

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

**SUMMARY:** The Department of Energy herewith amends 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).

**DATES:** Effective January 7, 1987.**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** On May 22, 1986, the Department of Energy (DOE) published in the *Federal Register* (51 FR 18867) a notice of a proposed change to Section D of its National Environmental Policy Act (NEPA) Guidelines by adding the permanent cogeneration exemption authorized under Title II of the Fuel Use Act to its list of categorical exclusions.

Publication of this notice commenced a 30-day comment period during which public comment was invited. No timely comments were received. The DOE has elected to address the one late comment received in which the commentor contended that DOE has not presented any evidence to justify the categorical exclusion for cogeneration facilities. The commentor disagreed with DOE's analysis and conclusion that cogeneration facilities typically do not result in significant environmental impacts. The commentor states that

"[t]his picture of cogeneration ignores the wide disparity in both the design of cogeneration facilities and the relative concentration of cogeneration sites within a specific region. \* \* \* Not only the cogeneration facility, but also the industrial facilities they are associated with are quite varied in design and, consequently, varied in their environmental effects."

The commentor further maintained that the categorical exclusion gives unjustifiable preferential treatment to petitioners seeking cogeneration systems as compared to those seeking other types of exemptions for their powerplants.

This comment misunderstands the basic nature of the categorical exclusion process under NEPA. The Council on Environmental Quality regulations implementing NEPA authorize Federal agencies to identify those classes of actions which *normally* do not require either an environmental impact statement (EIS) or an environmental assessment (EA) (see 40 CFR 1507.3(b)(2)). These may be categorically excluded from NEPA documentation (40 CFR 1500.4). DOE has identified these classes of actions in Section D of its Guidelines. 40 CFR 1507(c) requires agencies to put in place procedures to assure that individual actions properly fall under the basis for the categorical exclusion. DOE established such procedures in paragraphs A.3.b.2. and 3. of its Guidelines, which provide that: (1) DOE will review individual proposed actions to determine if it is appropriate for the categorical exclusion to apply, and (2) further NEPA review will be conducted for those individual actions when public comment raises a substantial question regarding the categorization. These requirements are implemented for Fuel Use Act exemptions at 10 CFR 503.13(b), which require petitioners to certify that all environmental permits will be obtained, and to complete an "environmental checklist" concerning sensitive environmental concerns, and in the Notice of Acceptance of the petition, which invites public comment on the categorical exclusion for the facility. Thus, DOE has put in place procedures to create a presumption that all actions in a class require neither an EIS or EA, and to rebut it in individual cases.

DOE believes that experience is the most reliable basis for determining

whether a class of action normally does not require further NEPA documentation and can be categorically excluded. As noted in the Guidelines modification proposal, none of the 96 cogeneration exceptions granted to date have required either an EIS or an EA. The proposed amendment briefly summarized the nature of the environmental data and information which DOE analyzed in each of the cases to reach the conclusion that no significant impacts would occur. Contrary to the inference contained in the comment, each analysis was performed using the fuel most likely to cause significant environmental impacts (either oil or natural gas) which the facility would be allowed to burn under the terms of its environmental permits.

DOE believes that this consistent history of performance is a sufficient basis to raise the rebuttable presumption necessary to establish a categorical exclusion. The environmental checklist and certification that all environmental permits will be obtained, coupled with the opportunity for public comment on the Notice of Acceptance of the exemption petition, provides adequate assurance that each action will be sufficiently scrutinized to determine if it correctly falls within the categorical exclusion.

Finally, DOE disagrees that this procedure improperly differentiates between types of exemptions. Paragraph A.3.d. of DOE's Guidelines clearly states that further additions to the categories may occur as experience is gained during implementation. When sufficient experience is gained with other types of powerplant exemptions, they will be considered for categorical exclusions also.

DOE has consulted with the Council on Environmental Quality (CEQ) regarding this categorical exclusion, in accordance with 40 CFR 1507.3. CEQ had no objection to the proposed amendment. Therefore, DOE has adopted this amendment to Section D of its NEPA guidelines, effective immediately.

Issued in Washington, DC on December 22, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

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