

action. A notice of intent to prepare the EIS may be used to satisfy the requirement for DOE to publish a notice of proposed floodplain or wetland action.

(b) For a proposed floodplain or wetland action for which no EIS is required, DOE shall take appropriate steps to send a notice of proposed floodplain or wetland action to appropriate government agencies (*e.g.*, FEMA regional offices, host and affected States, and tribal and local governments) and to persons or groups known to be interested in or potentially affected by the proposed floodplain or wetland action. DOE also shall distribute the notice in the area where the proposed action is to be located (*e.g.*, by publication in local newspapers, through public service announcements, by posting on- and off-site). In addition, for a proposed floodplain or wetland action that may result in effects of national concern to the floodplain or wetland or both, DOE shall publish the notice in the FEDERAL REGISTER.

§ 1022.13 Floodplain or wetland assessment.

(a) A floodplain or wetland assessment shall contain the following information:

(1) *Project Description.* This section shall describe the proposed action and shall include a map showing its location with respect to the floodplain and/or wetland. For actions located in a floodplain, the nature and extent of the flood hazard shall be described, including the nature and extent of hazards associated with any high-hazard areas.

(2) *Floodplain or Wetland Impacts.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetland. This section shall include impacts on the natural and beneficial floodplain and wetland values (§ 1022.4) appropriate to the location under evaluation. In addition, the effects of a proposed floodplain action on lives and property shall be evaluated. For an action proposed in a wetland, the effects on the survival, quality, and function of the wetland shall be evaluated.

(3) *Alternatives.* DOE shall consider alternatives to the proposed action that avoid adverse impacts and incompatible development in the floodplain and/or wetland, including alternate sites, alternate actions, and no action. DOE shall evaluate measures that mitigate the adverse effects of actions in a floodplain and/or wetland including, but not limited to, minimum grading requirements, runoff controls, design and construction constraints, and protection of ecologically-sensitive areas.

(b) For proposed floodplain or wetland actions for which an EA or EIS is required, DOE shall prepare the floodplain or wetland assessment concurrent with and included in the appropriate NEPA document.

(c) For floodplain or wetland actions for which neither an EA nor an EIS is prepared, DOE shall prepare the floodplain or wetland assessment separately or incorporate it when appropriate into another environmental review process (*e.g.*, CERCLA).

§ 1022.14 Findings.

(a) If DOE finds that no practicable alternative to locating or conducting the action in the floodplain or wetland is available, then before taking action DOE shall design or modify its action in order to minimize potential harm to or within the floodplain or wetland, consistent with the policies set forth in E.O. 11988 and E.O. 11990.

(b) For actions that will be located in a floodplain, DOE shall issue a floodplain statement of findings, normally not to exceed three pages, that contains:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

(c) For floodplain actions that require preparation of an EA or EIS, DOE may incorporate the floodplain statement of findings into the finding of no

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significant impact or final EIS, as appropriate, or issue such statement separately.

(d) DOE shall send copies of the floodplain statement of findings to appropriate government agencies (e.g., FEMA regional offices, host and affected states, and tribal and local governments) and to others who submitted comments on the proposed floodplain action.

(e) For proposed floodplain actions that may result in effects of national concern, DOE shall publish the floodplain statement of findings in the FEDERAL REGISTER, describing the location of the action and stating where a map is available.

(f) For floodplain actions subject to E.O. 12372—Intergovernmental Review of Federal Programs (July 14, 1982), DOE also shall send the floodplain statement of findings to the State in accordance with 10 CFR part 1005—Intergovernmental Review of Department of Energy Programs and Activities.

§ 1022.15 Timing.

(a) For a proposed floodplain action, DOE shall allow 15 days for public comment following issuance of a notice of proposed floodplain action. After the close of the public comment period and before issuing a floodplain statement of findings, DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received. After issuing a floodplain statement of findings, DOE shall endeavor to allow at least 15 days of public review before implementing a proposed floodplain action. If a FEDERAL REGISTER notice is required, the 15-day period begins on the date of publication in the FEDERAL REGISTER.

(b) For a proposed wetland action, DOE shall allow 15 days for public comment following issuance of a notice of proposed wetland action. After the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed wetland action and the mitigating measures, taking into account all substantive comments received, before implementing a proposed wetland action. If a

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FEDERAL REGISTER notice is required, the 15-day period begins on the date of publication in the FEDERAL REGISTER.

§ 1022.16 Variances.

(a) *Emergency actions.* DOE may take actions without observing all provisions of this part in emergency situations that demand immediate action. To the extent practicable prior to taking an emergency action (or as soon as possible after taking such an action) DOE shall document the emergency actions in accordance with NEPA procedures at 10 CFR 1021.343(a) or CERCLA procedures in order to identify any adverse impacts from the actions taken and any further necessary mitigation.

(b) *Timing.* If statutory deadlines or overriding considerations of program or project expense or effectiveness exist, DOE may waive the minimum time periods in §1022.15 of this subpart.

(c) *Consultation.* To the extent practicable prior to taking an action pursuant to paragraphs (a) or (b) of this section (or as soon as possible after taking such an action) the cognizant DOE program or project manager shall consult with the Office of NEPA Policy and Compliance.

§ 1022.17 Follow-up.

For those DOE actions taken in a floodplain or wetland, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigation measures, is proceeding as described in the floodplain or wetland assessment and the floodplain statement of findings.

Subpart C—Other Requirements

§ 1022.21 Property management.

(a) If property in a floodplain or wetland is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties, DOE shall:

(1) Identify those uses that are restricted under applicable floodplain or wetland regulations and attach other appropriate restrictions to the uses of the property; or

(2) Withhold the property from conveyance.