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DEPARTMENT OF ENERGY

10 CFR Parts 1021 and 1022

RIN 1901-AA94

Compliance With Floodplain and Wetland Environmental Review Requirements

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is revising its floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens by simplifying DOE public notification procedures for proposed floodplain and wetland actions, exempting additional actions from the floodplain and wetland assessment provisions of these regulations, providing for immediate action in an emergency, expanding the existing list of sources that may be used in determining the location of floodplains and wetlands, and allowing floodplain and wetland assessments for actions proposed to be taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to be coordinated with the CERCLA environmental review process rather than the National Environmental Policy Act (NEPA) process. DOE also is making a conforming change to its NEPA implementing regulations to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

EFFECTIVE DATE: These rule changes will become effective September 26, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or this rulemaking, or for copies of the final rule, contact Carolyn M. Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance,

1000 Independence Avenue, SW., Washington, DC 20585-0119. Telephone (202) 586-4600 or leave a message at (800) 472-2756; facsimile to (202) 586-7031; e-mail to carolyn.osborne@eh.doe.gov. The final rule also will be available after the effective date specified above on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa>.

For information on DOE's NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background

We published on November 18, 2002 (67 FR 69480), proposed revisions to our regulations entitled "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022), which were promulgated originally on March 7, 1979 (44 FR 12596), to implement the requirements of Executive Order (E.O.) 11988, "Floodplain Management" (42 FR 2951; May 24, 1977), and E.O. 11990, "Protection of Wetlands" (42 FR 26961; May 24, 1977). We also published in our November 18, 2002, **Federal Register** notice a proposed conforming change to our "National Environmental Policy Act Implementing Procedures" (10 CFR 1021.313).

Publication of the Notice of Proposed Rulemaking began a 60-day public comment period, ending January 17, 2003. Comments were received from three sources: A State, a county, and a member of the public. Copies of these comments are available for public inspection at the DOE Freedom of Information Office Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0101, (202) 586-3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

This document adopts the revisions proposed on November 18, 2002, with certain changes discussed below, and codifies them at 10 CFR parts 1021 and 1022. In accordance with 40 CFR 1507.3, the Council on Environmental Quality (CEQ) reviewed this notice of final rulemaking and concluded that the proposed amendment to the DOE regulations implementing NEPA is in conformance with NEPA and the CEQ

regulations. The Secretary of Energy has approved this notice of final rulemaking for publication.

II. Statement of Purpose

We are revising 10 CFR part 1022 based on our experience implementing the existing requirements for over 20 years. We expect these changes to improve our ability to meet our goals for floodplain and wetland protection in a timely and cost-effective manner. We are revising 10 CFR 1021.313 to conform with 10 CFR 1022.14(c) by allowing floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we are implementing will: (1) Simplify our public notification procedures for proposed floodplain and wetland actions by emphasizing local publication as opposed to publication in the **Federal Register**, (2) exempt additional actions from the floodplain and wetland assessment provisions of these regulations, (3) provide for immediate action in an emergency with documentation to follow, (4) expand the existing list of credible sources that may be used in determining the location of floodplains and wetlands, and (5) allow floodplain and wetland assessments for actions proposed to be taken under CERCLA to be coordinated with the CERCLA environmental review process rather than the NEPA process. The revisions also will make the rule easier to use by reordering sections to parallel the assessment process, clarifying requirements (such as the differences between floodplain and wetland actions and their respective assessment requirements), and simplifying the rule by deleting provisions that are no longer applicable. The revisions streamline existing procedures and add no new requirements.

III. Comments Received and DOE's Responses

We have considered and evaluated the comments received during the public comment period. A number of revisions suggested in these comments have been incorporated into the final rule. The following discussion describes the comments received, provides our response to the comments, and describes any resulting changes to the rule. We also have made editorial and stylistic revisions for clarity and consistency.