

U.S. Department of Energy

Washington, D.C.

ORDER

DOE 5440.1D

2-22-91

SUBJECT: NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM

1. **PURPOSE.** To establish internal Department of Energy (DOE) responsibilities and procedures to implement the National Environmental Policy Act of 1969 (NEPA).
2. **CANCELLATION.** DOE 5440.1C, NATIONAL ENVIRONMENTAL POLICY ACT, of 4-9-85.
3. **SCOPE.** This Order applies to all elements of DOE except the Federal Energy Regulatory Commission.
4. **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 12114, of 1-4-79, which establishes procedural and other actions to be taken by Federal agencies to further the purpose of NEPA with respect to the environment outside the United States, its territories and possessions.
 - c. Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508, as amended 7-1-86), which establish requirements for implementing the procedural provisions of NEPA.
 - d. Department of Energy Organization Act (42 U.S.C. 7112), of 8-4-77, which has among its purposes ensuring incorporation of national environmental protection goals in the formulation and implementation of energy programs; and advancing the goals of restoring, protecting, and enhancing environmental quality and ensuring public health and safety.
 - e. DOE Guidelines for Compliance with the National Environmental Policy Act (DOE NEPA Guidelines) of 12-15-87 (52 FR 47662) as amended 3-27-89 (54 FR 12474) and 9-7-90 (55 FR 37174), which establish Departmental guidelines for implementing the procedural provisions of NEPA pursuant to the CEQ Regulations.
 - f. Freedom of Information Act (FOIA) (5 U.S.C. 552), which provides that any person has a right of access to agency records unless the information contained in the records is protected from disclosure by one of the exemptions enumerated in the Act.
 - g. DOE Regulations for Compliance with Floodplains/Wetlands Environmental Review Requirements, 10 CFR 1022, which implement the procedural

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provisions of Executive Order 11988, Floodplain Management, of 5-24-77, and Executive Order 11990, Protection of Wetlands, of 2-10-78.

- h. DOE Secretary of Energy Notice SEN-7A-90 of 8-16-90, which clarifies line management's responsibility to achieve environmental compliance and establishes a process to provide Headquarters with up-to-date information on the status of each facility's environmental compliance.
 - i. DOE Secretary of Energy Notice SEN-15-90 of 2-5-90, which directs that revisions be made to DOE NEPA compliance procedures.
 - j. DOE 1700.1, FREEDOM OF INFORMATION PROGRAM, of 11-19-79 as amended 10-8-81, which establishes guidelines and procedures for DOE compliance with the Freedom of Information Act.
 - k. DOE 4700.1, PROJECT MANAGEMENT SYSTEM, of 3-6-87, which establishes the DOE project management system and provides implementing instructions, formats, and procedures for DOE outlay program acquisitions.
 - l. DOE 5100.3, FIELD BUDGET PROCESS, of 8-23-84, which establishes requirements and procedures for the preparation of field budget material, including data sheets, required for the DOE budget.
 - m. DOE 5400.1, GENERAL ENVIRONMENTAL PROTECTION PROGRAM, of 11-9-88, which establishes the environmental protection program for DOE operations.
 - n. DOE 5400.2A, ENVIRONMENTAL COMPLIANCE ISSUE COORDINATION, of 1-31-89, which establishes requirements for coordination of significant environmental compliance issues.
 - o. DOE 5400.3, HAZARDOUS AND RADIOACTIVE MIXED WASTE PROGRAM, of 2-22-89, which establishes policies and requirements for hazardous and mixed waste and implementation of the Resource Conservation and Recovery Act.
 - p. DOE 5400.4, COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT REQUIREMENTS, of 10-5-89, which establishes requirements for hazardous substance cleanup, for notification, and for implementation of the Comprehensive Environmental Response, Compensation, and Liability Act.
5. DEFINITIONS. It is intended that these definitions be consistent with the CEQ Regulations. Any deviations are intended for clarification.
- a. Action Description Memorandum (ADM). An internal DOE document (normally, not more than 5 pages) containing a concise description of a proposed action and discussion of relevant potential environmental issues, to assist DOE in determining the appropriate level of NEPA document for a proposed action.

- b. Categorical Exclusion (CX). A category of actions, as defined at 40 CFR 1508.4 and listed in Section D of the DOE NEPA Guidelines, that do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is normally required.
- c. Environmental Assessment (EA). A document defined at 40 CFR 1508.9, that assesses whether a proposed action is a "major Federal action significantly affecting the quality of the human environment" and serves as the basis for determining whether to prepare an environmental impact statement or a Finding of No Significant Impact.
- d. Environmental Impact Statement (EIS). A document defined at 40 CFR 1508.11 or a Supplemental EIS, and prepared in accordance with the requirements of section 102(2)(C) of NEPA, the CEQ Regulations, and the DOE NEPA Guidelines.
- e. EIS Implementation Plan (IP). A brief written plan that provides guidance for the preparation of a DOE EIS (including a supplemental EIS). The plan records the results of the scoping process and outlines the procedures by which an EIS is to be prepared.
- f. Finding of No Significant Impact (FONSI). A document, defined at 40 CFR 1508.13, prepared to record a Departmental decision that the environmental impacts of an action considered in an EA will not have a significant effect on the human environment and that an environmental impact statement is not required for the proposed action.
- g. Interim Action. An action that is within the scope of an ongoing EIS and that DOE proposes to take before issuing a record of decision, and that is permissible under 40 CFR 1506.1.
- h. Mitigation Action Plan. A document that describes the plan for implementing commitments made in a DOE EIS and its associated record of decision or in an EA/FONSI (where a FONSI is based, in significant part, on such a commitment) to mitigate adverse environmental impacts associated with an action.
- i. Monthly NEPA Report. A document submitted monthly to the Secretary that identifies EAs and EISs that Secretarial Officers expect to forward for approval during the subsequent 3 months.
- j. NEPA Compliance Guide. A DOE collection of written guidance and reference material to assist DOE staff in both planning for and achieving compliance with NEPA and various related environmental statutes. The Guide, which is updated periodically by EH, provides information on the NEPA process, the content of NEPA documents, the substantive and timing relationships between NEPA reviews and review requirements of other environmental statutes, and timing relationships between the NEPA process and the development of DOE actions.

- k. NEPA Compliance Officer (NCO). A DOE employee at each Program Office and Operations Office, and optionally at other offices, designated to coordinate, assist, and generally oversee the NEPA compliance activities in that office.
- l. NEPA Document. An EA, FONSI, notice of intent to prepare an EIS, EIS, record of decision, categorical exclusion determination, or any other document prepared pursuant to a requirement of NEPA or the CEQ Regulations.
- m. NEPA Status Report. A report on the status of existing or planned NEPA compliance activities, which is included in internal budget review documents (i.e., project data sheets or activity data sheets) prepared pursuant to DOE 5100.3.
- n. Notice of Intent (NOI). A document, defined at 40 CFR 1508.22, that announces the intent to prepare an EIS for a proposed action.
- o. Operations Office Manager. For the purposes of this Order, a person responsible for managing an Operations Office or similar field organization, who reports directly to the Under Secretary or a Secretarial Officer. The Operations Offices are Albuquerque, Chicago, Idaho, Nevada, Oak Ridge, Richland, San Francisco, and Savannah River. For the purposes of this Order, Operations Office Managers include but may not be limited to: the Manager of the Rocky Flats Office; the Administrators of the Alaska, Southeastern, and Southwestern Power Administrations; and the Directors of the Morgantown and Pittsburgh Energy Technology Centers.
- p. Program Office. A Department of Energy organization headed by a Secretarial Officer and responsible for an action requiring a NEPA review.
- q. Programmatic NEPA Document. A broad-scope EIS or EA that identifies and assesses the environmental impacts of a DOE program; it may also refer to an associated NEPA document such as a NOI, record of decision, or FONSI.
- r. Quarterly Environmental Compliance Report. A quarterly report prepared by DOE facilities and sent to the appropriate Secretarial Officer(s) and to the Assistant Secretary for Environment, Safety and Health in response to the initiatives in SEN-7A-90. The quarterly environmental compliance report includes the status of the line organization's NEPA compliance activities.
- s. Record of Decision (ROD). A document prepared in accordance with the requirements of 40 CFR 1505.2, that provides a concise public record of the Department's decision on a proposed action for which an EIS was prepared, and identifies the alternatives considered in reaching the decision, the environmentally preferable alternative(s), factors

balanced by the Department in making the decision, whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not.

- t. Secretarial Officers. For purposes of this Order, Secretarial Officers are Assistant Secretaries; the Deputy Under Secretary for Policy, Planning, and Analysis; the Directors of the Offices of Environmental Restoration and Waste Management, Energy Research, New Production Reactors, Nuclear Safety, Civilian Radioactive Waste Management, and Administration and Human Resource Management; and the Administrators of the Western Area Power Administration and the Bonneville Power Administration.
 - u. Site-wide NEPA Document. A broad-scope EIS or EA that identifies and assesses the individual and cumulative impacts of the continuing and reasonably foreseeable future actions at a DOE site; it may also refer to an associated NEPA document such as a NOI, ROD or FONSI.
 - v. State Coordination. The process by which a host State and, as appropriate, adjacent States are provided the opportunity to review and comment on an EA before DOE approval.
 - w. State Notification. The process by which a host State and, as appropriate, adjacent States are informed of an initial DOE determination to prepare an EA or EIS.
 - x. Supplement Analysis (SA). A DOE document that describes any changes in a proposed action that are relevant to environmental concerns, or any significant new circumstances and information relevant to environmental concerns and bearing on the proposed action or its impacts. A supplement analysis is used to determine whether a supplemental EIS should be prepared pursuant to 40 CFR 1502.9(c), or to support a decision to prepare a new EIS or a revised ROD.
 - y. Supplemental EIS. An EIS prepared to supplement a prior EIS, as provided at 40 CFR 1502.9(c).
6. POLICY. NEPA establishes a national policy to ensure that consideration is given to environmental values and factors in Federal planning and decisionmaking. The Department of Energy's policy is to comply fully with the letter and spirit of NEPA. To ensure that environmental factors are considered in the decisionmaking process and to promote environmentally responsible decisions, DOE will incorporate NEPA requirements early in the planning process for proposed actions. DOE also will coordinate its NEPA activities with the States that host DOE facilities. The Department is committed to complete assessment and full disclosure of the environmental consequences of its proposed actions.

7. RESPONSIBILITIES AND AUTHORITIES.

- a. Secretarial Officers. Secretarial Officers are responsible for the consideration of environmental factors in decisionmaking and the timely preparation of documents required by this Order for actions under their authority. Specifically, each Secretarial Officer shall, for matters under his/her authority:
- (1) Ensure that appropriate NEPA review is undertaken early in project and program planning, including planning for actions under new legislative authorities and for proposed legislation, regulations, and procurements, to provide adequate consideration of environmental factors along with other program considerations, and compliance with the CEQ Regulations, the DOE NEPA Guidelines, and SEN-15-90 in the decisionmaking process.
 - (2) Approve procedures and recordkeeping requirements within his/her program, in consultation with the Assistant Secretary for Environment, Safety and Health (EH-1) to ensure consistency in the agency-wide application of NEPA, and review those of field organizations. (See page 11, paragraph 7b(8); page 12, paragraph 7c(3); and page 13, paragraph 7d(4) below.)
 - (3) Ensure that the information gathering, analysis, and coordination requirements of the DOE NEPA Guidelines are carried out when conducting competitive procurements and other solicitations involving selection of sites or processes. Incorporate, where appropriate, environmental criteria and conditions into solicitations, and into resulting contracts and financial assistance instruments issued under his/her authority.
 - (4) Ensure that applicants for financial assistance, permits, licenses, exemptions, allocations, or similar actions submit the information necessary for DOE NEPA compliance, and that they otherwise comply with the requirements of the DOE NEPA Guidelines.
 - (5) Ensure that NEPA milestones (CX; EA, FONSI; or NOI, draft EIS, final EIS, ROD) have been incorporated into project planning documents, including those prepared under the project management system administered by the Office of Procurement, Assistance and Program Management (PR) through DOE 4700.1. Ensure that a NEPA Status Report on existing or planned NEPA compliance activities is included in internal budget review documents (i.e., project data sheets or activity data sheets) prepared pursuant to DOE 5100.3.
 - (6) Designate a NEPA Compliance Officer for the Program Office and maintain this position to ensure that the requisite functions are carried out (see page 11, paragraph 7c below); inform the Office of NEPA Oversight (EH-25) of the initial designation and any changes.

- (7) Ensure that the Program Office and each Operations Office under its authority augments, as appropriate, and maintains its environmental compliance staff so that a variety of environmental disciplines is represented sufficient to ensure that properly supervised and technically accurate and complete NEPA documents are prepared.
- (8) Ensure that the quarterly environmental compliance reports submitted by field organizations in accordance with SEN-7A-90 include accurate information on the status of NEPA compliance activities.
- (9) Establish procedures and act to ensure that NCOs and cognizant EH-25 staff (as assigned under page 15, paragraph 7e(3) below) are fully informed in a timely manner of all program considerations and changes that would bear on the accuracy and objectivity of NEPA documents.
- (10) Determine which organizational entity under his/her authority should have responsibility for drafting NEPA documents, based on criteria established by EH-1. (See page 11, paragraph 7b(7) and page 13, paragraph 7d(13) below.)
- (11) Optionally, delegate to Operations Office Managers the authority to make decisions regarding the appropriate level of NEPA review for those categories of actions specifically listed in Section D of the DOE NEPA Guidelines. This authority may not be redelegated. The Secretarial Officer shall notify EH-25 of the delegation of this authority.
- (12) If there has been no delegation under paragraph 7a(11) above, determine the appropriate level of NEPA review for those categories of actions specifically listed in Section D of the DOE NEPA Guidelines; within 2 weeks of approval, provide a copy of such determinations to EH-25, except for certain CXs for which documentation is not required (see page 13, paragraph 7.d.(142) below).
- (13) If there has been delegation under paragraph 7a(11) above, monitor the application of the delegated authority by the Operations Office Managers to determine whether it is being properly executed.
- (14) For actions not listed in Section D of the DOE NEPA Guidelines, or for which the appropriate level of NEPA review is unclear, prepare an ADM sufficiently early to allow timely completion of the required NEPA document; based on the ADM, provide a recommendation to and request a determination by EH-1 of the level of NEPA review required.

- (15) For a proposed interim action, prepare a description that provides sufficient information to determine, under applicable requirements in 40 CFR 1506.1, whether the interim action may proceed; transmit the description to EH-1 and request a determination.
- (16) Conduct State Notification, either directly or through the Secretarial Officer's NCO, except for those actions for which the NEPA determination authority has been delegated under paragraph 7a(11) above. A rate-setting action under which the State would be a customer is exempt from this requirement.
- (17) When it is unclear whether a supplemental EIS is required, prepare a supplement analysis and submit the supplement analysis to EH-1 with a recommendation for appropriate action. Upon approval by EH-1, notify the State(s) and the public of the availability of a supplement analysis and of the determination whether to prepare a supplemental EIS or other appropriate NEPA document. Public comments on the supplement analysis may be requested at the Secretarial Officer's discretion.
- (18) Ensure that necessary and appropriate public meetings, hearings, or other forms of public participation are conducted concerning NEPA-related aspects of a proposed action.
- (19) After ensuring their quality and sufficiency, forward EISs and EAs to EH-1 for approval. A proposed draft FONSI may accompany a pre-approval EA. Pre-approval EAs will be accompanied by a request for authorization for State Coordination and a proposed transmittal letter to the State(s) drafted for the Secretarial Officer's signature, except for actions that are exempt from State Coordination requirements (see paragraph 7a(20) below).
- (20) After receiving authorization from EH-25, conduct State Coordination regarding review of pre-approval EAs; ensure that EH-25 receives any comments from the State(s), along with the Program Office's proposed resolution. (Also see page 12, paragraph 7c(7) below.) A rate-setting action under which the State would be a customer is exempt from this requirement.
- (21) Ensure that NEPA documents are revised, as appropriate, in response to EH, State, and other review comments.
- (22) For each EIS, prepare an implementation plan (IP) and transmit it to EH-1 for approval; ensure that the IP is approved before issuance of the draft EIS; ensure that the approved IP is made publicly available for information purposes.

(23) Mitigation Action Plan

- (a) Upon notification by EH-1 that a FONSI would be based in significant part on a commitment to mitigate adverse environmental impacts, prepare a mitigation action plan for any such commitments; submit the mitigation action plan to EH-1 for review before issuance of the FONSI.
- (b) Prepare a mitigation action plan for implementation of any commitments made in an EIS/ROD for mitigation of environmental impacts associated with an action; if practicable, submit mitigation action plan to EH-1 for review before issuance of ROD and, in any case, before taking any action covered by the ROD that is the subject of a mitigation commitment.

(24) Track and report annually (on the anniversary of the original plan(s)) to EH-1 the progress made in implementing, and the effectiveness of any mitigation action plan described in paragraph 7a(23) above until mitigation is completed. Alternatively, a single combined annual mitigation report may be submitted for all actions under the Secretarial Officer's authority. The annual report should modify the original plan to reflect new information or changed circumstances.

(25) Ensure the prompt distribution (normally, within 2 weeks of approval) of EAs, FONSI's, EISs, and RODs and prompt public availability of approved NEPA documents in accordance with the CEQ Regulations, the DOE NEPA Guidelines, and procedures established under paragraph 7d(18) (page 14 below) of this Order; provide further distribution as may be appropriate based on guidance provided in the NEPA Compliance Guide, unless such documents are, or contain information that is, classified, proprietary, or otherwise exempt from mandatory disclosure under the Freedom of Information Act (5 U.S.C. 552); provide the NEPA documents to the appropriate Freedom of Information Officer(s) to make them available in the Headquarters Freedom of Information Reading Room and, if appropriate, Regional and Field Freedom of Information Reading Rooms as described in DOE 1700.1.

(26) Submit to EH-1 written information on those EAs and EISs that Secretarial Officers expect to forward to EH-1 for approval during the subsequent 3 months, to enable EH-1 to prepare a Monthly NEPA Report to the Secretary (see page 13, paragraph 7d(5) below).

(27) Lead or Cooperating Agency

- (a) When DOE and one or more additional Federal agencies propose or are involved in the same action or are involved in a group of actions directly related each other because of their functional interdependence or geographical proximity, submit

to EH-1 a recommendation whether DOE should be the lead agency in preparing an EIS and, if so, which agencies DOE should request to be cooperating agencies. (See 40 CFR 1501.5 and page 13, paragraph 7d(12) below.)

- (b) When another Federal agency has the lead and DOE may have jurisdiction by law or special expertise with respect to any environmental issue, submit to EH-1 a recommendation whether DOE should be a cooperating agency in preparing an EIS. (See sections 1501.5 and 1501.6 of the CEQ Regulations.) (See page 13, paragraph 7d(12) below.)
- (28) Consult with EH-25 for guidance and assistance regarding NEPA compliance matters, as needed.
 - (29) Respond to requests by EH or other Program Offices for technical assistance in preparation or review of NEPA documents.
- b. Operations Office Managers. Each Operations Office Manager (or equivalent as defined for the purposes of this Order) shall, for matters under his/her authority:
- (1) If the authority to make such decisions has been delegated from the Secretarial Officer under paragraph 7a(11) (page 7 above), determine the appropriate level of NEPA review for those categories of actions specifically listed in Section D of the DOE NEPA Guidelines. This authority may not be redelegated. If more than one Program Office is responsible for an action, the Operations Office Manager must have received a delegation from all responsible Secretarial Officers in order to make a determination for that action.
 - (2) If there has been a delegation under paragraph 7a(11) (page 7 above), make determinations to apply categories listed in Section D of the DOE NEPA Guidelines; within 2 weeks of approval, provide a copy of such determinations to EH-25 and responsible Secretarial Officers, except for certain CXs for which documentation is not required (see page 13, paragraph 7d(14) below).
 - (3) Designate a NEPA Compliance Officer (NCO) and maintain the position to ensure that the requisite functions are carried out (see page 11, paragraph 7c below); inform EH-25 of the initial designation and any changes.
 - (4) Augment, as appropriate, and maintain an environmental compliance staff so that a variety of environmental disciplines is represented sufficient to ensure that properly supervised and technically accurate and complete NEPA documents are prepared.

- (5) Report on the status of NEPA compliance activities in SEN-7A-90 quarterly environmental compliance reports to be submitted simultaneously to the appropriate Secretarial Officer(s) and EH-1.
 - (6) Conduct State Notification, either directly or through the Operations Office Manager's NCO, for those actions for which the NEPA determination authority has been delegated under paragraph 7a(11) (page 7 above). A rate-setting action under which the State would be a customer is exempt from this requirement.
 - (7) Prepare NEPA documents at the direction and under the supervision of the responsible Secretarial Officer(s), when so designated under paragraph 7a(10) (page 7 above).
 - (8) Approve procedures and recordkeeping requirements; in consultation with all relevant Secretarial Officers (see page 6, paragraph 7a(2) above), and in consultation with EH-1 to ensure consistency in the agency-wide application of NEPA.
 - (9) Ensure that the information gathering, analysis, and coordination requirements of the DOE NEPA Guidelines are carried out when conducting competitive procurements or other solicitations involving selection of sites or processes. Incorporate, where appropriate, environmental criteria and conditions into solicitations, and into resulting contracts issued under his/her authority.
 - (10) Ensure that applicants for financial assistance, permits, licenses, exemptions, allocations, or similar actions submit information necessary for DOE NEPA compliance, and otherwise comply with the requirements of the DOE NEPA Guidelines.
 - (11) Incorporate NEPA milestones (CX; EA, FONSI; or NOI, draft EIS, final EIS, ROD) into project planning documents within the project management system administered by the Office of Procurement, Assistance and Program Management (PR) through DOE 4700.1. Incorporate a NEPA Status Report on existing or planned NEPA compliance activities into internal budget review documents (i.e., project data sheets or activity data sheets) prepared pursuant to DOE 5100.3.
 - (12) Establish procedures and act to ensure that NCOs and cognizant EH-25 staff (as assigned under paragraph 7e(3) (page 15 below)) are fully informed in a timely manner of all program considerations and changes that would bear on the accuracy and objectivity of NEPA documents.
- c. NEPA Compliance Officer. The NEPA Compliance Officer (NCO) shall, for matters under the authority of his/her Program or Operations Office (the Office):

- (1) Provide advice regarding NEPA-related matters, including the provisions of the CEQ Regulations, the DOE NEPA Guidelines, SEN-15-90, the DOE NEPA Compliance Guide, this Order, and any other related guidance and requirements; provide assistance regarding procedures and document preparation; provide NEPA training and disseminate NEPA guidance materials and related information.
 - (2) Participate in periodic NEPA training, meetings, and workshops conducted by the Office of NEPA Oversight (EH-25).
 - (3) Recommend, for his/her Secretarial Officer or Operations Officer approval (see page 6, paragraph 7a(2) and page 11, paragraph 7b(8) above), office NEPA procedures and recordkeeping requirements, and document the office's compliance with those procedures and requirements.
 - (4) Recommend to his/her Secretarial Officer or Operations Office Manager for each proposed action the appropriate level of NEPA review, and recommend schedules designed to ensure the early preparation of NEPA documents.
 - (5) Review NEPA documents and other related documents for compliance with the CEQ Regulations, the DOE NEPA Guidelines, SEN-15-90, and other DOE NEPA-related procedures and guidance.
 - (6) Conduct State Notification, if directed to do so by his/her Secretarial Officer or Operations Office Manager (see page 8, paragraph 7a(16) and page 11, paragraph 7b(6) above).
 - (7) Serve as a liaison in the conduct of State Coordination, and provide EH-25 with comments from the State(s) and the Program Office's proposed resolutions, unless the Secretarial Officer directs another official to carry out this function.
- d. Assistant Secretary for Environment, Safety and Health (EH-1). The Assistant Secretary for Environment, Safety and Health shall:
- (1) Provide Departmental oversight and guidance on NEPA-related matters to ensure consistency in the agency-wide application of NEPA.
 - (2) Review appropriate management reports, new legislative authorities, proposed regulations, and emerging and ongoing policies, plans, programs, procurement activities, and other proposals to identify Departmental actions that may require environmental review under NEPA.
 - (3) Provide NEPA technical assistance and policy guidance to other Departmental Elements in their preparation of NEPA documents.

- (4) Review and advise on NEPA-related procedures and recordkeeping requirements to be approved by Secretarial Officers under paragraph 7a(2) (page 6 above) and by Operations Office Managers under paragraph 7b(8) (page 11 above), to ensure consistency in the agency-wide application of NEPA.
- (5) Report monthly to the Secretary regarding EAs and EISs that Secretarial Officers expect to forward to EH-1 for approval during the subsequent 3 months, based on information received from Secretarial Officers (see page 9, paragraph 7a(26) above); identify EAs or EISs that warrant Secretarial approval.
- (6) Submit quarterly to the Secretary an independent review of the SEN-7A-90 environmental compliance reports.
- (7) Monitor project planning documents, within the project management system administered by PR through DOE 4700.1, to ensure that project schedules include NEPA milestones.
- (8) Review NEPA Status Reports included in DOE internal budget review documents to ensure that projects include appropriate NEPA compliance planning.
- (9) Determine, after consulting with the Office of General Counsel (GC-11), the level of NEPA review required for proposed DOE actions not listed in Section D of the DOE NEPA Guidelines or for which the appropriate level of NEPA review is unclear (except as provided in paragraph 7d(10) below), based on review of an ADM and the recommendation of the responsible Secretarial Officer.
- (10) Forward significant or controversial proposals to the Secretary for a determination whether to proceed initially with an EA or an EIS.
- (11) Determine, upon request by a Secretarial Officer, whether a proposed interim action may proceed.
- (12) Determine whether DOE should be a lead or cooperating agency in preparing an EIS, taking account of any recommendation of a Secretarial Officer (see page 9, paragraph 7a(27) above).
- (13) Establish criteria by which a Secretarial Officer may determine which organizational entity shall prepare NEPA documents; where no Program Office has clear lead responsibility for the implementation of the proposed action, after consultation with the affected Offices, determine the responsible Office(s) to prepare the required NEPA documents.
- (14) Pending issuance of final DOE NEPA Regulations, EH-1 shall determine which CXs do not require documentation and shall notify the Secretarial Officers and Operations Office Managers. Within 2

weeks of receiving notice of a determination under paragraph 7a(12) (page 7 above) or 7b(2) (page 10 above), notify, in writing, the appropriate Operations Office Manager and/or Secretarial Officer of any objection to the application of a category listed in Section D of the DOE NEPA Guidelines.

- (15) Following review of an EA and the recommendation, if any, of the Secretarial Officer, determine, after consulting with GC-11, whether a proposed action requires an EIS; if an EIS is not required, issue a FONSI.
- (16) Approve, after consulting with GC-11, EIS implementation plans for the preparation of DOE EISs.
- (17) Following review of a supplement analysis, determine whether DOE shall prepare a supplemental EIS or a new EIS for a proposed action, whether to modify a ROD, or whether no further documentation is required.
- (18) Establish procedures for the review, approval, publication, and dissemination of NEPA documents.
- (19) Evaluate proposed and alternative actions, including alternative mitigating measures, described in Departmental EISs, supplements, or EAs and make any appropriate environmental recommendations to the responsible Secretarial Officer.
- (20) Advise the responsible Secretarial Officer and, if appropriate, the Secretary, of proposed actions believed not to conform with Departmental policies or, after consulting with GC-11, applicable environmental laws and regulations.
- (21) Review, exercise quality control over, evaluate, and after consulting with GC-11, approve or disapprove NEPA documents, except as otherwise provided in this Order, based on their content and conformity to the CEQ Regulations, the DOE NEPA Guidelines, SEN-15-90, Executive Order 12114, and this Order.
- (22) Notify, in writing, the responsible Secretarial Officer and the Secretary if deficiencies prevent approval of a NEPA document that the Secretarial Officer has forwarded for approval.
- (23) Review and, after consulting with GC-11, approve (for environmental content only) RODs that comply with NEPA, the CEQ Regulations, the DOE NEPA Guidelines, and SEN-15-90.
- (24) Review mitigation action plans for implementation of mitigation commitments made in an EIS/ROD or, when appropriate, EA/FONSI; review related annual progress reports to track the implementation of actions identified in the plans.

- (25) Advise the Secretarial Officers whether public participation is appropriate for NEPA-related issues not otherwise requiring public meetings, hearings, or comment periods.
- (26) Coordinate DOE assistance to other Federal agencies throughout their NEPA processes, including the review of documents and submission of DOE comments.
- (27) Conduct periodic NEPA compliance audits of DOE facilities and programs.
- (28) Perform all the functions under paragraph 7.e. through the Office of NEPA Oversight.

e. Director of NEPA Oversight (EH-25). The Director of NEPA Oversight shall:

- (1) Be responsible for quality control and general oversight of efforts directed toward fulfilling Departmental responsibilities under NEPA.
- (2) Provide to Secretarial Officers and Operations Office Managers, assistance upon request and guidance when appropriate regarding NEPA compliance issues, including:
 - (a) Reviews and comments on preliminary, draft, and final NEPA documents;
 - (b) Coordination of the EH review process for NEPA documents;
 - (c) Assistance in preparing outlines and target schedules for EIS preparation;
 - (d) Assistance in public meetings and hearings regarding NEPA matters;
 - (e) Assistance in responding to external comments on draft EISs and other NEPA documents;
 - (f) Assistance in preparing procurement solicitations with respect to NEPA requirements;
 - (g) Assistance in developing environmental criteria and evaluating proposals against such criteria, for procurements with potential environmental significance.
- (3) Assign staff to work closely with the designated NCO throughout all phases of EA or EIS preparation.

- (4) Review, exercise quality control over, evaluate and, after consulting with GC-11, recommend to EH-1 approval or disapproval of, or concurrence in NEPA documents.
- (5) Recommend to EH-1, after consulting with GC-11, whether:
 - (a) A proposed Departmental action requires an EA or EIS;
 - (b) An EA or EIS is adequate and should be approved. For an EA, approval should occur after State Coordination authorized by EH-25 is completed. (See page 14, paragraph 7e(15) below.)
 - (c) A supplement analysis is adequate and whether a supplemental EIS, a new EIS, or a revised ROD is required.
 - (d) A proposed interim action may proceed.
- (6) Evaluate proposed and alternative Departmental actions as analyzed in EISs and EAs and make any appropriate environmental recommendations to EH-1.
- (7) Advise EH-1 of any Departmental action believed not to conform with Departmental policies, or after consulting with GC-11, applicable environmental laws and regulations.
- (8) Within 2 weeks of receiving notice of a determination under paragraph 7a(12) (page 7 above) or 7b(2) (page 10 above), advise EH-1 of any objection to the application of a category listed in Section D of the DOE NEPA Guidelines.
- (9) Review EIS implementation plans for the preparation of DOE EISs and, after consulting with GC-11, recommend approval or disapproval of IPs to EH-1.
- (10) Track environmental impacts and issues relating to actions subject to NEPA review, and ensure that NEPA documents describe reasonable mitigating measures.
- (11) Recommend to EH-1 whether public participation is appropriate for NEPA-related issues not otherwise requiring public meetings, hearings, or comment.
- (12) Coordinate DOE assistance to other Federal agencies throughout their NEPA processes.
- (13) Coordinate all consultation with the CEQ and the U.S. Environmental Protection Agency (EPA) on matters relating to NEPA.
- (14) File approved draft, final, and supplemental EISs with EPA, in accordance with 40 CFR 1506.9 and EPA's procedural requirements.

- (15) Authorize Secretarial Officers to transmit pre-approval EAs for State Coordination, and determine the minimum length of the review period (14 to 30 days).
 - (16) Review, revise, and augment as needed Section D of the DOE NEPA Guidelines.
 - (17) Review, revise, and augment as needed the NEPA Compliance Guide.
 - (18) Prepare the Monthly NEPA Report for EH-1 to forward to the Secretary regarding EAs and EISs that Secretarial Officers expect to forward to EH-1 for approval during the subsequent 3 months.
 - (19) Develop and implement training programs and related materials to provide DOE personnel with information on NEPA, the CEQ Regulations, the DOE NEPA Guidelines, SEN-15-90, and their responsibilities in the NEPA process.
- f. Office of General Counsel. The Office of General Counsel (GC-1, GC-11, or other appropriate office) shall:
- (1) Provide EH with legal advice regarding the level of NEPA review required for a proposed action.
 - (2) Advise the Secretary, EH, and Departmental organizations regarding the legal adequacy of NEPA documents.
 - (3) Provide legal assistance to all Departmental organizations in the preparation of NEPA documents and the conduct of NEPA-related hearings.
 - (4) Provide legal assistance to EH and all Departmental organizations in preparing NEPA-related guidance.
 - (5) In those cases where GC may propose an action subject to NEPA, exercise the responsibilities and authorities in paragraph 7a.
- g. Director of Procurement, Assistance and Program Management (PR-1). The Director of Procurement, Assistance and Program Management shall:
- (1) Ensure integration of NEPA milestones in the project management system administered under DOE 4700.1, and provide Project Plans to EH-1 for review; ensure inclusion of a NEPA Status Report in internal budget review documents (i.e., project or activity data sheets) prepared under DOE 5100.3, and provide these documents to EH-1 for review.
 - (2) Ensure inclusion of NEPA compliance requirements in project management training.

- h. Director of Naval Nuclear Propulsion Program (NE-60). Executive Order 12344, statutorily affirmed by Pub. L. No. 98-525 (42 U.S.C. 7158 note), establishes the responsibilities and authority of the Director, Naval Nuclear Propulsion Program (who is also the Deputy Assistant Secretary for Naval Reactors within the Department) over all facilities and activities which comprise the Program, a joint Navy-DOE effort. The objective of this executive and legislative action is cited in part in the Executive Order as ". . . preserving the basic structure, policies, and practices developed for this program in the past" Essential to this objective is preserving the Director's authority to establish and maintain common practices and standards across the Navy and DOE activities of this uniquely integrated Program. Accordingly, the Director is responsible for carrying out the provisions of this Order including, but not limited to, making determinations on the level of NEPA review required for Program actions, and approving and issuing NEPA documents for Program actions.
- i. Secretary (S-1). The Secretary shall:
- (1) Upon referral from EH-1, determine whether an EA or an EIS should be prepared for significant or controversial proposals.
 - (2) Approve all programmatic and site-wide EISs and any other EAs or EISs identified by EH-1 or through the Secretary's review of EH-1's Monthly NEPA Report.
 - (3) Resolve disputes that arise regarding issues related to the NEPA process that cannot be resolved at lower levels of management.
 - (4) Approve any deviations from the DOE NEPA Guidelines.