

[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 900

RIN 1901-AB36

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations for the timely coordination of Federal Authorizations for proposed interstate electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA). The proposed amendments are intended to improve the pre-application procedures and result in more efficient processing of applications.

DATES: Public comment on this proposed rule will be accepted until **INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**. The public workshop for this rulemaking will be held on [INSERT DATE].

ADDRESSES: You may submit comments, identified by RIN 1901-AB36, by any of the following methods:

1. Follow the instructions for submitting comments on the Federal eRulemaking Portal at <http://www.regulations.gov>.
2. Send e-mail to oeregs@hq.doe.gov. Include RIN 1901-AB36 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.

3. Address postal mail to U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, Mailstop OE-20, Room 8G-017, 1000 Independence Avenue, SW, Washington, DC 20585.

Due to potential delays in the delivery of postal mail, we encourage respondents to submit comments electronically to ensure timely receipt.

The public workshop for this rulemaking will be held in Washington, DC at the DOE Forrestal Building in Room , 1000 Independence Avenue, SW, Washington, DC.

This notice of proposed rulemaking and any comments that DOE receives will be made available on the website at: <http://www.xxxxx.html>. You may request a hardcopy of the workshop transcript or comments be sent to you via postal mail by contacting the DOE's Office of Electricity Delivery and Energy Reliability.

FOR FURTHER INFORMATION CONTACT: Julie A. Smith, PhD with the U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, Mailstop OE-20, Room 8G-017, 1000 Independence Avenue, SW, Washington, DC 20585; or oeregs@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. A number of acronyms and abbreviations are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms, acronyms, and abbreviations are defined as follows:

CEQ Council on Environmental Quality

CFR Code of Federal Regulations

DOE Department of Energy
EIS Environmental Impact Statement
EO Executive Order
EPAct Energy Policy Act of 2005
FERC Federal Energy Regulatory Commission
FPA Federal Power Act
FR Federal Register
IIP Integrated Interagency Pre-Application
MOU Memorandum of Understanding
NEPA National Environmental Policy Act
OMB Office of Management and Budget
PM Presidential Memorandum
PMA Federal Power Marketing Administration
RFI Request for Information
RRTT Rapid Response Team for Transmission
RTO Regional Transmission Operators

I. Background

II. Discussion of Proposed Rule

- A. General
- B. Applicability
- C. Definitions
- D. Integrated Interagency Pre-Application (IIP) Process
- E. Selection of NEPA Lead Agency
- F. IIP Process Administrative File

III.Regulatory Review

- A. Executive Orders 12866 and 13563
- B. National Environmental Policy Act
- C. Regulatory Flexibility Act
- D. Paperwork Reduction Act
- E. Unfunded Mandates Reform Act of 1995
- F. Treasury and General Government Appropriations Act, 1999
- G. Executive Order 13132
- H. Executive Order 12988
- I. Treasury and General Government Appropriations Act, 2001
- J. Executive Order 13211

IV.Approval of the Office of the Secretary

I. Background

The Energy Policy Act of 2005 (Public Law 109-58) (EPAct) established a national policy to enhance and, to the extent possible, increase the coordination and communication among Federal agencies with authority to site electric transmission facilities. The policies set forth by Congress in EPAct reinforced policies announced in EO 13212, Actions to Expedite Energy-Related Projects (66 FR 28357, May 22, 2001) by mandating each agency with the authority to issue Federal authorizations to ensure the timely and coordinated review and permitting of electric transmission facilities. Section 1221(a) of EPAct added a new section 216(h) to the Federal Power Act (16 U.S.C. 791-828c) (FPA), which sets forth provisions relevant to the siting of interstate electric transmission facilities. Section 216(h) of the FPA (16 U.S.C. 824p(h)), “Coordination of Federal Authorizations for Transmission Facilities,” provides for DOE to coordinate all Federal authorizations and related environmental reviews needed for siting

interstate electric transmission projects, including National Environmental Policy Act of 1969 (NEPA) reviews.

Section 216(h) of the FPA provides for the coordination of Federal transmission siting determinations for project proponents seeking permits, special use authorizations, certifications, opinions, or other approvals required under Federal law to site an electric transmission facility. Section 216(h)(3) requires the Secretary, to the maximum extent practicable under Federal law, to coordinate the Federal authorization and review process with any Indian tribes, multi-state entities, and state agencies that have their own separate permitting and environmental reviews. Section 216(h)(4)(C) further requires that DOE establish an expeditious pre-application mechanism to allow project proponents to confer with Federal agencies involved, and for each such agency to communicate to the proponent any information needs relevant to a prospective application and key issues of concern to the agencies and public. The DOE proposes to amend its existing regulations to implement the Integrated Interagency Pre-application (IIP) process described in section II.

On September 19, 2008, DOE published an interim final rule establishing procedures under which prospective applicants may request that DOE coordinate interstate electric transmission facilities and related environmental reviews pursuant to FPA section 216(h) (73 FR 54456). The interim final rule became effective on October 20, 2008, and the regulations can be found at 10 CFR 900.1 through 900.6. Also on September 19, 2008, DOE published a notice of proposed rulemaking (NOPR), which proposed amendments to the interim final rule (73 FR 54461) that was intended to amend the interim final rule. Comments were filed in response to the 2008

interim final rule and 2008 NOPR. DOE addressed the comments submitted in response to both the interim final rule and the 2008 NOPR in another NOPR issued on December 13, 2011 (76 FR 77432).¹

On October 23, 2009, DOE and eight other Federal agencies with permitting or other Federal authorization responsibility for the siting of electric transmission facilities entered into a “Memorandum of Understanding Regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land” (2009 MOU). The signatories to the 2009 MOU were DOE, the Departments of Defense, Agriculture (USDA), the Interior (DOI), and Commerce, the Federal Regulatory Energy Commission (FERC), the Environmental Protection Agency (USEPA), the Council on Environmental Quality (CEQ), and the Advisory Council on Historic Preservation.

The purpose of the 2009 MOU is to establish a framework to improve coordination among project proponents, Federal agencies, states, and tribes involved in the siting and permitting process for electric transmission facilities on Federal lands. The MOU is intended to improve uniformity, consistency, and transparency by describing each entity’s role and responsibilities when project proponents wish to build electric transmission facilities. Additionally, the MOU

¹ With the publication of this proposed rule, DOE withdraws a previously proposed rulemaking for the Coordination of Federal Authorizations for Electric Transmission Facilities in December 2011 (76 FR 77432; Dec. 13, 2011). In that action, DOE proposed requirements for permitting entities to inform DOE of requests for authorizations, established a process by which prospective Project Proponents may request DOE’s coordination under section 216(h) for Federal authorizations for interstate electric transmission facilities, provided for the selection of a Federal lead agency for the purposes of compiling a single environmental review document and consolidated administrative record for Qualifying Projects, as well as provided for the establishment of intermediate and final deadlines for the review of Federal authorization decisions, as well as established a date certain after which all permit decisions and related environmental reviews under all applicable Federal laws shall be completed in one year or as soon thereafter as permissible by law.

designates a “Lead Agency” serving as the single point-of-contact for coordinating all Federal environmental reviews necessary to site electric transmission facilities on Federal lands. In most instances, the Departments of Agriculture or Interior will be the Lead Agency, since they have jurisdiction over most of the Federal lands and right-of-ways for proposed electric transmission facilities. Nothing in this proposed rule modifies this aspect of the MOU. The proposed 10 CFR 900.5 would maintain the agreements reached in the MOU in the context of identifying and selecting a potential NEPA lead for environmental reviews once applications for Federal authorizations are received by Federal agencies.

In October 2011, in an effort to improve the performance of Federal siting, permitting, and review processes for infrastructure development, the President created a Rapid Response Team for Transmission (RRTT), a collaborative effort involving nine executive departments and agencies that are signatories to the 2009 MOU. The RRTT is an interagency group working to improve the efficiency, effectiveness and predictability of transmission siting, permitting, and review processes, in part through increasing interagency coordination and transparency. Lessons learned through the RRTT have informed the Integrated Interagency Pre-application (IIP) process proposed in this proposed rule.

On March 22, 2012, the President issued Executive Order 13604, “Improving Performance of Federal Permitting and Review of Infrastructure Projects” that directed all Federal executive departments and agencies to take all authorized steps, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting

economic growth. The EO emphasized early and active consultation with tribal, state, and local governments to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent rather than sequential reviews. The EO also noted that these elements must be integrated into project planning processes so that projects are designed to avoid, minimize or mitigate, to the extent practicable, adverse impacts on public health, security, historic properties and cultural resources, and the environment.

On May 17, 2013, the President issued a memorandum on Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures to the heads of Executive Departments and Agencies, that discussed agency best practices identified as a result of EO 13604. These best practices include, but are not limited to: early coordination among Federal agencies, as well as with tribal, state, and local governments; strategic outreach to stakeholders; project-planning processes and individual project designs that consider local and regional ecological planning goals; landscape- and watershed-level mitigation practices; sharing of scientific and environmental data in open-data formats to minimize redundancy, facilitate informed project planning, and identify data gaps early in the review and permitting process; and the application of best environmental and cultural practices as set forth in the governing statutes.

On June 7, 2013, the President issued a memorandum on Transforming our Nation's Electric Grid Through Improved Siting, Permitting, and Review to the heads of Executive Departments and Agencies. Building on the work of the RRTT, that memorandum strongly affirms that robust collaboration among Federal, tribal, state, and local governments must be a critical component of the Administration's effort to improve the Federal siting, permitting, and review processes for

transmission projects because a single project may cross multiple governmental jurisdictions over hundreds of miles. Section 4(a) of the memorandum directs that Member Agencies of the Steering Committee created under EO 13604 to develop an integrated, interagency pre-application process for significant onshore electric transmission projects requiring Federal approval. The process must be designed to: promote predictability in Federal siting, permitting, and review processes; encourage early engagement, coordination, and collaboration of Federal, tribal, state, and local governments, non-governmental organizations, and the public; increase the use of integrated project planning early in the siting, permitting, and review processes; facilitate early identification of issues that could diminish the likelihood that projects will ultimately be permitted; promote early planning for integrated and strategic mitigation plans; expedite siting, permitting, and review processes through a mutual understanding of the needs of all affected Federal agencies and tribal, state, and local governments; and improve environmental and cultural resource outcomes.

On August 29, 2013, DOE published a Request for Information (RFI) seeking information on a new draft IIP Process for significant onshore electric transmission projects requiring Federal authorizations developed by the RRTT. The proposed IIP Process presented in the RFI consisted of a series of four (4) iterative meetings, with direct federal involvement throughout the entire development of a transmission line project – from the identification of two substation endpoints (study area), to the selection of study corridors within a study area, and through identification of route alternative(s) within those study corridors. In response to comments received from the

public, Federal agencies, state agencies, environmental groups, and industry representatives,² DOE proposes a revised simplified IIP Process that consists of two (2) meetings that focus on projects in which study corridors and route alternatives are already under development. The IIP Process is discussed in section II of this proposed rule.

II. Discussion of Proposed Rule

A. General

10 CFR 900.1 states the purpose of the regulations, which is to provide a process for the timely coordination of Federal authorizations for proposed transmission facilities pursuant to section 216(h) of the FPA (16 U.S.C. 824p(h)), including the development of an early pre-application process in support of this coordination and the selection of a NEPA lead agency. These proposed regulations provide a framework for DOE to coordinate early cooperation and exchange of environmental information. These proposed regulations provide a framework for DOE to facilitate early cooperation and exchange of environmental information required to site qualified electric transmission facilities. These activities would occur prior to an applicant filing a request for authorization with Federal permitting agencies. The proposed regulations also provide an opportunity for non-Federal agencies (tribal, state, or local governments) to coordinate separate non-Federal permitting and environmental reviews with that of the Federal permitting agencies.

B. Applicability

Section 900.2 of the proposed rule explains when the provisions of part 900 would apply to the coordination of Federal authorizations. The provisions of part 900, which are consistent with

² Comments received in response to the 2013 RFI may be accessed at: <http://energy.gov/oe/downloads/comments-request-information-improving-performance-Federal-permitting-and-review>.

DOE's existing regulations and the 2009 MOU, would apply to Qualifying Projects, and would also apply to Other Projects at the discretion of the Assistant Secretary of DOE's Office of Electricity Delivery and Energy Reliability (OE-1). Both types of projects must be for transmission facilities that are used for the transmission of electric energy in interstate commerce, but Qualifying Projects are generally 230 kV or above and cross jurisdictions administered by more than one Federal Entity or MOU Signatory Agency.

Further, there would be no coordination role for DOE for Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas (ERCOT) interconnection because section 216(k) of the FPA states that section 216 of the FPA shall not apply within the ERCOT area (16 U.S.C. 824p(k)). Section 900.2 also provides that section 216(h) does not apply when an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or a pre-filing procedure has been initiated, under section 216(b) of the FPA (16 U.S.C. 824p(b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridor). In those circumstances, DOE has delegated its section 216(h) coordination authority to FERC and, in Order No. 689,³ FERC adopted regulations setting forth the procedures it will follow in such circumstances.

Section 900.2 also provides that this part does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, marine national monuments, or facilities constructed by Federal Power Marketing Administrations (PMAs).⁴

³ Department of Energy Delegation Order No. 00-004-00A, § 1.22, issued May 16, 2006.

⁴ DOE does not consider applications to the PMAs for transmission interconnections to be Federal authorization requests within the meaning of 216(h).

Section 216(h) does not affect any requirements of U.S. environmental laws, and in the above mentioned cases, does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

C. Definitions

Section 900.3 defines terms for this part.

D. Integrated Interagency Pre-Application (IIP) Process

Section 900.4 provides the procedures and information requirements of the proposed IIP Process. This section sets forth a proposed framework for implementing the proposed IIP Process, provisions for how DOE would fulfill its section 216(h) Lead Coordinating Agency role as defined in § 900.2 of this part, provisions describing expected outcomes of each IIP Initial Meeting and IIP Close-Out Meeting, and provisions describing the nature and purpose of products generated during the IIP Process (e.g., Final IIP Environmental Report).

For proponents of Qualifying Projects, participation in the IIP Process is voluntary. A Project Proponent initiates the IIP Process by submitting an Initiation Request as described in proposed § 900.4. A Project Proponent may elect to request initiation of the IIP Process for a Qualifying Project or Other Project as defined in § 900.2. The timing of the Initiation Request is determined by the Project Proponent.

When a Project Proponent elects to utilize the IIP Process, DOE will require the active participation of the Project Proponent to ensure effective coordination covered in this part. Active participation includes providing project-related and environmental information required as part of the Initiation Request to DOE. DOE must determine that adequate information has

been provided by the Project Proponent consistent with § 900.4 before DOE will initiate its coordination function under this part.

Information requested as part of the Initiation Request in this proposed rule retains many of the existing requirements contained in § 900.5 “Request for coordination” of the existing section 216(h) regulation (January 2011), and expands on some of those elements based on RRTT agency experience and information received in response to the August 2013 RFI (78 FR 53436). DOE will provide electronic access to a checklist, as well as other helpful information and publicly-available resources in a central electronic repository, as currently provided for in § 900.6(b) of the existing regulations at 10 CFR part 900.⁵

DOE will notify and request participation by all Federal Entities in the IIP Process that have a potential authorization or consultation for a Qualifying Project after DOE has reviewed and determined that an Initiation Request meets the informational requirements of §900.4(a) through (d). All Federal Entities notified by DOE as having a potential authorization or consultation required for the siting of a Qualifying Project will be expected to participate in the Initial Meeting and the Final Meeting, unless the notified agency clarifies in writing to DOE within seven (7) calendar days of notification that they do not have any involvement or have minimal

⁵ Electronic tools currently exist that may serve as a resource for the information required as a part of the IIP Process. For example, the Regulatory and Permitting Information Desktop (RAPID) Toolkit, an online tool that streamlines the challenge of siting and permitting transmission lines in the West. The RAPID Toolkit offers a single location for agencies, developers, and industry stakeholders to work together on electric energy transmission regulatory processes by using a wiki environment to collaborate on regulatory processes, permit guidance, regulations, contacts, and other relevant information. The RAPID Toolkit can be accessed at <http://en.openei.org/wiki/RAPID>.

involvement, along with the supporting rationale used by the notified agency for their non- or minimal involvement.⁶

DOE will schedule IIP meetings no less than thirty (30) calendar days from each other and only after Federal Entities are given notice of the need for their participation in the IIP Process. The notification described applies to both initiation and close-out of the IIP Process, in response to the Project Proponent's request for such meetings.

The list of Federal Entities notified by DOE following its review of the Initiation Request as having a potential authorization or consultation required for the siting of a Qualified Project may be revised as necessary during the IIP Process based on information provided by the Project Proponent, the Federal Entity, and otherwise publicly-available information. DOE will oversee the IIP Process and coordinate the involvement of the Federal Entities as described below in § 900.4 even though DOE is not responsible for issuing a Federal Authorization. DOE will provide Federal Entities and Non-Federal Entities access to all information received from the Project Proponent as a part of an Initiation Request determined by DOE to meet the information requirements of this part in § 900.4, which will be coordinated through the use of the Office of Management and Budget's (OMB's) MAX electronic system (<https://max.omb.gov/maxportal>) throughout an IIP Process for a Qualifying Project.

⁶ Provided, however, that a Federal Entity whose permitting authority for the construction or modification of electric transmission facilities is limited to those facilities for which an application is filed under section 216(b) of the Federal Power Act may participate at its sole discretion.

In-person attendance at IIP Process meetings by each Federal Entity will depend on the availability of resources or the authority to recover costs from Project Proponents. Currently, certain Federal Entities may recover costs only after an application has been submitted, and some Federal entities lack cost recovery authority altogether. Even in instances where cost recovery may be available, each Federal agency will make its own determination regarding its participation and use of resources. Each Federal agency will provide its rationale to DOE in writing when or if a determination is made that it may not be expeditious to use of staff time and funds to attend all or some meetings. To the extent allowed by law Federal Entities may seek cost recovery from the Project Proponents during the IIP Process. DOE will provide an opportunity for Federal and Non-Federal Entities to participate in IIP meetings by using teleconferencing and webinars.

Coordinating the preparation of the Final IIP Resources Report document prepared by DOE and related administrative file will facilitate more efficient preparation of a single environmental review document that all agencies can strive to utilize to inform their relevant decision making. The Final IIP Resources Report is designed in terms of format and substance to be similar to an “early corporate environmental assessment” or typical applicant-generated environmental study in accordance with: 1) Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500 through 1508); 2) CEQ guidance related to early consultation or engagement of Federal agencies with prospective applicants; and 3) NEPA’s Forty Most Asked Questions related to the ability of agencies to authorize preparation of environmental

assessments by applicants (46 FR 18026; March 23, 1981, as amended).⁷ Such actions continue to be encouraged by CEQ as “they call for private, Federal and non-Federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.”⁸

The Final IIP Resources Report will be included by DOE, along with all other support information, datasets, maps, figures, etc. collected as part of the IIP Process in an IIP Process Administrative File that would be provided to the NEPA Lead Agency to inform their environmental reviews once an application is filed. This information can, and should, also be used by other agencies on related decision making. DOE will maintain the IIP Process Administrative File for the duration of the IIP Process and until no later than thirty (30) calendar days after the IIP Close out Meeting has been convened.

E. Selection of NEPA Lead Agency

Section 900.5 provides a mechanism for the identification and selection of a NEPA Lead Agency responsible for meeting Federal environmental review requirements⁹ for permitting interstate transmission lines across multiple Federal jurisdictions once applications are filed with permitting agencies. This section incorporates the terms and mechanisms provided for identification and determination of NEPA Lead Agency for transmission facilities proposed for siting on majority Federal lands as set forth in the 2009 MOU and in accordance with CEQ’s NEPA regulations.

⁷ CEQ, NEPA’s Forty Most Asked Questions (46 FR 18026; March 23, 1981, as amended), Question 8 discusses “early corporate environmental assessments”

⁸ *Id.*

⁹ Each participating Federal Entity is responsible for meeting its own agency-specific requirements.

F. IIP Process Administrative File

Section 900.6 defines the contents of a consolidated IIP Process Administrative File intended to document IIP Process-related products and information. This new section replaces the existing § 900.6. This section also describes the intent and process by which this file will be maintained by DOE as Lead 216(h) Agency in coordination with the Federal Entities for the duration of the IIP Process.

III. Regulatory Review

A. Executive Orders 12866 and 13563

This regulatory action has been determined to be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011) EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other

advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE concludes that this proposed rule is consistent with these principles. Specifically, this proposed rule sets forth voluntary procedures for DOE coordination of Federal Authorizations for the siting of interstate electric transmission facilities. As described in section III.C., therefore, the costs of the rule will impact Federal agencies. Among the benefits expected from this proposed rule, actions taken to coordinate information and agency communication before applications for Federal Authorizations are submitted to Federal agencies for review and consideration would help reduce application review and decision-making timelines. Because use of the proposed IIP Process is voluntary, DOE further expects that the Project Proponent requesting assistance has made the calculation that the request was in the best interests of the Project Proponent. The request would also help transmission developers determine the likelihood that they would successfully obtain permits, which is necessary to make their proposed project successful in the competitive, regional transmission planning processes.

B. National Environmental Policy Act

DOE has determined that promulgation of these regulations fall into a class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth under DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*). Specifically, this rulemaking is covered under the Categorical Exclusion

found in the DOE's National Environmental Policy Act regulations at paragraph A6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to Rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

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

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule sets forth simplified or revised procedures for DOE coordination of Federal Authorizations for the siting of interstate electric transmission facilities. As a result, the rule directly impacts Federal agencies and not small entities. In those cases where a Project Proponent requests DOE assistance for a project that is not a Qualifying Project, DOE expects that the provisions of this proposed rule, if adopted, would not affect the substantive interests of such Project Proponents, including any Project Proponents that are small entities. DOE expects actions taken under the proposed

provisions to coordinate information and agency communication before applications for Federal Authorizations are submitted to Federal agencies for review and consideration would help reduce application review and decision-making timelines. Because use of the IIP Process set forth in the proposed rule is voluntary, DOE further expects that the Project Proponent requesting assistance has made the calculation that the request was in the best interests of the Project Proponent. The request would also help facilitate transmission developers with determining the likelihood that they would successfully obtain permits, which is necessary to make their proposed project successful in the competitive, regional transmission planning processes. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

The proposed rule contains information collection requirements subject to review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* This requirement has been submitted to OMB for approval. Public reporting burden for requesting information during the pre-application process is estimated to average 30 minutes per response. Public reporting burden for requesting DOE assistance in the Federal authorization process is estimated to average one hour per response. Both of these burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE invites public comment on: (1) whether the proposed information collection requirements are necessary for the performance of DOE's functions, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden of the proposed information collection requirements; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection requirements on respondents. Comments should be addressed to the DOE Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW, Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the contact person at the address given in the ADDRESSES section of this notice of proposed rulemaking. Interested persons may obtain a copy of the DOE's Paperwork Reduction Act Submission to OMB from the contact person named in this notice of proposed rulemaking.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on tribal, state, and local governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon tribal, state, or local governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the

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

This proposed rule would revise procedures for an Integrated Interagency Pre-application process by which transmission developers, Federal, state, local agencies and tribes may coordinate early either in person or via teleconference/web conference and share information through the existing Office of Management and Budget MAX website collaborative tool. DOE has determined that the proposed rule would not result in the expenditure by tribal, state, and local governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

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

not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

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

H. Executive Order 12988

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

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

I. Treasury and General Government Appropriations Act, 2001

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

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

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the

Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action, which is intended to improve the pre-application procedures for certain transmission projects and therefore result in the more efficient processing of applications, would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this rule.

List of Subjects in 10 CFR Part 900

Electric power, Electric utilities, Energy, and Reporting and record keeping requirements

Issued in Washington, DC, on



Patricia A. Hoffman
Assistant Secretary
Office of Electricity Delivery and Energy Reliability

For the reasons stated in the preamble, DOE proposed to revise part 900 of Chapter II of Title10, Code of Federal Regulations as set forth below:

PART 900 – COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

Sec.

- 900.1 Purpose.
- 900.2 Applicability.
- 900.3 Definitions.
- 900.4 Integrated interagency pre-application (IIP) process.
- 900.5 Selection of NEPA lead agency.
- 900.6 IIP Process administrative file.

Authority: 16 U.S.C. 824p(h).

§ 900.1 Purpose.

This part provides a process for the timely coordination of information needed for Federal Authorizations for proposed electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA) (16 U.S.C. 824p(h)). This part seeks to ensure electric transmission projects are consistent with the nation's environmental laws, including laws that protect endangered and threatened species, critical habitats and historic properties. This part provides a framework called the Integrated Interagency Pre-Application (IIP) Process by which DOE cooperates with applicable Federal and Non-Federal Entities for the purpose of early coordination of information for permitting and environmental reviews required under Federal

law to site qualified electric transmission facilities prior to submission of required Federal request(s). The IIP Process provides for timely and focused pre-application meetings with key Federal and Non-Federal Entities, as well as for early identification of potential siting constraints or opportunities, and seeks to promote thorough and consistent Stakeholder outreach by a Project Proponent during transmission line planning efforts. The IIP Process occurs before any application or request for authorization is submitted to Federal Entities. This part improves the siting process by facilitating the early submission, compilation, and documentation of information needed for subsequent coordinated, transparent environmental review of a Qualifying Project or approved Other Project by Federal Entities under the National Environmental Policy Act (NEPA) following the submission of an application or request for authorization. This part also provides an opportunity for Non-Federal Entities to coordinate their non-Federal permitting and environmental reviews with that of the Federal Entities.

§ 900.2 Applicability.

The regulations under this part apply to Qualifying Projects. At the discretion of the Assistant Secretary (OE-1) the provisions of part 900 may also apply to Other Projects.

Other Projects. Persons seeking DOE assistance in the Federal Authorization process for Other Projects must file a request for coordination with the OE-1. The request must contain:

The legal name of the requester; its principal place of business; whether the requester is an individual, partnership, corporation, or other entity; citations to the state laws under which the requester is organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;

A concise general description of the proposed Other Project sufficient to explain its scope and purpose;

A list of all potential Federal Entities; and

A list of anticipated Non-Federal Entities, including any agency serial or docket numbers for pending applications.

Within thirty (30) calendar days of receiving this request, the OE-1, in consultation with the affected Federal Entities with jurisdiction, will determine if the Other Project should be treated as a Qualifying Project under this part and will notify the Project Proponent of one of the following:

If accepted for processing under this rule, the project will be treated as a Qualifying Project and the Project Proponent must submit an Initiation Request as set forth under Section 900.5; or

If not accepted for processing under this rule, the Project Proponent must follow the standard procedures for Federal Entities that will have jurisdiction over the project.

This part does not apply to Federal Authorizations for electric transmission facilities wholly located within the Electric Reliability Council of Texas interconnection.

This part does not apply to electric transmission facilities in a DOE-designated National Interest Electric Transmission Corridor where a Project Proponent seeks a construction or modification permit from the Federal Energy Regulatory Commission (FERC) under section 216(b) of the Federal Power Act (16 U.S.C. § 824p(b)).

This part does not affect any requirements of Federal law. Participation or non-participation in the IIP Process does not waive any requirements to obtain necessary Federal Authorizations for electric transmission facilities. This part shall not alter or diminish any responsibilities of the Federal Entities to consult under applicable law.

This part does not supplant but rather complements the Federal Entities' pre-application procedures for a Federal Authorization. Participation in the IIP Process does not guarantee

issuance of any required Federal Authorization for a proposed Qualifying Project or selection of the Project Proponent's proposed Study Corridors and proposed Routes as a range of reasonable alternatives or the preferred alternative for NEPA purposes.

DOE, in exercising its responsibilities under this part, will communicate regularly with the FERC, electric reliability organizations and electric transmission organizations approved by FERC, other Federal Entities, and Project Proponents. DOE will use information technologies to provide opportunities for Federal Entities to participate remotely.

DOE, in exercising its responsibilities under this part, will to the maximum extent practicable and consistent with Federal law, coordinate the IIP Process with any Non-Federal Entities. DOE will use information technologies to provide opportunities for Non-Federal Entities to participate remotely.

§ 900.3 Definitions.

As used in this part:

Affected Landowner means an owner of real property interests who is usually referenced in the most recent county or city tax records, and whose real property:

(1) Is located within either 0.25 miles of a proposed centerline of a Qualifying Project or at a minimum distance specified by state law, whichever is greater; or

(2) Contains a residence within 3000 feet of a proposed construction work area for a Qualifying Project.

DOE means the United States Department of Energy.

Early Identification of Project Issues refers to an early and open Stakeholder participation process carried out by a Project Proponent to identify potential environmental issues Federal and

Non-Federal Entities' may consider for further study, issues of concern to the affected public and Stakeholders, and potential project alternatives.

Federal Authorization means any authorization required under Federal law to site an electric transmission facility, including permits, rights-of-way, special use authorizations, certifications, opinions, or other approvals. This term includes those authorizations that may involve determinations under Federal law by either Federal or Non-Federal Entities.

Federal Entity means any Federal agency with jurisdictional interests that may have an effect on a proposed Qualifying Project, that is responsible for issuing a Federal Authorization for the proposed Qualifying Project or attendant facilities, has relevant expertise with respect to environmental and other issues pertinent to or that are potentially affected by the proposed Qualifying Project or its attendant facilities, or provides funding for the proposed Qualifying Project or its attendant facilities. Federal Entities include those with either permitting or non-permitting authority; for example, those entities with which consultation or review must be completed before a project may commence, such as the Department of Defense for an examination of military test, training or operational impacts.

FPA means the Federal Power Act (16 U.S.C. 791 through 828c).

IIP Process Administrative File means the information assembled and maintained by DOE as the Lead 216(h) Agency and the NEPA Lead Agency for all Federal Authorization decisions. The IIP Process Administrative File will include, without limitation, the IIP Initiation Request, which includes a Summary of Qualifying Project, Affected Environmental Resources and Impacts Summary, associated Maps, Geospatial Information, and Data (provided in electronic format), and a Summary of Early Identification of Project Issues, IIP Meeting Summaries, and other documents, including but not limited to maps, publicly-available data, and other supporting

documentation submitted by the Project Proponent as part of the IIP Process, and that inform the Federal Entities.

IIP Resources Report means the resource summary information provided by the Project Proponent as a part of the IIP Process that meets the content requirements pursuant to §900.4 of this part. The IIP Resource Report contains the environmental information used by a Project Proponent to plan a Qualifying Project.

Indian Tribe has the same meaning as provided for in 25 U.S.C. 450b(e).

Lead 216(h) Agency means the Department of Energy, which section 216(h) of the FPA (16 U.S.C. 824p(h)) makes responsible for timely coordination of Federal Authorization requests for proposed electric transmission facilities.

MOU Signatory Agency means a signatory of the Interagency MOU executed on October 23, 2009, entitled, “Memorandum of Understanding among the United States (U.S.) Department of Agriculture (USDA), the Department of Commerce, Department of Defense (DoD), Department of Energy (DOE), Environmental Protection Agency (EPA), the Council on Environmental Quality (CEQ), the Federal Energy Regulatory Commission (FERC), the Advisory Council on Historic Preservation (ACHP), and Department of the Interior (DOI), regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Lands.”

MOU Principals means the heads of each of the MOU Signatory Agencies.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

NEPA Lead Agency means the Federal agency or agencies preparing or having primary responsibility for preparing an environmental impact statement or environmental assessment as defined in 40 CFR 1508.16 and in accordance with 40 CFR 1501.5(c).

Non-Federal Entity means an Indian Tribe, multistate governmental entity, or state and local government agency with relevant expertise and/or jurisdiction within the Project Area, that is responsible for conducting permitting and environmental reviews of the proposed Qualifying Project or its attendant facilities, that has special expertise with respect to environmental and other issues pertinent to or that are potentially affected by the proposed Qualifying Project or its attendant facilities, or provides funding for the proposed Qualifying Project or its attendant facilities. Non-Federal Entities may include those with either permitting or non-permitting authority, e.g., entities such as State Historic Preservation Offices, with whom consultation must be completed in accordance with Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, before a project can commence.

OE-1 means the Assistant Secretary for DOE's Office of Electricity Delivery and Energy Reliability.

Other Projects mean electric transmission facilities that are not Qualifying Projects. Other Projects include facilities for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale, but do not need to meet the 230 kV or above qualification, or be otherwise identified as regionally or nationally significant with attendant facilities, in which all or part of a proposed transmission line crosses jurisdictions administered by more than one Federal Entity.

Project Area means the geographic area considered when the Project Proponent develops Study Corridors and then potential Routes for environmental review and potential project siting as a part of the Project Proponent's planning process for a Qualifying Project. It is an area located between the two end points of the project (e.g., substations), including their immediate surroundings within at least one-mile of that area, and over any proposed intermediate

substations. The size of the Project Area should be sufficient to allow for the evaluation of various potential alternative Routes with differing environmental, engineering, and regulatory constraints. Note that the Project Area does not necessarily coincide with “permit area,” “area of potential effect,” “action area,” or other defined terms of art that are specific to types of regulatory review.

Project Proponent means a person or entity who initiates the IIP Process in anticipation of seeking Federal Authorizations for a Qualifying Project or Other Project.

Qualifying Project means—

(1) A non-marine high voltage electric transmission line (230 kV or above) and its attendant facilities or other regionally or nationally significant non-marine electric transmission line and its attendant facilities, in which:

(2) All or part of the proposed electric transmission line is used for the transmission of electric energy in interstate commerce for sale at wholesale, and

(3) All or part of the proposed electric transmission line crosses jurisdictions administered by more than one Federal Entity or crosses jurisdictions administered by a Federal Entity and is considered for Federal financial assistance from a Federal Entity. Qualifying Projects do not include those for which a Project Proponent seeks a construction or modification permit from the FERC for electric transmission facilities in a DOE-designated National Interest Electric Transmission Corridor under section 216(b) of the FPA (16 U.S.C.824p(b)).

Regional Mitigation Approach means an approach that applies the mitigation hierarchy (first seeking to avoid, then minimize impacts, then, when necessary, compensate for residual impacts) when developing mitigation measures for impacts to resources from Qualifying Projects at scales relevant to the resource, however narrow or broad, necessary to sustain, or otherwise achieve

established goals for those resources. The approach identifies the **needs and baseline conditions of targeted resources, potential impacts** from the Qualifying Projects, **cumulative impacts of past and likely projected disturbance to those resources, and future disturbance trends.**

The approach then uses such information to identify **priorities for avoidance, minimization, and** compensatory mitigation measures across that relevant area to provide the maximum benefit to the impacted resources.

Regional Mitigation Strategies or Plans mean documents developed through or external to, the NEPA process that apply a Regional Mitigation Approach to identify appropriate mitigation measures in advance of potential impacts to resources from Qualifying Projects.

Route means a linear area within which a Qualifying Project could be sited. It should be wide enough to allow minor adjustments in the alignment of the Qualifying Project so as to avoid sensitive features or accommodate potential engineering constraints but narrow enough to allow detailed study.

Stakeholder means any Non-Federal Entity, any non-governmental organization, Affected Landowner, or other person potentially affected by a proposed Qualifying Project.

Stakeholder Outreach Plan means a concise description and plan for how a Project Proponent coordinates Stakeholder interface, communications, and involvement so as to provide information to and receive feedback from Stakeholders as defined in this part as part of the development of a Qualifying Project and during the IIP Process. It directly informs and supports the development of the summary of Early Identification of Project Issues required as part of the Initiation Request pursuant to §900.5. The purpose of the Stakeholder Outreach Plan is to ensure that a Project Proponent actively engages and receives feedback from Stakeholders when the

Project Proponent is evaluating potential Study Corridors or potential Routes before and during the IIP Process.

Study Corridor means a contiguous area (but not to exceed one-mile) in width within the Project Area where alternative Routes may be considered for further study.

§ 900.4 Integrated interagency pre-application (IIP) process

The IIP Process is intended for a Project Proponent who has identified potential Study Corridors and/or potential Routes within an established Project Area and the proposed locations of any intermediate substations for a Qualifying Project. The IIP Process is also intended to accommodate proposed Qualifying Projects that have been selected in a regional electric transmission plan for purposes of cost allocation or a similar process where an electric transmission plan has been identified and the permitting and siting phase must commence.

While the IIP Process is optional, the early coordination provided by DOE between Federal Entities, Non-Federal Entities, and the Project Proponent ensures that the Project Proponent fully understands application and permitting requirements, including data potentially necessary to satisfy application requirements for all permitting entities. The two-meeting structure also allows for early interaction between the Project Proponents, Federal Entities, and Non-Federal Entities in order to enhance early understanding by those having an authorization or consultation related to the Qualifying Project with a clear description of a Qualifying Project, the Project Proponent's siting process, and the environmental and community setting being considered by the Project Proponent for siting the transmission line, including Early Identification of Project Issues.

A Project Proponent electing to utilize the IIP Process must submit an Initiation Request to DOE to start the IIP Process. The timing of the submission of the Initiation Request for IIP

Process is determined by the Project Proponent. The Initiation Request must include, based on best available information, a Summary of Qualifying Project, Affected Environmental Resources and Impacts Summary, associated Maps, Geospatial Information, and Studies (provided in electronic format), a Summary of Early Identification of Project Issues, and must adhere to the page limits established by this part.

Summary of the Qualifying Project is limited to a maximum length of ten (10) pages, single-spaced and must include:

- (1) A statement that the Project Proponent requests to use the IIP Process;
- (2) Primary contact information for the Project Proponent, including a primary e-mail address;
- (3) The legal information for the Project Proponent: legal name; principal place of business; whether the requester is an individual, partnership, corporation, or other entity; the state laws under which the requester is organized or authorized; and if the Project Proponent resides or has its principal office outside the United States, documentation related to designation by irrevocable power of attorney of an agent residing within the United States;
- (4) A description of the Project Proponent's financial and technical capability to construct, operate, maintain, and decommission the Qualifying Project;
- (5) A statement of the Project Proponent's interests and objectives;
- (6) To the extent available, regional electric transmission planning documents, including status of regional reliability studies, regional congestion or other related studies where applicable, and interconnection requests;

- (7) A brief description of the evaluation criteria and methods that are being used by the Project Proponent to identify and develop the potential Study Corridors or potential Routes for the proposed Qualifying Project;
- (8) A brief description of the proposed Qualifying Project, including endpoints, voltage, ownership, justification for the line, intermediate substations if applicable, and, to the extent known, any information about constraints or flexibility with respect to the Qualifying Project;
- (9) Project Proponent's proposed schedule, including timeframe for filing necessary Federal and state applications, construction start date, and planned in-service date if the Qualifying Project receives needed Federal Authorizations and approvals by Non-Federal Entities;
- (10) A list of potentially affected Federal and Non-Federal Entities;

(b) *Affected Environmental Resources and Impacts Summary* is limited to a maximum length of twenty (20), single-spaced pages, not including associated maps, and must include concise descriptions, based on existing, relevant, and reasonably-available information, of the known existing environment, and major site conditions in Project Area, including:

- (1) An overview of topographical and resource features that are relevant to the siting of electric transmission lines present;
- (2) Summary of known land uses, including Federal and state public lands of various types (e.g., parks and monuments), associated land ownership, and any land use restrictions;
- (3) Summary of known or potential adverse effects to cultural and historic resources;

- (4) Summary of known or potential conflicts with or adverse impacts on military activities;
- (5) Summary of known or potential impacts on the U.S. aviation system, including FAA restricted airspace;
- (6) Summary of known or potential impacts on the U.S. marine transportation system, including impacts on waterways under jurisdiction of the U.S. Coast Guard;
- (7) Summary of known information about Federal- and state-protected avian, aquatic, and terrestrial species, and Critical Habitat or otherwise protected habitat, that may be present, as well as other biological resources information that is necessary for an environmental review;
- (8) Summary of the aquatic habitats (to include estuarine environments, and water bodies, including wetlands, as well as any known river crossings and potential constraints caused by impacts to navigable waters of the United States considered for the Qualifying Project);
- (9) Summary of known information about the presence of low-income communities and minority populations that could be affected by the Qualifying Project;
- (10) Identification of existing or proposed Qualifying Project facilities or operations in the Project Area;
- (11) Summary of the proposed use of previously-disturbed lands, existing, agency-designated corridors, including but not limited to corridors designated under Section 503 of the Federal Land Policy and Management Act and Section 368

of the Energy Policy Act of 2005, transportation rights-of-way, and the feasibility for co-location of the Qualifying Project with existing facilities or location in existing corridors and transportation rights-of-way; and

- (12) Summary of potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans, and considered by the Project Proponent to reduce the potential impacts of the proposed Qualifying Project to resources requiring mitigation.

(c) *Maps, Geospatial Information, and Studies* in support of the information provided in the summary descriptions for the known existing environmental, cultural, and historic resources in the Project Area under paragraph (b) must be included, and do not contribute to the overall page length of the IIP Initiation Request. Project Proponents must provide maps as electronic data files that may be readily accessed by Federal Entities and Non-Federal Entities, including:

- (1) A map of the Project Area showing the locations of potential Study Corridors or potential Routes;
- (2) Detailed maps that accurately show information supporting summaries of the known existing environmental resources within the potential Study Corridors or potential Routes;
- (3) Electronic access to existing data or studies that are relevant to the summary information provided as part of paragraphs (a) and (b); and
- (4) Citations identifying sources, data, and analyses used to develop the IIP Process Initiation Request materials.

(d) *Summary of Early Identification of Project Issues* must not exceed ten (10), single-spaced pages in length and is intended to provide a summary of Stakeholder outreach or interactions conducted for the Qualifying Project prior to submission of the Initiation Request and inform the development of issues and project alternatives for study in an environmental review document.

The Summary of Early Identification of Project Issues will:

- (1) Discuss the specific tools and actions used by the Project Proponent to facilitate Stakeholder communications and public information, including an existing, current Project Proponent website for the proposed Qualifying Project, where available, and a readily-accessible, easily-identifiable, single point of contact for the Project Proponent;
- (2) Identify how and when meetings on the location of potential Study Corridors or potential Routes have been and would be publicized prior to the submission of applications for Federal Authorization, as well as where and when those meetings were held and how many more meetings may be planned during the IIP Process;
- (3) Identify known Stakeholders and how Stakeholders are identified;
- (4) Briefly explain how the Project Proponent responds to requests for information from Stakeholders, as well as records Stakeholder requests, information received, and Project Proponent responses to Stakeholders;
- (5) Provide the type of location (for example, libraries, community reading rooms, or city halls) in each county potentially affected by the proposed Qualifying Project, and specify those where the Project Proponent has provided publicly-

available copies of documents and materials related to the proposed Qualifying Project;

- (6) Describe the evaluation criteria being used by the Project Proponent to identify and develop the potential Study Corridors or potential Routes and that are presented by the Project Proponent to Stakeholders during its project planning outreach efforts prior to submission of applications for Federal Authorizations or non-Federal permits or authorizations;
- (7) Provide information collected as result of the Project Proponent's Stakeholder outreach efforts; and
- (8) Include a summary of issues identified, differing project alternative Corridors or Routes, and revisions to Routes developed as a result of issues identified by Stakeholders during the Project Proponent's Stakeholder outreach efforts the Qualifying Project.

(e) Within fifteen (15) calendar days of receiving the Initiation Request, DOE shall notify by electronic mail all Federal Entities and Non-Federal Entities with an authorization potentially necessary to site the Qualifying Project that:

(1) Based on its initial review of information submitted by the Project Proponent in response to requirements in paragraphs (a) and (b) of this section, DOE has identified the contacted Federal Entities or Non-Federal Entities as having an authorization or consultation responsibility related to the Qualifying Project; and

(2) Federal and Non-Federal Entities notified by DOE should participate in the IIP Process for the Qualifying Project with DOE's rationale for that determination provided; and

(3) Federal and Non-Federal Entities notified by DOE will provide DOE with a name and information for a point of contact, and any initial questions or concerns about their level of participation in the IIP Process based on DOE's justification within seven (7) calendar days of receiving DOE's notification.

(f) Within thirty (30) calendar days of receiving the Initiation Request, DOE shall notify the Project Proponent that:

(1) The Initiation Request meets the requirements in paragraphs a through d, including whether the project constitutes a Qualifying Project; or

(2) The Initiation Request does not meet the requirements in paragraphs (a through d in this section) and provide the reasons for that finding and a description of how the Project Proponent may, if applicable, address any deficiencies through supplementation of the information contained in the Initiation Request and DOE will consider its determination.

(g) DOE shall provide Federal and Non-Federal Entities with access to an electronic copy of the Initiation Request and associated maps, geospatial data, and studies that meet the requirements in paragraphs (a through d of this section), at the same time that DOE provides notice to the Project Proponent.

(h) *IIP Initial Meeting.* DOE, in consultation with the identified Federal Entities, shall convene the IIP Initial Meeting with the Project Proponent and all Federal Entities and Non-Federal Entities notified by DOE as having an authorization or consultation related to the Qualifying Project as soon as practicable and no later than forty-five (45) calendar days after notifying the Project Proponent and Federal and Non-Federal Entities that the Initiation Request meets the requirements in paragraphs (a through d) of this section. The Initial Meeting shall be convened in the area or region where the proposed Qualifying Project is located. Federal and

Non-Federal Entities shall have at least thirty (30) calendar days to review the information provided by the Project Proponent as part of the Initiation Request prior to the meeting. Federal Entities identified by DOE as having a Federal authorization related to the Qualifying Project are expected to participate in the Initial Meeting. DOE also shall invite Non-Federal Entities identified by DOE as having an authorization or consultation related to the Qualifying Project to participate in the Initial Meeting. During the Initial Meeting:

- (1) DOE shall discuss the IIP Process with the Project Proponent and any cost recovery requirements, where applicable
- (2) The Project Proponent shall describe the proposed Qualifying Project and the contents of its Initiation Request.
- (3) The Federal Entities shall, to the extent possible and based on agency expertise and experience, review the information provided by the Project Proponent, and publicly-available information, preliminarily identify the following and other reasonable criteria for adding, deleting, or modifying preliminary Routes from further consideration within the identified Study Corridors:
 - (A) Potential environmental visual, historic, cultural, economic, social, or health effects or harm based on potential project or proposed siting, and anticipated constraints;
 - (B) Potential cultural resources and historic properties of concern;
 - (C) Areas under special protection by Federal statute or other Federal Entity or Non-Entity decision that could potentially increase the time needed for project evaluation and potentially foreclose approval of siting a transmission line Route through such areas, and may include but are not

limited to properties or sites which may be of traditional or cultural importance to Indian Tribe(s), National Scenic and Historic Trails, National Landscape Conservation system units managed by BLM, National Wildlife Refuges, units of the National Park System, national marine sanctuaries, or marine national monuments;

- (D) Opportunities to site Routes through designated corridors, previously disturbed lands, and lands with existing infrastructure as a means of potentially reducing impacts and known conflicts as well as the time needed for affected Federal land managers to evaluate an application for a Federal Authorization if the Route is sited through such areas (e.g., co-location with existing infrastructure or location on previously disturbed lands or in energy corridors designated by the DOI or USDA under Section 503 of the Federal Land Policy and Management Act or Section 368 of the Energy Policy Act of 2005, an existing right-of-way, or a utility corridor identified in a land management plan);
- (E) Potential constraints caused by impacts on military test, training, and operational missions, including impacts on installations, ranges, and airspace;
- (F) Potential constraints caused by impacts on the United States' aviation system;
- (G) Potential constraints caused by impacts to navigable waters of the United States;

- (H) Potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans to reduce the potential impact of the proposed Qualifying Project to resources requiring mitigation; and
- (I) Based on available information provided by the Project Proponent, biological (including threatened, endangered, or otherwise protected avian, aquatic, and terrestrial species and aquatic habitats), visual, cultural, historic, and other surveys and studies that may be required for preliminary proposed Routes.

Such information and feedback to the Project Proponent does not constitute a commitment by Federal Entities to approve or deny any Federal Authorization request. Moreover, no agency would or could determine that the Project Proponent's proposed preliminary Routes presented or discussed during the IIP Process would constitute a range of reasonable alternatives for NEPA purposes. The IIP Process does not limit agency discretion regarding NEPA review. Participating Non-Federal Entities are encouraged to identify risks and benefits of siting the proposed Qualifying Project within the preliminary proposed Routes.

The DOE shall record key issues, information gaps, and data needs identified by Federal and Non-Federal Entities during the Initial Meeting, and shall convey a summary of the meeting discussions, key issues, and information gaps and requests to the Project Proponent, all Federal Entities, and any Non-Federal Entities that participated in the IIP Process in a draft Initial Meeting Summary within fifteen (15) calendar days after the meeting. Participating Federal

Entities and Non-Federal Entities, and the Project Proponent will then have fifteen (15) calendar days following its receipt of the IIP Process Meeting Summary to review the IIP Process Meeting Summary and provide corrections to DOE for resolution in a final Initial Meeting Summary, as appropriate. Thirty (30) calendar days following the close of the 15-day review period, DOE will incorporate the final Initial Meeting Summary into the IIP Process Administrative File for the Qualifying Project, and at the same time, provide all Federal and Non-Federal Entities and the Project Proponent an electronic copy of a final IIP Initial Meeting Summary.

(i) *IIP Close-Out Meeting Request.* A Project Proponent electing to utilize the IIP Process pursuant to this section must submit a Close-Out Meeting Request to DOE to complete the IIP Process. The timing of the submission of the Close-Out Meeting Request for the IIP Process is determined by the Project Proponent but must be submitted no less than forty-five (45) calendar days following the Initial Meeting. The Close-Out Meeting Request shall include:

- (1) A statement that the Project Proponent is requesting the Close-Out Meeting for the IIP Process;
- (2) A summary table of changes made to the Qualifying Project during the IIP Process, including potential environmental and community benefits from improved siting or design;
- (3) Maps of updates to potential proposed Routes within Study Corridors, including the line, substations and other infrastructure, which include at least as much detail as required for the Initial Meeting described above and as modified in response to early Stakeholder input and outreach and

agency feedback documented as a part of the IIP Initial Meeting Summary;

- (4) An updated summary of all project-specific biological (including threatened, endangered or otherwise protected avian, aquatic, and terrestrial species, and aquatic habitats), visual, cultural, historic or other surveys sponsored by the Project Proponent;
- (5) If known, a schedule for completing upcoming field resource surveys;
- (6) An updated summary of all known or potential adverse impacts to natural resources;
- (7) An updated summary of any known or potential adverse effects to cultural and historic resources;
- (8) A conceptual plan for potential implementation and monitoring of mitigation measures, including avoidance, minimization, and conservation measures, such as compensatory mitigation (offsite and onsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans to reduce the potential impact of the proposed Qualifying Project to resources requiring mitigation;
- (9) An estimated time of filing its requests for Federal Authorizations for the proposed Qualifying Project; and
- (10) An estimated time of filing its requests for all other authorizations and consultations with Non-Federal Entities.

(j) *Close-Out Meeting*. The IIP Process Close-Out Meeting shall result in a description by Federal Entities of the remaining issues of concern, identified information gaps or data needs, and potential issues or conflicts that could impact the time it will take affected Federal Entities to process applications for Federal Authorizations for the proposed Qualifying Project. The Non-Federal Entities shall also be encouraged to provide a description of remaining issues of concern, information needs, and potential issues or conflicts. The IIP Process Close-Out Meeting will also result in the identification of a potential NEPA Lead Agency pursuant to Section 900.6 described below.

- (1) Within fifteen (15) calendar days of receiving the Close-Out Meeting Request, DOE shall notify by electronic mail the appropriate POCs of all Federal Entities and Non-Federal Entities with a known or potential authorization necessary to site the Qualifying Project.
- (2) Within thirty (30) calendar days of receiving a Close-Out Meeting Request, DOE shall determine whether the Close-Out Meeting Request meets the requirements in paragraph (i) and inform the Project Proponent of its acceptance, and provide Federal Entities and Non-Federal Entities with Close-Out Meeting Request materials, including map, geospatial data, and surveys in electronic format, preferably via the OMB MAX collaboration website at <https://max.omb.gov/maxportal/>.
- (3) Within (sixty) 60 calendar days of making a determination that the Close-Out Meeting Request meets the requirements of this section, DOE shall convene the Close-Out Meeting in the same region or location at the Initial Meeting with the Project Proponent and all Federal Entities. All Non-Federal Entities participating in the IIP Process shall also be invited to attend. During the Close-Out Meeting:

(A) The Project Proponent's updates to the siting process to date shall be discussed, including Stakeholder Outreach activities, resultant Stakeholder input, and Project Proponent response to Stakeholder input;

(B) Based on information provided by the Project Proponent to date, the Federal Entities shall discuss key issues of concern and potential mitigation measures identified for the proposed Qualifying Project;

(C) Led by DOE, all Federal Entities shall discuss statutory and regulatory standards that must be met to make decisions for Federal Authorizations required for the proposed Qualifying Project;

(D) Led by DOE, all Federal Entities shall describe the estimated time to make decisions for required Federal Authorizations and the anticipated cost (e.g., processing and monitoring fees and land use fees);

(E) Led by DOE, all affected Federal Entities shall describe their expectations for a complete application for a Federal Authorization for the proposed Qualifying Project;

(F) DOE shall prepare and include a Final IIP Resources Report in the IIP Process Administrative File, which provides an accurate description of the proposed Qualifying Project, including Stakeholder Outreach activities and feedback, summary information on environmental resources, and potential impacts (with electronic access to associated maps, geospatial data and/or survey data), potential issues, and identification of constraints by Federal Entities and Non-Federal Entities for the proposed Qualifying Project;

(G) When it is included in the IIP Process Administrative File, DOE shall recommend that participating Federal Entities use the Final IIP Resources Report to inform the NEPA process for the proposed Qualifying Project, for example, during scoping for an EIS and identifying

potential Routes, explaining why certain alternatives were eliminated from further consideration, and preliminarily identifying impacts, potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans and considered by the Project Proponent to reduce the potential impacts of the proposed Qualifying Project to resources requiring mitigation; and

(H) All participating Federal and Non-Federal Entities shall identify a preliminary schedule for authorizations for the proposed Qualifying Project contingent upon timely filing of applications and related materials by the Project Proponent.

§ 900.5 Selection of the NEPA lead agency

DOE, in consultation with the Federal Entities, shall coordinate the selection of a potential NEPA Lead Agency responsible for preparing an environmental review document under NEPA for proposed Qualifying Projects. Determination and responsibilities of the NEPA Lead Agency for preparing the EIS shall be in compliance with applicable law, including the National Environmental Policy Act of 1969 and CEQ implementing regulations at 40 CFR Part 1500, and each agency's respective NEPA implementing regulations and procedures. However:

(a) For proposed Qualifying Projects that cross lands administered by both DOI and USDA, DOI and USDA shall consult and jointly determine within thirty (30) calendar days of receiving the Initiation Request information from DOE to determine which Department has a greater land management interest in the proposed Qualifying Project and which Department should therefore assume the role of NEPA Lead Agency.

(b) DOI and USDA shall notify DOE of their determination regarding the NEPA Lead Agency in writing within ten (10) calendar days of making the determination.

(c) Unless DOE notifies DOI and USDA in writing of its objection to that determination within ten (10) calendar days of the DOI/USDA notification, the determination shall be deemed accepted and final. In deciding whether to object to the determination, DOE shall consider the CEQ regulations pertaining to selection of the Lead Agency, including 40 CFR 1501.5(c).

(d) When the NEPA Lead Agency is not established pursuant to paragraphs (a) through (c) of this section, the Federal Entities that will likely constitute the cooperating agencies for an environmental review document under NEPA shall consult and jointly recommend a NEPA Lead Agency within 45 calendar days of receiving an IIP Process Close-Out Meeting Request to the Council on Environmental Quality for a final determination. No determination of a Federal Entity as the NEPA Lead Agency under this part shall be made absent that Federal Entity's consent.

§ 900.6 IIP Process administrative file

(a) When communicating with the Project Proponent during the IIP Process, Federal Entities are expected to include DOE involved in the IIP Process for the Project Proponent's proposed Qualifying Project.

(b) DOE shall maintain all information, including documents and communications, it disseminates or receives from the Project Proponent, Federal Entities, and Non-Federal Entities during the IIP Process for future use in reviewing any applications for required Federal Authorizations for the proposed Qualifying Project. Before disseminating information specific to a Federal Entity's or Non-Federal Entity's review, DOE must receive approval from that agency in accordance with that Federal Entity's Freedom of Information Act requirements.

(c) DOE shall document the list of issues identified during the IIP Process for a proposed Qualifying Project and updates to information provided as part of the Close-Out Meeting discussion in a Final IIP Resources Report, if any, for the IIP Process Administrative File.

(d) Each Federal Entity is encouraged to maintain the documents and communications developed in the IIP Process subject to each Federal Entity's administrative record policies and, as appropriate and applicable, those documents and communications could become part of that Federal Entity's administrative record for granting or denying a Federal Authorization for each Qualifying Project.