

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 5440.1B

5-14-82

SUBJECT: IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. PURPOSE. To revise previous procedures implementing the National Environmental Policy Act of 1969.
2. CANCELLATION. DOE 5440.1A, IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT, of 10-20-80.
3. REFERENCES.
 - a. National Environmental Policy Act (42 U.S.C. 4321 et seq.), of 1-1-70, which establishes broad national environmental policy.
 - b. Executive Order 11514, of 3-5-70, as amended by Executive Order 11991, 5-24-77, which establishes environmental responsibilities of Federal agencies, and directs the Council on Environmental Quality to issue regulations to implement the procedural provisions of the National Environmental Policy Act.
 - c. Council on Environmental Quality Regulations (40 CFR Parts 1500-1508, 43 FR 55978), 11-29-78, which establishes regulations for implementing the procedural provisions of the National Environmental Policy Act.
 - d. Department of Energy Organization Act (42 U.S.C. 7112), which establishes statutory responsibilities to ensure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and advance goals of restoring, protecting, and enhancing environmental quality and assuring public health and safety.
 - e. Department of Energy Guidelines for Compliance with the National Environmental Policy Act (45 FR 20694, as amended), of 3-28-80, which establishes Departmental guidelines for implementation of the procedural provisions of the National Environmental Policy Act pursuant to the Council on Environmental Quality Regulations.
4. DEFINITIONS.
 - a. Program or Regulatory Organization. Organization (Under Secretary, Assistant Secretary, Administrator, or Director level) is responsible for the decisionmaking and implementation of the Department's programmatic or regulatory action requiring a National Environmental Policy Act review.

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- b. Environmental Assessment. A document prepared by the Department which assesses whether a proposed action is a "major Federal action significantly affecting the quality of the human environment," and which serves as the basis for a determination as to whether an environmental impact statement is required.
 - c. Finding of No Significant Impact. A document prepared to record a Departmental decision that the environmental impacts are not significant and that an environmental impact statement is not required for a proposed action.
 - d. Environmental Impact Statement. A document prepared in accordance with the requirements of Section 102(2)(C) of the National Environmental Policy Act.
 - e. Implementation Plan. A written plan that records the results of the scoping process and outlines the procedures by which an environmental impact statement is to be prepared. The implementation plan should be prepared in accordance with the Department's guidelines (45 FR 20694), paragraph A4(e).
 - f. Record of Decision. A concise public record of the Department's decision on a proposed action for which an environmental impact statement was prepared which includes the alternatives considered, the environmentally preferable alternative, factors balanced in the decision, and mitigation measures and monitoring to minimize harm.
 - g. National Environmental Policy Act Document. An environmental assessment, an environmental impact statement, an environmental impact statement supplement, a finding of no significant impact, a notice of intent, a record of decision, or any other documentation prepared pursuant to a National Environmental Policy Act requirement.
5. POLICY. The National Environmental Policy Act establishes a broad national policy to encourage productive and enjoyable harmony between persons and their environment and to ensure that consideration is given to environmental values and factors in Federal decisionmaking. It shall be the Department of Energy's policy to comply fully with the spirit and letter of the National Environmental Policy Act.
6. RESPONSIBILITIES AND AUTHORITIES.
- a. Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness (EP-1), or designee, shall:
 - (1) Review appropriate management reports, new legislative authorities, and emerging and ongoing programs to identify Department of Energy actions which may require environmental review under the National Environmental Policy Act;

- (2) Determine, after consultation with the General Counsel, the level of review under the National Environmental Policy Act required for proposed Department of Energy actions except as provided for in paragraphs 6b(2), 6c(2), and 6c(3);
- (3) Following review of an environmental assessment prepared pursuant to either paragraphs 6a(2) or 6c(2) and the recommendation of the program office regarding environmental impact statement preparation, determine, after consultation with the General Counsel, whether or not a proposed action requires an environmental impact statement;
- (4) Determine, in those cases where no one program or regulatory office has overall responsibility for the implementation of the proposed action, the responsible office(s) and means by which an environmental assessment or environmental impact statement will be prepared;
- (5) Provide National Environmental Policy Act technical assistance and policy guidance to other Departmental offices in their preparation of environmental assessments and environmental impact statements;
- (6) Approve task forces proposed to prepare environmental impact statements by program or regulatory offices, which are composed of representatives of various Departmental offices and other Government agencies;
- (7) Establish procedures for the review, approval, publication, and dissemination of all National Environmental Policy Act documents;
- (8) Review, exercise quality control over, evaluate, and, after consultation with the General Counsel, approve or disapprove for publication all environmental assessments and draft and final environmental impact statements based on their content and conformity to Executive Order No. 11514, the Council on Environmental Quality Regulations, the Department of Energy's National Environmental Policy Act guidelines, and this Order;
- (9) Approve program or regulatory office procedures established to ensure adequate consideration of environmental factors in their decisionmaking;
- (10) Determine, after consultation with the General Counsel and appropriate program or regulatory Department officials, whether a public hearing on the National Environmental Policy Act aspects of a proposed action should be held;
- (11) Establish procedures for the Department's review and comment on the environmental assessments and environmental impact statements of other agencies;

- (12) Review and approve (for content only) records of decision;
 - (13) Evaluate proposed and alternative actions described in Departmental environmental impact statements and make any appropriate environmental recommendations to the responsible Assistant Secretary;
 - (14) Evaluate alternative mitigating measures specified by responsible supervisory officials in final environmental impact statements prepared under their jurisdiction (see subparagraph 5c(11)) and make recommendations regarding the desirability and feasibility of their implementation;
 - (15) Advise the appropriate responsible supervisory official and, if necessary, the Secretary of proposed actions believed to be not in conformance with applicable environmental laws and regulations, or Department of Energy policies;
 - (16) Establish and maintain the capability to enhance, revise, or replace sections of a National Environmental Policy Act document prepared by a program or regulatory office, where it is judged by the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness that the following conditions exist:
 - (a) The document has major deficiencies from the standpoint of National Environmental Policy Act sufficiency; and
 - (b) The program or regulatory office is unable to make the necessary alterations within the required time frame;
 - (17) Develop procedures for determining which Department of Energy procurements have potential environmental significance, and review all Department of Energy procurement solicitations and resulting contracts determined to have potential environmental significance; and
 - (18) Perform all the functions under subparagraph 6b below, through the Office of Environmental Compliance.
- b Office of Environmental Compliance (EP-36). The Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness shall maintain an Office of Environmental Compliance. The Director of Environmental Compliance is responsible for quality control and general supervision of efforts directed toward fulfilling the Department of Energy's responsibilities under the National Environmental Policy Act. He or she shall:

- (1) Provide National Environmental Policy Act guidance, and planning technical assistance to program and regulatory offices, including:
 - (a) Assistance in the preparation of procurement solicitations with respect to the preparation of National Environmental Policy Act documents;
 - (b) Assistance in the development of environmental criteria (stipulative and evaluative) and evaluation of proposals against such criteria for procurements with potential environmental significance;
 - (c) Assistance in the preparation of outlines for environmental impact statements and schedules for environmental impact statement preparation;
 - (d) Review and comment on all interim, draft, and final National Environmental Policy Act documents;
 - (e) Coordinating and expediting the signoff and distribution process for National Environmental Policy Act documents;
 - (f) Holding of public hearings regarding National Environmental Policy Act matters; and
 - (g) Assistance in the response to external comments on draft environmental impact statements;
- (2) Determine, after consultation with the General Counsel, that a proposed Departmental action does not require an environmental assessment or an environmental impact statement, except as provided for in paragraph 6c(3);
- (3) Review, exercise quality control over, and recommend approval or disapproval of all National Environmental Policy Act documents to the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness;
- (4) Prepare policy and legislative environmental assessments and environmental impact statements dealing with a proposal significantly affecting more than one program or regulatory office in consultation with those affected offices;
- (5) Develop National Environmental Policy Act policies and Department of Energy directives;
- (6) Track environmental impacts and issues relating to actions subject to National Environmental Policy Act review, and assure the implementation of practical substantive environmental mitigating measures into Department of Energy programs;

- (7) Coordinate assistance to other agencies in their National Environmental Policy Act processes from the period beginning prior to the preparation of a draft environmental impact statement by the other agency through submission of comments on final environmental impact statements from other agencies;
- (8) Coordinate all consultation with the Council on Environmental Quality on matters pertaining to the National Environmental Policy Act;
- (9) Review and approve implementation plans for the preparation of environmental impact statements on Department of Energy program, regulatory, or legislative actions;
- (10) Recommend to the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness:
 - (a) Whether a proposed Departmental action requires an environmental assessment;
 - (b) Whether an environmental assessment is adequate;
 - (c) Whether a proposed Departmental action requires an environmental impact statement; and
 - (d) Whether an environmental impact statement is adequate and should be approved for publication;
- (11) Recommend to the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness whether a public hearing should be held on the National Environmental Policy Act aspects of a proposed action;
- (12) Evaluate proposed and alternate Departmental actions as set forth in environmental impact statements and make appropriate environmental recommendations to the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness;
- (13) Alert the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness of any Departmental action believed to be not in conformance with applicable environmental laws, regulations, or national or Department of Energy environmental policies; and
- (14) Fulfill his or her responsibilities, in part, through the assignment of National Environmental Policy Act coordination officers to work closely with designated program or regulatory personnel throughout all phases of their environmental assessment or environmental impact statement preparation effort.

- c. Responsible Supervisory Officials. The Deputy Secretary, Under Secretary, Assistant Secretaries, Administrators, and Directors, or their designees, are responsible for preparing and defending environmental impact statements or environmental assessments on programs, projects, or regulatory actions under their jurisdiction. As part of this responsibility, they shall:
- (1) Notify the Director of Environmental Compliance at the earliest possible time in their planning process of actions under consideration that may potentially have a significant effect upon the quality of human environment.
 - (2) Determine whether a proposed action under their jurisdiction requires the preparation of an environmental assessment, an environmental impact statement, or neither, for those actions that fall within the typical classes of actions listed in Section D of the Department of Energy guidelines (45 FR 20694, as amended); and furnish a copy of such determinations to the Office of Environmental Compliance;
 - (3) Determine that a proposed action, although not categorically excluded in Section D of the Department of Energy guidelines (45 FR 20694, as amended), clearly will not have significant environmental effects and therefore does not warrant preparation of an environmental assessment or an environmental impact statement, and furnish copies of such determinations to the Office of Environmental Compliance;
 - (4) Designate and supervise officials responsible for preparing environmental assessments and environmental impact statements;
 - (5) Prepare at the earliest practicable time, and review environmental assessments on proposed actions under their jurisdiction for which it is unclear whether an environmental impact statement is required;
 - (6) Prepare implementation plans as defined in subparagraph 4e;
 - (7) Prepare at the earliest practicable time, and review draft and final environmental impact statements on proposed actions under their jurisdiction having significant environmental impacts;
 - (8) Arrange, as appropriate, for the holding of public hearings concerning the National Environmental Policy Act related aspects of a proposed action under their jurisdiction;
 - (9) Proposed and establish, where appropriate, task forces composed of representatives of the Department of Energy and other Government agencies to prepare environmental impact statements;

- (10) Establish identifiable procedures and records within their respective organizations to ensure that environmental factors are adequately considered along with other program considerations in the decisionmaking process;
- (11) Specify in final environmental impact statements which environmental mitigating measures they are committed to implement in connection with the proposed action, which will be studied further, which are outside the authority of the Federal Government to implement, and which will not be implemented;
- (12) Monitor and prepare, where appropriate, periodic reports on the status of post-final environmental impact statement program or project implementation, particularly with respect to any environmental mitigating measures included in the program or project;
- (13) Establish procedures and take steps to ensure that the National Environmental Policy Act coordination officers designated in subparagraph 6b(14) are fully informed in a timely manner of all program considerations and changes that would bear on the accuracy and objectivity of the National Environmental Policy Act documents prepared under that program; and
- (14) Incorporate, where appropriate, environmental criteria (stipulative and evaluative) and conditions into procurement solicitations, and into resulting contracts issued under this jurisdiction.

d. General Counsel shall:

- (1) Consult with the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness as to whether a proposed action requires an environmental assessment, or an environmental impact statement, or neither;
- (2) Consult with the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness regarding the legal adequacy of all Departmental National Environmental Policy Act documents;
- (3) Consult with the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness as to whether a public hearing concerning the National Environmental Policy Act aspects of a proposed action should be held; and
- (4) Provide legal assistance to all Department organizations in the preparation of National Environmental Policy Act documents and the conduct of National Environmental Policy Act related hearings.

- e. The Assistant Secretary, Management and Administration, (MA-1), through the Director of Administrative Services shall maintain a list available for public inspection of all draft and final environmental impact statements, environmental assessments, and findings of no significant impact in the Department of Energy Public Reading Room and shall arrange for making such documents available for inspection in accordance with the provisions of the Freedom of Information Act (5 U.S.C Section 552).
- f. The Secretary shall:
- (1) Review final environmental impact statements on those Departmental actions where final decisionmaking authority has not been redelegated;
 - (2) Settle disputes that arise regarding issues related to the issuance of National Environmental Policy Act documents that are unresolvable at the program or regulatory organization levels.



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