

[3128-01]

## DEPARTMENT OF ENERGY

[10 CFR Part 1022]

## COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

## Proposed Rulemaking; Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

**SUMMARY:** The Department of Energy (DOE) hereby gives notice of a proposal to establish Part 1022 of Chapter X of Title 10 of the Code of Federal Regulations, providing for compliance with Executive Order (E.O.) 11988—Floodplain Management, and E.O. 11990—Protection of Wetlands. Written comments will be received and a public hearing will be held with respect to this proposal.

The proposed regulations are designed to be coordinated with the environmental review requirements established at 10 CFR Part 1021<sup>1</sup> with respect to DOE's compliance with the National Environmental Policy Act (NEPA). The regulations will be applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC).

**DATES:** Comments must be received on or before August 28, 1978; request to speak by August 7, 1978; hearing testimony by August 17, 1978; hearing date: August 18, 1978.

**ADDRESSES:** Comments and requests to speak to Box TP, Department of Energy, Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Hearing location: Room 2105, 2000 M Street NW., Washington, D.C.

## FOR FURTHER INFORMATION CONTACT:

Robert J. Stern or Carol Borgstrom, Office of the Assistant Secretary for Environment, Room 7119, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9760

## SUPPLEMENTARY INFORMATION:

- I. Background.
- II. The proposed regulations.
- III. Comment procedure.

## I. BACKGROUND

## A. EXECUTIVE ORDER 11988—FLOODPLAIN MANAGEMENT

E.O. 11988—Floodplain Management, issued May 24, 1977, requires each Federal agency to take action to reduce the risk of flood loss; to minimize the impact of floods on human

<sup>1</sup>DOE proposed regulations for compliance with NEPA, which appeared in the FEDERAL REGISTER at 43 FR 7232 (February 21, 1978).

safety, health and welfare; and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities. The Order establishes a Federal policy to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. Agencies are required to issue or amend existing regulations and procedures to comply with the Order.

## B. EXECUTIVE ORDER 11990—PROTECTION OF WETLANDS

E.O. 11990—Protection of Wetlands, issued May 24, 1977, requires each Federal agency to take action to minimize the destruction, loss, or degradation of wetlands; and to preserve and enhance the natural and beneficial values of wetlands in carrying out its responsibilities. The Order establishes a Federal policy to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct and indirect support of new construction in wetlands wherever there is a practicable alternative.

## C. COORDINATION AND CONSULTATION

To the extent possible, agencies are required to utilize existing processes, such as those for compliance with NEPA, to fulfill the requirements of these Orders. Therefore, the regulations proposed herein have been designed to be implemented in conjunction with the environmental review requirements established at 10 CFR Part 1021, the proposed DOE regulations for compliance with NEPA.

E.O. 11988 also requires agencies to consult with the Water Resources Council (WRC), the Federal Insurance Administration, and the Council on Environmental Quality (CEQ) in the preparation of their floodplain regulations. DOE has circulated a draft of these regulations to the above agencies and, at the request of CEQ, has also circulated a draft to the Environmental Protection Agency and the Corps of Engineers. In addition, DOE has utilized the guidance provided by the WRC in its Floodplain Management Guidelines, published in the FEDERAL REGISTER on February 10, 1978.

## II. THE PROPOSED REGULATIONS

In establishing policies and procedures for DOE compliance with Executive Orders 11988 and 11990, the regulations attempt to assure that floodplain and wetlands factors are considered by DOE in its planning and decisionmaking. To the extent possible, these environmental review re-

quirements shall be carried out through the DOE NEPA process.

## A. APPLICABILITY

The regulations shall apply to all organizational units of DOE except FERC. They shall apply to all proposed DOE actions, except as provided in §1022.5. In cases where wetlands are located in a floodplain, the floodplain management procedures shall be followed. With respect to wetlands not located in a floodplain, the regulations do not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands which are located on non-Federal property, as provided in section 1 of E.O. 11990.

In accordance with section 8 of Executive Order 11990, the regulations do not apply to actions in wetlands with respect to projects under construction prior to October 1, 1977; projects for which all of the funds have been appropriated through fiscal year 1977; or projects and programs for which a draft or final EIS was filed prior to October 1, 1977. With respect to ongoing projects and programs in floodplains for which the environmental review has been completed prior to the effective date of these regulations, the alternatives considered in that review shall be assessed for potential impacts on floodplains. If DOE determines to take action in a floodplain, the selected alternative shall be designed or modified to minimize adverse floodplain impacts and to restore and preserve floodplain values.

Actions related to floodproofing and maintenance of existing DOE structures and facilities are considered exempt from the requirements of this Part, except in unusual circumstances, because they will have little or no effect on floodplains and wetlands.

## B. PROCEDURES FOR FLOODPLAIN/WETLANDS REVIEW

Subpart B of Part 1022 establishes DOE procedures for determining whether a proposed action will be located in a floodplain/wetlands, preparing floodplain/wetlands assessments, providing for early public review of proposed DOE actions in floodplains and/or wetlands, and issuing a statement of findings in cases where there is no practicable alternative to taking an action in a floodplain.

1. *Floodplain/Wetlands Determination.*—DOE shall determine whether a proposed action is located in a floodplain/wetlands concurrent with its environmental impact review pursuant to 10 CFR Part 1021. DOE will utilize maps prepared by the Federal Insurance Administration, Fish and Wildlife Service, and other appropriate agencies to determine if a proposed action is located in a floodplain/wetlands.

2. *Floodplain/Wetlands Assessment.*—For proposed floodplain/wet-

lands actions, a floodplain/wetlands assessment shall be prepared, in accordance with the requirements of § 1022.12. In those cases where an environmental assessment (EA) or environmental impact statement (EIS) is also required, in accordance with 10 CFR Part 1021, the EA or EIS shall include the floodplain/wetlands assessment. If an EA or EIS is not required, the floodplains/wetlands assessment shall be issued as a separate document.

3. *Public Review.*—For proposed floodplain/wetlands actions for which an EA or EIS is required, the opportunity for early public review will be provided through existing DOE NEPA procedures. For proposed floodplain/wetlands actions for which no EA or EIS is required, DOE shall provide for public review through publication of a notice in the FEDERAL REGISTER, and circulation of that notice to appropriate agencies and interested persons.

4. *Statement of Findings.*—If no practicable alternative to locating in the floodplain/wetlands is available, DOE shall design or modify its action so as to minimize potential harm to or within the floodplain/wetlands. In addition, DOE shall publish a brief statement of findings for actions taken in a floodplain which explains why the action is proposed to be located in the floodplain, lists the alternatives considered, indicates whether the action conforms to applicable State or local floodplain protection standards, and describes measures to be taken to minimize harm to or within the floodplain. DOE shall endeavor to provide a brief comment period after publication of the statement of findings, prior to implementing the proposed action.

5. *Other Responsibilities.*—For floodplain/wetlands actions, DOE shall verify that the implementation of the selected alternative, particularly with regard to any mitigating measures included in the action, is proceeding as described in the floodplain/wetlands assessment and the statement of findings.

III. COMMENT PROCEDURE

A. WRITTEN COMMENTS

Interested persons are invited to submit written comments with respect to the proposed regulations to Box TP, Public Hearing Management, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Compliance with Floodplain/Wetlands Environmental Review Requirements." Fifteen (15) copies should be submitted. All comments and related information should be received by DOE by August 28, 1978, in order to ensure consideration.

Any information or data considered by the person furnishing it to be confi-

dential must be so identified and submitted in writing, one copy only. Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine to confidential status of the information or data and to treat it according to its determination.

B. PUBLIC HEARING

1. *Participation Procedure.*—A public hearing on the proposed regulations will be held at 9:30 a.m., on August 18, 1978, in Room 2105, 2000 M Street NW., Washington, D.C., to received oral presentations from interested persons.

Any person who has an interest in the proposed regulations or who is a representative of a group of class of persons which has an interest in them may make a written request for an opportunity to make oral presentation. Such a request should be directed to the Public Hearing Management, Box TP, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461, before 4:30 p.m., August 7, 1978. The person making the request should describe his or her interest in the proceeding and provide a concise summary of the proposed oral presentation and a phone number where he or she may be reached. Each person who in DOE's judgment proposed to present relevant and material information shall be selected to be heard, shall be notified by DOE of his participation before 4:30 p.m., August 10, 1978, and shall submit 15 copies of his or her proposed statement to the Public Hearing Management, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461, on or before August 17, 1978.

2. *Conduct of Hearings.*—DOE reserves the right to arrange the schedule of presentations to be heard, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated as presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

NOTE.—DOE has determined that that because this document does not constitute a significant regulation within the meaning of Executive Order 12044, preparation of a regulatory analysis is not required.

Issued in Washington, D.C., July 13, 1978.

WILLIAM P. DAVIS,  
Deputy Director  
of Administration.

In consideration of the foregoing, it is proposed that Chapter X of Title 10 of the Code of Federal Regulations be amended as provided below:

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

- Sec. 1022.1 Background.
- 1022.2 Purpose and scope.
- 1022.3 Policy.
- 1022.4 Definitions.
- 1022.5 Applicability.

Subpart B—Procedures for Floodplain/Wetlands Review

- 1022.11 Floodplain/wetlands assessment.
- 1022.12 Floodplain/wetlands assessment.
- 1022.13 Public review.
- 1022.14 Notification of decision.
- 1022.15 Follow-up.
- 1022.16 Timing of floodplain actions.
- 1022.17 Selection of lead agency and consultation among participating agencies.

AUTHORITY: National Environmental Policy Act of 1969, Pub. L. 91-190, as amended; the National Flood Insurance Act of 1968, Pub. L. 90-448, as amended; the Flood Disaster Protection Act of 1975, Pub. L. 93-234; E.O. 11988 (May 24, 1977); and E.O. 11990 (May 24, 1977).

Subpart A—General

§ 1022.1 Background.

Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977), requires each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated, and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the order is provided in the Floodplain Management Guidelines of the U.S. Water Resources Council, dated Feb-

ruary 10, 1978 (40 FR 6030). Executive Order 11990—Protection of Wetlands (May 24, 1977), requires all Federal agencies to issue or amend existing procedures to insure consideration of wetlands protection in decisionmaking. It is the intent of both executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures, such as those established to implement the National Environmental Policy Act (NEPA) of 1969. In those instances where the impacts of actions in floodplains and/or wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

#### § 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities with respect to compliance with E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain/wetlands factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in floodplain/wetlands, providing opportunity for early public review of such proposed actions, preparing floodplain/wetlands assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE will accommodate the requirements of E.O. 11988 and E.O. 11990 through existing DOE NEPA procedures.

#### § 1022.3 Policy.

DOE shall:

(a) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative;

(b) Incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the hazard and risk of flood loss,

(2) Minimize the impact of floods on human safety, health, and welfare,

(3) Restore and preserve natural and beneficial values served by floodplains,

(4) Require the construction of DOE structures and facilities to be in accordance with the standards and criteria, and consistent with the intent, of the regulations promulgated pursuant to the National Flood Insurance Program,

(5) Minimize the destruction, loss, or degradation of wetlands,

(6) Preserve and enhance the natural and beneficial values of wetlands;

(c) Undertake a careful evaluation of the potential effects of any DOE action taken in a floodplain and any new construction undertaken by DOE in wetlands not located in a floodplain;

(d) Identify, evaluate, and implement, as appropriate, alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts; and

(e) Provide opportunity for public review of actions proposed in floodplains and wetlands.

#### § 1022.4 Definitions.

For purposes of this Part:

(a) "Action" means any DOE activity.

(b) "Base Flood" means that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood).

(c) "Critical Action" means any activity for which even a slight chance of flooding would be too great. Such actions may include the storage of highly volatile, toxic, or water reactive materials.

(d) "Environmental Assessment" (EA) means a document prepared by DOE, pursuant to 10 CFR Part 1021, which assesses whether a proposed DOE action would be "major" and would "significantly affect" the quality of the human environment, and which serves as the basis for a determination as to whether an environmental impact statement is required.

(e) "Environmental Impact Statement" (EIS) means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA.

(f) "Facility" means any man-made or man-placed item other than a structure.

(g) "Flood or Flooding" means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters.

(h) "Floodplain" means lowlands adjoining inland and coastal waters including, at a minimum, that area inundated by a 1 percent or greater chance flood in any given year. The base floodplain is defined as the 100-year (1.0 percent) floodplain. The critical action floodplain is defined as the 500-year (0.2 percent) floodplain.

(i) "Floodplain Action" means any DOE action which takes place in a floodplain.

(j) "Floodplain/Wetlands Assessment" means an evaluation consisting of a description of a proposed action, a discussion of its effect on the floodplain/wetlands, and consideration of alternatives.

(k) "Floodproofing" means the modification of individual structures and

facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce the effects of water entry.

(l) "High Hazard Area" means those portions of riverine and coastal floodplains nearest the source of flooding which are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

(m) "Minimize" means to reduce to the smallest degree practicable.

(n) "Negative Determination" (ND) means a document prepared pursuant to 10 CFR Part 1021 to certify a decision that an EIS will not be prepared for a proposed DOE action.

(o) "New Construction" for the purpose of compliance with E.O. 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after October 1, 1977.

(p) "Practicable" means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, and implementation time.

(q) "Public Notification" (PN) means a brief notice published in the FEDERAL REGISTER which describes a proposed floodplain/wetlands action and affords the opportunity for public review.

(r) "Preserve" means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.

(s) "Restore" means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

(t) "Statement of Findings" means a statement issued pursuant to E.O. 11988 which explains why a DOE action is proposed in a floodplain, lists alternatives considered, indicates whether the action conforms to State and local floodplain standards, and describes steps to be taken to minimize harm to or within the floodplain.

(u) "Structure" means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

(v) "Wetlands" means those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, pot-holes, wet meadows, river overflows, mud flats, and natural ponds.

(w) "Wetlands Action" means an action undertaken by DOE in a wet-

lands not located in a floodplain, subject to the exclusions specified at § 1022.5(d).

#### § 1022.5 Applicability.

(a) This Part shall apply to all organizational units of DOE, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This Part shall apply to all proposed floodplain/wetlands actions, including those sponsored jointly with other agencies, where practicable modifications of or alternatives to the proposed action are still available. With respect to programs and projects for which the appropriate environmental review has been completed or a final EIS filed prior to the effective date of these regulations, DOE shall, in lieu of the procedures set forth in this Part, review the alternatives identified in the environmental review or in the final EIS for potential impacts on floodplains. If project or program implementation has progressed to the point where review of alternatives is no longer practicable, or if DOE determines after a review of alternatives to take action in a floodplain, DOE shall design or modify the selected alternative in order to minimize potential harm to or within the floodplain and to restore and preserve floodplain values. DOE shall publish in the FEDERAL REGISTER a brief description of measures to be employed and shall endeavor to notify appropriate Federal, State, and local agencies and persons or groups known to be interested in the action.

(c) This Part shall not apply to wetlands projects under construction prior to October 1, 1977; wetlands projects for which all of the funds have been appropriated through fiscal year 1977; or wetlands projects and programs for which a draft or final EIS was filed prior to October 1, 1977. With respect to proposed actions located in wetlands (not located in a floodplain), this Part shall not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands which are located on non-Federal property.

(d) This Part is specifically applicable to activities in furtherance of DOE responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to, water and related land resources planning, regulating, and licensing activities.

(e) This Part ordinarily shall not apply to the following actions which generally have minimal or no adverse effect on floodplains/wetlands:

(1) Floodproofing or flood protection of existing DOE structures or facilities within the floodplain;

(2) Maintenance of existing facilities and structures on DOE property within a floodplain.

However, where unusual circumstances exist, DOE shall consider the need for a floodplain/wetlands assessment for these types of actions.

(f) The policies and procedures of this Part which are applicable to floodplain actions shall apply to all proposed actions which occur in a wetlands located in a floodplain.

#### SUBPART B—PROCEDURES FOR FLOODPLAIN/WETLANDS REVIEW

##### § 1022.11 Floodplain/wetlands determination.

(a) Concurrent with its review of a proposed action to determine the applicability of the procedural requirements of 10 CFR Part 1021, DOE shall determine the applicability of the floodplain management and wetlands protection requirements of this Part.

(b) In making the floodplain determination, DOE shall utilize the Flood Insurance Rate Maps (FIRM's) or the Flood Hazard Boundary Maps (FHBMs) prepared by the Federal Insurance Administration of the Department of Housing and Urban Development to determine if a proposed action is located in the base or critical action floodplain, as appropriate. For a proposed action in an area of predominantly Federal or State land holdings where FIRM or FHBMs are not available, information shall be sought from the land administering agency (e.g., Bureau of Land Management, Soil Conservation Service, etc.) or from agencies with floodplain analysis expertise.

(c) In making the wetlands determination, DOE shall utilize U.S. Fish and Wildlife Service National Wetlands Inventory maps, where available.

##### § 1022.12 Floodplain/wetlands assessment.

(a) If DOE determines, pursuant to § 1022.5 and § 1022.11, that this Part is applicable to the proposed action, DOE shall prepare a floodplain/wetlands assessment, which shall contain the following information:

(1) Project Description.—This section shall describe the nature and purpose of the proposed action, and shall include a map showing its location with respect to the floodplain and/or wetlands. For actions located in a floodplain, the high hazard areas shall be delineated and their relationship to the proposed action shall be discussed.

(2) Floodplain/Wetlands Effects.—This section shall discuss the positive and negative and long- and short-term effects of the proposed action on the floodplain and/or wetlands. The effects of a proposed floodplain action on lives and property, and on natural and beneficial floodplain values shall be evaluated. For actions taken in wet-

lands, the effects on the survival, quality, and natural and beneficial values of wetlands shall be evaluated.

(3) Alternatives.—Alternatives to the proposed action shall be considered including alternate sites and no action. Measures that mitigate the adverse effects of actions in a floodplain or wetlands, including, but not limited to, requirements for minimum grading, runoff controls, design and construction constraints, and protection of ecology-sensitive areas shall be included.

(b) For proposed floodplain or wetlands actions for which an EA or EIS is required, the floodplain/wetlands assessment shall be prepared concurrent with the NEPA analysis specified in 10 CFR Part 1021 and included in the EA or EIS.

(c) For floodplain/wetlands actions for which an EA or EIS is not prepared, an independent document shall be issued as the floodplain/wetlands assessment.

##### § 1022.13 Public review.

(a) For proposed floodplain/wetlands actions for which an EA or EIS is required, the opportunity for early public review will be provided through the existing NEPA procedures specified in 10 CFR Part 1021. In these cases, either the Notice of Intent to prepare an EIS (10 CFR 1021.25), or the Negative Determination (10 CFR 1021.14), shall be used to satisfy the requirements for early public notification.

(b) For proposed floodplain/wetlands actions for which no EA or EIS is required, DOE shall provide the opportunity for early public review through preparation of a Public Notification (PN), which shall be published in the FEDERAL REGISTER. In addition, DOE shall endeavor to send the PN to appropriate Federal, State, and local agencies and to persons or groups known to be interested in the floodplain/wetlands implications of the proposed action. The PN shall include a description of the proposed action with a location map.

(c) Following publication of the PN, DOE shall wait 15 days prior to making its decision on the proposed action, except as specified in § 1022.16. After this period, DOE shall reevaluate the practicability of alternatives to the proposed floodplain/wetlands action and mitigating measures, taking into account all substantive comments received.

##### § 1022.14 Notification of decision.

(a) If no practicable alternative to locating in the floodplain/wetlands is available, DOE shall design or modify its action in order to minimize potential harm to or within the floodplain/wetlands.

(b) For actions which will be located in a floodplain, DOE shall publish a

brief (not to exceed three pages) statement of findings which shall contain:

(1) An explanation indicating why the action is proposed to be located in the floodplain,

(2) A list of alternatives considered,

(3) A statement indicating whether the action conforms to applicable State or local floodplain protection standards, and

(4) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

For floodplain actions which require an EIS, the statement of findings may be incorporated into the final EIS or issued as a separate notice in the FEDERAL REGISTER. Where no EIS is required, DOE shall publish the statement of findings in the FEDERAL REGISTER and distribute copies to Federal, State, and local agencies and others who submitted comments as a result of the PN or ND. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, DOE shall send the statement of

findings to the State and areawide A-95 clearinghouses for the geographic area affected.

(c) DOE shall indicate in any requests for new authorizations or appropriations transmitted to OMB whether the proposed action is in accord with the requirements of E.O. 11990 and E.O. 11988.

#### § 1022.15 Follow-up.

For those DOE actions taken in floodplain/wetlands, DOE shall verify that the implementation of the selected alternative, particularly with regard to any mitigating measures, is proceeding as described in the floodplain/wetlands assessment and statement of findings.

#### 1022.16 Timing of floodplain/wetlands actions.

(a) Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

(b) With respect to wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the PN in the FEDERAL REGISTER.

(c) Where emergency circumstances, statutory deadlines, or overriding considerations of expense or effectiveness exist, the minimum time periods may be waived.

#### § 1022.17 Selection of a lead agency and consultation among participating agencies.

When DOE and one or more other Federal agencies are directly involved in a floodplain/wetlands action, DOE shall consult with such other agencies to determine if a floodplain/wetlands assessment is required, to identify the appropriate lead or joint agency responsibilities, and to establish procedures for interagency coordination during the environmental review process.

[FR Doc. 78-19908 Filed 7-18-78; 8:45 am]