directly on the web page or by uploading in a file.

2. *Postal Mail:* Mail comments to NEPA Rulemaking Comments, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Because security screening may delay mail sent through the U.S. Postal Service, DOE encourages electronic submittal of

comments through [www.regulations.gov](http://www.regulations.gov).

3. *Email*: send comments to [DOE-NEPA-Rulemaking@hq.doe.gov](mailto:DOE-NEPA-Rulemaking@hq.doe.gov).

*Instructions*: For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation—Submission of Comments” (section IV) of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT**: For questions concerning how to comment on this proposed rule, contact Ms. Carrie Abravanel, Office of NEPA Policy and Compliance, at [DOE-NEPA-Rulemaking@hq.doe.gov](mailto:DOE-NEPA-Rulemaking@hq.doe.gov) or 202–586–4600.

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##### I. Introduction and Background

The National Environmental Policy Act, as amended, (42 U.S.C. 4321 *et seq.*) requires Federal agencies to provide a detailed statement regarding the environmental impacts of proposals for major Federal actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508) require agencies to develop their own NEPA implementing procedures to apply the

CEQ regulations to their specific programs and decision-making processes (40 CFR 1507.3). DOE’s NEPA procedures are contained in 10 CFR part 1021.

NEPA establishes three types of review for proposed actions—environmental impact statement, environmental assessment, and categorical exclusion—each involving different levels of information and analysis. An environmental impact statement is a detailed analysis of reasonably foreseeable environmental effects prepared for a major Federal action significantly affecting the quality of the human environment (42 U.S.C. 4332(2)(C) and 40 CFR part 1502 and section 1508.1(j)). An environmental assessment is a concise public document prepared by a Federal agency to set forth the basis for its finding of no significant impact or its determination that an environmental impact statement is necessary (42 U.S.C. 4336(b)(2) and 40 CFR 1501.5, 1501.6, and 1508.1(h)). A categorical exclusion is a category of actions that the agency has determined, in its agency NEPA procedures, normally does not have a significant effect on the human environment and therefore does not require preparation of an environmental assessment or environmental impact statement (40 CFR 1501.4, 1507.3(e)(2)(ii), and 1508.1(d)). DOE’s procedures for applying categorical exclusions require the agency to consider whether extraordinary circumstances exist due to which a normally excluded action may have a significant environmental effect.

##### A. Establishment and Use of Categorical Exclusions

DOE establishes and revises categorical exclusions pursuant to a rulemaking, such as this one, for defined classes of actions that the Department determines are supported by a record showing that the actions normally do not have significant environmental impacts, individually or cumulatively. The rulemaking process provides the public with an opportunity to review and comment on DOE’s proposed changes. DOE will consider the comments received during the public comment period.

Once established in DOE’s NEPA procedures, use of a categorical exclusion requires evaluation of a proposed action against several conditions. DOE must determine, in accordance with 10 CFR 1021.410(b), that: (1) the proposed action fits within a categorical exclusion listed in appendix A or B to subpart D of part 1021; (2) there are no extraordinary

circumstances<sup>1</sup> related to the proposal that may affect the significance of the environmental impacts of the proposed action and require preparation of an environmental assessment or environmental impact statement, consistent with 40 CFR 1501.4(b)(1) and (b)(2); and (3) the proposal has not been improperly segmented<sup>2</sup> to meet the definition of a categorical exclusion, there are no connected or related actions with cumulatively significant impacts, and the proposed action is not precluded by 40 CFR 1506.1 or 10 CFR 1021.211 as an impermissible interim action.

In addition, DOE evaluates whether the proposed action satisfies conditions included within the text of the individual categorical exclusion and the conditions known as “integral elements” that apply to all categorical exclusions listed in appendix B to subpart D of part 1021 (appendix B, paragraphs (1) through (5)). Together, these conditions limit the types of proposals that fit within a categorical exclusion and help ensure that adverse environmental impacts are avoided or reduced. These conditions are discussed generally in this section and also in section II of this document, which describes each of DOE’s proposed changes.

The categorical exclusions discussed in this proposed rulemaking include conditions specific to the categorical exclusion. For example, the proposed action must follow applicable codes and best management practices. These codes and practices vary by technology and location (*e.g.*, fire protection codes that differ by state). Also, they change over time to reflect lessons learned and to address emerging technology and practices. The Technical Support Document provides links to and summarizes information on some of the relevant codes and best practices for the categorical exclusions that are included in this proposed rulemaking. As another example, the changes proposed in this rulemaking specify conditions regarding siting proposed actions on previously disturbed or developed land and on land contiguous to previously disturbed and developed land. DOE defines previously disturbed or developed as

<sup>1</sup> DOE defines extraordinary circumstances as “unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources.” (10 CFR 1021.410(b)(2))

<sup>2</sup> Segmentation can occur when a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. (10 CFR 1021.410(b)(3))

“land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.” (10 CFR 1021.410(g)(1)) As DOE explained in a 2011 notice of proposed rulemaking, “In DOE’s experience, the potential for certain types of actions to have significant impacts on the human environment is generally avoided when that action takes place within a previously disturbed or developed area, *i.e.*, land that has been changed such that the former state of the area and its functioning ecological processes have been altered.” (76 FR 218; January 3, 2011) DOE’s experience reviewing proposed projects across the United States since 2011 supports this same conclusion. DOE also has experience implementing categorical exclusions that allow construction on land that is contiguous to previously disturbed or developed areas and proposes to make certain siting on contiguous land part of one of the proposed categorical exclusions. The area of contiguous land affected would be small as discussed in 10 CFR 1021.410(g)(2). Any proposed use of contiguous land is subject to review against all the conditions relevant to the categorical exclusion, including the integral elements that require consideration of effects on threatened species, historic properties, and other environmentally sensitive resources. The Technical Support Document includes summaries of environmental assessments for projects proposed on previously disturbed or developed land and on contiguous land.

In addition to conditions within an individual categorical exclusion, the proposed action also must satisfy conditions known as “integral elements.” Integral elements are part of each categorical exclusion in appendix B. These conditions appear at the beginning of the appendix and are not repeated for each categorical exclusion. Integral elements require that, to fit within a categorical exclusion, the proposed action must not threaten a violation of applicable environment, safety, and health requirements; require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities; disturb hazardous substances, pollutants, or contaminants that preexist in the

environment such that there would be uncontrolled or unpermitted releases; have the potential to cause significant impacts on environmentally sensitive resources; or involve governmentally designated noxious weeds or invasive species, unless certain conditions are met.<sup>3</sup> In appendix B, DOE defines “environmentally sensitive resource” as a resource that has typically been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian tribe. Environmentally sensitive resources include historic properties, threatened and endangered species, floodplains, and wetlands, among others. (10 CFR part 1021, subpart D, appendix B)

Only if DOE determines that all the applicable conditions have been met may it issue a categorical exclusion determination. DOE posts its categorical exclusion determinations at [www.energy.gov/nepa/doe-categorical-exclusion-cx-determinations](http://www.energy.gov/nepa/doe-categorical-exclusion-cx-determinations).

#### *B. Development of the Proposed Changes*

In this proposed rulemaking, DOE proposes to add a categorical exclusion for certain energy storage systems and revise categorical exclusions for upgrading and rebuilding transmission lines and for solar photovoltaic (PV) systems, as well as make conforming changes to related sections of DOE’s NEPA regulations. DOE last made changes to its categorical exclusions in these areas in 2011 (76 FR 63764; October 13, 2011). Since then, DOE has developed a better understanding of the potential environmental impacts of these types of actions through research, conducting environmental reviews, and engaging with industry, local communities, and other government agencies. The proposed changes are based on the experience of DOE and other Federal agencies, current technologies, regulatory requirements, and accepted industry practice. DOE consulted with CEQ during the development of these proposed changes.

DOE has documented the technical substantiation for the proposed changes in this preamble and in an accompanying Technical Support Document. The Technical Support Document summarizes environmental assessments for the types of projects addressed in this proposed rulemaking and other information. The environmental assessments demonstrate how DOE and other Federal agencies

<sup>3</sup> This is a summary description of the integral elements. See 10 CFR part 1021, subpart D, appendix B for the full text.

evaluated potential environmental impacts of these projects and determined that they would not result in a significant environmental effect. To be clear, not every environmental assessment discussed in the Technical Support Document reflects a project that would have qualified for a categorical exclusion proposed in this rulemaking. Such determinations would have to be made on a case-by-case basis.

DOE developed its support for this proposed rulemaking consistent with CEQ’s 2010 guidance on establishing, applying, and revising categorical exclusions under NEPA (75 FR 75628; December 6, 2010). DOE also considered climate impacts and greenhouse gas (GHG) emissions in preparing these proposals consistent with CEQ’s 2023 interim guidance on the consideration of GHG emissions and climate change (88 FR 1196; January 9, 2023). The description of the proposed changes in section II of this document includes a discussion of how the proposed changes may affect GHG emissions.

The public made suggestions for revising DOE’s categorical exclusions in response to a Request for Information (RFI) published in the **Federal Register** on November 15, 2022. (87 FR 68385). Those suggestions, along with others made by DOE’s NEPA Compliance Officers and other staff, led to the proposals included in this proposed rulemaking. DOE evaluated the proposals by reviewing environmental assessments prepared by DOE and by other Federal agencies, categorical exclusions established by other Federal agencies, technical reports, applicable requirements and industry practices, and other publicly available information.

Thirty-three individuals or entities responded to the Request for Information. The Request for Information and these comments are available at [www.regulations.gov/docket/DOE-HQ-2023-0002/comments](http://www.regulations.gov/docket/DOE-HQ-2023-0002/comments). Relevant to this proposed rulemaking, commenters asked DOE to add energy storage systems to its categorical exclusions, to expand the scope of its categorical exclusion for upgrading and rebuilding powerlines, and to expand its categorical exclusion for solar photovoltaic systems to at least 200 acres within previously disturbed or developed areas. DOE addresses these and related comments in its discussion of proposed changes in section II.B of this document. The identification number for individual commenter documents used on [www.regulations.gov](http://www.regulations.gov) and the page(s) where a particular comment appears are

included in section II.B of this document.

## II. Description of Proposed Changes

### A. Overview

DOE proposes to establish a new categorical exclusion for certain energy storage systems and to revise existing categorical exclusions for upgrading and rebuilding transmission lines and for solar photovoltaic systems. DOE's proposal also includes conforming changes to other categorical exclusions, to a class of actions normally requiring an environmental assessment, and to a class of actions normally requiring an environmental impact statement (10 CFR part 1021, subpart D, appendices B, C, and D). These proposed changes are discussed in sections II.B through II.D of this document.

These proposed changes, if finalized, would not require any changes to or otherwise affect categorical exclusion determinations completed prior to the effective date of any final rule.

### B. Proposed Changes to Categorical Exclusion B4.13 for Upgrading and Rebuilding Existing Powerlines

Powerlines are a critical component of the electric grid that moves electricity from facilities that generate electricity to our communities, businesses, and factories. Upgrading and rebuilding<sup>4</sup> powerlines extends their useful life. Upgrades and rebuilds can also help reduce the need for new powerlines and can allow the replacement of components with newer, more efficient and resilient technology.

One example is reconductoring. Conductors are the wires that carry electricity. Most of the existing electric grid uses conductors with a steel core for strength surrounded by aluminum for the electrical current. More recently, conductor designs (called advanced conductors) with composite or carbon cores, in place of steel, have come into use. Advanced conductors provide a variety of benefits including increased capacity, which can be used to integrate renewable energy and other sources into the grid without the need to build new transmission lines. Use of advanced conductors reduces line losses (*i.e.*, power lost during transmission and

distribution of electricity) relative to traditional conductors, thereby improving efficiency.<sup>5</sup> Improvements to capacity and efficiency can help to ensure reliability, reduce costs to consumers, and reduce GHG emissions associated with electricity generation, transmission, and distribution.

Upgrading and rebuilding powerlines also can avoid or reduce adverse environmental impacts, such as by relocating small<sup>6</sup> segments of the existing line to avoid a sensitive environmental resource. Upgrading and rebuilding powerlines also can enhance resilience. For example, an upgrade or rebuild project might convert segments of existing overhead powerlines to underground lines or replace old transmission poles to ensure continued safe operations.

Categorical exclusion B4.13 currently applies to upgrading or rebuilding “approximately 20 miles in length or less” of existing powerlines and allows for minor relocations of small segments of powerlines. DOE proposes to remove the mileage limitation, add options for relocating within an existing right of way or within otherwise previously disturbed or developed lands, and add new conditions.

The potential significance of environmental impacts from upgrading or rebuilding powerlines is more related to local environmental conditions than to the length of the powerlines. For example, the presence of environmentally sensitive resources along the existing right-of-way is more pertinent than the length of the existing powerlines to be upgraded or rebuilt. DOE reviewed environmental assessments for transmission line upgrades and rebuilds of various lengths. (*See* Technical Support Document, page 4.) The length of the projects is based on the endpoints, which are commonly substations (*e.g.*, rebuild the transmission line from substation A to substation B). Environmental assessments and other information summarized in the Technical Support Document, as well as DOE's experience with powerline upgrades and rebuilds do not indicate a particular mileage limit that would mark a threshold for significant impacts.

DOE also proposes to clarify options for relocating powerlines within the

scope of categorical exclusion B4.13. Relocating segments of a powerline can improve resilience, avoid sensitive resources, or serve other purposes. (*See*, in the Technical Support Document, page 6, DOE/EA–1912 for an example of relocation to avoid cultural resources and DOE/EA–1967 to avoid a rock fall and landslide area.) Currently, B4.13 allows “minor relocations of small segments of the powerlines.” DOE proposes to delete “minor” because it is unnecessary to qualify “relocations of small segments” with “minor.” DOE also proposes to specify that, under the proposed revisions, small segments of powerlines may be relocated “within an existing right of way or within otherwise previously disturbed or developed lands.” This change would provide additional flexibility without increasing adverse environmental impacts. Any proposed relocation would be subject to all the conditions with the proposed categorical exclusion B4.13, including conformity to the integral elements that require consideration or potential impacts on environmentally sensitive resources and other potential impacts.

DOE's review of environmental assessments and other information in preparing this proposed rulemaking identified conditions that would be appropriate to add to categorical exclusion B4.13. Proposals to upgrade or rebuild powerlines normally incorporate practices that avoid or reduce potential land disturbance, erosion, disturbance of environmentally sensitive resources, and take other measures to protect the local environment. To account for this, DOE proposes to add a condition that the proposed project would be in accordance with applicable requirements and would incorporate appropriate design and construction standards, control technologies, and best management practices. This condition, together with the integral elements and consideration of extraordinary circumstances (described in section I.A of this document), would ensure that DOE considers whether a proposed upgrade or rebuild of an existing powerline would be sited and designed appropriately prior to determining whether categorical exclusion B4.13 applies.

DOE proposes a conforming change to its class of action, C4, that normally requires an environmental assessment for upgrading and rebuilding existing powerlines more than approximately 20 miles in length. That proposed change would remove the reference to powerline length and, instead, clarify that an environmental assessment

<sup>4</sup> A transmission line rebuild is typically a replacement of conductor and equipment without increasing capacity. Transmission line design and new materials and equipment would meet current standards and electrical clearance requirements. A transmission line upgrade is typically a replacement of conductor and equipment, or the addition of sensors or other advanced technology, to increase the line's capacity, such as by increasing the operating voltage or increasing the temperature rating.

<sup>5</sup> Grid Strategies, LLC, “Advanced Conductors on Existing Transmission Corridors to Accelerate Low Cost Decarbonization,” March 2022, available at: [https://acore.org/wp-content/uploads/2022/03/Advanced\\_Conductors\\_to\\_Accelerate\\_Grid\\_Decarbonization.pdf](https://acore.org/wp-content/uploads/2022/03/Advanced_Conductors_to_Accelerate_Grid_Decarbonization.pdf).

<sup>6</sup> *See* 10 CFR 1021.410(g)(2) for a discussion of “small” in the context of determining the applicability of a DOE categorical exclusion.

normally would be prepared when the proposal does not qualify for categorical exclusion B4.13.

In response to DOE's November 2022 Request for Information,<sup>7</sup> Edison Electric Institute (EII) suggested that DOE increase the length of powerlines in categorical exclusion B4.13 to "at least 100 miles" within previously disturbed or developed rights-of-way. (EII (RFI 0010), pages 7–8) EII stated that, "Such [rights-of-way] are already managed from an environmental, safety, and reliability standpoint and thus, projects in these areas should not result in significant effects on the human environment." (EII (RFI 0010), page 8) EII further stated that this change would "prioritize projects in existing [rights-of-way] over new greenfield projects" and that utilizing existing rights-of-way would "more efficiently build the transmission infrastructure necessary for the clean energy transformation." (EII (RFI 0010), page 8) The Cross-Cutting Issues Group suggested that DOE omit the 20-mile limitation in B4.13 and stated that, "Projects in previously disturbed or developed [rights-of-way] will not significantly impact the human environment regardless of the length of the powerlines." (Cross-Cutting Issues Group (RFI 0012), page 5) DOE's proposed changes to categorical exclusion B4.13 are consistent with these comments.

The Cross-Cutting Issues Group requested that DOE confirm that categorical exclusion B4.13 covers all types of powerlines, including "gen-tie lines" and "powerlines that feed into a federal electric transmission system (e.g., Tennessee Valley Authority)" and related project elements such as access roads. (Cross-Cutting Issues Group (RFI 0012), pages 4–5) DOE interprets B4.13 to encompass all types of powerlines, including those identified by the commenter. In regard to access roads and other project elements, DOE's NEPA regulations explain, "A class of actions [e.g., a categorical exclusion] includes activities foreseeably necessary to proposals encompassed within the class of actions (such as award of implementing grants and contracts, site preparation, purchase and installation of equipment, and associated transportation activities)." (10 CFR 1021.410(d))

<sup>7</sup> The Request for Information and these comments are available at [www.regulations.gov/docket/DOE-HQ-2023-0002/comments](http://www.regulations.gov/docket/DOE-HQ-2023-0002/comments).

### C. Proposed New Categorical Exclusion B4.14 for Certain Energy Storage Systems

For purposes of this proposed rulemaking, an energy storage system is a device or group of devices assembled together, capable of storing energy in order to supply electrical energy at a later time. Energy storage can be used to integrate renewable energy (such as wind and solar energy) into the electric grid, help generation facilities operate at optimal levels to meet customer demand, and reduce the use of less efficient generating units that would otherwise run only at peak times. An energy storage system also provides protection from power interruptions and serves as reserve power in case of power outages or fluctuations. The most familiar type of energy storage system is a group of electrochemical batteries and associated equipment referred to as a battery energy storage system. Another form uses a flywheel, which converts excess electricity from the grid to kinetic energy in a fast-spinning rotor. As needed, the stored energy is converted back to electricity and returned to the grid or put to other use.

DOE and others have been developing large-scale energy storage systems for decades. Deployment of these systems has increased over the past decade. Today, energy storage systems support the operation of electric transmission facilities, microgrids, energy generation facilities, and commercial and industrial facilities.<sup>8</sup>

DOE proposes to establish new categorical exclusion B4.14 for the construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small area contiguous to a previously disturbed or developed area. Section I.A of this document includes discussion of DOE's definition of previously disturbed or developed area and DOE's experience referring to contiguous areas in its categorical exclusions. The total acreage used for an energy storage system will be defined by the needs of the proposed project. Based on past experience, DOE anticipates that energy storage systems typically require 15 acres or less and

<sup>8</sup> The U.S. Energy Information Administration published information about large-scale energy storage for electricity generation ([www.eia.gov/energyexplained/electricity/energy-storage-for-electricity-generation.php](http://www.eia.gov/energyexplained/electricity/energy-storage-for-electricity-generation.php)) and market trends for battery storage ([www.eia.gov/analysis/studies/electricity/batterystorage/](http://www.eia.gov/analysis/studies/electricity/batterystorage/)). Also, DOE published an energy storage market report in 2020 ([www.energy.gov/sites/prod/files/2020/12/f81/Energy%20Storage%20Market%20Report%202020\\_0.pdf](http://www.energy.gov/sites/prod/files/2020/12/f81/Energy%20Storage%20Market%20Report%202020_0.pdf)).

would be sited close to energy, transmission, or industrial facilities. (See Technical Support Document, page 24.) Consistent with this expectation and because contiguous land might be undisturbed and undeveloped, DOE proposes that siting outside a previously disturbed or developed be limited to a "small" contiguous area. DOE would consider whether a contiguous area is small "in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, DOE would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action." (10 CFR 1021.410(g)(2)) In addition, the proposed categorical exclusion includes conditions that the proposed project be in accordance with applicable requirements (such as land use<sup>9</sup> and zoning requirements) and would incorporate appropriate design and construction standards, control technologies, and best management practices. In addition, DOE would review the proposed project against the criteria, including integral elements and extraordinary circumstances, described in section I.A of this document. This review would ensure that DOE considers the potential environmental effects of a proposed energy storage system prior to determining whether categorical exclusion B4.14 applies. In proposing this categorical exclusion, DOE has evaluated environmental assessments and findings of no significant impact prepared by DOE and other Federal agencies, categorical exclusion determinations made by DOE, and other information. (See Technical Support Document, page 24.)

DOE also proposes conforming changes to three related categorical exclusions. Based on its past experience with energy storage systems, in 2011, DOE added "power storage (such as flywheels and batteries, generally less than 10 MW)" as an example of conservation actions to categorical

<sup>9</sup> On DOE sites and in other locations, land use planning may be documented in a site land use plan, or be subject to siting processes or other comparable systems. Use of land use and zoning requirements is inclusive of these processes.

exclusion B5.1, Actions to conserve energy or water. DOE also added “load shaping projects (such as the installation and use of flywheels and battery arrays)” to the list of example actions in categorical exclusion B4.6, Additions and modifications to transmission facilities. DOE now proposes to delete “power storage” from the examples in B5.1. DOE would not include the 10 MW (megawatt) limit in new categorical exclusion B4.14 because capacity, whether denominated in megawatts as a measure of instantaneous output or megawatt-hours as a measure of the total amount of energy capable of being stored, is not a reliable indicator of potential environmental impacts. Including a capacity limit within the categorical exclusion could mean that technology improvements resulting in more power storage within the same physical footprint may not qualify for the categorical exclusion even though the potential environmental impacts have not changed. DOE also proposes to delete the example of flywheels and battery arrays from B4.6 but retain the reference to “load shaping projects” and add “reducing energy use during periods of peak demand” as a new example. DOE would add a note to B4.6 that energy storage systems are addressed in B4.14. DOE also would add this note to categorical exclusion B4.4, Power marketing services and activities, which was established in 1992 and lists storage and load shaping as examples. These conforming changes would avoid confusion over which categorical exclusion and associated conditions apply to energy storage systems.

In response to DOE’s November 2022 Request for Information,<sup>10</sup> three commenters (Cross-Cutting Issues Group, Duke Energy, and EEI) requested that DOE include energy storage systems, and the installation and operation of such systems, in categorical exclusions B4.4 and B4.6. Cross-Cutting Issues Group explained that including energy storage systems explicitly in B4.4 and B4.6 would “provide more certainty” as project proponents explore different types of energy storage system technologies (such as compressed air energy storage and molten salt storage), “particularly the timing and costs associated with deploying such projects.” (Cross-Cutting Issues Group (RFI 0012), page 6) EEI and Cross-Cutting Issues Group asked DOE to explicitly include the addition or

modification of a “battery array or other energy storage device(s)” as part of these categorical exclusions. (EEI (RFI 0010), pages 9–10; Cross-Cutting Issues Group (RFI 0012), page 6)

DOE’s proposed changes address these comments. DOE believes that the best way to ensure consistency is to have a single categorical exclusion for energy storage systems. DOE is proposing that new categorical exclusion B4.14 be limited to electrochemical-battery and flywheel energy storage systems. At this time, DOE has not identified sufficient information to conclude that compressed air energy storage, thermal energy storage (e.g., molten salt storage), or other technologies normally do not present the potential for significant environmental impacts. DOE welcomes comments that provide analytic support for whether these other energy storage technologies meet the requirements for a categorical exclusion. If DOE identifies sufficient support, DOE may revise the categorical exclusion in the final rule to include additional energy storage technologies.

#### *D. Proposed Changes to Categorical Exclusion B5.16 for Solar Photovoltaic Systems*

Solar photovoltaic (PV) technology converts sunlight into electrical energy. Individual PV cells, which may produce only 1 or 2 watts of electricity, are connected together to form modules (otherwise known as panels). The modules are combined with other components (e.g., to convert electricity from direct current (DC) to alternating current (AC)) to create a solar PV system. These systems can be located in a wide variety of locations and sized for an individual home or business up to utility-scale, generating hundreds of megawatts.<sup>11</sup>

Solar PV systems do not release GHGs while operating, though, as with any industrial activity, manufacturing and installing solar PV systems can release GHGs. The U.S. Energy Information Administration reports that, “Studies conducted by a number of organizations and researchers have concluded that PV systems can produce the equivalent amount of energy that was used to manufacture the systems within 1 to 4 years. Most PV systems have operating lives of up to 30 years or more.”<sup>12</sup> Thus,

<sup>11</sup> DOE’s Solar Energy Technologies Office has a website that describes solar PV technologies ([www.energy.gov/eere/solar/solar-photovoltaic-technology-basics](http://www.energy.gov/eere/solar/solar-photovoltaic-technology-basics)).

<sup>12</sup> U.S. Energy Information Administration “Solar explained” available at [www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php](http://www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php); retrieved August 27, 2023.

on a life-cycle basis, solar PV systems provide many years of electricity generation without GHG emissions.

DOE’s current categorical exclusion B5.16, Solar photovoltaic systems, includes the installation, modification, operation, and removal of solar PV systems located on a building or other structure or, if located on land, within a previously disturbed or developed area generally comprising less than 10 acres. DOE proposes to change “removal” of a solar PV system to “decommissioning.” Decommissioning encompasses recycling and other types of actions that occur when a facility is taken out of service. DOE also proposes to remove the acreage limitation for proposed projects. Based on DOE’s experience, acreage is not a reliable indicator of potential environmental impacts. As discussed in section I.B of this document, the potential significance of environmental impacts is more related to local environmental conditions than to acreage. DOE’s review of various environmental assessments indicate that an acreage limit would not serve as an appropriate indicator of significant impacts. This conclusion is illustrated, for example, by environmental assessments for solar PV projects larger than 1,000 acres on previously disturbed or developed land that would not result in significant environmental impacts. (See Technical Support Document, page 42.)

The nature and significance of environmental impacts is determined by a proposed project’s proximity to and potential effects on environmentally sensitive resources and other conditions accounted for in categorical exclusion B5.16 and in the integral elements, extraordinary circumstances, and other factors described in section I.A of this document. If the proposed changes are finalized, DOE would consider the integral elements and the presence of any extraordinary circumstances when reviewing proposed solar PV projects’ eligibility for this categorical exclusion. This review would ensure that DOE considers potential environmental impacts of a proposed solar PV system prior to determining whether categorical exclusion B5.16 applies. For example, in preparing the Technical Support Document, DOE observed that some large solar PV systems have been proposed for agricultural land. While integrating solar PV systems with farms may provide a variety of economic and environmental benefits to farmers,<sup>13</sup>

<sup>13</sup> U.S. Energy Information Administration “Solar explained” available at [www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php](http://www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php); retrieved August 27, 2023.

<sup>10</sup> The Request for Information and these comments are available at [www.regulations.gov/docket/DOE-HQ-2023-0002/comments](http://www.regulations.gov/docket/DOE-HQ-2023-0002/comments).

doing so also raises questions about land use and the protection of important farmlands. One of the integral elements ensures that DOE considers the potential impacts on prime or unique farmland, or other farmland of statewide or local importance. (10 CFR part 1021, appendix B, paragraph (4)(v).)

DOE also proposes to make conforming changes in appendix C, Classes of Actions that Normally Require EAs but not Necessarily EISs, and in appendix D, Classes of Actions that Normally Require EISs. These appendices each include a class of actions, C7 and D7, that associates the level of NEPA review for interconnection requests and power acquisition with the power output of the electric generation resource. In 2011, DOE proposed for C7 that an environmental assessment normally would be required for the interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts “and that would not be eligible for categorical exclusion under 10 CFR part 1021.” (76 FR 233; January 3, 2011) DOE did not receive public comment on the proposed addition regarding categorical exclusion eligibility. In the 2011 final rule, DOE did not include the condition regarding eligibility for a categorical exclusion. DOE explained this decision by stating “to improve clarity, DOE is removing the previously proposed condition that the new generation resource ‘would not be eligible for categorical exclusion under this part.’ DOE normally would not prepare an environmental assessment when a categorical exclusion would apply. Therefore, the condition is unnecessary and potentially confusing.” (76 FR 63784; October 13, 2011) DOE’s practice continues to be that it “normally would not prepare an environmental assessment when a categorical exclusion would apply.” DOE is again proposing to add a condition regarding the applicability of a categorical exclusion to C7, however. In light of the proposed change to B5.16—which would remove the acreage restriction for solar PV systems, thereby allowing the categorical exclusion to apply to systems generating up to hundreds of megawatts—DOE believes that including a condition in C7 is appropriate and helpful. It will clarify DOE’s practice that an environmental assessment is normally required “unless the generation resource is eligible for a categorical exclusion.” DOE did not propose a similar condition in 2011 for D7, which applies to new generation resources greater than 50

average megawatts. DOE is now proposing to add the same condition to both C7 and D7 for the reasons previously described. For D7, DOE also is proposing to specify that an environmental impact statement is not required when an environmental assessment was prepared that resulted in a finding of no significant impact. This is standard practice, and DOE proposes to add this text only to avoid any potential confusion.

In response to DOE’s November 2022 Request for Information,<sup>14</sup> EEI suggested that DOE revise categorical exclusion B5.16 to apply to “solar photovoltaic systems, both large- and small-scale, and increase the acreage to at least 200 acres within previously disturbed or developed areas to fully capture the extent of large-scale solar installation that utilize more than 10 areas and may not be contiguous.” (EEI (RFI 0010), page 10) DOE’s proposal in this rulemaking is consistent with this comment.

### III. Procedural Issues and Regulatory Review

#### A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the

desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. Many benefits and costs associated with this proposed rule are not quantifiable. The direct benefits include reduced cost and time for environmental analysis incurred by DOE, project proponents, and the public. Indirect benefits are expected to include deployment of technologies that improve the reliability and resilience of the nation’s electric grid and that expand electricity generation capacity while reducing emissions of GHGs. For the reasons stated in this preamble, this proposed regulatory action is consistent with these principles.

This regulatory action has been determined not to be “a significant regulatory action” under E.O. 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive order by OIRA of OMB.

#### B. Review Under Executive Orders 12898 and 14096

E.O. 12898, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” as supplemented and amended by E.O. 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All,” requires each Federal agency, consistent with its statutory authority, to make achieving environmental justice part of its mission. E.O. 14096 directs Federal agencies to carry out environmental reviews under NEPA in a manner that “(A) analyzes direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns; (B) considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards, such as information related to the race, national origin, socioeconomic status, age, disability, and sex of the individuals exposed; and (C) provides opportunities for early and meaningful involvement in the environmental review process by

<sup>14</sup> The Request for Information and these comments are available at [www.regulations.gov/docket/DOE-HQ-2023-0002/comments](http://www.regulations.gov/docket/DOE-HQ-2023-0002/comments).

communities with environmental justice concerns potentially affected by a proposed action, including when establishing or revising agency procedures under NEPA.” DOE is providing opportunities for public engagement in this proposed rulemaking, including opportunities for communities with environmental justice concerns. Also, in determining whether the proposed categorical exclusions apply to a future proposed action, DOE will consider whether the proposed action threatens a violation of these Executive Orders, consistent with the first integral element listed in appendix B of DOE’s NEPA procedures.

#### C. Review Under National Environmental Policy Act

The Department’s NEPA procedures assist the Department in fulfilling its responsibilities under NEPA and the CEQ regulations but are not themselves final determinations of the level of environmental review required for any proposed action. The CEQ regulations do not direct agencies to prepare an environmental assessment or environmental impact statement before establishing agency procedures that supplement the CEQ regulations to implement NEPA (40 CFR 1507.3). In establishing a new categorical exclusion and making other changes as described in this notice, DOE is following the requirements of CEQ’s procedural regulations, which include publishing the Notice of Proposed Rulemaking in the **Federal Register** for public review and comment, considering public comments, and consulting with CEQ regarding conformity with NEPA and the CEQ regulations. (See 40 CFR 1507.3(b)).

In this proposed rule, DOE proposes amendments that establish, modify, and clarify procedures for considering the environmental effects of DOE actions within DOE’s decisionmaking process, thereby enhancing compliance with the letter and spirit of NEPA. DOE has preliminarily determined that this proposed rule would qualify for categorical exclusion under 10 CFR part 1021, subpart D, appendix A6, because it is a strictly procedural rulemaking, and no extraordinary circumstances exist that require further environmental analysis. Therefore, DOE has preliminarily determined that promulgation of these amendments is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

#### D. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel’s website: <https://energy.gov/gc/underResources>.

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed revisions to 10 CFR part 1021 streamline the environmental review for proposed actions, resulting in a decrease in burdens associated with carrying out such reviews. For example, the proposed revisions to DOE’s categorical exclusions are expected to reduce the number of environmental assessments that applicants would need to pay to have prepared for DOE’s consideration. Applicants may sometimes incur costs in providing environmental information that DOE requires when making a categorical exclusion determination. The Government Accountability Office found in 2014 that there is little data available on the costs for preparing NEPA reviews and that agencies “generally do not reports costs that are ‘paid by the applicant’ because these costs reflect business transactions between applicants and their contractors and are not available to agency officials.”<sup>15</sup> In 2011, DOE estimated the cost of preparing environmental assessments over the prior decade at an average of \$100,000 and a median of \$65,000.<sup>16</sup> DOE does not have more current cost data. The costs of making a categorical exclusion determination are less than those to prepare an EA. Although DOE does not have data on what percentage of EAs were funded by applicants that qualified as small entities, a beneficial cost

impact is expected to accrue to entities of all sizes.

Based on the foregoing, DOE certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed rulemaking. DOE’s certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

#### E. Review Under Paperwork Reduction Act

This proposed rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

#### F. Review Under Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of UMRA requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or to the private sector, of \$100 million or more in any one year (adjusted annually for inflation) (2 U.S.C. 1532(a) and (b)). Section 204 of UMRA requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments (2 U.S.C. 1534).

The proposed rule would amend DOE’s existing regulations governing compliance with NEPA to better align DOE’s regulations, including its categorical exclusions, with its current activities and recent experiences. The proposed rule would not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the UMRA.

<sup>15</sup> GAO–14–369, NATIONAL ENVIRONMENTAL POLICY ACT: Little Information Exists on NEPA Analyses, April 2014, available at [www.gao.gov/assets/gao-14-369.pdf](http://www.gao.gov/assets/gao-14-369.pdf).

<sup>16</sup> 76 FR 237, January 3, 2011.



*G. Review Under Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*H. Review Under Executive Order 13132*

E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt state law and would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

*I. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity

and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of E.O. 12988.

*J. Review Under Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under E.O. 12866, or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*L. Review Under Executive Order 12630*

DOE has determined pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 18, 1988), that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

**IV. Public Participation—Submission of Comments**

DOE will accept comments, data, and information regarding this notice of proposed rulemaking no later than the date provided in the **DATES** section at the beginning of this document. Interested individuals are invited to submit data, views, or arguments with respect to the specific sections addressed in this proposed rule using the methods described in the **ADDRESSES** section at the beginning of this document.

1. *Submitting comments via [www.regulations.gov](http://www.regulations.gov).* Your contact information will be viewable by DOE’s Office of the General Counsel staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to [www.regulations.gov](http://www.regulations.gov) information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through [www.regulations.gov](http://www.regulations.gov) cannot be claimed as CBI. Comments received through [www.regulations.gov](http://www.regulations.gov) will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through www.regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that www.regulations.gov provides after you have successfully uploaded your comment.

2. Submitting comments via email or mail. Comments and documents submitted via email or mail will also be posted to www.regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

3. Confidential Business Information. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: One copy of the document marked "CONFIDENTIAL" including all the information believed to be confidential, and one copy of the document marked "NON-CONFIDENTIAL" with the information believed to be confidential deleted. Submit these documents via email to DOE-NEPA-Rulemaking@hq.doe.gov. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

4. Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF

or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Signing Authority

This document of the Department of Energy was signed on November 8, 2023, by Samuel T. Walsh, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Signed in Washington, DC, on November 9, 2023.

Treena V. Garrett, Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE proposes to amend part 1021 of chapter X of title 10, Code of Federal Regulations, as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

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

Authority: 42 U.S.C. 7101 et seq.; 42 U.S.C. 4321 et seq.; 50 U.S.C. et seq.

■ 2. Appendix B of subpart D of part 1021 is amended by:

- a. Revising B4.4, B4.6, and B4.13;
■ b. Adding B4.14; and
■ c. Revising B5.1 and B5.16.

The revisions and addition read as follows:

Appendix B to Subpart D of Part 1021—Categorical Exclusions Applicable to Specific Agency Actions

\* \* \* \* \*
B4. \* \* \*
\* \* \* \* \*

B4.4 Power marketing services and activities

Power marketing services and power management activities (including, but not limited to, storage, load shaping and balancing, seasonal exchanges, and other similar activities), provided that the operations of generating projects would remain within normal operating limits. (See B4.14 of this appendix for energy storage systems.)

\* \* \* \* \*

.6 Additions and modifications to transmission facilities

Additions or modifications to electric power transmission facilities within a previously disturbed or developed facility area. Covered activities include, but are not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, load shaping projects (such as reducing energy use during periods of peak demand), changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms. (See B4.14 of this appendix for energy storage systems.)

\* \* \* \* \*

B4.13 Upgrading and rebuilding existing powerlines

Upgrading or rebuilding existing electric powerlines, which may involve relocations of small (as discussed at 10 CFR 1021.410(g)(2)) segments of the powerlines within an existing right of way or within otherwise previously disturbed or developed lands (as discussed at 10 CFR 1021.410(g)(1)). Covered actions would be in accordance with applicable requirements, including the integral elements listed at the start of appendix B of this part; and would incorporate appropriate design and construction standards, control technologies, and best management practices.

B4.14 Construction and operation of electrochemical-battery or flywheel energy storage systems

Construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small (as discussed at 10 CFR 1021.410(g)(2)) area contiguous to a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of this part, and would incorporate appropriate design and construction standards, control technologies, and best management practices.

\* \* \* \* \*

B5. \* \* \*

B5.1 Actions to conserve energy or water

(a) Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy efficiency that would not have the potential to cause significant changes in the indoor or outdoor

concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as state, local, and tribal). Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors. Covered actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) and (c) of this appendix.

(b) Covered actions include rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not:

- (1) Have the potential to cause a significant change in manufacturing infrastructure (such as construction of new manufacturing plants with considerable associated ground disturbance);
- (2) Involve significant unresolved conflicts concerning alternative uses of available resources (such as rare or limited raw materials);
- (3) Have the potential to result in a significant increase in the disposal of materials posing significant risks to human health and the environment (such as RCRA hazardous wastes); or
- (4) Have the potential to cause a significant increase in energy consumption in a state or region.

(c) Covered actions also include rulemakings that establish energy conservation standards for new Federal buildings and Federal buildings undergoing major renovation, provided that the actions would not have the potential to:

- (1) Result in a significant decrease in indoor air quality; or
- (2) Result in a significant increase in emissions of air pollutants.

\* \* \* \* \*

**B5.16 Solar photovoltaic systems**

(a) The installation, modification, operation, or decommissioning of

commercially available solar photovoltaic systems:

- (1) Located on a building or other structure (such as rooftop, parking lot or facility, or mounted to signage, lighting, gates, or fences); or
- (2) Located within a previously disturbed or developed area.

(b) Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of this part, and would incorporate appropriate control technologies and best management practices.

■ 3. Amend Appendix C of subpart D of part 1021 by revising C4 and C7 to read as follows:

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

\* \* \* \* \*

**C4 Upgrading, Rebuilding, or Construction of Powerlines**

(a) Upgrading or rebuilding existing powerlines when the action does not qualify for categorical exclusion B4.13; or construction of powerlines:

- (1) More than approximately 10 miles in length outside previously disturbed or developed powerline or pipeline rights-of-way; or
- (2) More than approximately 20 miles in length within previously disturbed or developed powerline or pipeline rights-of-way.

\* \* \* \* \*

**C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power**

(a) Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve:

- (1) The interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts, unless the generation resource is eligible for a categorical exclusion;
- (2) Changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or
- (3) Service to discrete new loads of less than 10 average megawatts over a 12-month period.

\* \* \* \* \*

■ 4. Amend Appendix D to subpart D of part 1021 by revising D7 to read as follows:

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

\* \* \* \* \*

**D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power**

(a) Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve:

(1) The interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts, unless the generation resource is eligible for a categorical exclusion or was evaluated in an environmental assessment resulting in a finding of no significant impact;

(2) Changes in the normal operating limits of generation resources greater than 50 average megawatts; or

(3) Service to discrete new loads of 10 average megawatts or more over a 12-month period.

\* \* \* \* \*

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**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 210**

[Docket No. 2022–5]

**Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Supplemental notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The U.S. Copyright Office is extending the deadline to submit reply comments in connection with a supplemental notice of proposed rulemaking regarding the applicability of the derivative works exception to termination rights under the Copyright Act to the new statutory mechanical blanket license established by the Music Modernization Act and other matters relevant to identifying the proper payee to whom the mechanical licensing collective must distribute royalties.

**DATES:** The comment period for the proposed rule published September 26, 2023, at 88 FR 65908, is extended. Written reply comments are due no later than 11:59 p.m. Eastern Time on Tuesday, December 5, 2023.

**ADDRESSES:** For reasons of governmental efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office’s website at <https://copyright.gov/rulemaking/mma-termination>. If electronic submission of comments is not feasible due to lack of access to a computer or the internet,