

**DEPARTMENT OF ENERGY****Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines****AGENCY:** Department of Energy.**ACTION:** Notice of Proposed Amendments to the Department of Energy's NEPA Guidelines.

**SUMMARY:** The Department of Energy proposes to amend Section D of its NEPA guidelines by adding the permanent cogeneration exemption authorized under Title II of the Fuel Use Act to its list of categorical exclusions. A categorical exclusion is a class of DOE action which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). Public comment is invited on this proposal. Pending final adoption or rejection of the proposed amendments, the Department of Energy will utilize the categorical exclusion process for permanent cogeneration exemptions.

**DATE:** Comments by June 23, 1986.**FOR FURTHER INFORMATION CONTACT:**

Dr. Robert J. Stern, Director, Office of Environmental Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 3C-092, Washington, DC 20585, (202) 252-4600

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**SUPPLEMENTARY INFORMATION:****A. Background**

On March 28, 1980, the Department of Energy (DOE) published in the *Federal Register* (45 FR 20895) final guidelines for implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1509). In accordance with these regulations Section D of the DOE guidelines lists three classes of agency action: (1) Those which normally require environmental impact statements (EIS); (2) those which normally require environmental assessments (EA) but not necessarily environmental impact statements and; (3) those which normally do not require either environmental assessments or environmental impact statements. This third class was identified pursuant to § 1507.3(b)(2)(ii) of the CEQ regulations referenced above and are termed "categorical exclusions." The CEQ regulations defines a categorical

exclusion as a "category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." The regulations permit agency discretion, in that "an agency may decide in its procedures or otherwise to prepare environmental assessments even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect."

The DOE NEPA guidelines state that "DOE may add actions to or remove actions from the categories in section D based on experience gained during the implementation of the CEQ regulations and these guidelines." Pursuant to the guidelines, substantive revisions are to be published in the *Federal Register* and adopted only after opportunity for public review. The last amendments to section D were published in the *Federal Register* on February 5, 1985.

**B. Proposed Amendments**

The Department proposes to further amend section D of its guidelines by adding to the list of categorical exclusions in section D, the grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (Act) (Pub. L. 95-620) for any new cogeneration powerplant. This exemption is authorized by section 212(c) of the Act.

The listing of certain classes of actions which are categorically excluded from NEPA only raises a presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from the grant or denial of a specific cogeneration exemption, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to ascertain whether an environmental assessment or environmental impact statement would be required for any individual action which is listed in Subpart D of the guidelines as categorically excluded from NEPA. To assist DOE in making this determination, DOE is concurrently amending, in a document published elsewhere in this *Federal Register*, its regulations covering applications for cogeneration exemptions by requiring a petitioner for this exemption to (1) certify that he will comply with all applicable environmental permits and

approvals prior to operating the facility; and (2) complete an environmental checklist designed to determine whether the facility in question will have an impact in certain areas regulated by specified laws which impose consultation requirements on DOE (10 CFR 503.13(b)(2)). This will allow DOE to verify that either no significant impact will result, or that the categorical exclusion does not apply.

Under section 500.2 of DOE's final rule as amended (47 FR 29209, July 6, 1982), a "cogeneration facility" is an electric powerplant or a major fuel burning installation that produces:

- (1) Electric power; and
- (2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

In its revised rulemaking of July 6, 1982 (47 FR 29209) (final rule) the DOE recognized the important role cogeneration technologies can play in assisting the nation to meet the energy goals of increased fuel efficiency and oil and natural gas savings. The final rule included a table by which potential cogeneration exemption applicants could determine the oil and gas savings that could be expected, on a regional basis, for electricity backed off the grid through cogeneration. The table displayed oil and gas savings, based on Btu/kWh for 11 regions. Examples of expected oil and gas savings by electric region, per Btu/kWh range from 300 in the Southeastern Electric Reliability Council (Virginia, N. Carolina, S. Carolina, etc.) a region in which the majority of the utility-generated electricity is from coal and nuclear, to 7,000 for the Western Systems Coordinating Council (California, Oregon, Washington, etc.), an area heavily dedicated to the use of oil and gas for electricity generation.

To date 94 cogeneration exemption requests have been submitted to the DOE (during 1985 alone, 38 petitions were accepted). Of this number, four were rejected for lack of sufficient information and three were terminated because the facilities did not require FUA exemptions. The remaining 88 facilities have either been granted cogeneration exemptions or the exemption requests are currently being acted upon by the DOE. Only 29 of these facilities have not been located in California.

| Number of facilities | State          |
|----------------------|----------------|
| 1                    | Alaska.        |
| 1                    | Arkansas.      |
| 3                    | Colorado.      |
| 3                    | Louisiana.     |
| 1                    | Massachusetts. |
| 2                    | Michigan.      |
| 1                    | New Hampshire. |
| 1                    | New Jersey.    |
| 1                    | Oklahoma.      |
| 14                   | Texas.         |
| 1                    | Washington.    |

These exemption petitions have effectively backed-out substantial quantities of electricity. In 1979, the first year after enactment of FUA, 185 megawatts of electricity were backed-off the grid. In 1985, 2926 megawatts were backed-off (the average unit size was 75 megawatts).

All cogeneration exemption petitions must be reviewed for compliance with NEPA requirements. In some, but not all approved cases, some added impact has been involved. Based on DOE's experience to date, the following generalities can be drawn in each of four main categories of impacts.

**Air Quality**

In general, natural gas or oil firing has resulted at worst in only very minor increases in air emissions. Often, the offsetting reduction in emissions resulting from the operation of a new cogeneration unit will cause a net decrease as compared to the preoperation condition. This has been achieved in many cases through the retirement of old units which the new

cogenerator replaces. Even in those cases where no units are replaced, operation of a new cogeneration system will inherently result in the reduction of emissions from existing utility sources. Under the Fuel Use Act, a cogeneration exemption can be granted only if it will result in less oil and gas being consumed. Thus, cogeneration results in less fuel consumption for an equal amount of produced electricity and other useable energy. Although the offsetting utility emission reductions are not always equal to the emissions of the new cogenerator, because of pollution control requirements and relative system efficiencies, any net increases have been so minor that the threshold levels necessary to qualify for New Source Review have not been exceeded.

**Water Resources and Quality**

Given the nature of cogeneration, the majority of cogeneration exemption petitions are for facilities to be constructed at existing industrial sites, and the systems for water supply and disposal are usually already in place. Even though water requirements of a cogeneration facility can be large, it generally represents an insignificant additional demand on supply.

**Land Use**

Land proposed for a new cogeneration facility is generally within an existing plant boundary on an already industrialized site. Usually little or no undeveloped land is affected. For a

proposed facility sited outside of such areas, usually only a few acres of undeveloped land are affected.

**Other Impacts**

Cogeneration facilities have rarely been found to cause significant impacts on other environmental or socio-economic parameters such as solid waste, noise, cultural resources, threatened and endangered species, floodplains and wetlands, employment, industrial development, etc.

The granting of a cogeneration exemption generally results in no significant impact to the environment, while the denial of a cogeneration exemption results in no net change to the environment. The DOE, therefore, based on public comment on the above findings, proposes to add cogeneration to its list of Fuel Use Act exemptions subject to NEPA categorical exclusion.

Comments concerning the proposed amendments to Section D of the Department's NEPA guidelines should be submitted to Dr. Robert J. Stern at the above cited address.

Pending final adoption or rejection of the proposed action, the Department of Energy will effect the proposal on an interim basis.

Issued in Washington, DC, on May 7, 1986.

Mary L. Walker,  
*Assistant Secretary, Environment, Safety, & Health.*  
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