

should be published, and E.O. 11990, which addresses wetlands protection, does not require a statement of findings. The E.O.'s allow Federal agencies substantial latitude in implementing the requirements as deemed most appropriate for individual agencies.

E. Comments on Variances (§ 1022.16)

One comment sought clarification of the conditions under which we could waive time limits between various steps in the floodplain or wetland environmental review process and requested a definition of emergency actions and emergency situations. The rule allows us to alter the floodplain or wetland assessment process in response to emergencies and in some non-emergency situations.

Section 1022.16(a) allows us to take immediate action in the event of an emergency, forgoing the assessment process required by this rule until after the emergency has been addressed. We will continue to determine what constitutes an emergency (an emergency action or emergency situation) on a case-by-case basis, as is consistent with the manner in which an emergency has been declared in the past in regard to compliance with these and other requirements (e.g., NEPA). We have declared only three emergency exceptions to our NEPA procedures in the past 25 years.

Section 1022.16(b) allows shortening the review process in non-emergency situations in response to "statutory deadlines or overriding considerations of program or project expense or effectiveness." This section does not allow any exception from completing a required floodplain or wetland assessment nor from following any other provision of this rule or any other applicable requirement before taking action. This provision has been in place since we first promulgated our floodplain and wetland environmental review requirements in 1979, and in practice, we have not experienced difficulty in its implementation.

The comment also asked who determines whether a variance is to be granted. The cognizant DOE official responsible for NEPA or CERCLA implementation, as applicable, normally would consult with the Office of NEPA Policy and Compliance pursuant to § 1022.16(c) before determining whether to grant a variance.

F. Other Revisions

Notable among the editorial and stylistic revisions we made are changes to the definitions of "floodplain and wetland values" and "critical action floodplain" in § 1022.4. We reorganized

the examples of floodplain and wetland values to improve readability.

We have added to the definition of critical action floodplain a clarification that was included in the preamble to this proposed rule in November 2002. This clarification regards when we will consider a flood with an expected frequency of less than once in a 500-year period, and thus a larger floodplain, in evaluating potential impacts associated with a critical action (i.e., any DOE action for which even a slight chance of flooding would be too great). In this final rule, and as proposed, we define a critical action floodplain as "at a minimum, the 500-year floodplain, that is, a floodplain with a 0.2 percent chance of flooding in any given year." To this, we have added the clarification that when another requirement applicable to the proposed action requires evaluation of a less frequent flood (i.e., a more severe flood that would inundate a larger floodplain), then we may use the less frequent flood to determine the floodplain for purposes of this rule. For example, where the safety basis documentation under 10 CFR part 830 for a proposed action requires consideration of a 100,000-year flood, then the 100,000-year floodplain could be the critical action floodplain for the proposed action for purposes of this rule.

IV. Procedural Review Requirements

A. Review Under Executive Order 12866

This rule has been determined not to be a "significant regulatory action" under E.O. 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993), as amended by E.O. 13258 (67 FR 9385; February 28, 2002). Accordingly, today's final regulatory action was not subject to review under that E.O. by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform" (61 FR 4779; February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things:

Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of E.O. 12988.

C. Review Under Executive Order 13132

Today's regulatory action has been determined not to be a "policy that has federalism implications," that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under E.O. 13132, "Federalism" (64 FR 43255; August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the E.O. by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under E.O. 13175 (65 FR 67249; November 9, 2000) on "Consultation and Coordination with Indian Tribal Governments," DOE may not issue a discretionary rule that has "tribal implications" and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that this rule would not have such effects and concluded that E.O. 13175 does not apply to this rule.

E. Review Under the Regulatory Flexibility Act

The revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and related provisions of E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461; August 16, 2002) and DOE's procedures and policies (68 FR 7990; February 19, 2003). The Act requires preparation of an initial regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. Today's revisions to 10 CFR parts 1021 and 1022 amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two E.O.s. The actions would