

A. General Comments

In addition to a comment supporting our intent to simplify and restructure the rule, we received one comment objecting to our streamlining effort on the ground that it would make it easier to sabotage environmental protection before the public could know about potential impacts. This comment is speculative. It does not provide any example to show a potentially adverse effect from any of the proposed amendments to the regulations in 10 CFR parts 1021 and 1022. We believe the revised rule will improve our ability to meet our goals for floodplain and wetland protection. We will be able to focus our resources, and those of the public, on the types of proposed actions that our experience demonstrates are most likely to benefit from an examination of alternatives and mitigating measures and increase the efficiency of our environmental reviews (thereby, for example, allowing earlier identification of mitigation actions).

We received a comment pointing to DOE's obligation to comply with the Coastal Zone Management Act, NEPA, and applicable state laws and regulations. We recognize our legal responsibilities and note that it is the intent of the E.O.'s upon which this regulation is based, and the regulation itself, that implementation be coordinated, and when appropriate, integrated with procedures for implementing other requirements, such as those of NEPA. (See §§ 1022.1(b) and 1022.2(b).) We also note that this rulemaking is not a proposal to conduct any activity that would affect any coastal resource. We will comply with 10 CFR part 1022 and all other applicable requirements if we propose any such activity in the future.

B. Comments on Definitions (§ 1022.4)

Two comments requested clarification of "effects of national concern" as used in determining whether we are required to publish in the **Federal Register** a notice of proposed action (§ 1022.12(b)) or a floodplain statement of findings (§ 1022.14(e)). In response, we have added a definition to state that effects of national concern are those effects that because of the high quality or function of the affected resource or because of the wide geographic range of effects could create concern beyond the locale or region of the proposed action. The lack of potential effects of national concern does not excuse us from our public notification and participation responsibilities (§§ 1022.3(e), 1022.12, and 1022.14).

C. Comments on Exemptions (§ 1022.5)

One comment recommended that we define terms associated with the exemptions described in § 1022.5(d) to "ensure that the activities contemplated by the proposed rule changes will have only minimal and temporary adverse impacts on the aquatic environment." We do not believe it is practical or useful to attempt to define all the activities that might fall within the rule's three exemptions. We have, however, added examples for each exemption.

The rule now states that routine maintenance activities (§ 1022.5(d)(1)) are those, such as reroofing, plumbing repair, and door and window replacement, needed to maintain and preserve existing facilities and structures for their designated purpose. We believe that the restrictive conditions stated in § 1022.5(d)(2) and § 1022.5(d)(3) help describe the types of activities that could be exempted, but also have added examples in both sections. For site characterization, environmental monitoring, or environmental research activities (§ 1022.5(d)(2)), the rule now includes the examples of sampling and surveying water and air quality, flora and fauna abundance, and soil properties. For minor modification of an existing facility or structure to improve safety or environmental conditions (§ 1022.5(d)(3)), the rule now includes the examples of upgrading lighting, heating, ventilation, and air conditioning systems; installing or improving alarm and surveillance systems; and adding environmental monitoring or control systems.

D. Comments on Public Notification and Information Dissemination (§§ 1022.12 and 1022.14)

We received one comment asking that, when providing public notification, consideration be given to the interest of state government, in addition to local interest, in a proposed action. This has been our practice and is our intent. For clarification, in this final rule, we have added the parenthetical phrase "(e.g., FEMA [Federal Emergency Management Agency, Department of Homeland Security] regional offices, host and affected states, and tribal and local governments)" after "government agencies" in §§ 1022.12(b) and 1022.14(d). Distribution to these parties, and to others as appropriate for a specific proposed action, facilitates public participation.

One comment questioned whether language in § 1022.14(f) would limit

distribution of floodplain statements of findings to only those state agencies identified in a particular list of state contacts maintained by the Office of Management and Budget. To clarify our intent to continue to distribute statements of findings to parties interested in or potentially affected by a proposed action, in § 1022.14(f) of the final rule, we have added the word "also." The rule now states that for actions subject to E.O. 12372, "Intergovernmental Review of Federal Programs," DOE "also" shall send the floodplain statement of findings to the state in accordance with 10 CFR part 1005 (DOE's regulations for implementing the E.O.).

With regard to a comment that DOE must establish contacts and maintain current information on them, DOE Order 451.1B, "National Environmental Policy Act Compliance Program," requires each DOE Program and Field Office with NEPA responsibilities to have a Public Participation Plan. With regard specifically to state contacts, we established ongoing relationships with State Clearinghouses in 1990 through contact with the Governors, and we update our State Clearinghouse contacts in the "Directory of Potential Stakeholders for Department of Energy Action under the National Environmental Policy Act," which is distributed broadly within the Department and made available on the DOE NEPA Web site (<http://tis.eh.doe.gov/nepa/guidance.html>, under "Public Participation").

One comment opposed our change to allow discretion in whether to include a floodplain statement of findings within a final EIS. We agree with the commenter that information relevant to potential floodplain and wetland impacts is integral to the evaluation of a proposed action and alternatives within an EIS. A final EIS would consider those impacts and mitigations. For example, both the final EIS and the floodplain assessment would evaluate mitigation measures to minimize harm to or within the floodplain. Nonetheless, a floodplain statement of findings may be issued separately as there may be times when it is not appropriate to incorporate the statement within the final EIS (e.g., when steps to be taken to minimize harm are not determined until after the final EIS is issued, or a phased decision involving sequential records of decision is being made and the findings would not be relevant to the initial record of decision). Moreover, E.O. 11988, upon which the floodplain management portions of this regulation are based, does not specify when in the NEPA process the statement of findings