

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 and republication of the Department of Energy's NEPA guidelines.

SUMMARY: The Department of Energy is amending Section D of its guidelines for compliance with the National Environmental Policy Act (NEPA) by adding eight new typical classes of actions, by modifying four existing typical classes of actions, and by deleting one typical class of actions, as proposed on February 25, 1985, (50 FR 7629). Section D was originally published on March 28, 1980, (45 FR 20694) and subsequently has been amended on February 23, 1982, (47 FR 7976), January 6, 1983, (48 FR 685), and January 7, 1987, (52 FR 659). Sections A, B, C, and amended Section D of the NEPA guidelines are republished in their entirety.

EFFECTIVE DATE: December 15, 1987.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION: On March 28, 1980, the Department of Energy (DOE) published in the *Federal Register* (45 FR 20694) final guidelines for compliance with the National Environmental Policy Act (NEPA), as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). Section D of the Department's guidelines identifies typical classes of DOE actions: (1) which normally do not require either an environmental assessment (EA) or an environmental impact statement (EIS), i.e., categorical exclusions, (2) which normally require an EA but not necessarily an EIS, and (3) which normally require an EIS. These classes of actions were identified pursuant to CEQ regulations (40 CFR 1507.3(b)(2)).

A notice of proposed amendments to Section D of DOE's guidelines was published on February 25, 1985, (50 FR

7629). The proposed amendments related primarily to activities of the Department's Power Marketing Administrations, and proposed adding eight new typical classes of actions, modifying four existing typical classes of actions, and deleting one typical class of actions. Specifically, the proposed amendments were the addition of seven and modification of two categorical exclusions, the addition, modification, and deletion of classes of actions which normally require an EA, and the modification of one class of actions which normally requires an EIS.

Publication of the proposed amendments commenced a 30-day public comment period. No comments were received. The final amendments as stated below are essentially the same as the proposed amendments. Certain clarifying changes have been made, as noted.

The following categorical exclusions, i.e., actions which normally do not individually or cumulatively have a significant effect on the quality of the human environment and therefore for which neither an EA nor an EIS is required, have been added:

1. Construction of tap lines (defined as usually being less than 10 miles in length) which are not for the integration of major new sources of generation into DOE's main transmission systems, and where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands. (Note - This has been modified from the amendment proposed in 50 FR 7629 to make it clear that the parenthetical information is a definition of "tap lines" and is not a transmission line length criterion, and to use a length that is more in keeping with the normal maximum length of a tap line, i.e., 10 miles instead of 6 miles.)

2. Construction of microwave and radio communication towers and associated facilities where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands, and where such actions do not prejudice future site selection decisions for substations or other transmission facilities. (Note - The words "and radio communication" have been added to the amendment proposed in 50 FR 7629 to include radio towers, which have environmental impacts similar to those of microwave towers.)

3. Disposal of real property by the DOE through the General Services Administration where the planned land use is to remain unchanged.

4. Financial and technical assistance to individuals (builders, owners, designers) and to state and local

governments to promote energy efficiency in new structures built in compliance with applicable, duly adopted building codes.

5. Small scale research and development projects designed to demonstrate potential electrical energy conservation associated with residential/commercial buildings, appliance/ equipment efficiency standards, and manufacturing and industrial processes (e.g., insulation effectiveness, lighting efficiencies, appliance efficiency ratings, and development of manufacturing or industrial plant efficiencies).

6. Activities undertaken to restore existing fish and wildlife facilities, including minor habitat improvements or improvements to existing fish passage facilities at existing dams or diversion canals.

7. Power marketing services including storage, load shaping, seasonal exchanges, or other similar activities where the operations of hydroelectric projects remain within established constraints and which do not alter the environmental status quo. (Note - The term "load factoring" in the amendment proposed in 50 FR 7629 has been replaced by the term "load shaping".)

The addition of the new categorical exclusion number 1 above makes it necessary to make a conforming change, as proposed, to an existing typical class of actions normally requiring an EA. The typical class of actions "Construction of new service facilities such as tap lines and substations," has been modified to read as follows: "Construction of new substations."

The following typical class of actions has been added to those which normally require EAs but not necessarily EISs: Execution of marketing plans or allocation plans for the long term allocation (greater than 1 year) of existing or excess power resources to customers who can receive the resources over existing transmission systems. (Note - This has been modified from the amendment proposed in 50 FR 7629 to reflect the focus of environmental review on marketing or allocation plans rather than on individual contracts executed under approved plans. The allocation of power resources to customers in a manner differing from existing contractual arrangements is already an existing class of actions requiring an EA. The term "facilities" in the amendment proposed in 50 FR 7629 has been replaced by the term "systems".)

The existing categorical exclusion "Execution of contracts for the short term or seasonal allocation of excess

power resources to customers who can receive these resources over existing transmission systems," is modified as follows: Execution of contracts, marketing plans, or allocation plans for the short term or seasonal allocation (less than 1 year) of existing or excess power resources to customers who can receive these resources over existing transmission systems. (Note: This has been modified from the amendment proposed in 50 FR 7629 to include marketing or allocation plans as well as individual contracts executed under approved plans. The allocation of power resources to customers in a manner differing from existing contractual arrangements is already an existing class of actions requiring an EA.)

The existing class of actions normally requiring an EIS, "DOE actions which cause energy conservation on a substantial scale," is modified as follows: DOE actions which cause energy conservation on a substantial scale, including those where effects are primarily on the indoor environment (e.g., indoor air quality). (Note: This has been modified from the amendment proposed in 50 FR 7629 for clarification.)

The existing categorical exclusion "Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area," is modified as follows: Minor substation modifications, which do not involve the construction of new transmission lines or the integration of a major new resource, and where such actions do not impact environmentally sensitive areas such as archaeological sites, critical habitats, floodplains, and wetlands. (Note: This modification is identical to that proposed in 50 FR 7629.)

As a result of the above modification, the following typical class of actions normally requiring an EA but not necessarily an EIS has been deleted: "Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area." Thus, an EA is not automatically required for facility modifications that extend beyond the previously developed area. However, if the limiting criteria in the categorical exclusion cannot be met (if the action involves construction of new transmission lines or the integration of a major new source or if there will be impacts in environmentally sensitive areas), then an EA would be required.

DOE has consulted with the Council on Environmental Quality (CEQ) regarding these amendments, in accordance with 40 CFR 1507.3. CEQ had no objection to the proposed

amendments. Therefore, DOE has adopted these amendments to Section D of its NEPA Guidelines, effective immediately.

The Department's NEPA Guidelines are republished as follows in their entirety. The republication incorporates amendments to the original Section D (45 FR 20694, March 28, 1980) which were finalized on February 23, 1982, (47 FR 7976), January 6, 1983, (48 FR 685), January 7, 1987, (52 FR 659), and by this notice. Sections A, B, and C of the Guidelines are reprinted as published in 45 FR 20694 with the exceptions that (1) responsible DOE offices have been changed as appropriate and (2) the list of other environmental laws that are coordinated with the NEPA process has been updated.

Issued in Washington, DC on November 19, 1987.

Mary L. Walker,
Assistant Secretary for Environment, Safety and Health.

DOE NEPA GUIDELINES

Purpose

Section A - NEPA and Agency Planning

Paragraph A.1 DOE Process [40 CFR 1501.2]

Paragraph A.2 Applicant Processes [40 CFR 1501.2(d)]

Paragraph A.3 Whether to Prepare an Environmental Impact Statement [40 CFR 1501.4, 1507.3(b)(2), and 1508.4]

Paragraph A.4 Scoping [40 CFR 1501.7]

Section B - NEPA and Agency Decisionmaking

Paragraph B.1 DOE Decisionmaking [40 CFR 1505.1]

Paragraph B.2 General Procedures

Paragraph B.3 Specific Procedures

Section C - Other Requirements of NEPA

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

Paragraph C.2 Supplemental Statements [40 CFR 1502.9(c)]

Paragraph C.3 Revisions of Time Periods [40 CFR 1507.3(d)]

Paragraph C.4 Coordination With Other Environmental Laws [40 CFR 1502.25]

Paragraph C.5 Status of NEPA Actions [40 CFR 1506.6(e)]

Paragraph C.6 Oversight of Agency NEPA Activities [40 CFR 1507.2(a)]

Paragraph C.7 Compliance

Paragraph C.8 Revisions to the Guidelines

Section D - Typical Classes of Action

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 Under Secretary of DOE.

Section A - NEPA and Agency Planning

1. DOE 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 insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."

To implement this requirement DOE will:

(a) 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;

(b) 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;

(c) At the earliest possible time, in accordance with paragraph A.3 herein, determine whether an environmental assessment (EA) or an environmental impact statement (EIS) is required.

2. Applicant Processes

With respect to applicant processes, the CEQ regulations (40 CFR 1501.2(d)) require agencies to:

"(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 this requirement:

(a) Applicants for a DOE lease, permit, license, certificate, financial assistance, allocation, exemption or similar action are expected to:

(1) 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 of or in support of their application;

(2) Conduct studies which are deemed necessary and appropriate by DOE to determine the impact of the proposed action on the quality of the human environment;

(3) 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;

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

(5) 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;

(6) 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);

(7) 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).

(b) Upon receipt of an application, or earlier if possible, DOE will:

(1) Initiate and coordinate any requisite environmental analyses in accordance with the requirements set forth at 40 CFR 1506.5;

(2) Determine, in accordance with paragraph A.3 herein, whether an EA or an EIS is required; and

(3) Establish time limits for the NEPA process when requested to do so by an applicant.

(c) 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.

(d) 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.

3. 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 Section 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).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Section 1508.9)."

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

(a) DOE has (in Section D), identified 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 (Section 1508.4)].

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

(b) DOE will review individual proposed actions to determine the appropriate level of NEPA documentation required where:

(1) The proposed action is not encompassed within the categories of Section D,

(2) The proposed action is encompassed within the categories 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 categories 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 an 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.

4. 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."

To implement this requirement, DOE will:

(a) 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;

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

(c) 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 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.

(d) If a scoping meeting is to be held, provide notice of the meeting in the NOI at least 15 days before the meeting.

(e) Prepare and use an EIS implementation plan to record the results of the scoping process and to

provide guidance to DOE for the preparation of an EIS.

(1) The EIS implementation plan will be a brief document and will contain:

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

(ii) A detailed outline of the EIS;

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

(2) The EIS implementation plan may also contain:

(i) Target page limits for the EIS; (ii) Target time limits for EIS preparation; (iii) An allocation of assignments among DOE and cooperating agencies.

(3) 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.

(4) DOE may revise the implementation plan, as necessary during EIS preparation.

Section B - NEPA and Agency Decisionmaking

1. DOE Decisionmaking

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 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 specific procedures applicable to the individual 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 decided at higher levels of decisionmaking.

2. General Procedures

(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.3 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 as specified in 40 CFR 1506.6 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.

3. Specific Procedures

(a) *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.

(1) 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.

(2) For formal statements of national energy policy DOE will: Initiate implementation of the applicable general procedures specified 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.

(b) *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.

(1) For energy technology research, development, demonstration and commercialization programs, DOE will: initiate the applicable general procedures specified 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 in advance of 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: (i) The significance of the environmental impacts of the technology, if applied, on the quality of the human environment;

and (ii) 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.

(2) For programs that are implemented by regulations, DOE will initiate implementation of the applicable general procedures specified 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, with comments and responses, will be included in the administrative record. In accordance with 40 CFR 1506.10(b)(2), final rulemakings promulgated pursuant to the Administrative Procedure Act may be issued simultaneously with publication of the notice of the availability of the final EIS.

(3) For programs that are not included in paragraphs (1) or (2) and that are implemented by a formal program plan, DOE will: initiate implementation of the applicable general procedures specified above concurrent with program plan formulation; and, if required, prepare the relevant environmental document when the environmental effects of the program can be meaningfully evaluated. If an EIS is required, it will be prepared, considered, and published and the requisite record of decision issued before taking an action that would have an adverse environmental impact or limit the choice of reasonable alternatives except as provided in 40 CFR 1506.1(c).

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval of projects, by the approval or disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) For projects that are undertaken directly by DOE, including projects involving the sole source procurement of a site and/or process, DOE will: initiate implementation of the applicable general procedures specified above concurrent with project concept development; and, if required, prepare, consider, and publish the relevant environmental document before making

a go/no-go decision on the project. In addition, if a DOE project requires preparation of an EIS, DOE will not take an action concerning the project which would have an adverse environmental effect or which would limit the choice of reasonable alternatives until the required record of decision is issued.

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. (The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to those reasonably available to offerors.)

(ii) Independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and

indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500-1508 and in advance of a go/no-go decision.

(3) For projects that involve applications to DOE for financial assistance or applications to DOE for a permit, license, exemption, allocation or similar regulatory action involving informal administrative proceedings, DOE will: apply NEPA early in the process in accordance with 40 CFR 1501.2(d) and paragraph A.2 herein; commence preparation of the relevant environmental document, if required, no later than immediately after applications are received and in accordance with the requirements set forth at 40 CFR 1506.5; and consider the relevant environmental document, if one is prepared, in decisions on the application.

(4) For actions that involve adjudicatory proceedings, excluding judicial or administrative, civil, or criminal enforcement actions, DOE will: normally prepare, consider and publish the relevant environmental document, if required, in advance of a decision, and include the document in the formal record of the proceedings. If an EIS is required, the draft EIS will normally precede preliminary staff recommendations, and publication of

the final EIS will normally precede final staff recommendations and that portion of the public hearing related to the EIS. The EIS need not precede preliminary hearings designed to gather information for use in the EIS.

Section C - Other Requirements of NEPA

1. Access to NEPA Documents

The CEQ NEPA regulations (40 CFR 1507.3(c)) allow an agency to develop criteria for limiting public access to environmental documents which involve classified information. This section provides the DOE policy for addressing classified information as well as policy for addressing confidential information.

Classified or confidential information is exempted from mandatory public disclosure by Section 552(b) of the Freedom of Information Act (FOIA) (5 U.S.C. 552), Section 1004.10(b) of DOE's regulations implementing FOIA (10 CFR Part 1004), and 18 U.S.C. 1905. Public access to such information will be restricted in accordance with such regulations and applicable statutes.

All NEPA documents (as defined at 40 CFR 1508.10), the EIS implementation plan, and the record of decision are subject to the mandatory public disclosure requirements of FOIA and the DOE regulations implementing FOIA except documents which are determined, in accordance with the applicable statutes and regulations, to contain classified or confidential information. DOE will determine the treatment of documents containing classified or confidential information on a case by case basis in accordance with the requirements of DOE's FOIA regulations and the applicable statutes.

Wherever possible, the fundamental policy of full disclosure of NEPA documents will be followed. In some cases, this will mean that classified or confidential information may be excised, prepared as an appendix, or otherwise segregated to allow the release of the nonsensitive portions of a document.

2. 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 that 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.

3. Revisions of Time Periods

The CEQ regulations (40 CFR 1507.3(d)), allow agencies to provide for periods of time other than those presented in 40 CFR 1506.10 when necessary to comply with other specific statutory requirements.

Certain circumstances, such as statutory deadlines, may require that the periods established in 40 CFR 1506.10 for the timing of DOE NEPA actions be altered. If DOE determines that, in order to comply with specific requirements of other statutes, such revisions are necessary, a notice of the determination will be published in the **Federal Register**. This notice will briefly provide the reason for such alterations and contain information on the revised time periods. Related notices of substantive action, if applicable, may be published jointly with notices published pursuant to this paragraph.

4. Coordination With Other Environmental Laws

The CEQ regulations (40 CFR 1502.25) provide for integrating the NEPA process and other environmental requirements.

To the fullest extent possible, DOE will:

(a) Coordinate NEPA compliance with other environmental review requirements including those under: the Clean Air Act, the Clean Water Act, the Coastal Zone Management Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Wild and Scenic Rivers Act, the National Historic Preservation Act, Section 13 of the Federal Nonnuclear Research and Development Act, the Marine Protection,

Research and Sanctuaries Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and other Acts, as deemed appropriate by DOE.

(b) Determine the applicability of other environmental requirements early in the planning process to ensure compliance and to avoid delays.

(c) In addition to the information required by 40 CFR 1502.25(b), include in draft and final EISs plans and estimated schedules for compliance with other applicable environmental review requirements.

(d) Use the relevant NEPA document to support the fulfillment of the review and documentation requirements of other environmental statutes and regulations, and to report the status of compliance with these other environmental authorities.

5. Status of NEPA Actions

Individuals or organizations desiring information or status reports on elements of the NEPA process should address their inquiries to:

Office of NEPA Project Assistance,
Department of Energy, 1000
Independence Avenue, SW., Washington,
DC 20585.

6. Oversight of Agency NEPA Activities

The Assistant Secretary for Environment, Safety and Health, or his/her designee, will be responsible for overall review of DOE NEPA compliance.

7. Compliance

These guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations. Any deviation from the guidelines must be soundly based and must have the advance approval of the Under Secretary of DOE.

8. Revisions to the Guidelines

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** and will be finally adopted only after an opportunity for public review.

SECTION D.—TYPICAL CLASSES OF ACTIONS

| Normally do not require EA's or EIS's | Normally require EA's but not necessarily EIS's | Normally require EIS's |
|--|--|--|
| Classes of Actions Generally Applicable to All of DOE | | |
| <p>Administrative procurements (e.g., general supplies).</p> <p>Contracts for personal services.</p> <p>Personnel actions.</p> <p>Reports or recommendations on legislation or proposed rule-making which was not initiated by DOE.</p> <p>Compliance actions, including investigations, conferences, hearings, notices of probable violations and remedial orders.</p> <p>Interpretations and rulings, or modification or rescissions thereof.</p> <p>Promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended.</p> <p>Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program.</p> <p>Information gathering, analysis, and dissemination.</p> <p>Actions in the nature of conceptual design or feasibility studies.</p> <p>Actions involving routine maintenance of DOE-owned or operated facilities.</p> <p>Actions in the nature of analytic energy supply/demand studies which do not result in a DOE report or recommendation on legislation or other DOE proposals.</p> <p>Adjustments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued by the Office of Hearings and Appeals.</p> <p>Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities, which do not exceed the rate of inflation in the period since the last rate increase.</p> <p>Actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid.</p> <p>General plant projects such as road and parking area resurfacing, modifications to heating-ventilating-air conditioning systems, minor alterations of existing buildings, and other similar projects where: (1) The projects are located within previously developed areas and will not affect environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands and (2) the projects are not part of a proposed action that is or may be the subject of an EA or EIS.</p> <p>Installation of meteorological towers and associated activities to assess potential wind energy resources where the installation has no impacts on environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands, and where the installation does not prejudice future site selection decisions for large wind turbines.</p> <p>Construction of microwave and radio communication towers and associated facilities where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands, and where such actions do not prejudice future site selection decisions for substations or other transmission facilities.</p> <p>Disposal of real property by the Department of Energy through the General Services Administration where the planned land use is to remain unchanged.</p> <p>Financial and technical assistance to individuals (builders, owners, designers) and to state and local governments to promote energy efficiency in new structures built in compliance with applicable, duly adopted building codes.</p> <p>Small scale research and development projects designed to demonstrate potential electrical energy conservation associated with residential/commercial buildings, appliance/equipment efficiency standards, and manufacturing and industrial processes (e.g. insulation effectiveness, lighting efficiencies, appliance efficiency ratings, and development of manufacturing or industrial plant efficiencies).</p> <p>Activities undertaken to restore existing fish and wildlife facilities, including minor habitat improvements or improvements to existing fish passage facilities at existing dams or diversion canals.</p> | <p>DOE actions which enable or result in engineering development activities, i.e., detailed design, development, fabrication, and test of energy system prototypes.</p> <p>DOE actions which provide grants to state and local governments for energy conservation programs.</p> <p>Rate increases for products or services marketed by DOE, and approval of rate increases for non-DOE entities which exceed the rate of inflation in the period since the last increase.</p> | <p>DOE actions which are expected to result in the construction and operation of a large scale project.</p> <p>DOE actions which cause energy conservation on a substantial scale, including those where effects are primarily on the indoor environment (e.g., indoor air quality).</p> |
| Classes of Actions Generally Applicable to Licenses to Import/Export Natural Gas Pursuant to Section 3 of the Natural Gas Act | | |
| | <p>Approval/disapproval of new license or amendment to an existing license which does not involve new construction, but which requires operational changes which may or may not be significant, such as an increase in liquid natural gas throughput, change in transportation or storage operations.</p> | <p>Approval/disapproval of applications involving the construction of new liquid natural gas (LNG) terminals, regasification or storage facilities, or a significant expansion of an existing LNG terminal, regasification or storage facility.</p> |

SECTION D.—TYPICAL CLASSES OF ACTIONS—Continued

| Normally do not require EA's or EIS's | Normally require EA's but not necessarily EIS's | Normally require EIS's |
|--|---|---|
| Approval/disapproval of an application involving a significant operational change, such as a major increase in the quality of liquid natural gas imported or exported. | | |
| Classes of Actions Generally Applicable to International Activities | | |
| <p>Approval of DOE participation in international "umbrella" agreements for cooperation in energy R&D which do not commit the U.S. to any specific projects or activities.</p> <p>Approval of technical exchange arrangements for information, data or personnel with other countries or international organizations.</p> <p>Approval of export of small quantities of special nuclear materials or isotopic materials in accordance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" FEDERAL REGISTER, Part VII, June 9, 1978).</p> | | |
| Classes of Actions Generally Applicable to Power Marketing Administrations (PMA) | | |
| <p>Minor substation modifications, which do not involve the construction of new transmission lines or the integration of a major new resource, and where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands.</p> <p>Emergency repair of transmission lines including replacement or repair of damaged equipment as well as the removal and replacement of downed transmission lines.</p> <p>Additions or modifications to transmission facilities which do not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, replacement of poles and crossarms, and similar actions.</p> <p>Grant or denial of requests for multiple use of DOE transmission line rights-of-way, such as grazing permits and crossing agreements including electric lines, water lines, and drainage culverts.</p> <p>Execution of contracts, marketing plans, or allocation plans for the short term or seasonal allocation (less than 1 year) of existing or excess power resources to customers who can receive these resources over existing transmission systems. The renewal of existing power contracts in kind.</p> <p>Construction of tap lines (defined as usually being less than 10 miles in length) which are not for the integration of major new sources of generation into DOE's main transmission systems, and where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands.</p> <p>Power marketing services including storage, load shaping, seasonal exchanges, or other similar activities where the operations of hydroelectric projects remain within established constraints and which do not alter the environmental status quo.</p> <p>Actions undertaken in order to bring an existing DOE transmission facility into compliance with changes in applicable Federal, state, or local environmental standards or to mitigate adverse environmental effects, where such actions do not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands. Such actions include, for example, noise abatement measures, and the acquisition of additional rights-of-way to establish buffer areas.</p> <p>Execution of contracts for the short term (less than one-year) or seasonal acquisition of excess power from existing power resources which can be transmitted over existing transmission systems with no changes in the operations of the power resources.</p> <p>Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events where the adjustments result in only minor changes in reservoir levels and streamflows.</p> <p>Contract interpretations, amendments, and modifications, including replacement, which are clarifying or administrative in nature, and which do not extend the term or otherwise substantially change the contracts being amended.</p> <p>Leasing of existing transmission facilities where the leases do not involve any change in operation.</p> <p>Acquisition or minor relocation of existing access roads serving existing transmission facilities where the relocation does not impact environmentally sensitive areas such as archeological sites, critical habitats, floodplains, and wetlands.</p> <p>Replacing conductors on existing transmission lines where the replacement conductors carry the same nominal voltage as the existing conductors and where the replacement work does not involve new support structures, new substations, or other new facilities.</p> <p>Research, inventory, and information collection activities which are directly related to the conservation of fish and wildlife resources and which involve only negligible animal mortality or habitat destruction, and no introduction of either contaminants or exotic organisms.</p> | <p>Upgrading (reconstructing) an existing transmission line.</p> <p>Construction of new substations.</p> <p>Annual vegetation management program (system-wide).</p> <p>Construction and operation of wind resource, low-head hydro, and solar energy pilot projects.</p> <p>The allocation of power resources to customers in a manner differing from existing contractual arrangements.</p> <p>Implementation of an erosion control program that is system-wide.</p> <p>Execution of marketing plans or allocation plans for the long term allocation (greater than 1 year) of existing or excess power resources to customers who can receive the resources over existing transmission systems.</p> | <p>Main transmission system additions—additions of new transmission lines, main grid substations and switching stations to PMA's main transmission grid.</p> <p>Integrating transmission facilities—transmission system additions for integrating new sources of generation into PMA's main grid.</p> |

SECTION D.—TYPICAL CLASSES OF ACTIONS—Continued

| Normally do not require EA's or EIS's | Normally require EA's but not necessarily EIS's | Normally require EIS's |
|---|---|--|
| Classes of Actions Generally Applicable to Nuclear Waste Management Program. | | |
| | Exploratory and site characterization activities which by virtue of resource commitment or elapsed time for completion may foreclose reasonable site alternatives. | DOE actions resulting in the site selection, construction, or operation of major treatment, storage and/or disposal facilities for transuranic and high level nuclear waste and/or spent nuclear fuel such as spent fuel storage facilities and geologic repositories. |
| | Land acquisition activities solely for the purposes of reserving possible candidate sites and which do not prejudice future programmatic site selection decisions. The demonstration or implementation of intermediate-depth burial of low-level waste at DOE sites. | |
| Classes of Actions Generally Applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA) | | |
| The grant or denial of any temporary exemption for any electric powerplant or major fuel-burning installation. | | |
| The grant or denial of any permanent exemption of any existing electric powerplant or major fuel-burning installation, other than an exemption (1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain state or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants. | | |
| 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 electric powerplant or major fuel-burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum. | | |
| The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new peakload powerplant. | | |
| The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new electric powerplant or major fuel-burning installation to permit operation for emergency purposes only. | | |
| The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Act for any new or existing major fuel-burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period. | | |
| The grant or denial of a permanent exemption from the prohibitions of Title II of the Act for any new major fuel-burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year. | | |
| The grant or denial of a permanent exemption from the prohibitions of Title II of the Power Plant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620) for any new cogeneration powerplant. | | |

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