DEPARTMENT OF ENERGY

10 CFR Part 1021

RIN 1901–AA67

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The amendments incorporate changes that improve DOE's efficiency in implementing NEPA requirements by reducing costs and preparation time while maintaining quality, consistent with the DOE Secretarial Policy Statement on NEPA issued in June 1994. These amendments also incorporate changes necessary to conform to recent changes in DOE's missions, programs, and policies that have evolved in response to changing national priorities since the current regulations were issued in 1992.

EFFECTIVE DATE: These amendments to the rule will become effective August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The National Environmental Policy Act of 1969 (42 USC 4321 *et seq.*) requires that Federal agencies prepare environmental impact statements for major Federal actions that may ''significantly affect the quality of the human environment.'' NEPA also created the President's Council on Environmental Quality (CEQ), which issued regulations in 1978 implementing the procedural provisions of NEPA. Among other requirements, the CEQ NEPA regulations (40 CFR parts 1500–1508) require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations. DOE's current NEPA implementing regulations were promulgated in 1992 (57 FR 15122, April 24, 1992) and are codified at 10 CFR part 1021.

On February 20, 1996, DOE published a proposed rulemaking that would revise its existing NEPA implementing regulations (61 FR 6414). Publication of the Notice of Proposed Rulemaking began a 45-day public comment period that originally ended on April 5, 1996. In response to requests, the comment period was subsequently reopened on April 19, 1996 (61 FR 17257), and extended until May 10, 1996. As part of the notice and comment process and also in response to requests, DOE held a public hearing on the proposed amendments on May 6, 1996. Comments were received from approximately 39 sources, including Federal and state agencies, public interest groups, other organizations, and individuals. Seven commenters also spoke at the public hearing. Copies of all written comments and the transcript of the public hearing have been provided to CEQ and are available for public inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

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

DOE is continuing to consider its proposed amendments to subpart D that relate to the Federal power marketing administrations. Accordingly, as described in a separate Notice published elsewhere in this issue, DOE will reopen the public comment period on the proposed amendments to subpart D that apply primarily to power marketing activities (B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12, B4.13, C4, C7, and D7). This final rule addresses the remainder of the proposed amendments.

This Notice adopts the amendments proposed in the Notice of Proposed Rulemaking (except for the power marketing classes of actions listed above), with certain changes discussed below, and amends the existing regulations at 10 CFR Part 1021. Copies of the final amendments to the rule are available upon request from the information contact listed above.

In accordance with the CEQ NEPA regulations, 40 CFR 1507.3, DOE has consulted with CEQ regarding these final amendments to the DOE NEPA rule. CEQ has found that the amendments conform with NEPA and the CEQ regulations and has no objection to their promulgation.

II. Statement of Purpose

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

III. Comments Received and DOE's Responses

DOE has considered and evaluated the comments received during the public comment period. Many revisions suggested in these comments have been incorporated into the final amendments to the rule. The following discussion describes the comments received, provides DOE's responses to the comments, and describes any resulting changes to the proposed amendments. As a result of changes made in response to comments, several number designations of classes of actions have been changed in the final rule; section references, unless otherwise indicated, are to those in the proposed amendments.

Several commenters expressed overall support for DOE's efforts to increase efficiency and reduce NEPA compliance costs. One Federal agency (the Food and Drug Administration) and one state agency (the Virginia Department of Environmental Quality) stated that they had no objections to DOE's proposed amendments. No comments or only positive comments were received on the following proposed amendments to subpart D of the rule: Integral element B(1), B1.8, B1.18, B1.21, B1.31, B3.3, and D1. These proposed amendments, therefore, remain unchanged in the final rulemaking, and are not discussed further.

A. Procedural Comments

A few commenters addressed procedural aspects of this rulemaking. Specifically, one commenter stated that public Notice of Proposed Rulemaking was inadequate. DOE notes that the Notice of Proposed Rulemaking was published in the Federal Register on February 20, 1996. In addition, the Notice was mailed to more than 400 stakeholders and was made available for review and comment through the World Wide Web at DOE's NEPA Web Site. DOE believes that its effort to notify the public of its proposed rulemaking was sufficient.

In addition, two commenters requested that DOE hold public hearings on the proposed rulemaking at locations in close proximity to various DOE facilities and a reopening of the comment period until 90 days after publication of the schedule for public hearings. Other commenters also asked that the comment period be reopened.

In response, DOE reopened the comment period from April 19, 1996, through May 10, 1996. Further, as described in a separate Notice published elsewhere in this issue, DOE will again reopen the comment period, but only on the proposals to modify the typical classes of actions pertaining primarily to power marketing activities. DOE also held a public hearing in Washington, DC., on May 6, 1996, with accommodations for commenters who wished to present their views by conference telephone call from DOE regional offices throughout the United States.

DOE has fully considered all oral and written comments received through May 10, 1996. DOE believes that it has provided sufficient and appropriate public participation opportunities in its proposed rulemaking, and does not believe that additional hearings or an additional 90-day comment period on the entire proposed rulemaking is necessary.

Two commenters questioned the procedures DOE followed in determining that the proposed new and modified categorical exclusions would result in no significant impact, and indicated the need for documentation of this finding for each categorical exclusion in addition to the statement that appears in the preamble to the proposed rulemaking. In accordance with the CEQ regulations (40 CFR 1508.4), DOE initiated this rulemaking, in part, to define those classes of actions that DOE has found to have no significant effect on the human environment, either individually or cumulatively. DOE is not required by the CEQ regulations to set forth in the preamble a detailed, individualized explanation for its finding of no significant impact for each of the classes of actions in appendices A and B, but provides an overall finding in Section III.F, below.

One commenter requested that DOE prepare an environmental impact statement addressing the cumulative impacts of the proposed amendments. Two other commenters stated that an environmental assessment was necessary to determine whether the proposed amendments constituted a major Federal action.

DOE believes that its proposal to amend its NEPA implementing regulations falls within the categorical exclusion for procedural rulemaking (10 CFR part 1021, appendix A to subpart D, categorical exclusion A6). DOE's NEPA regulations prescribe the process under which the Department examines the environmental impacts of its proposed actions. The regulations do not set out substantive criteria for reaching a decision on a particular action, and thus are procedural only. For this reason, these amendments to the DOE NEPA regulations are properly excluded from NEPA documentation requirements. See also Section IV.A.

One commenter requested that DOE impose a moratorium on privatization pending completion of public hearings and an environmental impact statement on the proposed amendments. This request is outside the scope of this rulemaking, and DOE does not believe that the scope, which is restricted to DOE's proposed changes to 10 CFR part 1021, should be expanded. Any moratorium on privatization activities should be determined on the basis of the particular facts and circumstances and not in this rulemaking.

A commenter disagreed with DOE's statement in the preamble to the proposed rule that a review under the Unfunded Mandates Reform Act was not required because the DOE NEPA regulations affect only DOE. The commenter stated that many DOE facilities and actions have profound effects on other government agencies and the private sector. While DOE recognizes that its activities do affect other government agencies and the private sector, its regulations to implement the procedural provisions of NEPA impose obligations only on DOE, not on any state, local, or tribal government or on the private sector. Thus, further review by DOE under the Unfunded Mandates Reform Act is not required, and DOE is reiterating in this final rule its previous finding in the proposed rule. See Section IV.G.

B. General Comments on Proposed Amendments

Comments on Public Involvement Opportunities

Many commenters stated that the proposals regarding implementation plans, records of decision, and additions and modifications to the list of categorical exclusions would have the effect of reducing the public's knowledge of, and opportunities to participate in, DOE's decision making process. One commenter expressed concern that new and modified categorical exclusions would reduce the range of DOE actions subject to meaningful environmental review.

In proposing certain streamlining amendments to subpart C, DOE carefully weighed the benefits of improved efficiency against the acknowledged reduction in public information. DOE has reconsidered each such proposal in light of public comments and made some adjustments, as described below in Section III.D.

However, with regard to categorical exclusions, while the CEQ regulations encourage public participation in the NEPA process, they also direct agencies to use categorical exclusions (which, by definition, have no significant impact on the environment, either individually or cumulatively) to reduce paperwork (40 CFR 1500.4(p)) and delays (40 CFR 1500.5(k)). Consistent with this streamlining approach, the CEQ regulations do not provide for public participation in an agency's determination that a particular proposed action is categorically excluded.

DOE is amending its list of categorical exclusions by adding certain DOE classes of actions and modifying or clarifying other classes of actions currently on its list of categorical exclusions. In doing so, DOE has determined that these classes of actions do not have significant impacts on the environment, either individually or cumulatively. See Section III.F below. Thus, for these particular classes of actions, the environmental review that the commenter requested would not be meaningful in terms of evaluating significant impacts to the environment. DOE believes that it will serve environmental concerns and the public's interest best by focusing its efforts on the careful analysis of those actions that actually have the potential for significant impact.

DOE has considered comments on the merits of each proposed categorical exclusion amendment as discussed in Section III.F, but has decided generally to proceed with listing and modifying categorical exclusions, with the

knowledge that in some respects doing so would diminish opportunities for public involvement or information sharing.

Comments Outside the Scope of Proposed Rulemaking

DOE proposed changes to specific sections of its NEPA implementing procedures. DOE considers any comments received regarding the proposed changes to be within the scope of this rulemaking and has addressed such comments in this final rulemaking.

DOE received several comments that it considers to be outside the scope of this rulemaking. These include suggested modifications to provisions of the existing DOE NEPA regulations other than those DOE is proposing to modify or expand, suggestions for additional categorical exclusions, suggestions for broad changes to the DOE NEPA process, and comments on particular DOE proposed actions and DOE policies or procedures not related to DOE's NEPA regulations. Such comments are briefly discussed below.

Suggested Changes to Other Provisions of Existing DOE NEPA Regulations

Some commenters suggested changes to provisions of existing DOE NEPA regulations in addition to provisions that DOE proposed to modify or expand. These commenters sought changes to §§ 1021.216 (Procurement, financial assistance, and joint ventures), 1021.301 (Agency review and public participation), 1021.410 (Application of categorical exclusions (classes of actions that normally do not require EAs or EISs)), and B3.11 (Outdoor tests and experiments on materials and equipment components). While DOE is not considering such changes to its NEPA regulations at this time, DOE is taking these suggestions under advisement and may address them in a future rulemaking.

Suggestions for Additional Categorical Exclusions

A few commenters offered suggestions for additional categorical exclusions to cover facility deactivation activities; onsite transportation of packaged spent nuclear fuel or transuranic waste; onsite transportation of hazardous, mixed, and radioactive waste; relocation or reconfiguration of existing facilities, buildings, and operations within and between DOE sites; replacement of existing facilities in kind and in place; and treatment or disposal of hazardous waste at an existing offsite permitted facility. To the extent that these suggestions were not addressed in DOE's proposed additions and modifications to its list of typical classes of action, DOE considers them to be outside the scope of this rulemaking. DOE is taking these suggestions under advisement and may address them in a future rulemaking.

Suggested Changes to DOE's NEPA Process

Other commenters offered general suggestions for what they considered to be improvements to the DOE NEPA process; topics included the codification of DOE's enhanced public involvement procedures, improvement of DOE's notification procedures, the timing of NEPA actions, page limits for DOE environmental impact statements, coordination with state historic preservation officers, actions taken under consent orders, defining when the choice of reasonable alternatives becomes limited, use of ''worst case'' scenarios in NEPA documents, and delegation of decision making authority. One commenter requested that DOE ensure that its implementing rules and related policies, orders, and procedures are not applied unnecessarily to actions that are not ''major Federal actions.'' Although these comments are outside the scope of DOE's proposed rulemaking, DOE may consider these suggestions in a future rulemaking.

Comments Not Related to NEPA Regulations

A few commenters offered comments that are related to particular DOE proposed actions or other DOE policies and procedures. These include comments regarding whistleblower protection, privatization of DOE facilities, hearings on the Multi-Purpose Canister Environmental Impact Statement, management of spent nuclear fuel, cleanup of contaminated sites, Federal Acquisition Regulations, the Waste Management Programmatic Environmental Impact Statement, and contractor oversight. Because these comments relate to specific DOE actions and not to DOE's procedures for NEPA compliance, DOE finds these comments to be outside the scope of this rulemaking. Accordingly, they were not considered in developing the final rule.

Other Comments

One commenter stated that DOE should provide language in the rule that requires all DOE NEPA documents to substantiate compliance with all applicable environmental laws, Executive Orders, and other similar requirements. DOE notes that it must comply with all applicable environmental laws, Executive Orders, and similar requirements. With respect to the application of the categorical exclusions in appendix B to subpart D, DOE's NEPA regulations currently require that a proposed action must be one that would not ''[t]hreaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health'' in order to fit within a categorical exclusion (appendix B to subpart D, integral element B(1)).

One commenter objected to documenting the application of categorical exclusions to each and every activity that DOE undertakes; on the other hand, several commenters suggested the need for documentation to ensure that the integral elements (appendix B, B (1) through B(4) to subpart D of DOE's NEPA regulations) were properly considered and cumulative impacts would not result. DOE notes that neither the CEQ nor DOE NEPA regulations, nor DOE's internal NEPA procedures, require documenting the application of categorical exclusions (DOE Order 451.1, Section 5(d)(2)). The appropriate NEPA Compliance Officer is responsible for the proper application of categorical exclusions.

Another commenter stated that DOE should regularly prepare a list of the actions to which categorical exclusions were applied and make that list available to the public. DOE recognizes the value in informing the interested and affected public around DOE sites of its activities at those sites. However, a requirement for the periodic publication of a list of activities that have been categorically excluded would tend to undermine CEQ's strategy of using categorical exclusions to streamline the NEPA process.

One commenter stated that DOE's environmental review processes for compliance with NEPA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) should be integrated. Another commenter expressed concern that the proposed amendments did not adequately address DOE's current policy on compliance with NEPA for CERCLA actions, as set forth in the Secretarial Policy Statement on NEPA (June 1994).

Under the current policy, DOE will rely on the CERCLA process for review of actions to be taken under CERCLA and will address NEPA values and public involvement procedures in its CERCLA processes to the extent practicable. DOE may choose, however, after consultation with stakeholders and as a matter of policy, to integrate the NEPA and CERCLA processes for specific proposed actions. The CERCLA/NEPA policy is applied on a case-by-

case basis, and DOE is satisfied that the new approach is clear and working adequately as a matter of policy that does not warrant codification in the regulations.

One commenter asked whether DOE should consider NEPA to be sufficiently specific and detailed to warrant the commitment to the ''letter'' of NEPA that DOE stated in its preamble to the proposed amendments. The commenter stated that such a commitment can create unnecessary concerns about the degree to which the responsibility for decision making can be delegated and justify unnecessarily restrictive and arbitrary decisions. While DOE agrees that the statute itself imposes few specific requirements, DOE believes that it is important to stress its commitment to complying with the express requirements, as well as with the intent of the statute to preserve, protect, and enhance the environment.

C. Comments on Amendments to Subpart A—General

Section 1021.105 Oversight of Agency NEPA Activities

One commenter expressed concern that the Office of NEPA Policy and Assistance was being eliminated and that the amendment proposed that oversight of DOE NEPA activities would be assumed by the Assistant Secretary for Environment, Safety and Health.

The oversight of DOE's NEPA activities has been and continues to be conducted by the Assistant Secretary for Environment, Safety and Health. On December 18, 1994, the office under the Assistant Secretary with specific responsibility for NEPA activities was renamed the Office of NEPA Policy and Assistance (formerly the Office of NEPA Oversight). The only modification to this section is a conforming change to incorporate the new name for the office.

D. Comments on Amendments to Subpart C—Implementing Procedures

Section 1021.312 EIS Implementation Plan

DOE received several comments supporting and several comments opposing the proposal to eliminate the requirement to prepare an implementation plan for every environmental impact statement.

Several commenters expressed concern that the public's opportunity for involvement would be reduced if an implementation plan were not prepared for every environmental impact statement. They stated that implementation plans provide an opportunity for the public to see how scoping comments will be addressed in the environmental impact statement, to formulate options and comments, to review contractor disclosure statements, and to keep the environmental impact statement on track. One commenter stated that the public has valuable insight to provide. Another commenter suggested that implementation plans are useful educational tools and an excellent introduction to the DOE NEPA process.

As discussed above in Section III.B, DOE weighed the benefits of improved efficiency from eliminating the implementation plan requirement against the acknowledged reduction in publicly available information. After considering all the comments received, DOE determined that because the public has the opportunity to provide comments on the scope of an environmental impact statement and can see how scoping comments were addressed and considered in the draft environmental impact statement, the value to the public and DOE of continuing the requirement for an implementation plan does not justify the cost, time, and resources required in preparing an implementation plan for every environmental impact statement.

With respect to contractor disclosure statements, DOE stated in the preamble to the proposed amendments that it would continue to prepare and require the execution of such statements by contractors, as required by 40 CFR 1506.5(c) of the CEQ regulations. In response to comments, however, DOE will include the contractor disclosure statements in draft and final environmental impact statements, and has modified 10 CFR 1021.310 accordingly.

One commenter stated that eliminating the implementation plan requirement will preclude requests from interested parties for environmental assessments and environmental impact statements before the agency proceeds with actions. Because an implementation plan is prepared after a decision has been made to prepare an environmental impact statement, and is not prepared at all for environmental assessments, DOE believes that eliminating the implementation plan requirement will not have any effect on the public's ability to request an environmental impact statement or an environmental assessment.

While some commenters supported eliminating the implementation plan requirement, they requested that notes from public scoping meetings be made available in public reading rooms or that DOE prepare a detailed administrative record of the disposition of public scoping comments and make it available to the public upon request. Another commenter, although supportive of the proposed amendment, suggested that DOE include a response to public scoping comments in the draft environmental impact statement.

DOE believes that the purpose in eliminating the implementation plan requirement (i.e., to achieve cost and time savings without meaningfully reducing public involvement in the DOE environmental impact statement process) would not be served by adopting the alternative suggestions (preparing a detailed administrative record or including a response to public scoping comments in a draft environmental impact statement) in place of the implementation plan requirement. The public scoping process under DOE's amended rule fully complies with the CEQ NEPA regulations, which require only that draft environmental impact statements be prepared in accordance with the scope decided upon in the scoping process (40 CFR 1502.9(a)).

One commenter stated that the environmental impact statement implementation plan should be optional. DOE agrees and intends for the elimination of the implementation plan requirement to have the effect of making such plans optional.

Finally, in its proposal to eliminate the requirement to prepare an implementation plan for an environmental impact statement, DOE inadvertently omitted making a corresponding change to § 1021.311(f), which included a reference to the EIS implementation plan. Section 1021.311(f) has now been removed from the final rule; paragraph (g) has been redesignated accordingly.

Section 1021.315 Records of Decision

Section 1021.315(c). Commenters opposed two aspects of this proposed amendment. First, some commenters expressed concern that DOE's proposal to allow publication in the Federal Register of a brief summary and notice of availability of a record of decision, rather than the full text, would shift to the public the cost of obtaining copies of a record of decision, and would not assure timely availability of the record of decision. Another commenter suggested that any savings achieved from not publishing the full text of a record of decision in the Federal Register would not be sufficient to justify the public's increased burden in seeking a record of decision. DOE has reconsidered the proposal in light of the commenters' concerns, and has decided that the cost-savings do not justify the burden associated with the proposed

change. Therefore, DOE will continue to publish the full text of records of decision in the Federal Register.

Second, commenters also expressed concern about the proposed clarification to § 1021.315(c) that, if a decision has been publicized by other means (e.g., press release or announcement in local media), DOE need not defer taking action until its record of decision has been published in the Federal Register. The commenters suggested that these other means of communication were not as reliable, accurate, easily available, or effective as the Federal Register.

This amendment is a clarification, not a substantive change, to DOE's regulations. Section 1021.315(b) currently states that ''No action shall be taken until the decision has been made public.'' One way to make a decision public is to publish the record of decision in the Federal Register, but decisions can be made public in other ways, such as through press releases or announcements in local media. DOE's proposed amendment merely clarifies the practice that DOE has followed previously under which DOE may proceed with an action after its decision has been made public but before that decision is published in the Federal Register. DOE needs to retain the ability to implement an action after making the record of decision public, but before publication of that decision in the Federal Register, in those instances when timing is critical.

One commenter questioned whether DOE was proposing to implement an action before the decision is articulated in writing and signed. DOE is not making such a proposal. To clarify this point, DOE has modified the final language in a new § 1021.315(d) by indicating that DOE may implement a decision if the record of decision has been signed and the decision and the availability of the record of decision have been made public.

Another commenter indicated confusion over DOE's proposal to modify § 1021.315(c) rather than § 1021.315(b). In response, and to provide further clarification, DOE has moved the second sentence from current § 1021.315(b) to begin a new § 1021.315(d), and added to the new subsection (d) the language previously proposed for § 1021.315(c), as modified above. Section 1021.315(c) remains as in the current regulation, and current § 1021.315(d) is now § 1021.315(e). Pertinent sections of § 1021.315 are now changed as follows:

(a) (no change)

(b) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

(c) (no change)

(d) No action shall be taken until the decision has been made public. DOE may implement the decision before the ROD is published in the Federal Register if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media).

(e) DOE may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD is subject to the provisions of paragraphs (b), (c), and (d) of this section.

Section 1021.322 Findings of No Significant Impact

Section 1021.322(b)(1). Under the proposed amendment, and in accordance with 40 CFR 1508.13, DOE would either incorporate the environmental assessment by reference in a finding of no significant impact and attach the environmental assessment, or summarize the environmental assessment in the finding. A few commenters supported the proposal to remove the requirement to summarize the environmental assessment in the finding of no significant impact in all cases. Others expressed concern that DOE was proposing to eliminate information that is currently being provided to the public.

This proposal is intended to eliminate redundancy by requiring either the attachment of an environmental assessment to the related finding of no significant impact or the inclusion of a summary of an environmental assessment in the related finding of no significant impact, but not both. This would change DOE's current practice of summarizing the environmental assessment in each finding of no significant impact and also attaching the environmental assessment to the finding of no significant impact. For a finding of no significant impact published in the Federal Register, it would be necessary to summarize the environmental assessment in the finding of no significant impact, because the environmental assessment would not be published in the Federal Register.

E. General Comments on Subpart D—Typical Classes of Actions

Many of the commenters suggested, both generally and with regard to specific proposed amendments to classes of actions in subpart D, that DOE's terminology was too vague or subjective to adequately define classes of actions. For example, commenters objected to DOE's use of such terms as ''small-scale,'' ''short-term,'' ''minor,'' and ''generally,'' among others, as being too imprecise. On the other hand, where DOE had proposed using specific quantities to aid in defining a class of actions (e.g., 50,000 square feet of area and 100 MeV (million electron-volts) of energy), commenters asked why DOE had picked the proposed value rather than any other, and how DOE could justify such apparent precision.

DOE has considered all such comments in the context of the individual proposed amendments to subpart D classes of actions presented in Section III.F, below. To provide additional information and to simplify the more specific discussions, DOE is providing the following general response.

DOE formulates subpart D classes of actions based on DOE's experience, other agencies' experience as reflected in their NEPA procedures, technical judgments regarding impacts from actions, and public comments on a proposed rule. To minimize subjectivity in interpretation, DOE uses both numerical values of quantities (which have clear meaning) and descriptive words such as ''minor'' and ''small-scale,'' which suggest the smaller actions in a class, not the larger. DOE also uses examples, both to clarify that the class of actions includes the specific examples cited, and to suggest the nature of actions that may be included.

With regard to DOE's use of specific quantities in several of the proposed classes of actions, commenters had two general objections. First, they noted correctly that using ''generally'' in defining a class of actions (e.g., proposed B1.26 and B3.10) could allow the class to be applied to proposed actions that would otherwise not even approximately fit the definition. Second, commenters questioned the justification for the specific quantity values chosen and even whether any specific value could be justified.

DOE's intention with respect to both issues is better expressed by the concept of ''approximately'' rather than ''generally,'' and the classes of actions in the final rule have been changed accordingly. By using ''approximately,'' DOE is indicating that the numerical values used in defining classes of actions are to be interpreted flexibly rather than with unwarranted precision. For example, DOE proposed to categorically exclude construction of small accelerators and decided that it could express the class of actions as including accelerators less than 100 MeV in energy. DOE acknowledges that judgment is involved and that it could

have chosen numbers somewhat greater than 100 MeV to limit the categorical exclusion. DOE believes, however, that the phrase ''less than approximately 100 MeV in energy'' provides appropriate flexibility and represents the best overall resolution of the matter.

One commenter expressed concern that DOE had not taken the opportunity to decrease the level of prescription and detail in the DOE NEPA regulations. The commenter expressed particular concern that DOE had proposed 17 new classes of actions, many of which the commenter believed would add little or no value to DOE's NEPA process. Similarly, another commenter stated that DOE should make existing categorical exclusions more comprehensive whenever possible, rather than simply expand the list of categorical exclusions.

In proposing amendments to the DOE NEPA rule, DOE considered making the list of categorical exclusions shorter by combining certain actions and making the list more comprehensive by broadening the categories. DOE declined to pursue such a course of action generally in this rulemaking, although it proposed to combine two classes of actions. DOE's extensive list of categorical exclusions results primarily from the fact that DOE is engaged in many different types of activities.

One commenter requested that DOE define the phrase ''already developed area'' that is used in several proposed new or amended categorical exclusions (e.g., B1.15, B1.22, B3.6, B3.10, B3.12, and B6.4). The commenter expressed concern that DOE may consider portions of wildlife management areas surrounding DOE facilities to be ''developed'' merely because of DOE ownership or because of the existence of abandoned DOE facilities. In the existing and proposed regulations, DOE used the parenthetical phrase ''where site utilities and roads are available'' to help define ''an already developed area'' in the classes of actions in the final rule. For further clarity, DOE has modified the parenthetical phrase to read ''where active utilities and currently used roads are readily accessible.'' DOE does not intend to include wildlife areas and abandoned facilities in its definition of ''an already developed area.''

Finally, several commenters noted that DOE defined categorical exclusions as classes of actions that ''normally'' do not require environmental assessments or environmental impact statements. One of these commenters suggested that ''normally'' should mean 99 percent of the time, and this commenter and others stated that there should be provisions for extraordinary circumstances under which a proposed action listed in appendices A or B should not be categorically excluded.

DOE's use of the term ''normally'' in the context of categorical exclusions is consistent with the use of this term in the CEQ regulations, which state that an agency's NEPA implementing procedures for categorical exclusions ''shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect'' (40 CFR 1508.4). See also 40 CFR 1507.3(b)(2)(ii), in which CEQ directs agencies to identify classes of actions ''which normally do not require either an environmental impact statement or an environmental assessment.'' DOE believes that its categorical exclusions comply with CEQ's regulations, i.e., to be eligible for categorical exclusion, a class of actions must not have significant effects on the human environment except in extraordinary circumstances that may affect the significance of the environmental effects of a specific proposed action. DOE's existing regulations (10 CFR 1021.410(b)(2)) describe the nature of extraordinary circumstances under which a categorical exclusion should not be applied, and explicitly require (§ 1021.400(d)) an environmental assessment or environmental impact statement for a proposed action that presents such circumstances. Therefore, DOE does not believe any changes are needed to address the use or interpretation of the word ''normally'' in DOE's description of categorical exclusions or the manner in which DOE provides for extraordinary circumstances.

F. Comments on Appendices of Subpart D—Typical Classes of Actions

Several commenters objected to many categorical exclusions on the grounds of cumulative effects, connected actions, or extraordinary circumstances, but without explanation as to their specific objection. A categorical exclusion is a class of actions that, individually or cumulatively, do not have significant environmental impacts. If there are extraordinary circumstances associated with a proposed action, or if the proposal is connected to other actions with potentially significant impacts or related to other proposed actions with cumulatively significant impacts, then a categorical exclusion would not apply under § 1021.410(b).

Another commenter noted that several of the proposed categorical exclusions referred to ''siting, construction, operation, and decommissioning'' of various DOE activities and questioned whether such activities would also need state permits. DOE notes that while new construction could require state or local permits, one of the integral elements for all appendix B categorical exclusions is that the proposed action ''does not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health.'' Any DOE action would be required to comply with applicable state and local requirements, independent of the level of NEPA review appropriate under DOE's NEPA regulations.

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

The headings below are those used in the table of contents of the appendices in the proposed amendments. The conversion table below shows which classes of actions have been included in the final amendments to the rule. There were a few numbering changes between the proposed and final amendments because some classes of actions were added or removed. Specifically, the proposed B1.32 was removed, and the proposed B1.33 was renumbered as B1.32; existing B6.4, which had been proposed for revision, was retained without change, and a new B6.10 was added to incorporate some of the changes proposed for B6.4; and the proposed modification to C9 was withdrawn. These changes are explained more fully in the following discussion.

CONVERSION TABLE

Existing rule	Final amendments	
A.7	A.7	Clarified.
B(1)	B(1)	Modified.
B(2)	B(2)	Do.
B1.3	B1.3	Clarified.
B1.8	B1.8	Modified.
B1.13	B1.13	Do.
B1.15	B1.15	Do.
B1.18	B1.18	Do.
B1.21	B1.21	Do.
B1.22	B1.22 & B1.23	Clarified.
	B1.24—B1.32	Added.
	B2.6	Do.
B3.1	B3.1	Clarified.
B3.3	B3.3	Do.
B3.6	B3.6	Modified.
B3.10	B3.6	Do.
	B3.10	Added.
	B3.12–B3.13	Do.
B5.3	B5.3	Modified.
B5.5	B5.5	Do.
B5.9–B5.11	B5.9–B5.11	Clarified.
B5.12–B5.16	Removed.	
	B5.12	Added.
B6.1	B6.1	Modified.
B6.5	B6.5	Clarified.
	B6.9–B6.10	Added.
C1	C1	Reserved.
C10	C10	Do.
C11	C11	Modified.
C14	C14	Do.
C16	C16	Do.
D1	D1	Do.
D10	D10	Do.

Finally, after considering all public comments on the proposed amendments, DOE has determined that the final amendments to appendices A and B constitute classes of actions that do not individually or cumulatively have a significant effect on the human environment, and are covered by a finding to that effect in § 1021.410(a). In making this finding, DOE has considered, among other things, its own experience with these classes of actions, other agencies' experience as reflected in their NEPA procedures, DOE's technical judgment, and the comments received on the proposed amendments.

- Proposed Clarification A7 Transfer of property, use unchanged.

One commenter stated that DOE cannot assume that transfer of property will not result in short- and long-term changes in impacts. DOE proposed to amend paragraph A7 only to clarify the meaning of property by explicitly including both personal property (e.g., equipment and material) and real property (e.g., permanent structures and land). DOE did not propose to amend the requirement regarding property use remaining unchanged. The categorical exclusion may only be applied when the impacts would remain essentially the same after the transfer as before. See also the discussion of B1.24 and B1.25.

Classes of Actions Listed in Appendix B

- Proposed Modification to Integral Element B(2).

DOE proposed to modify integral element B(2)—which sets the condition that a categorically excluded action may not require siting, construction, or major expansion of waste storage, disposal, recovery, or treatment facilities—to provide an exception for such actions that are themselves categorically excluded. DOE proposed this change to conform to simultaneously proposed changes (B1.26, B1.29, B6.4, and B6.9) that would categorically exclude certain water treatment and waste storage facilities.

Two commenters objected to the change, apparently as an extension of their objections to the proposed categorical exclusion amendments that prompted DOE's proposal to modify B(2). Another commenter expressed concern that the proposed B(2) would imply that ''major'' expansion of waste facilities might be categorically excluded. This interpretation was unintended and the language has been modified. In other respects, however, DOE has retained the B(2) amendment as necessary to conform to certain final categorical exclusions (B1.26, B1.29, B6.9, and B6.10). As finally revised, B(2) reads as follows: ''To fit within the classes of actions (in appendix B), a proposal must be one that would not . . . require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions.''

- Proposed Modification to Integral Element B(4)(iii).

DOE intended to modify this integral element to allow the categorical exclusion of actions listed in appendix B despite their having an adverse impact on small, low quality wetlands. DOE anticipated that activities in such areas would not have a significant environmental impact, either individually or cumulatively. While several commenters supported the proposed change, others expressed concern about the potential cumulative impacts, the institution of a threshold size, the meaning of ''covered'' by a general permit, and the difference between a ''general'' permit and a ''Nationwide'' permit.

In consideration of the comments and after consultation with staff of the U.S. Army Corps of Engineers (Corps), DOE has revised B(4)(iii) to allow the categorical exclusion of actions in wetland areas not considered waters of the United States and thus not regulated under the Clean Water Act. This includes certain drainage and irrigation ditches, artificial lakes and ponds, and borrow pits, as discussed below.

The Corps generally does not consider the following areas to be waters of the United States: (a) Non-tidal drainage and irrigation ditches excavated on dry land; (b) artificially irrigated areas which would revert to upland if the irrigation ceased (for DOE this would include areas ''irrigated'' by leaking pipes, tanks, or ditches); (c) artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing; (d) artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons; (e) waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States under 33 CFR 328.3(a). See 51 FR 41206, 41217 (November 13, 1986). The Corps reserves the right, however, on a case-by-case basis to determine that a particular water body within these categories fits within the definition of waters of the United States. The U.S. Environmental Protection Agency (EPA) also has the right to determine on a case-by-case basis if any of these areas are waters of the United States. Note that some of these areas could become waters of the United States and subject to regulation. This may occur if the area no longer meets the above criteria, e.g., the area is no longer used for the purpose for which it was constructed or is abandoned. In such cases, a categorical exclusion could not be applied.

The wording of B(4)(iii) has been modified from the proposed rule as follows: ''Wetlands regulated under the Clean Water Act (33 USC 1344) and floodplains.''

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

One commenter asked for clarification of ''in kind replacement.'' The commenter stated that, with regard to older facilities, certain equipment used in the facilities is no longer made or its installation at this time would be

contrary to code or good management practices. The commenter asked if replacing equipment in older facilities with modern components is considered ''in kind replacement.''

DOE recognizes that the equipment used in many of its facilities cannot be replaced literally ''in kind'' for the reasons the commenter states. DOE believes, however, that the description of ''in kind replacement'' presented in the proposed clarification for B1.3 (i.e., in kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility) adequately addresses the commenter's request.

B1.3(n). One commenter suggested that instead of adding additional examples of testing and calibration of facility components to B1.3, that the word ''maintenance'' be added to B3.1. DOE has chosen to address routine maintenance under a separate categorical exclusion rather than adding it to other categorical exclusions where it might apply.

B1.3(o). One commenter thought that the term ''routine decontamination'' needed additional clarification. DOE uses ''routine'' to mean a recurring action that is done easily and is well understood, such as wiping with rags, using strippable latex, and minor vacuuming. B1.3(o) is intended to categorically exclude contamination-cleanup activities of a routine nature.

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

DOE proposed to expand existing B1.13 (Acquisition or minor relocation of existing access roads serving existing facilities if the traffic they are to carry will not change substantially) by adding construction and spur roads, pathways and railroads, and by deleting the phrase ''serving existing facilities if the traffic they will carry will not change substantially.'' One commenter questioned the definition of ''spur'' and ''access'' roads. Another commenter suggested more restrictive language for B1.13 so that it would be applied only in instances to improve safety, and only if the total traffic volume would not substantially change. A third commenter expressed concern that applying the categorical exclusion could eliminate valuable input from natural resource agencies and cause potential significant impacts to wildlife, including loss of habitat, habitat fragmentation, and degradation of adjacent habitat. Another commenter stated that the actions proposed to be categorically excluded should be subject to public review.

In response to the concerns raised by these commenters, DOE has made two changes to the proposed modification to B1.13. First, DOE has deleted the reference to ''spur roads'' because the term ''access roads'' adequately encompasses the intended purpose. Second, DOE has revised the categorical exclusion to apply only to the construction of ''short'' access roads and access railroads. DOE acknowledges that the construction of onsite access roads could result in adverse environmental impacts. DOE believes, however, that the general restrictions on the application of categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), will provide adequate safeguards to ensure that this class of actions is not applied to activities that could result in significant effects. Also, it is DOE's intention that the inclusion of the term ''short'' will further clarify the length of access roads and railroads that DOE intended to be constructed under this categorical exclusion (i.e., no more than a few miles in length). The categorical exclusion B1.13 now reads: ''Construction, acquisition, and relocation of onsite pathways and short onsite access roads and railroads.'' DOE does not believe that actions qualifying under this categorical exclusion warrant public review. See Section III.B, above.

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

One commenter suggested that the categorical exclusion be expanded to include deactivation and demolition of the same structures. Such expansion is not necessary because these activities are included under proposed categorical exclusion B1.23.

Two commenters suggested that the phrase ''but not limited to'' be inserted between ''including'' and ''prefabricated buildings and trailers.'' DOE has incorporated the suggestion, as well as reversing the order of ''prefabricated buildings'' and ''trailers,'' to be consistent with B1.22.

One commenter stated that actions covered by this categorical exclusion should be subject to public review. For the reasons stated in Section III.B, DOE believes that public review is not appropriate.

One commenter asked for a definition of an ''already developed area,'' a phrase used in the existing regulations. The phrase in the proposed B1.15, ''where site utilities and roads are available,'' was intended to define the term. For clarification, DOE has modified this phrase to read ''where active utilities and currently used roads are readily accessible.'' See the discussion of ''already developed area'' in Section III.E.

- Proposed Clarification B1.23 Demolition/disposal of buildings.

DOE proposed to divide the existing categorical exclusion B1.22 into two categorical exclusions to clarify that the two actions included in the existing class of actions—relocation of buildings (proposed B1.22) and demolition and subsequent disposal of buildings, equipment, and support structures (proposed B1.23)—are not connected actions (i.e., actions that are closely related and therefore needed to be considered in the same NEPA review).

DOE received three comments on B1.23, none of which directly related to the proposed clarification. One commenter suggested that the categorical exclusion should be applicable to contaminated buildings that, after demolition, could be entombed in place. Another commenter questioned whether DOE was mandating disposal of construction debris in landfills. Apparently, this commenter's concern is based on DOE's intended clarification that building relocation actions are separate from building demolition and disposal. In any event, DOE is not mandating the disposal of construction debris in landfills. The third commenter objected to the categorical exclusion on the grounds of cumulative effects, connected actions, or extraordinary circumstances. DOE has responded to this objection, which was also expressed by other commenters in regard to other categorical exclusions, in Section III.F.

DOE does not intend for proposed categorical exclusion B1.23 to apply to in-place entombment of demolished structures. However, this categorical exclusion could be applied to the demolition and disposal of contaminated structures if releases are controlled or permitted and other conditions for application of the categorical exclusion are met.

- Proposed B1.24 Transfer of property/residential, commercial, industrial use; and
- Proposed B1.25 Transfer of property/habitat preservation, wildlife management.

DOE received several comments on these two proposed categorical exclusions. One commenter, noting that proposed B1.24 and B1.25 were similar, suggested combining them. Based on this comment and other comments that expressed concern about the broad scope of the categorical exclusions as proposed, DOE has retained both

categorical exclusions, but changed their wording to clarify DOE's intentions for their scopes and the differences between them. Categorical exclusion B1.24 as now revised refers to transfer, lease, disposition, or acquisition of interests in structures and equipment, and only land that is necessary for use of the transferred structures and equipment. Proposed B1.25 as revised refers to transfer of interests in land for purposes of habitat preservation or wildlife management, and only buildings that support those purposes.

One commenter questioned the meaning of ''uncontaminated.'' DOE has added a definition to each of these two proposed categorical exclusions that states that ''uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.'' This definition is based on the definition of contaminant in CERCLA § 101(33). DOE already has defined ''contaminant'' in § 1021.104 of its existing NEPA regulations as ''a substance identified within the definition of contaminant in Section 101(33) of CERCLA (42 USC 9601.101(33)).''

Several commenters questioned the feasibility of making a determination about potential releases and impacts that could occur after the transfer, as required by the categorical exclusions, without some formal environmental analysis (e.g., an environmental assessment). With regard to proposed B1.24, one of the commenters questioned how DOE would know if contaminant releases increase after transfer, stating that private operators, unlike DOE, are under no obligation to provide records of types, volumes, and pathways of contaminants released into the environment. In applying these two categorical exclusions (as in applying any other categorical exclusion), DOE will consider reasonably foreseeable circumstances, but will not attempt to speculate on all possible circumstances that the future could present. DOE believes that it will be able to determine whether a proposed post-transfer use is similar enough to the existing use to meet the conditions of the categorical exclusion, i.e., no decrease in environmental quality, no increased discharges, and generally similar environmental impacts. If DOE cannot make these judgments without environmental analysis, DOE will prepare at least an environmental assessment.

One commenter stated that the proposed categorical exclusion B1.24 was a positive step, but thought DOE had unduly limited its application. Another commenter stated that proposed categorical exclusion B1.24 was an improvement in that property transfers that could be categorically excluded would not be limited to those where use remains the same. This commenter wanted to expand the proposed categorical exclusion B1.24 to include transfers to other Federal agencies without restrictions on environmental parameters, because other Federal agencies must conduct their own NEPA review for future uses of the property. DOE believes that it must conduct the proper level of NEPA review for its actions, and that a NEPA review for the transfer, lease, disposition, or acquisition of property must consider reasonably foreseeable uses and conditions of those uses, regardless of whether the transfer would be to another Federal agency.

Two commenters expressed concern about eliminating community involvement in DOE's decisions about future land use. One commenter stated that the transfer of potentially contaminated land without environmental analysis would be inconsistent with DOE's openness policy. DOE does not intend to categorically exclude the transfer of contaminated property. However, DOE recognizes that in listing these classes of actions as categorical exclusions, the sharing of public information will be diminished in some instances, as discussed in Section III.B.

One commenter questioned whether categorical exclusion B1.24 would apply to a facility that had been idle (and thus not discharging any pollutants into the environment), allowing the facility to resume operations and resulting in pollutant discharges. If the facility to be transferred has not been in operation and transfer of the facility would result in the resumption of operation, then greater environmental discharges would result, making this proposed activity ineligible for this categorical exclusion.

With regard to proposed B1.25, one commenter suggested that the preamble was unclear because the categorical exclusion deals with the transfer, lease, and disposition of habitat lands and not a change to the habitat. The commenter also stated that a habitat improvement that supported the existing species of plants and animals, although a change, would not have the potential for significant impact and therefore could be categorically excluded.

There are three categorical exclusions related to the transfer of property: A7, where the use will remain the same; B1.24, where the use may change but the environmental impacts are similar; and B1.25, where the use will be habitat preservation or wildlife management. Small-scale improvements to fish and wildlife habitat are included under existing categorical exclusion B1.20. A large-scale habitat improvement project may have significant environmental effects, albeit beneficial, and would not be categorically excluded.

A commenter suggested that DOE should not assume that significant environmental and socioeconomic impacts will not result from the transfer of uncontaminated lands for habitat preservation and wildlife management, because DOE cannot reasonably predict the types of uses that private interests, conservation groups, or local and state agencies might allow for these lands. DOE agrees that it cannot project with certainty all future activities that might be allowed on any land that it transfers, leases, or disposes. However, categorical exclusion B1.25 is intended for application in those cases where the circumstances of the property transaction create a reasonable expectation that the property will be used for habitat preservation and wildlife management for the reasonably foreseeable future.

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

Several commenters recommended that DOE not categorically exclude water treatment facilities that would involve highly toxic substances, regardless of the limited rate at which water could be processed. Some commenters stated that the 250,000 gallon criterion was not necessarily the relevant factor regarding environmental impacts. The commenters also expressed concern that cumulatively significant effects would occur from repeated applications of this proposed categorical exclusion. DOE believes that the adverse environmental effects of concern to many of the commenters are highly unlikely. DOE chose to categorically exclude treatment facilities with less than about 250,000 gallons capacity because such small plants have little potential for significant impacts, especially in light of the safeguards afforded by the integral elements. For example, a DOE categorical exclusion may not be applied where the proposed action could adversely affect an environmentally sensitive resource (10 CFR part 1021, subpart D, appendix B, B(4)). Regarding cumulative effects, appendix B listings are not applicable to a proposed action that is connected to other actions with potentially significant impacts or related to other

proposed actions with cumulatively significant impacts (10 CFR 1021.410(b)(3)). Nevertheless, DOE has modified the proposal as one commenter suggested, so that, in addition to small potable water and sewer facilities, only those small wastewater and surface water treatment facilities whose liquid discharges are subject to external regulation would be categorically excluded. See also the discussion regarding the use of the word ''generally'' and numerical values in Section III.B.

• Proposed B1.27 Facility deactivation.

One commenter expressed concern that the categorical exclusion would apply to any facility and that deactivation is not clearly defined. The commenter suggested that if DOE intended the categorical exclusion to apply only to the disconnection of utilities, then it should be rewritten as: ''The disconnection of utilities such as water, steam, telecommunications, and electrical power after it has been determined that the continued operation of these systems is not needed for safety.'' DOE agrees and has rewritten the categorical exclusion as suggested. The term deactivation is no longer included in the categorical exclusion.

Another commenter suggested that the categorical exclusion be clarified to include provisions for partial disconnections and utility modifications where equipment may be required to remain operational at a reduced level. DOE believes that this categorical exclusion encompasses such disconnections and modifications.

One commenter stated that the risk posed by surplus facilities varies greatly and that DOE should be cautious in presuming NEPA documentation is not required. DOE agrees that the risks posed by particular facilities can vary, but believes that merely disconnecting the utilities of such facilities will not cause significant environmental impacts.

Another commenter questioned whether DOE intended to deactivate nuclear electrical utility facilities under this categorical exclusion, and suggested that such activities would require consultation and cooperation with other state and federal agencies and full public notice and participation. The proposed categorical exclusion would apply only to DOE facilities and not to the commercial nuclear power industry or other commercial powerplants.

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

Several commenters questioned the scope of the categorical exclusion and generally expressed concern with the use of the word ''minor.'' Several commenters suggested that DOE more narrowly define what it intended to cover in this categorical exclusion (e.g., the meaning of ''adequate treatment, storage, or disposal facilities'' and ''no proposed use''). Other commenters stated that such activities could be carried out on a large scale at a particular site and that there could be cumulative impacts associated with waste management activities.

As discussed in Section III.E, DOE believes that the word ''minor'' is useful in describing the types of activities contemplated by the categorical exclusion, particularly when combined with examples and exclusions. DOE intends this categorical exclusion to apply to activities needed to place a surplus facility (one that will no longer be used by DOE for any purpose, including storage) in an environmentally safe condition, where there are existing treatment, storage, or disposal facilities with existing capacity to manage the resulting waste (including low-level radioactive waste). These activities include the final defueling of a reactor, as stated in the example in the proposed rule. DOE emphasizes that this categorical exclusion, like all other categorical exclusions, may not be applied in situations involving extraordinary circumstances (such as uncertain effects or effects involving unique or unknown risks) or where the proposal is connected to other actions with potentially significant impacts (see § 1021.410(b) (2) and (3)). Thus, if a proposal involved a mode of decontamination with potentially significant environmental effects or if it posed serious potential risks to workers, the public, or the environment, then the proposed activity would not be eligible for a categorical exclusion. DOE believes that the language of the proposed categorical exclusion, together with the general restrictions on the application of categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), provide adequate safeguards to ensure that this categorical exclusion is not applied to activities that could result in significant environmental effects.

One commenter asked that the relationship of this categorical exclusion to CERCLA and the Resource Conservation and Recovery Act (RCRA) procedures be clarified. DOE's CERCLA/NEPA policy is discussed in Section III.B. Although DOE's RCRA procedures are outside the scope of this rulemaking, DOE notes that its application of this categorical exclusion would have no effect on its compliance with RCRA.

Another commenter recommended that the categorical exclusion be broadened to include removal of contaminated equipment, material, and waste and include activities such as size reduction and placement of wastes in storage containers if done in the same building. DOE intends the categorical exclusion, as proposed, to include these activities.

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

Several commenters objected to this categorical exclusion. One commenter expressed concern that new disposal facilities for construction and demolition waste could be sited and constructed in environmentally sensitive areas, such as priority shrub steppe habitat, with adverse impacts on wildlife. This commenter also expressed concern about cumulative impacts from multiple facilities. DOE believes that integral element B(4), which states that an action proposed for categorical exclusion must not adversely affect environmentally sensitive areas, would preclude use of the proposed categorical exclusion for construction of disposal facilities in priority shrub steppe habitat. Also, under § 1021.410(b)(3) of its NEPA implementing regulations, DOE may not categorically exclude a proposed action that may be connected to other actions with potentially significant impacts, or related to other proposed actions with cumulatively significant impacts.

Another commenter expressed concern that a 10-acre disposal facility could pose major health and safety risks to workers and members of the public in adjacent communities, noting in particular the potential for adverse impacts on air quality. By limiting this categorical exclusion to disposal of uncontaminated materials, DOE believes there would be no harmful releases of contaminants and no increased health impact to workers or the nearby public. DOE has revised the language in this categorical exclusion in the final amendments by inserting the phrase ''which would not release substances at a level, or in a form, that would pose a threat to public health or the environment'' to explain the term ''uncontaminated.'' This new language corresponds to the definition of ''contaminant'' in DOE's NEPA regulations, which in turn is based on CERCLA § 101(33). In addition, DOE employs standard industrial practices, such as water spraying to control dust, in operating any of its facilities, and DOE believes that any particulate

emissions would be adequately controlled to protect workers and the public. To correspond to other changes in the final amendments, DOE has changed the phrase ''generally less than 10 acres in area,'' to ''less than approximately 10 acres.'' See also the discussion in Section III.E.

Another commenter stated that the scope of the categorical exclusion was so broad that the host community, state and local officials, and interested citizens could be excluded from participating in decisions that may have significant environmental and socioeconomic impacts. DOE believes that this class of actions normally does not have potential for significant impacts and has decided to list it as a categorical exclusion in the final amendments. See also the discussion of public involvement and information sharing opportunities in Section III.B.

One commenter requested that the proposed categorical exclusion be expanded to include on-site disposal facilities for all uncontaminated waste, including office and cafeteria waste. This comment is outside the scope of this rulemaking, but DOE may consider the suggestion in a future rulemaking.

• Proposed B1.30 Transfer actions.

Several commenters objected to this proposed categorical exclusion as too broad and open ended, some noting potential for adverse impacts. Some commenters requested that it be deleted; others requested that limits be provided on the quantity and types of materials and wastes that could be transported. Other commenters sought additional clarification.

In contrast, two commenters stated that the proposed categorical exclusion was too limited in scope and suggested broadening the categorical exclusion to include routine transportation of materials, equipment, and wastes that are managed in accordance with regulatory requirements. One of these commenters noted DOE's statement in the preamble to the proposed rulemaking that ''transportation activities under DOE's standard practices pose no potential for significant impacts.''

All DOE proposed actions must comply with applicable regulatory requirements, although some actions nevertheless may have significant impacts. DOE will continue to include analysis of transportation impacts in environmental assessments and environmental impact statements where the scope of the proposed actions presents potential for significant impact.

DOE has revised the language of the categorical exclusion to characterize the amount of materials, equipment, or waste to be transferred as ''small'' in addition to being incidental to the amount at the receiving site. This revision addresses the concerns expressed by several commenters that DOE had proposed to limit the amount of material or waste that could be transported, not by the impacts that might occur by transport of the material or waste, but by the amount of material or waste at the receiving site.

One of these commenters stated that the proposed categorical exclusion could be applied to the transport of thousands of containers of materials or waste to a site that had yet larger amounts. Another commenter stated that the baseline for determining the amount of waste or material that could be received at a site, under the proposed categorical exclusion, would continually increase as waste or materials were transferred to the site. The revision reinforces DOE's intention that use of the categorical exclusion should not add significantly to what may already be significant amounts of waste or materials at a site.

Several commenters stated that transportation of radioactive materials and waste is likely to be a key or controversial issue to local communities. One commenter stated that unscheduled transportation of waste would generate considerable community interest, and another expressed concern that the host community, state and local officials, and interested citizens could be excluded from participating in decisions that may result in significant environmental and socioeconomic impacts. DOE believes that this class of actions normally does not have potential for significant impacts and has decided to list it, as revised, as a categorical exclusion in the final amendment. See also the discussion of public involvement opportunities in Section III.B.

One commenter suggested that the proposed categorical exclusion would be more appropriately placed as a clarifying statement elsewhere in the regulations, to note that transportation may be an implicit part of any action that is eligible for a categorical exclusion or to require, as an integral element of any categorical exclusion, that transportation be conducted in accordance with applicable regulatory requirements. Other commenters stated that transportation is a connected activity and should not be considered independently.

DOE's NEPA regulations currently state that a categorically excluded class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions and provides ''associated transportation activities'' as one of two examples (§ 1021.410(d)). Categorical exclusion B1.30, however, applies to transfer actions where the predominant activity is transportation.

DOE's existing NEPA regulations (appendix B(1)) also contain an integral element for categorical exclusions requiring that, in order to be categorically excluded, an action not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE orders.

One commenter asked DOE to clarify whether this categorical exclusion could be applied to the transfer of waste from a DOE site to an offsite, non-DOE facility that treats that type of waste. DOE believes that B1.30 does cover these types of transfer actions, as long as all the conditions of the categorical exclusion, including the integral elements, are satisfied and there are no extraordinary circumstances.

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

One commenter supported DOE's strategy, stated in the preamble to the proposed rule, to coordinate activities in wetlands with state and federal agencies to assure compliance with other land use plans. The commenter suggested that wetland creation should address the impacts of attracting migratory wildlife, especially types of wildlife that are likely to be hunted for human consumption. Other commenters questioned how the terms ''small'' and ''large'' were defined and how size would be used to determine whether wetland restoration, creation, or enhancement would have significant impacts. Other commenters stated that this categorical exclusion should include compliance with all appropriate Federal environmental laws and regulations and that DOE should consider limiting the number of such projects to reduce the potential for cumulative adverse impacts.

DOE has reconsidered its proposal to categorically exclude restoration, creation, or enhancement of a small wetland. Actions typically taken by DOE to restore, enhance, or create a wetland normally would be performed as mitigation to compensate for loss or degradation of other wetlands as a result of a DOE proposed action. As such, wetland mitigation is not a separate or distinct action and should be considered as an integral part of the proposed action. Further, in those rare situations where DOE would undertake specific actions to restore, enhance, or create wetlands (e.g., development of

wetlands as part of wetland banking), the existing class of actions C9, which normally requires preparation of an environmental assessment, provides opportunity for other agency and public review and input into decisions regarding how the action should be undertaken. Accordingly, DOE is withdrawing its proposal to categorically exclude restoration, creation, or enhancement of a small wetland, as well as its proposal to make a conforming language change in C9.

• Proposed B1.33 (Final B1.32). Traffic flow adjustments, existing roads.

One commenter questioned whether DOE would extend the categorical exclusion to include road adjustments. This categorical exclusion is limited to DOE sites and applies only to adjustments of traffic flow, such as installation of traffic signs, signal lights, and turning lanes. It does not apply to general road adjustments, such as road widening and realignment. In order to clarify this point, DOE has modified this categorical exclusion to include turning lanes as an example of a categorically excluded action, and to specifically exclude general road adjustments.

The commenter also stated that increased traffic flow could result in increased risk of exposure to the public. DOE believes traffic flow adjustments could not, by their nature, alter traffic patterns in such a manner as to produce significantly increased public exposures. In response to a comment that commercial trucking terminals should be excluded, DOE notes that it does not operate commercial trucking terminals.

One commenter suggested adding this activity to B1.3 on routine maintenance. DOE does not consider traffic flow adjustments to constitute routine maintenance.

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

In response to several comments, DOE has clarified that ''other cognizant agency'' would include a state that regulates radioactive materials under an agreement with the Nuclear Regulatory Commission (Commission). In addition, DOE intends to include other agencies that may, under perhaps unusual circumstances, have responsibilities regarding the materials that are included in the categorical exclusion.

One commenter expressed concern that this categorical exclusion could apply to a wide variety of actions that private parties might conduct. DOE's NEPA implementing procedures, however, apply only to actions that DOE would conduct.

Another commenter expressed concern about cumulative effects from applying this categorical exclusion repeatedly. Because DOE is requested to perform the actions covered under B2.6 only occasionally—e.g., when a Commission licensee cannot or will not safely manage the material—DOE does not expect these activities to have significant cumulative effects. This commenter also stated that the justification for one of the examples cited in the proposed categorical exclusion—''packaged radioactive waste not exceeding 50 curies''—was not apparent and undefined as to impact. DOE possesses all the skills and equipment required to handle, transport, and store such materials safely, and would be involved in such activities only occasionally. Moreover, the Commission has found that its licensees normally possess and manage such materials without significant impacts. For these reasons, DOE believes it is appropriate to categorically exclude its activities regarding all of the materials the Commission has listed in 10 CFR 51.22(14).

Finally, a commenter suggested that DOE should apply the categorical exclusion to packaging, transportation, and storage of DOE's own radioactive materials that are the same kind as listed in the Commission's categorical exclusion. DOE is taking this suggestion under advisement and may consider it in a future rulemaking.

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

DOE proposed to modify B3.6 (indoor bench-scale research projects) by combining it with B3.10 (small-scale research and development projects and small-scale pilot projects) and to include the siting, construction, operation, and decommissioning of facilities to house such projects. DOE also proposed to delete the descriptive phrase ''for generally less than two years'' in reference to the length of time a categorically excluded pilot project typically could be conducted.

One commenter stated that this categorical exclusion as proposed may be susceptible to abuse, e.g., by permitting a pilot project to evolve into a full-scale operation without public environmental review. DOE believes that this example would be a misapplication of the categorical exclusion. To clarify the meaning of ''pilot project,'' DOE is inserting the descriptive phrase ''generally less than two years.'' Thus, as revised, the only modification DOE is making to the existing categorical exclusions is combining B3.6 and B3.10, and expanding the combined categorical exclusion to include the siting, construction, operation, and decommissioning of facilities that would house the indoor bench-scale research, conventional laboratory operations, small-scale research and development, and small-scale pilot projects. DOE received no comments on these aspects of the proposed modification.

Several commenters questioned the definition of ''small-scale'' and ''pilot projects.'' One commenter questioned whether ''bench-scale'' includes the use of large pieces of equipment. The meaning of these terms is not changing from the existing regulations. DOE notes, however, that scale refers to the magnitude of the activity, e.g., the amount of materials consumed, waste produced, air emissions, and effluents. Further, the size of the equipment would be relevant in this context only if it affected the input of material and output of waste, so as to produce potentially significant physical impacts. See also the discussion of ''small-scale'' in Section III.E.

Another commenter expressed concern that the nature of research activities could involve new and untried processes. If a proposed research action had the potential to involve unique or unknown risks, then it would trigger the ''extraordinary circumstances'' provision in § 1021.410(b)(2), and thus would not be eligible for a categorical exclusion.

One commenter stated that there is an apparent conflict between B3.6 and C12. DOE notes that B3.6 specifically covers ''small-scale pilot projects (generally less than two years),'' constructed in an already developed area. C12, however, refers to larger scale, longer term projects that are not restricted to an already developed area. DOE is adding a specific reference to C12 in B3.6 to call attention to the differences between them.

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

Two commenters recommended that DOE remove the word ''generally'' from the phrase ''generally less than 100 MeV,'' stating that the proposed language would permit categorically excluding much higher energy machines than 100 MeV (million electron-volts).

DOE has restated the condition to read ''less than approximately 100 MeV,'' which better reflects DOE's intention and addresses the commenters' concerns. See also the discussion in Section III.E.

Another commenter welcomed the proposed amendment and recommended adding to this proposed categorical exclusion ''maintenance and remedial actions [involving particle and electron beam accelerators] which have the incidental effect of improving machine performance within design criteria.'' DOE intends that the language of B3.10, as proposed, covers such actions as long as there is no increase in primary beam energy or current.

Finally, a commenter requested that the proposed categorical exclusion be restated in terms that relate to impacts such as land requirements and radioactive emissions rather than beam energy (i.e., 100 MeV) as proposed, stating that the proposed formulation would not be very meaningful to the public. Accelerators fitting this class of actions typically are room-size and often are installed in existing buildings at hospitals and universities. On the basis of its experience, the language of this proposed amendment, and the general restrictions on the application for categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), DOE believes that the covered actions will not present any significant land use or radiation effects issues.

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

Several commenters expressed concern about the potential environmental, health, and socioeconomic impacts of microbiological and biomedical facilities and the lack of opportunity for public involvement. One commenter sought clarification regarding DOE's statement in the preamble to the proposed rulemaking that these facilities generally do not handle ''extremely dangerous materials.'' Another commenter urged DOE not to categorically exclude laboratories that are rated Biosafety Level 1 through 4.

All microbiological laboratories are rated Biosafety Level 1 through 4. Level 1 handles the least dangerous agents. To clarify what is intended by Biosafety Levels 1 and 2, the following definitions were extracted from Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers for Disease Control and Prevention, and the National Institutes of Health: Publication No. (CDC) 93–8395. Biosafety Level 1 is assigned to facilities in which work is done with defined and characterized strains of viable microorganisms not known to cause disease in healthy adult humans (e.g., *Bacillus subtilis, Naeleria gruberi,* and infectious canine hepatitis). This designation represents a basic level of containment that relies on standard microbiological practices with no special primary or secondary barriers recommended, other than a sink for handwashing. Biosafety Level 2 is assigned to facilities in which work is done with the broad spectrum of indigenous moderate-risk agents present in the community and associated with human disease of varying severity (e.g., Hepatitis B virus, salmonellae and *Toxoplasma* spp.). This designation requires the use of splash shields, face protection, gowns and gloves, as appropriate, and the availability of secondary barriers such as handwashing facilities and laboratory waste decontamination facilities. Given these controls, DOE believes that it is appropriate to categorically exclude Biosafety Level 1 and 2 laboratories from further NEPA review, provided that all of the integral elements of a categorical exclusion (appendix B, B(1)–B(4)) are met.

Another commenter asked for a clarification of ''an already developed area.'' In particular, this commenter asked if it referred to a metropolitan area, residential area, commercially developed area, or existing biomedical facility. As discussed previously, ''an already developed area'' refers to an area ''where active utilities and currently used roads are readily accessible.'' DOE has clarified the categorical exclusion accordingly. Facilities that would be eligible for this categorical exclusion could be sited in a metropolitan, residential, or commercially developed area or in an existing biomedical facility, as long as the area is already developed.

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

A commenter asked whether DOE intends to conduct new magnetic fusion experiments at existing facilities under this proposed categorical exclusion, and indicated that an environmental assessment or environmental impact statement is required to protect the public and worker health and safety in light of impacts from exposure to electromagnetic fields. DOE intends to categorically exclude such experiments at existing facilities. Based on its experience with such activities, DOE believes that magnetic fusion experiments do not pose an electromagnetic field or other hazard to the public. DOE routinely provides workers with adequate training and controlled conditions to conduct such work safely.

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

DOE proposed to add gas wells to this categorical exclusion, and one commenter stated that DOE should consider possible risks to public health and safety before doing so. This categorical exclusion applies only to the modification (e.g., installation of different chokes and other wellhead equipment) or abandonment of existing wells and does not include workover (see proposed B5.12) or expansion. Therefore, the inclusion of gas will not result in any significant impacts.

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

DOE proposed to add natural gas and steam pipelines and to remove references to the specific existing facilities to which the pipelines would be connected. One commenter expressed concern about the end point facilities of the pipeline segments and how such facilities would affect the impacts. The commenter stated that connecting pipeline segments without regard to the impacts of the end point facilities is comparable to approval of a sewer pipe without knowledge of the discharge point. DOE notes that this categorical exclusion applies to the construction and operation of short segments of pipelines between existing DOE facilities and existing transportation, storage, or refining facilities within a single industrial complex and within existing rights-of-way. Because both end points must be existing facilities, DOE believes that the potential impacts of constructing and operating short pipeline segments between such facilities do not depend on the type of facility and will not cause significant environmental impacts. There would be no discharges to the environment from these pipelines.

- Proposed Clarification B5.9. Temporary exemption for any electric powerplant;

- Proposed Clarification B5.10 Certain permanent exemptions for any existing electric powerplant;

- Proposed Clarification B5.11 Permanent exemption for mixed natural gas and petroleum;

• Proposed Modification (Removal) B5.12 Permanent exemption for new peakload powerplant;

• Proposed Modification (Removal) B5.13 Permanent exemption for emergency operations;

• Proposed Modification (Removal) B5.14 Permanent exemption for meeting scheduled equipment outages;

• Proposed Modification (Removal) B5.15 Permanent exemption due to lack of alternative fuel supply; and

• Proposed Modification (Removal) B5.16 Permanent exemption for new cogeneration powerplant.

DOE proposed to clarify or modify (i.e., remove) these categorical exclusions because they involve the grant or denial by DOE of certain exemptions under the Power Plant and Industrial Fuel Use Act of 1978 (PIFUA), which was amended by Congress and now applies only to base load power plants. It no longer applies to other types of power plants or to major fuel-burning installations. Some commenters opposed the retention of B5.9, B5.10, and B5.11 in their modified state on the basis that they appear to exempt multiple actions from an environmental assessment or environmental impact statement under the guise of energy conservation or expressed concerns about cumulative impacts, connected actions, or extraordinary circumstances. DOE believes that the original rationale for these categorical exclusions, based on experience with actual cases, remains valid and thus believes that they should be retained for situations where the law provides for exemptions (i.e., base load power plants). Another commenter expressed concern regarding the proposed removal of existing B5.12 through B5.16. While DOE acknowledges this concern, it is nonetheless appropriate for DOE to conform its NEPA regulations to changes in the law. These categorical exclusions are being clarified or removed from appendix B because under PIFUA, as amended, DOE no longer has authority to grant or deny PIFUA exemptions except in cases involving base load power plants.

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

DOE proposed a new categorical exclusion covering the workover of existing oil, gas, or geothermal wells on existing wellpads where the work ''would not disturb adjacent habitat.'' One commenter requested that the word ''endanger'' be included in the proposed categorical exclusion. DOE believes that the words ''disturb'' and ''endanger'' are both subject to various interpretations. DOE is therefore modifying the categorical exclusion to use instead ''adversely affect,'' which reflects DOE's original intent and is consistent with language elsewhere in the DOE NEPA rule.

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

DOE proposed to change the way in which it defines the scope of the categorical exclusion from ''removal actions under CERCLA * * * and removal-type actions similar in scope'' to ''small-scale, short-term cleanup actions under RCRA, the Atomic Energy Act, or other authorities'' without naming CERCLA. This proposal reflects DOE's policy (see Section III.B) of relying on the CERCLA process for review of actions to be taken under CERCLA. DOE believes that the reference in the current regulations to CERCLA removal actions is confusing in the context of this policy. DOE also proposed to expand the limits of the categorical exclusion to actions generally costing up to $5 million over as many as 5 years.

One commenter supported the modification to clarify application to RCRA cleanup actions and to increase the cost and time limitations. Another commenter stated that DOE should integrate the CERCLA and NEPA processes. As discussed in Section III.B, DOE's CERCLA/NEPA policy allows for case-by-case integration of the CERCLA and NEPA processes. Therefore, although CERCLA is not referenced in the new categorical exclusion, DOE may apply categorical exclusion B6.1 to certain CERCLA actions. DOE has not changed its proposed modification to the categorical exclusion based on this comment.

This commenter also requested that DOE retain the time and cost limits in the existing categorical exclusion (i.e., the CERCLA regulatory cost and time limits of $2 million and 12 months), but requested that if DOE does expand the limits to $5 million and 5 years as proposed, the language of the categorical exclusion should read ''expand the limits to'' and that the categorical exclusion's limits be stated as maximum cut off points. As discussed in Section III.E, DOE's use of numerical quantities are intended to provide a reasonable degree of flexibility and should not be applied as absolute limits. DOE has retained the proposed cost and time factors in the final categorical exclusion.

Another commenter stated that the applicability of a categorical exclusion to an action should be based on the site-specific conditions of the action, not on its cost or duration. The cost and time descriptions in the proposed categorical exclusion are simply indicators of the size and type of actions DOE intends to categorically exclude, not definitions of the actions themselves. Categorical exclusions listed in appendix B include integral elements that are site specific, and categorical exclusions will be applied based on site-specific factors, such as the existence of any extraordinary circumstances, rather than on the cost or duration of the action.

One commenter expressed concern that the use of terms ''small-scale,'' ''short-term,'' and ''generally'' are too subjective. The use of such descriptive terms is discussed in Section III.E.

One commenter requested that DOE state in example B6.1(b) that it would use the definition of hazardous waste from whichever regulatory agency (e.g., EPA or a state agency) provided the more protective definition for purposes of protecting public health and safety, or had greater authority to regulate hazardous waste. DOE proposed to revise the example to reflect the fact that hazardous waste is defined under one of two possible regulatory authorities, either 40 CFR Part 261 or applicable state requirements, depending on whether EPA or a state exercises primary regulatory authority. DOE does not have a choice as to which definition it must abide by. DOE is retaining the proposed language in the final categorical exclusion.

This commenter also stated that DOE did not specifically exempt high-level radioactive waste, transuranic waste, spent nuclear fuel, waste from reprocessing spent nuclear fuel, and uranium mill tailings in its language pertaining to waste cleanup and storage and requested clarification on the scope of the categorical exclusions in this regard. DOE agrees that it should clarify the scope of the categorical exclusion and has added the phrase ''other than high-level radioactive waste and spent nuclear fuel'' to the categorical exclusion. DOE believes that it can appropriately apply the categorical exclusion to cleanup activities involving transuranic waste and uranium mill tailings.

This commenter also expressed concern that this categorical exclusion allowed more discretionary authority to DOE for its waste management actions with less public notification, involvement, and accountability. DOE's response to comments relating to the reduction of public involvement opportunities is in Section III.B.

See also the discussion of categorical exclusion B6.9 for a modification of example B6.1(g).

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

DOE proposed to replace the existing B6.4, which covers a very narrow class of waste storage actions, with a new and broader B6.4 that would have encompassed the activities to which the existing B6.4 applies. In response to comments on the proposed new B6.4, however, DOE has decided to narrow its scope in such a manner that retaining the existing B6.4 is necessary. Therefore, DOE is retaining the existing B6.4, and will list a new class of actions covering waste storage facilities (i.e., a ''reduced-scope'' version of the proposed B6.4) as B6.10. See the further discussion below.

• Proposed B6.4 (FinalB6.10) Siting/construction/operation/decommissioning of small waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

Several commenters expressed concern that this proposed categorical exclusion could apply to actions that individually may have significant impacts and especially would have significant cumulative impacts if a number of such facilities were built. Commenters also expressed concern regarding the location of the facility, type of waste, and the nature of the surrounding environment. On the other hand, a commenter who supported the proposal suggested that DOE clarify that an unlimited number of 50,000 square-foot facilities could be built under the categorical exclusion.

DOE generally agrees with the commenters who stated that the proposal was too broad. However, DOE notes that significant new waste-producing activities and significant transfers of waste among sites are subject to NEPA analysis and would not be categorically excluded. Provisions for storing such waste would be within the scope of such analyses (or reviewed under CERCLA, if the waste would result from CERCLA environmental restoration activities), and storage impacts and alternatives would be appropriately assessed.

In light of the comments, DOE has decided to limit the applicability of proposed categorical exclusion B6.4 (final B6.10) to upgrades or replacement of storage facilities for waste that is already present at a DOE site at the time the storage capacity is to be provided. Providing new or upgraded storage facilities for existing wastes under this categorical exclusion would only improve upon previous storage conditions. Further, because the storage changes would not be associated with changes in waste type or waste quantity, providing new storage facilities or upgrades would not likely have cumulatively significant impacts. Storage facilities for newly generated waste from ongoing operations would not be categorically excluded, and any associated cumulative impacts would be considered in an appropriate NEPA analysis.

Several commenters questioned the basis for DOE's proposal to categorically exclude a particular size of storage facility, namely approximately 50,000 square feet or less. In recent years DOE has evaluated and constructed a variety of new waste storage facilities. These are typically uncomplicated light-weight buildings on a concrete pad floor that provide open floor storage space for waste packages. They are designed, and waste is emplaced, with safety as a priority. DOE chose 50,000 square feet as a representative size of such facilities, intending not to categorically exclude facilities that might be unusually large.

In response to commenters' objections regarding the word ''generally'' in the proposed phrase ''generally not to exceed an area of 50,000 square feet,'' DOE has changed the phrase to read ''less than approximately 50,000 square feet in area,'' which more accurately conveys DOE's original intent. See also the discussion in Section III.E.

As proposed, the categorical exclusion would not apply to storage of high-level radioactive waste or spent nuclear fuel. Several commenters questioned whether the categorical exclusion would apply to other types of waste. One commenter suggested that DOE not apply this categorical exclusion to transuranic wastes, fissile materials, and all other materials for which DOE is largely self-regulating. The commenter did not explain why self-regulation would be important to the determination at issue, and DOE believes that it is not. DOE has concluded, however, that storage facilities for wastes that require special precautions to prevent nuclear criticality should not be categorically excluded, and DOE is modifying the proposed categorical exclusion accordingly. For example, certain transuranic wastes that contain fissile materials may pose such concerns.

Finally, DOE has clarified its original intent to include under this categorical exclusion only storage facilities located at DOE sites, and also has deleted reference to ''activities connected to site operations,'' as commenters requested.

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

DOE proposed to clarify the existing B6.5 merely by adding cross-references to B6.4 and B6.6, not to change it substantively. A commenter, however, suggested that B6.5 should be expanded to include activities in which waste would be unpacked for purposes of characterization. DOE considers the comment to be outside the scope of this rulemaking, but may consider the suggestion in an appropriate future rulemaking.

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

Several commenters expressed concern that, in effect, this categorical exclusion would reduce opportunities for review by other agencies and the public, and that it might be applied to actions that could have adverse effects on public health and the environment. One commenter stated that contamination of groundwater is a potentially significant risk to public health and that DOE should not exclude such contamination issues from public participation opportunities and NEPA documentation requirements. One commenter expressed concern that application of this categorical exclusion would eliminate valuable input from natural resource agencies regarding effects from actions of this type on state-designated priority habitats. A related comment expressed concern that actions categorically excluded under B6.9 could be detrimental to valuable habitat or cultural resources.

As noted in the preamble to the proposed rulemaking, DOE has found that these actions normally have very local and environmentally beneficial effects and pose no potential for significant environmental impacts. With regard to potential impacts to sensitive environmental resources (such as priority habitat and cultural resources), DOE believes that integral condition B(4) in appendix B, which states that an action proposed for categorical exclusion must not adversely affect environmentally sensitive areas, would preclude use of this categorical exclusion when priority habitat and cultural resources may be adversely affected. Public involvement opportunities are discussed in Section III.B.

One commenter stated that it was unclear why the proposed categorical exclusion was not within the scope of B6.1, an existing categorical exclusion for small-scale cleanup actions (see modification of B6.1 above). DOE believes that certain groundwater

cleanup actions could indeed be categorically excluded under B6.1, if the proposed actions met the conditions of that categorical exclusion, i.e., there were existing facilities to treat the water and the proposed activities were to be completed in about 5 years or less. DOE believes it is also appropriate, however, to categorically exclude the siting, construction, and longer term operation of groundwater treatment and containment facilities and therefore proposed a separate categorical exclusion (i.e., B6.9) to define and cover those activities. DOE intends that the categorical exclusion would include mobile pumping and treatment facilities or pumping and treatment facilities that might be built and then removed when the action was stopped, and DOE used the phrase ''small-scale temporary measure'' to characterize these possibilities. DOE has added these facility descriptions to the examples in the final categorical exclusion. DOE agrees that the example of ''installing underground barriers'' in the proposed categorical exclusion is more appropriately considered as an action under B6.1. For this reason, DOE is adding ''underground barriers'' to the existing example B6.1(g) and is deleting it from proposed B6.9.

Another commenter stated that the meaning of ''small-scale temporary measure'' was vague. DOE's use of terms such as ''small-scale'' is discussed in Section III.E.

Classes of Actions Listed in Appendix C

- Proposed Modification (Removal) C1 Major projects.

One commenter expressed concern that DOE's proposal to remove ''Major Projects, as designated by DOE Order 4240.1'' from appendix C would result in the categorical exclusion of proposed actions currently requiring an environmental assessment or environmental impact statement.

The term ''Major Project'' was defined in DOE Order 4240.1, based primarily on cost characteristics. DOE no longer uses the term ''Major Project,'' and thus the existing C1 is no longer meaningful. Accordingly, DOE is removing C1. DOE will continue to prepare environmental impact statements, however, for ''major Federal actions significantly affecting the quality of the human environment'' as required under NEPA § 102(2)(C). Also, although DOE has eliminated the designation of ''Major Projects'' from the proposed actions for which an environmental assessment would normally be prepared, DOE will continue to prepare environmental assessments for the types of proposed actions formerly included within the definition of ''Major Projects.''

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

DOE originally proposed to amend this category to conform to proposed B1.32, i.e., to distinguish NEPA review for large versus small wetlands. As noted in the discussion on B1.32, DOE is withdrawing its proposal to categorically exclude restoration, creation, or enhancement of a small wetland. Similarly, DOE is also withdrawing its proposal to make a conforming language change in C9.

- Proposed Modification (Removal) C10 Siting/construction/operation/ decommissioning of synchrotron radiation accelerator facility; and
- Proposed Modification C11 Siting/construction/operation/ decommissioning of low- or medium-energy particle acceleration facility with primary beam energy generally greater than 100 MeV.

DOE proposed to consolidate the existing C10 and C11 into C11 (reserving C10), and make the resulting C11 applicable for low to medium energy particle accelerators, consistent with the proposed categorical exclusion B3.10 for accelerators with energy less than approximately 100 MeV. One commenter stated that the existing regulations would have required an environmental impact statement under existing C1, which covers ''Major Projects,'' and DOE proposed to eliminate C1. The commenter is mistaken because ''Major Projects'' would normally have required an environmental assessment under C1, not an environmental impact statement. As noted above, DOE is removing C1. See previous discussion under C1.

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

DOE proposed to modify C14 to conform to proposed B1.26. A commenter objected to use of the word ''generally'' in both listings. DOE has replaced the phrase ''generally exceeding'' with ''greater than approximately,'' which reduces the agency's discretion, as the commenter requested, conforms with changes to proposed B1.26 discussed above, and better expresses DOE's original intent. DOE also revised C14 to include small wastewater and surface water treatment facilities, whose liquid discharges are not subject to external regulation, to conform with changes to proposed B1.26 made in response to comments. See also the discussion in Section III.E.

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

DOE's proposed amendments were intended to clarify the meaning of ''onsite'' in the existing C16, and to make C16 consistent with proposed B6.4 (now final B6.10), under which a subset of small-scale actions included in existing C16 would be categorically excluded. DOE does not agree with a commenter's statements to the effect that this proposal would eliminate public participation for the siting of centralized and regional treatment and storage facilities and protect its contractors and itself at the expense of the public. DOE provides for appropriate public involvement in its environmental assessment process. In accordance with another commenter's suggestion, DOE is providing clearer direction by replacing the phrase ''generally greater than'' with ''greater than approximately,'' which also better expresses DOE's original intent. See also the discussion in Section III.E.

Classes of Actions Listed in Appendix D

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

DOE proposed to amend D10 so that there would be no presumption that an EIS would be prepared for siting, constructing, operating, and decommissioning of onsite replacement storage facilities or upgrading storage facilities for spent nuclear fuel. DOE proposals for these types of facilities have varied too widely to support a general conclusion that such proposed actions normally require the preparation of an environmental impact statement. Thus, under DOE's proposal, onsite replacement or upgrade of storage facilities for spent nuclear fuel would no longer require the preparation of an environmental impact statement; rather, DOE would decide on a case-by-case basis (i.e., based on the particular project, site, and circumstances) whether to prepare an environmental assessment or an environmental impact statement. Contrary to one commenter's presumption, DOE's decision not to assign a particular level of NEPA documentation to onsite replacement or upgrading of storage facilities for spent nuclear fuel would never result in such activities being categorically excluded.

While one commenter supported the proposed modification, several others opposed it. Some commenters stated

that the use of the term ''major'' in D10 already provided DOE with the flexibility to prepare an environmental assessment in certain circumstances. In response, DOE notes that the term ''major'' refers to the size and/or cost of a particular project, not to whether its impacts will be significant. Thus, it is possible to have a large, costly DOE project that, because of its location or technical characteristics, is not likely to have significant environmental effects. In that case (such as replacement or upgrade of a spent nuclear fuel storage facility), DOE believes it is more appropriate to prepare an environmental assessment. Two commenters expressed concern that replacement or upgrade of spent nuclear fuel storage facilities could result in expanded spent nuclear fuel storage capacity and that existing storage sites may become long-term storage sites in the absence of a permanent repository. DOE did not intend to permit expanded storage under this exclusion and has modified its proposal to add ''where such replacement or upgrade will not result in increased storage capacity.'' Whether the storage of spent nuclear fuel may in fact become long-term storage is outside the scope of this rulemaking.

Another commenter stated that D10 must not be replaced by any less stringent process for public input and involvement. DOE will prepare either an environmental assessment or an environmental impact statement for replacement or upgrades of spent nuclear fuel storage facilities, depending on the circumstances. DOE provides for public involvement in both its environmental assessment and environmental impact statement processes.

Other commenters contended that DOE had proposed that an environmental assessment would be applicable for handling high-level waste. DOE's proposed modification deals with replacement and upgrades of storage facilities for spent nuclear fuel, not high-level waste. Under the original D10 and as amended, DOE would normally prepare an environmental impact statement for the siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste.

One commenter questioned why replacement or upgrades of high-level waste storage facilities are not treated the same as similar facilities for spent nuclear fuel, and whether DOE's proposed modification was designed to justify the preparation of an environmental assessment for a particular spent nuclear fuel facility at the Idaho National Engineering Laboratory, rather than an environmental impact statement. DOE's approach to formulating typical classes of actions for listing in subpart D is described in Section III.E, above. DOE does not formulate such classes of actions, or proposed additions and modifications, with the intention of securing coverage for a specific future or past action under a particular class of actions.

IV. Procedural Review Requirements

A. Environmental Review Under the National Environmental Policy Act

These amendments to the DOE NEPA rule establish, modify, and clarify procedures for considering the environmental effects of DOE actions within the Department's decision making process. Implementation of this rule will not affect the substantive requirements imposed on DOE or on applicants for DOE licenses, permits, and financial assistance, and this rule will not result in environmental impacts. Therefore, DOE has determined that this rule is covered by the categorical exclusion found at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to procedural rulemaking. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 USC 601 et seq.) requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 USC 603). The rule modifies existing policies and procedural requirements for DOE compliance with NEPA. The rule makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that the rule will not have a ''significant economic impact on a substantial number of small entities.''

C. Review Under the Paperwork Reduction Act

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

D. Review Under Executive Order 12612

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987) requires that regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. These amendments will affect Federal NEPA compliance procedures, which are not subject to state regulation. The amendments will not have any substantial direct effects on states and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 12866

The final amendments were reviewed in accordance with Executive Order

12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993), which requires a Federal agency to prepare a regulatory assessment, including the potential costs and benefits, of any ''significant regulatory action.'' The order defines ''significant regulatory action'' as any regulatory action that may have an annual effect on the economy of $100 million or more and may adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments in a material way; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; or raise novel legal or policy issues arising out of legal mandates (section 3(f)).

These amendments will modify already existing policies and procedures for compliance with NEPA. The amendments contain no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or similar actions. Therefore, DOE has determined that the incremental effect of these amendments to the DOE NEPA regulations will not have the magnitude of effects on the economy, or any other adverse effects, to bring this proposal within the definition of a ''significant regulatory action.''

G. Review Under the Unfunded Mandates Reform Act

Under section 205 of the Unfunded Mandates Reform Act of 1995 (2 USC 1533), Federal agencies are required to prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Because the DOE NEPA regulations affect only DOE and do not create obligations on the part of any other person or government agency, neither state, local or tribal governments nor the private sector will be affected by amendments to these regulations. Therefore, DOE has determined that further review under the Unfunded Mandates Reform Act is not required.

H. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of Small Business Regulatory Enforcement Fairness Act of 1996 (Act) (5 USC 801). The Office of Management and Budget has determined that the final regulations do not constitute a ''major rule'' under the Act (5 USC 804). DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

List of Subjects in 10 CFR Part 1021

Environmental impact statement.

Issued in Washington, DC, June 28, 1996.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

For reasons set out in the preamble, 10 CFR part 1021 is amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

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

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

§ 1021.104 [Amended]

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

3. Section 1021.105 is revised to read as follows:

§ 1021.105 Oversight of Agency NEPA activities.

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

4. Section 1021.310 is revised to read as follows:

§ 1021.310 Environmental impact statements.

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart. DOE shall include in draft and final EISs a disclosure statement executed by any contractor (or subcontractor) under contract with DOE to prepare the EIS document, in accordance with 40 CFR 1506.5(c).

§ 1021.311 [Amended]

5. Section 1021.311 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

* * * * *

§ 1021.312 [Removed and reserved]

6. Section 1021.312 is removed and reserved.

7. In § 1021.315 paragraphs (b) and (d) are revised and (e) is added to read as follows:

§ 1021.315 Records of decision.

* * * * *

(b) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

* * * * *

(d) No action shall be taken until the decision has been made public. DOE may implement the decision before the ROD is published in the Federal Register if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media).

(e) DOE may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD is subject to the provisions of paragraphs (b), (c), and (d) of this section.

§ 1021.322 [Amended]

8. Section 1021.322 is amended by removing paragraph (b)(1), and redesignating paragraphs (b)(2) through (b)(5) as paragraphs (b)(1) through (b)(4).

9. Appendix A to Subpart D, paragraph A7, is revised to read as follows:

Appendix A to Subpart D to Part 1021—Categorical Exclusions Applicable to General Agency Actions

* * * * *

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

* * * * *

10. Appendix B to Subpart D, is amended to revise the Table of Contents entries for B1.8, B1.13, B1.22, B3.6, B3.10, B5.3, B5.5, B5.9, B5.10, B5.12, B6.1, and B6.5; add B1.23 through B1.32, B2.6, B3.12, B3.13, B6.9, and B6.10; and remove B5.13 through B5.16, to read as follows:

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

Table of Contents

* * * * *

B1.8 Modifications to screened water intake/outflow structures

* * * * *

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

* * * * *

B1.22 Relocation of buildings

B1.23 Demolition/disposal of buildings

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

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

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

B1.27 Disconnection of utilities

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

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

B1.30 Transfer actions

B1.31 Relocation/operation of machinery and equipment

B1.32 Traffic flow adjustments, existing roads

* * * * *

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 less than approximately 100 MeV

* * * * *

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

B3.13 Magnetic fusion experiments, no tritium fuel use

* * * * *

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

* * * * *

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

* * * * *

B6.5 Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste

* * * * *

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

B6.10 Siting/construction/operation/decommissioning of small upgraded or replacement waste storage facilities

* * * * *

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

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

* * * * *

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

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions.

* * * * *

(4) * * *

(iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;

* * * * *

12. Appendix B to Subpart D, section B1, is amended by revising the introductory text to paragraph B1.3, paragraphs B1.3(n) and (o), B1.8, B1.13, B1.15, B1.18, B1.21, and B1.22, and adding paragraphs B1.23 through B1.32, to read as follows:

B1. Categorical Exclusions Applicable to Facility Operation

* * * * *

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

* * * * *

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

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

* * * * *

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

* * * * *

B1.13 Construction, acquisition, and relocation of onsite pathways and short onsite access roads and railroads.

* * * * *

B1.15 Siting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; employee health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (including security posts); fire protection; and similar support purposes, but excluding facilities for waste storage activities, except as provided in other parts of this appendix.

* * * * *

B1.18 Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, if there would be no drawdown other than in the immediate vicinity of the pumping well, no

resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well.

* * * * *

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

B1.22 Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area (where active utilities and currently used roads are readily accessible).

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

B1.24 Transfer, lease, disposition or acquisition of interests in uncontaminated permanent or temporary structures, equipment therein, and only land that is necessary for use of the transferred structures and equipment, for residential, commercial, or industrial uses (including, but not limited to, office space, warehouses, equipment storage facilities) where, under reasonably foreseeable uses, there would not be any lessening in quality, or increases in volumes, concentrations, or discharge rates, of wastes, air emissions, or water effluents, and environmental impacts would generally be similar to those before the transfer, lease, disposition, or acquisition of interests. Uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.

B1.25 Transfer, lease, disposition or acquisition of interests in uncontaminated land for habitat preservation or wildlife management, and only associated buildings that support these purposes. Uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.

B1.26 Siting, construction (or expansion, modification, or replacement), operation, and decommissioning of small (total capacity less than approximately 250,000 gallons per day) wastewater and surface water treatment facilities whose liquid discharges are externally regulated, and small potable water and sewage treatment facilities.

B1.27 Activities that are required for the disconnection of utility services such as water, steam, telecommunications, and electrical power after it has been determined that the continued operation of these systems is not needed for safety.

B1.28 Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste, such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste. These activities would not include conditioning, treatment, or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Siting, construction, operation, and decommissioning of a small (less than approximately 10 acres) onsite disposal facility for construction and demolition waste which would not release substances at a level, or in a form, that would pose a threat to public health or the environment. These wastes, as defined in the Environmental Protection Agency's regulations under the Resource Conservation and Recovery Act, specifically 40 CFR 243.101, include building materials, packaging, and rubble.

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

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

B1.32 Traffic flow adjustments to existing roads at DOE sites (including, but not limited to, stop sign or traffic light installation, adjusting direction of traffic flow, and adding turning lanes). Road adjustments such as widening or realignment are not included.

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

B2. Categorical Exclusions Applicable to Safety and Health

* * * * *

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

14. Appendix B to Subpart D, section B3, is amended by revising the introductory text to paragraph B3.1, B3.3, B3.6, and B3.10, and adding new paragraphs B3.12 and B3.13, to read as follows:

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

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

* * * * *

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

* * * * *

B3.6 Siting, construction (or modification), operation, and decommissioning of facilities for indoor bench-scale research projects and conventional laboratory operations (for example, preparation of chemical standards and sample analysis); small-scale research and development projects; and small-scale pilot projects (generally less than two years) conducted to verify a concept before demonstration actions. Construction (or modification) will be within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). See also C12.

* * * * *

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

* * * * *

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

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

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

15. Appendix B to Subpart D, section B5, is amended by revising paragraphs B5.3, B5.5 and B5.9 through B5.12 and removing B5.13 through B5.16, to read as follows:

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

* * * * *

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

* * * * *

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

* * * * *

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

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

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

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

16. Appendix B to Subpart D, section B6, is amended by revising the introductory text to paragraph B6.1, paragraph B6.1 (b), (g), and (j), B6.5, and adding paragraphs B6.9 and B6.10, to read as follows:

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

B6.1 Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, less than approximately 5 million dollars in cost and 5 years duration, to reduce risk to human health or the environment from the release or threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (e.g., incineration), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

* * * * *

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

* * * * *

(g) Confinement or perimeter protection using dikes, trenches, ditches, diversions, or installing underground barriers, if needed to reduce the spread of, or direct contact with, the contamination;

* * * * *

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

* * * * *

B6.5 Siting, construction (or modification or expansion), operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, if operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10, and C16) or the handling of spent nuclear fuel.

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water, by mobile units or facilities that are built and then removed at the end of the action.

B6.10 Siting, construction (or modification), operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) at a DOE site within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. See also B6.4, B6.5, B6.6, and C16.

17. Appendix C to Subpart D is amended in the Table of Contents by removing and reserving the entries for C1 and C10 and by revising the entries for C11, C14 and C16 to read as follows:

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

Table of Contents

18. Appendix C to Subpart D to Part 1021 is amended by removing and reserving paragraphs C1 and C10 and by revising C11, C14 and C16, to read as follows:

C1 [Removed and reserved].

* * * * *

C10 [Removed and reserved].

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

* * * * *

C14 Siting, construction (or expansion), operation, and decommissioning of wastewater, surface water, potable water, and sewage treatment facilities with a total capacity greater than approximately 250,000 gallons per day, and of lower capacity wastewater and surface water treatment facilities whose liquid discharges are not subject to external regulation.

* * * * *

C16 Siting, construction (or modification to increase capacity), operation, and decommissioning of packaging and unpacking facilities (that may include characterization operations) and large storage facilities (greater than approximately 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage, packaging, or unpacking of spent nuclear fuel. See also B6.4, B6.5, B6.6, and B6.10.

19. Appendix D to Subpart D is amended to revise the Table of Contents

entries for D1 and D10 to read as follows:

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

Table of Contents

D1 Strategic Systems

* * * * *

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

* * * * *

20. Appendix D to subpart D to part 1021 is amended by revising paragraphs D1 and D10, to read as follows:

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

* * * * *

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

* * * * *

[FR Doc. 96–17285 Filed 7–8–96; 8:45 am]

BILLING CODE 6450–01–P