

# Federal Register

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Friday  
March 28, 1980

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Part V

## Department of Energy

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Compliance With the National  
Environmental Policy Act

## DEPARTMENT OF ENERGY

### Compliance With the National Environmental Policy Act; Final Guidelines

**AGENCY:** Department of Energy.

**ACTION:** Final guidelines for compliance with the National Environmental Policy Act.

**SUMMARY:** The Department of Energy (DOE) hereby adopts final guidelines for implementing the procedural provisions of the National Environmental Policy Act (NEPA) as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). The guidelines published herein reflect certain revisions to the proposed guidelines, published in the Federal Register on July 18, 1979 (44 FR 42136), based upon DOE's consideration of comments and upon experience under the CEQ regulations and the proposed guidelines.

The guidelines are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC) which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

**EFFECTIVE DATE:** March 28, 1980.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4C-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-4600.

Stephen H. Greenleigh, Esq., Assistant, General Counsel for Environment, Room 6D-033, Forrestal Building, Washington, D.C. 20585 (202) 252-6947.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The final guidelines published herein provide the supplemental implementing procedures required by the CEQ regulations. DOE published proposed guidelines in the Federal Register on July 18, 1979 (44 FR 42136), and established August 20, 1979, as the close of the public comment period. DOE has operated under the proposed guidelines since the time of publication.

On August 6, 1979, DOE announced in the Federal Register (44 FR 45918) the establishment of Part 1021 of Chapter X of Title 10 of the Code of Federal Regulations. That rulemaking provided for DOE adoption of the CEQ regulations and the revocation of the NEPA regulations of predecessor agencies of DOE. The effective date of the rulemaking was July 30, 1979.

##### II. Comments Received and DOE Response

Written comments were received from the Environmental Protection Agency (EPA), the Advisory Council on Historic Preservation (ACHP), and four private organizations. DOE has carefully considered all comments received and has modified the proposed guidelines, as appropriate, to assure that the final guidelines represent sound NEPA procedures.

###### A. EPA Comments

The EPA suggested that DOE promulgate its procedures as regulations rather than guidelines to give the procedures greater legal authority. DOE considered issuing regulations but decided, instead, to issue guidelines. This decision was based on the advice of CEQ staff and on the belief that guidelines would ensure flexibility.

The EPA also suggested adding sections to the guidelines to provide for monitoring mitigation measures and for the filing of EIS's. DOE considered these suggestions but concluded that the CEQ regulations adequately establish the requirements for monitoring mitigation measures (40 CFR 1505.2(c)) and for filing DIS's (40 CFR 1506.9).

###### B. ACHP Comment

The ACHP suggested adding a section to the guidelines which would detail the manner in which DOE's National Historic Preservation Act (NHPA) responsibilities will be coordinated with its NEPA responsibilities. DOE recognizes the benefits of coordinating the requirements of other environmental statutes such as the NHPA with those of NEPA, and has supplemented the CEQ requirements contained at 40 CFR 1502.25 by adding general procedures under Paragraph C.4 for coordination with environmental review requirements of other environmental statutes. DOE believes that these general procedures, in conjunction with the ACHP's regulations, 36 CFR 800, will facilitate the coordination of NEPA and NHPA requirements.

###### C. Other Comments

1. *Section A—NEPA and Agency Planning.* Paragraphs 1.(c)(4) and (5) of the proposed guidelines indicated that DOE expects applicants to notify DOE of other governmental actions required for project completion and of parties interested in the proposed undertaking. One commenter asserted that DOE should have the responsibility for such activities. The purpose of these paragraphs was to provide guidance to applicants for cases where actions are

planned before DOE actually receives an application. In such cases, applicants, and generally not DOE, have the information necessary to determine the applicability of other environmental requirements and to identify interested parties. These efforts by applicants early in their planning process will facilitate coordination and thereby help avoid duplication and delays. Accordingly, and with the exception of some minor format changes, DOE has not changed its advice to applicants.

The same commenter suggested that the role of an applicant who is required to file a Fuels Decision Report under the Fuel Use Act (FUA) should be specified in the NEPA Guidelines. DOE published guidelines in the Federal Register on November 5, 1979 (44 FR 63740), for the preparation of the environmental analysis chapter of a Fuels Decision Report. The role of a FUA applicant is specifically outlined by the FUA guidelines and the NEPA guidelines.

The same commenter also asserted the necessity of establishing specified time frames for the NEPA process. DOE recognizes the benefits of setting time limits for the NEPA process and has repeated for emphasis the CEQ regulations contained at 40 CFR 1501.8 by adding a requirement under applicant processes which provides that DOE establish time limits for the NEPA process when requested to do so by an applicant.

2. *Section B—NEPA and Agency Decisionmaking.* Paragraph 1(b)(2)(i) of the proposed guidelines established factors that DOE would consider in determining the necessity and appropriate timing of a NEPA document for energy technology research, development, demonstration, and commercialization programs. One commenter was concerned that the factors did not include the likelihood that the technology will prove to be commercially feasible. DOE believes that this factor is reflected in the broader factor already in the guidelines which reads "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."

3. *Section C—Other Requirements of NEPA.* One commenter requested that future revisions to the guidelines be published in the Federal Register for comment. DOE agrees that substantive changes to the guidelines should be published for comment and has added appropriate requirements under Paragraph C.8.

**4. Section D—Typical Classes of Action.** One commenter questioned the application of NEPA to DOE's action on an exemption petition for a combustion turbine under the Fuel Use Act (FUA), on the basis that the issuance of permits under the Clean Air Act is exempted in section 7(c)(1) of the Energy Supply and Environmental Coordination Act from NEPA. That exemption from NEPA applies only to actions taken under authority of the Clean Air Act and not to actions taken by other agencies under such other authorities as FUA.

Other commenters also questioned the application of NEPA to action on an exemption petition for a peakload powerplant, on the grounds that the exemption is non-discretionary and suggested the need for categorizing FUA exemption actions in Section D of the DOE NEPA guidelines. DOE is assessing the general applicability of NEPA to specific FUA exemptions, as well as the need for categorizing, FUA exemption actions in Section D. Appropriate public notice and opportunity for comment will be provided on these matters as DOE gains additional experience with FUA implementation and before DOE adoption of additional categorizations in Section D for FUA exemptions.

#### *D. Comments Beyond Scope*

One set of comments was received that is beyond the scope of the guidelines. The comments included:

(1) DOE should place energy above the environment in assessing planned departmental actions.

(2) DOE's policy should include requiring substantiation and objective documentation of any EPA study which would potentially affect energy supplies.

#### **III. Other Revisions to the Guidelines**

In addition to revisions made in response to comments, DOE has also revised the guidelines as a result of experience under the CEQ regulations and DOE's proposed guidelines.

##### *A. Format, Wording and Paragraph Arrangement*

Several minor changes were made to improve continuity and clarity and to facilitate referencing specific sections of the guidelines.

##### *B. Section A—NEPA and Agency Planning*

Paragraph A.4. (d) was added to establish an adequate notice period with respect to scoping meetings.

##### *C. Section B—NEPA and Agency Decisionmaking*

Under project level decisionmaking, DOE has added Paragraph B.3. (c)(2) to provide for major system acquisition projects involving the competitive procurement of a site and/or process. The competitive procurement process has confidentiality requirements established pursuant to 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information. Accordingly, DOE has established, pursuant to the provisions of 40 CFR 1507.3(b), special procedures to provide for compliance with NEPA to the fullest extent possible. The environmental impact analysis required by the special procedures will ensure consideration of environmental factors in selection decisions between competing sites and/or processes. If selected sites and/or processes are likely to have significant effects on the quality of the human environment, the special procedures provide that DOE will prepare an EIS before making a go/no-go decision.

Upon publication, DOE will operate under the special procedures on an interim basis. However, because these procedures represent a substantive revision to the previously proposed guidelines, DOE affirmatively solicits public comments on them and will make appropriate modifications before final adoption of Paragraph B.3. (c)(2). Interested persons are invited to submit written comments with respect to these procedures to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of the Assistant Secretary for Environment, Room 4G-064, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585. To ensure consideration, comments should be received by DOE no later than 30 days after publication of the special procedures in the Federal Register.

##### *D. Section D—Typical Classes of Action*

Two minor changes, both involving rate increases, have been made in this section. The addition of rate increases exceeding the rate of inflation as a typical class of action normally requiring an EA and generally applicable to all of DOE is the logical counterpart to the categorical exclusion for rate increases not exceeding the rate of inflation. Since this addition is applicable to all of DOE, the rate increase typical class of action for Power Marketing Administrations has been deleted.

Issued in Washington, D.C., March 25, 1980.

Ruth C. Clusen,

*Assistant Secretary for Environment.*

#### **DOE NEPA GUIDELINES**

##### **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**

#### **DOE NEPA Guidelines**

##### *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 Deputy 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 § 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 (§ 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 (§ 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 in 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 1506.23), 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) and (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 that 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 § 552(b) of the Freedom of Information Act (FOIA) (5 U.S.C. 552), § 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 1506.10), 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, 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 EIS's 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:

NEPA Affairs Division, Office of Environment, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

6. *Oversight of Agency NEPA Activities.* The Assistant Secretary for Environment, 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 Deputy 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 Action

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
<b>Classes of Actions Generally Applicable to All of DOE</b>		
Administrative procurements (e.g., general supplies) .....	DOE actions which enable or result in engineering development activities, i.e., detailed design, development and test of energy system prototypes.	DOE actions which are expected to result in the construction and operation of a full-scale energy system project.
Contracts for personal services .....	DOE actions which provide grants to state or local governments for energy conservation programs.	DOE actions which promote energy conservation through regulation of energy use on a substantial scale.
Personnel actions .....	.....	.....
Reports or recommendations on legislation or proposed rule-making which was not initiated by DOE.	.....	.....
Compliance actions, including investigations, conferences, hearings, notices of probable violations and remedial orders.	.....	.....
Interpretations and rulings, or modification or rescissions thereof.	.....	.....
Promulgation of rules and regulations which are clarifying in nature, or which do not substantially change the effect of the regulations being amended.	.....	.....
Actions with respect to the planning and implementation of emergency measures pursuant to the International Energy Program.	.....	.....
Information gathering, analysis, and dissemination.....	.....	.....
Actions in the nature of conceptual design or feasibility studies.	.....	.....
Actions involving routine maintenance of DOE-owned or operated facilities.	.....	.....
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 proposal.	.....	.....
Adjustments, exceptions, exemptions, appeals, stays or modifications or rescissions of orders issued pursuant to the Emergency Petroleum Allocation Act, as amended.	.....	.....
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.	Rate increases for provide 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.	.....
Actions that are substantially the same as other actions for which the environmental 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.	.....	.....
<b>Classes of Actions Applicable to Licenses to Import/Export Natural Gas Pursuant to Section 3 of the Natural Gas Act</b>		
.....	Approval/disapproval of a new license or an 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 LNG throughput, change in transportation or storage operations.	Approval/disapproval of applications involving the construction of new liquid natural gas terminal, regasification or storage facilities or a significant expansion of an existing LNG terminal, regasification or storage facility.
.....	.....	Approval/disapproval of an application involving a significant operational change, such as a major increase in the quantity of LNG imported or exported.
<b>Classes of Actions Applicable to Propane Allocation Program</b>		
Assignments and allocations of propane to retail and wholesale outlets for commercial and residential use.	Assignments and allocations of propane to gas utilities for peak shaving, Btu enrichment or supplemental gas supplies involving new construction or a substantial change in operations or potential impact on competing users of propane.	.....
Assignments and allocations of propane to gas utilities for peak shaving or Btu enrichment which do not involve new construction or a substantial change in operation and where DOE has determined that such actions will not impact the supplies available for competing uses.	New assignments and allocations of propane feedstock to enable operation of or increases in operation of petrochemical plants. Changes in regulatory status such as the decontrol of propane.	.....
<b>Classes of Actions Applicable to Synthetic Natural Gas (SNG) Feedstock Allocation Program</b>		
Approval/disapproval of an application for supplier assignment and feedstock allocation which involves continuation of SNG production at historical levels, and where DOE has determined that the requested assignment will not adversely impact competing users due to the projected availability of supply.	Issuance of an Order which reduces SNG production below historical levels and where the probability of fuel switching or other impacts caused by the reduction is unknown.	Approval/disapproval of an application for supplier assignment and feedstock allocation which involves the construction of a new SNG plant or a major modification at an existing plant.
.....	Issuance of an Order for an existing plant which increases the SNG production above historical levels.	Issuance of an Order which significantly reduces the feedstock allocation to an existing plant in cases where the gas supply/demand outlook indicates significant fuel switching or economic hardship may occur as a result of the curtailment of SNG feedstock.



Section D.—Typical Classes of Action—Continued

Normally do not require either EA's or EIS's	Normally require EA's but not necessarily EIS's	Normally require EIS's
<b>Classes of Actions Applicable to International Activities</b>		
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.		
Approval of technical exchange arrangements for information, data or personnel with other countries or international organization.		
Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options.		
Approval of export of small quantities of special nuclear materials or isotopic material 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).		

<b>Classes of Actions Applicable to Power Marketing Administrations (PMA)</b>		
Minor additions to a substation, transformer additions, or changes in transformer assignments that do not affect the area beyond the previously developed substation area.	Upgrading (reconstructing or reconducting) an existing transmission line.	Main Transmission System Additions—additions of new transmission lines, main grid substations and switching stations to PMA's main transmission grid.
	Construction of new service facilities such as tap lines and substations.	Integrating Transmission Facilities—transmission system additions for integrating new sources of generation into PMA's main grid.
	Modifications of existing facilities (e.g., substations, storage yards) where impacts extend beyond the previously developed facility area.	
	Annual vegetation management program (system-wide).	

<b>Classes of Actions Generally Applicable to Nuclear Waste Management Program</b>		
	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 storage and/or disposal of nuclear waste, and/or spent nuclear fuel.
	Land acquisition activities solely for the purposes of reserving possible candidate sites and which do not prejudice future programmatic site selection decision.	

<b>Classes of Actions Generally Applicable to DOE Implementation of Powerplant and Industrial Fuel Use Act of 1978 (FUA)</b>		
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 for 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.		

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