



[6450-01-M]

## Title 10—Energy

CHAPTER X—DEPARTMENT OF  
ENERGY (GENERAL PROVISIONS)PART 1022—COMPLIANCE WITH  
FLOODPLAIN/WETLANDS ENVIRONMENTAL  
REVIEW REQUIREMENTS

AGENCY: Department of Energy.

ACTION: Final rulemaking.

**SUMMARY:** The Department of Energy (DOE) hereby establishes Part 1022 of Chapter X of title 10 of the Code of Federal Regulations, providing for compliance with Executive Order (E.O.) 11988—Floodplain Management, and E.O. 11990—Protection of Wetlands.

The regulations are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC), and are designed to be coordinated with the environmental review requirements established pursuant to the National Environmental Policy Act (NEPA). The final regulations published herein contain certain revisions to the proposed regulations, published in the *FEDERAL REGISTER* on July 19, 1978 (43 FR 31108), based on DOE's consideration of comments received.

EFFECTIVE DATE: March 7, 1979.

FOR FURTHER INFORMATION  
CONTACT:

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## SUPPLEMENTARY INFORMATION:

- I. Background
- II. Comments Received
- III. DOE Response
- IV. Effective Date

## I. BACKGROUND

On July 19, 1978, DOE published in the *FEDERAL REGISTER* (43 FR 31108) a notice of proposed rulemaking to establish 10 CFR Part 1022. DOE regulations for compliance with floodplain/wetlands environmental review requirements. The proposed regulations were drafted in response to Executive Orders 11988 and 11990 regarding floodplain management and wetlands protection, respectively, which were issued on May 24, 1977. The regula-

tions were proposed to be applicable to all organizational units of DOE, except the FERC.

A public hearing was scheduled to be held on August 17, 1978, but only one request to speak was received. The hearing was cancelled by subsequent notice in the *FEDERAL REGISTER*, and the requesting party, the Sierra Club, met informally with DOE representatives to discuss its views on the proposed regulations. The formal comment period closed on August 28, 1978; DOE has, however, considered late comments in the preparation of these final regulations.

## II. COMMENTS RECEIVED

Written comments were received from 12 organizations and agencies, including the Department of the Interior (DOI), Army Corps of Engineers, Environmental Protection Agency (EPA), Water Resources Council (WRC), Federal Insurance Administration (FIA), Council on Environmental Quality (CEQ), Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, Georgia State Department of Planning and Budget, State of Vermont Agency of Environmental Conservation, and Marathon Oil Company.

DOE has carefully considered all comments received, and has modified the proposed regulations, as appropriate, to assure that the final regulations represent sound policy and procedures for floodplain management and wetlands protection. DOE's analysis and treatment of the major substantive comments are summarized below.

## III. DOE RESPONSE

A. RELATIONSHIP TO DOE NEPA  
PROCEDURES AND CEQ NEPA REGULATIONS

In accordance with the intent of both Executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures, such as those established to implement NEPA, DOE designed its proposed floodplain/wetlands regulations to be implemented in conjunction with its proposed regulations for compliance with NEPA, originally intended to be codified at 10 CFR Part 1021 (*FEDERAL REGISTER*, February 21, 1978). Several commenters questioned the relationship of the floodplain/wetlands regulations to the NEPA regulations, given the fact that the DOE NEPA regulations had not been promulgated.

DOE had intended to finalize 10 CFR Part 1021 prior to the promulgation of floodplain/wetlands regulations. However, due to the recent publication of final CEQ NEPA regulations (*FEDERAL REGISTER*, November 29, 1978), DOE no longer intends to final-

ize the rules which were proposed in February. Instead, DOE is preparing implementing procedures as required by the CEQ NEPA regulations. The basic approach of coordinating the floodplain/wetlands review procedures with existing (and future) DOE NEPA procedures remains intact. However, specific references to 10 CFR Part 1021 have been deleted. In addition, DOE has modified certain floodplain/wetlands requirements and definitions of NEPA documentation used herein to be consistent with the CEQ NEPA regulations and the anticipated DOE NEPA procedures.

A related comment pertained to the administrative framework for assuring DOE compliance with its floodplain/wetlands responsibilities. DOE intends to utilize the internal framework established with respect to NEPA compliance to fulfill its floodplain/wetlands responsibilities. Such internal authorities and responsibilities are embodied in internal DOE Orders and memoranda and are not included in these regulations, in order to maintain necessary flexibility. To address this concern, however, a new provision (§ 1022.18) has been added to identify the Assistant Secretary for Environment as the central point of contact for inquiries concerning DOE's floodplain/wetlands activities.

## B. DETAILED STANDARDS AND PROCEDURES

In combined comments, WRC, CEQ, and FIA suggested that the final regulations establish "specific standards" for key substantive and procedural requirements of the floodplains Order. For example, it was suggested that specific standards be provided with respect to what constitutes a "practicable alternative" to siting in a floodplain. DOI also commented that the "spirit and intent" of the two Orders requires "considerably more details" in agency procedures "to provide a higher level of consideration to the natural and beneficial values of floodplains and wetlands."

While DOE is sympathetic to the goals expressed in these comments, it believes that the evaluation of floodplain/wetlands impacts is inherently site-specific in nature, and that the determination of what constitutes a "practicable alternative" can only be made after balancing relevant factors on a case-by-case basis. DOE believes that these regulations adequately provide the framework within which this process can take place, and that these regulations, as revised, fully satisfy the requirements of both Executive orders. Additional detailed guidance will be provided, as appropriate, through internal DOE Orders, guidelines and memoranda.