

## DEPARTMENT OF ENERGY

## Compliance With the National Environmental Policy Act; Proposed Guidelines

AGENCY: Department of Energy.

ACTION: Proposed guidelines for compliance with the National Environmental Policy Act.

**SUMMARY:** The proposed guidelines provide the supplemental agency procedures required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

The guidelines will be applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC), which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

The CEQ regulations, which were published in the Federal Register on November 29, 1978, become binding on Federal agencies as of July 30, 1979.

Accordingly, DOE, at that time, will revoke the NEPA regulations of the predecessor agencies of DOE and adopt the proposed DOE guidelines on an interim basis pending publication in final form.

Written comments are requested with respect to the proposed DOE guidelines.

**DATES:** Comments must be received no later than August 20, 1979.

**ADDRESSES:** Send comments to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G-084, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G-084, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202-252-8400. Stephen H. Greenleigh, Esq., Acting Assistant, General Counsel for Environment, Room 6G-087, Forrestal Building, Washington, D.C. 20586, 202-252-6947.

## SUPPLEMENTARY INFORMATION:

- I. Background
- II. The Proposed Guidelines
- III. Comment Procedures

## I. BACKGROUND

**A. National Environmental Policy Act.**—The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies give appropriate weight to factors affecting the human environment during all stages of their decisionmaking process. In this connection, NEPA requires Federal agencies to prepare detailed statements on proposals for major Federal actions significantly affecting the quality of the human environment.

**B. Council on Environmental Quality NEPA Regulations.**—Executive Order 11991 (May 24, 1977) directed CEQ to issue regulations implementing the procedural provisions of NEPA. Accordingly, CEQ published final NEPA regulations on November 29, 1978, which become binding on all Federal agencies on July 30, 1979. The CEQ regulations (40 CFR Parts 1500-1508) require agencies to adopt implementing procedures, no later than July 30, 1979, to supplement the uniform procedures established by CEQ.

**C. Department of Energy NEPA Procedures.**—The guidelines proposed in this notice provide the supplemental implementing procedures required by 40 CFR 1507.3.

The guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. They are not intended, however, to create or enlarge any procedural or substantive rights against DOE. Any deviations from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

At the time the CEQ regulations become effective, July 30, 1979, DOE will revoke the NEPA regulations previously promulgated by the Energy Research and Development Administration (10 CFR Part 711) and the Federal Energy Administration (10 CFR Part 208) as well as the NEPA regulations of other predecessor agencies of DOE to the extent they had applied to functions transferred to DOE pursuant to the DOE Organization Act, and will adopt the proposed DOE guidelines on an interim basis pending publication in final form.

**D. Consultation with CEQ.**—In accordance with 40 CFR 1507.3, DOE has consulted with CEQ in developing the proposed DOE guidelines.

## II. THE PROPOSED GUIDELINES

**A. General.**—The implementing procedures proposed herein do not reiterate or paraphrase the CEQ provisions, in accordance with 40 CFR 1507.3, and, therefore, must be read and

interpreted in conjunction with 40 CFR Parts 1500-1508.

The proposed guidelines will be applicable to all organizational elements of DOE, except FERC, an independent regulatory body within DOE.

**B. NEPA and Agency Planning.**—Section A of the guidelines generally parallels the structure of 40 CFR 1501 with respect to the integration of the NEPA process with other planning at the earliest possible time and the early identification of significant environmental issues.

In order to assure that the DOE NEPA process begins at the earliest possible time in applicant proceedings, paragraph A.1 provides procedures for the early submission of environmental information by applicants and early coordination and consultation with other governmental agencies and potentially interested parties.

Paragraph A.2 sets forth the process for determining if an environmental assessment (EA) or an environmental impact statement (EIS) is required to support a proposed DOE action. Typical classes of DOE actions which normally require an EIS, normally do not require either an EIS or an EA, and which normally require EA's but not necessarily EIS's are presented in Section D.

The DOE scoping process, which includes requirements for a Notice of Intent to prepare an EIS and an EIS implementation plan, among other things, is explained in paragraph A.3.

**C. NEPA and Agency Decisionmaking.**—Section B of the guidelines provides DOE procedures to implement the CEQ requirements with respect to agency decisionmaking (40 CFR Part 1505) to ensure that DOE decisions are made in accordance with the policies and purposes of NEPA. To comply with 40 CFR 1505.1(b), DOE has designated the major decisionmaking processes for its principal programs likely to have a significant effect on the human environment and included provisions to assure that the NEPA process corresponds with such decisionmaking processes.

Relevant environmental factors and alternatives to proposed DOE actions will be considered at the earliest possible time in the decisionmaking process. Where an EIS is prepared, the record of decision (40 CFR 1505.2) will be published in the Federal Register and made available upon request, except as provided in paragraph C.1 with respect to confidential or classified information.

**D. Other Requirements of NEPA.**—The CEQ regulations allow an agency to develop criteria for limiting public

access to NEPA documents which involve classified information. Paragraph C.1 provides DOE policy for addressing classified information as well as policy for addressing confidential information.

Procedures regarding DOE Modifications of the time periods specified in the CEQ regulations in certain limited circumstances are provided in paragraph C.2.

Paragraph C.3 identifies the NEPA Affairs Division within the Office of Environment as the point of contact for public inquiries regarding the DOE NEPA process. The Assistant Secretary for Environment, or his/her designee, shall be responsible for overall review of DOE NEPA compliance (paragraph C.4).

Paragraph C.5 provides that any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

**E. Terminology.**—The terminology established in the CEQ regulations (40 CFR 1500.1) will be applied consistently throughout the guidelines.

### III. COMMENT PROCEDURES

Interested persons are invited to submit written comments with respect to the proposed guidelines to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4C-064, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Compliance with the National Environmental Policy Act." Five (5) copies should be submitted. All comments and related information should be received by DOE August 20, 1979, in order to insure consideration.

**Note.**—In respect to Executive Order 12044, "Improving Government Regulations," DOE has determined that the proposed guidelines are "significant" but not "major" because the anticipated effects of the proposal if made final, would be primarily to provide internal guidance for the implementation of the Council of Environmental Quality (CEQ) regulations. They do not, therefore, require a regulatory analysis.

Issued in Washington, D.C., July 13, 1979.  
Ruth C. Glusen,  
Assistant Secretary for Environment.

### DOE NEPA GUIDELINES

Section A—NEPA and Agency Planning  
Paragraph A.1. Apply NEPA Early in the Process [40 CFR 1501.2].

Paragraph A.2. Whether to Prepare an Environmental Impact Statement [40 CFR 1501.4, 1507.3(b)(2), and 1508.4].  
Paragraph A.3. Scoping [40 CFR 1501.7].  
Paragraph A.4. Supplemental Statements [40 CFR 1502.9(c)].

Section B—NEPA and Agency Decisionmaking

Paragraph B.1. DOE Decisionmaking Procedures [40 CFR 1505.1].

Section C—Other Requirements of NEPA

Paragraph C.1. Access to NEPA documents [40 CFR 1507.3(c)].

Paragraph C.2. Revisions of Time Periods [40 CFR 1507.3(d)].

Paragraph C.3. Status of NEPA Actions [40 CFR 1508.6(e)].

Paragraph C.4. Oversight of Agency NEPA Activities [40 CFR 1507.2(a)].

Paragraph C.5. Compliance.

Section D—Typical Classes of Action

### DOE NEPA GUIDELINES

#### Purpose

The purpose of these guidelines is to provide procedures which the Department of Energy (DOE) will apply to implement the Council on Environmental Quality (CEQ) regulations for compliance with the National Environmental Policy Act (NEPA). The CEQ regulations are codified at 40 CFR Parts 1500-1508. The guidelines are issued pursuant to and are to be used only in conjunction with the CEQ regulations.

The guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. They are not intended, however, to create or enlarge any procedural or substantive rights against DOE. Any deviation from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

DOE will, in accordance with 40 CFR 1507.3, review these guidelines on a continuing basis and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA. Substantive changes will be published in the Federal Register.

Section A—NEPA and Agency Planning

1. Apply NEPA Early in the Process  
The CEQ regulations (40 CFR 1501.2) require that:

"Agencies shall integrate the NEPA process with other planning at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."

Specifically with respect to applicant processes, agencies are required to develop procedures that:

"(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

"(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

"(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

"(3) The Federal agency commences its NEPA process at the earliest possible time.

To implement these requirements:

(a) DOE will review preliminary internal program planning documents, regulatory agenda, draft legislation, budgetary materials and other developing DOE proposals, to ensure the proper integration of the NEPA process and will:

(1) Incorporate into its early planning processes a careful consideration of: (i) the potential environmental consequences of its proposed actions, and (ii) appropriate alternative courses of action;

(2) At the earliest possible time, in accordance with paragraph A.2 herein, determine whether an environmental assessment (EA) or an environmental impact statement (EIS) is required.

(b) Applicants for a DOE lease, permit, license, certificate, financial assistance, allocation, exemption or similar action should consult with DOE as early as possible in their planning processes to obtain guidance with respect to the appropriate level and scope of any studies or environmental information which DOE may require to be submitted as part or in support of their application.

(c) DOE expects applicants to: (1) Conduct studies which are deemed necessary and appropriate by DOE to determine the impact of the proposed action on the human environment;

(2) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during the preliminary planning stages of the proposed action to ensure that environmental factors including permitting requirements are identified;

(3) Submit applications for all required Federal, regional, State and local permits or approvals as early as possible;

(4) Notify DOE as early as possible of other Federal, regional, State, local and Indian tribe actions required for project completion in order that DOE may coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2, regarding elimination of

duplication with State and local procedures, as appropriate;

(5) Notify DOE of private persons and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2);

(6) Notify DOE if, prior to completion of the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction which may meet either of the criteria set forth at 40 CFR 1506.1(a).

(d) DOE will, upon receipt of an application, or earlier if possible, initiate and coordinate any requisite environmental analyses.

(e) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(f) For DOE programs that frequently involve another agency or agencies in related decisions subject to NEPA, DOE will cooperate with the other agencies in developing environmental information and in determining whether to prepare an EA or an EIS. Where appropriate and acceptable to the other agencies, DOE will develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

**2. Whether to Prepare an Environmental Impact Statement.**—The CEQ regulations (40 CFR 1501.4) require the Federal agency, in determining whether to prepare an EIS, to:

"(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

"(1) Normally requires an environmental impact statement, or

"(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion), and

"(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1506.9)."

To implement this requirement and the requirements contained at 40 CFR 1507.3(b)(2):

(a) DOE has (in Section D), identified and developed specific criteria for those typical classes of DOE action:

"(i) Which normally do require environmental impact statements.

"(ii) Which normally do not require either an environmental impact statement or an

environmental assessment [categorical exclusions (§ 1506.4)].

"(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(b) DOE will review individual proposed actions to ascertain whether an environmental assessment (EA) or EIS is required where:

(1) The proposed action is not encompassed within the categorizations of Section D.

(2) The proposed action is encompassed within the categorizations of Section D, but DOE believes that the categorization is not appropriate to the individual proposed action.

(3) Public comment received on or relating to a proposal included within the categorizations of Section D raises a substantial question regarding the categorization.

(c) DOE will, in conducting the reviews of paragraph (b) above, either:

(1) Determine that neither an EA nor EIS is required where it is clear that the proposed action is not a major Federal action significantly affecting the quality of the human environment. (In such cases, a brief memorandum may be prepared explaining the basis for that determination);

(2) Prepare an EA where it is unclear whether an EIS is required; or

(3) Proceed directly to EIS preparation where it is clear that an EIS is required.

(d) DOE may add actions to or remove actions from the categories in Section D, based on experience gained during implementation of the CEQ regulations and these guidelines.

**3. Scoping.**—The CEQ regulations (40 CFR 1501.7) require:

"an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action."

(a) To implement this requirement, DOE will:

(1) As soon as practicable after a decision to prepare an EIS, publish in the Federal Register a Notice of Intent (NOI) to prepare an EIS in accordance with 40 CFR 1501.7. However, where DOE finds that there is a lengthy period between DOE's decision to prepare an EIS and the time of actual preparation, DOE may instead publish the NOI at a time sufficiently in advance of preparation of the draft EIS to provide reasonable opportunity for interested persons to participate in the EIS preparation process.

(2) Provide additional dissemination of the NOI in accordance with 40 CFR 1506.6;

(3) Through the NOI, invite comments and suggestions on the proposed scope of the EIS including environmental issues and alternatives for consideration in the preparation of the draft EIS and invite public participation in the NEPA process in accordance with 40 CFR 1501.7(a)(1), except where there is an exception for classified proposals pursuant to 40 CFR 1507.3(c) and paragraph C.1, herein. The comment period for the NOI will normally be 20 days. To the extent practicable, DOE may consider comments received after the close of the designated comment period on the NOI in preparing the draft EIS.

(4) Prepare and utilize an EIS implementation plan as described below.

(b) The EIS implementation plan will be a brief document providing guidance to DOE for the preparation of an EIS. It will contain:

(1) Information to address the provisions of 40 CFR 1501.7(a)(2), (3), (5), (6), and (7);

(2) A detailed outline of the EIS;

(3) A description of the means by which the EIS will be prepared, including the nature of any contractor assistance to be utilized.

(c) The EIS implementation plan may also contain:

(1) Target page limits for the EIS;

(2) Target time limits for EIS preparation;

(3) An allocation of assignments among DOE and cooperating agencies.

(d) DOE will complete an EIS implementation plan as soon as practicable after the close of the designated comment period on the NOI or after a scoping meeting, if one is held, whichever is later. DOE may revise the implementation plan, as necessary during EIS preparation.

**4. Supplemental Statements.**—(a) If required, DOE will prepare, circulate, and file a supplement to a draft or final EIS, in accordance with 40 CFR 1502.9(c). However, where it is unclear whether an EIS supplement is required, DOE will prepare an analysis which provides sufficient information to support a DOE determination with respect to the criteria of 40 CFR 1502.9(c) (i) and (ii). Based on the analysis, DOE will determine whether to prepare an EIS supplement. Where DOE determines that an EIS supplement is not required, DOE will prepare a brief memorandum which explains the basis for the determination.

(b) When applicable, DOE will incorporate an EIS supplement or a brief memorandum and supporting analysis into any related formal administrative

record prior to making a final decision on the action which is the subject of the EIS supplement or analysis.

#### Section B—NEPA and Agency Decisionmaking

**1. DOE Decisionmaking Procedures.**—The CEQ NEPA regulations (40 CFR 1505.1) require that agencies adopt procedures to ensure that decisions are made in accordance with the policies and purposes of NEPA.

To implement this CEQ requirement, this section designates the major decisionmaking processes for DOE's principal programs and provides for procedures to assure that the NEPA process corresponds with the decisionmaking processes. These processes are designated as policy level decisionmaking, program level decisionmaking, and project level decisionmaking. The procedures consist of general procedures applicable to all DOE decisionmaking processes followed by additional procedures applicable to the specific decisionmaking processes. The decisionmaking structure designated herein is consistent with the CEQ tiering concept (40 CFR 1502.20), which provides for focusing on the actual issues ripe for decision and eliminating repetitive discussions of the issues already decided. Accordingly, environmental documents prepared for policy level decisions will normally focus on broad issues and will provide the foundation for subsequent program and project environmental documents. Environmental documents prepared for program level decisions will normally focus on narrower issues than at the policy level and may summarize and incorporate by reference discussions contained in any relevant policy level environmental document but should not repeat the discussion of issues already decided at the policy level of decisionmaking. Similarly, environmental documents prepared for project level decisions will normally focus on issues specific to the proposed project and may summarize and incorporate by reference discussions contained in any broader environmental documents but should not repeat the discussion of issues already decided at higher levels of decisionmaking.

(a) The following general procedures apply to all DOE decisionmaking processes. DOE will:

(1) At the earliest possible time in the decisionmaking process: (i) identify and evaluate environmental factors and appropriate alternative courses of action, and (ii) determine in accordance with paragraph A.2 herein the

appropriate level of environmental review document required.

(2) Commence preparation of the relevant environmental document as close as possible to the time that DOE begins development of or is presented with a proposal (40 CFR 1508.23), and complete the document in advance of final decisionmaking.

(3) During the development and consideration of a proposal and the relevant environmental document, review other DOE planning and decisionmaking documents to ensure that alternatives (including the proposed action) to be considered by the decisionmaker are encompassed by the range of alternatives in the relevant environmental document.

(4) Circulate the relevant environmental document or summary thereof with the proposal and other decisionmaking documents through DOE's internal review processes to ensure that DOE officials use the environmental documents in making decisions and that the decisionmaker consider the alternatives described therein.

(5) Where an EIS is prepared, publish the record of decision (40 CFR 1505.2) in the Federal Register and make it available to the public upon request except as provided in paragraph C.1. For the purposes of 40 CFR 1506.1, the record of decision will be deemed issued upon signature by the appropriate DOE official.

(6) Utilize the tiering concept in accordance with 40 CFR 1502.20 and 1508.28 to the fullest extent practicable.

(b) The following procedures are applicable to the specific decisionmaking processes.

(1) **Policy level decisionmaking.**—At this level of decisionmaking, DOE is deciding on broad strategies to achieve energy goals such as conservation, development of new resources and use of more abundant resources. Policy level decisions may, for example, be represented by proposals for legislation or by formal statements of national energy policy.

(i) For legislative proposals, DOE will: identify and evaluate relevant environmental issues and reasonable alternatives, and make a determination regarding the need to prepare an environmental document during the proposal formulation and early drafting stages; and, normally prepare, consider, and publish any required environmental document in connection with the submittal of a proposal to Congress, except as may be provided in 40 CFR 1506.8.

(ii) For formal statements of national energy policy DOE will: initiate implementation of the applicable general procedures specified in paragraph (a) above during the analysis phase of policy development; and will prepare, consider, and publish any required environmental document in advance of policy adoption for those policies that will result in or substantially alter DOE programs.

(2) **Program level decisionmaking.**—At this level of decisionmaking, DOE is deciding on a variety of approaches to implement specific policies or statutory authorities. Program level decisions are generally represented by the advancement of an energy technology program, the issuance of program regulations, or the adoption of a program plan.

(i) For energy technology research, development, demonstration and commercialization programs, DOE will: initiate the applicable general procedures in paragraph (a) above concurrent with program initiation; and, if required, prepare the relevant environmental document when environmental effects can be meaningfully evaluated. When required, the relevant environmental document would normally be prepared to support a decision to proceed with the development phase of a research, development, demonstration, and commercialization program. Nevertheless, DOE will consider the following factors throughout the program in determining the necessity and appropriate timing of the relevant environmental document: (a) The significance of the environmental impacts of the technology, if applied, on the quality of the human environment; and (b) The extent to which continued investment in the new technology is likely to cause the program to reach a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(ii) For programs that are implemented by regulations, DOE will initiate implementation of the applicable general procedures in paragraph (a) above during early regulation drafting stages. Publication of a draft EIS, if required will normally accompany publication of the proposed regulations and will be available for public comment at any hearings held on the proposed regulations. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking intended to gather information during early stages of regulation development. The relevant environmental document,

















