

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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:** Proposed rule; opportunity for public comment.

**SUMMARY:** This proposed rule would revise the Department of Energy's (DOE's) 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. In addition, the proposed revisions would make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer necessary. The proposed revisions would streamline existing procedures and add no new or additional requirements. This proposed revision also would provide a conforming change to 10 CFR part 1021 to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

**DATES:** Interested persons should submit comments by January 14, 2003.

**ADDRESSES:** You should address written comments on the proposed revisions to Carolyn Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance, 1000 Independence Avenue SW., Washington, DC 20585-0119. You also may e-mail written comments to:

*carolyn.osborne@eh.doe.gov* or submit them by facsimile to (202) 586-7031.

**FOR FURTHER INFORMATION CONTACT:** For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or these proposed revisions, contact Carolyn Osborne at the above address. Telephone (202) 586-4600 or leave a message at (800) 472-2756.

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.

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#### I. Background

We published our regulations entitled "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022) on March 7, 1979 (44 FR 12596) to implement the requirements of Executive Order 11988, "Floodplain Management" (42 FR 2951, May 24, 1977), and Executive Order

11990, "Protection of Wetlands" (42 FR 26961, May 24, 1977).

#### A. Executive Orders 11988 and 11990

Executive Orders 11988 and 11990 direct Federal agencies to consider and protect the beneficial values of floodplains and wetlands, and Executive Order 11988 also requires Federal agencies to consider, and implement protection from, the risk of loss from floods. The Executive Orders direct that Federal agencies evaluate the potential impacts of, and look for alternatives to, actions proposed in a floodplain or wetland. The Executive Orders also direct that agencies locate any new development outside floodplains and any new construction outside wetlands whenever there is a practicable alternative for doing so. When the action must proceed in a floodplain or wetland, the responsible agency is to implement steps to mitigate any potential harm. The assessment process under the Executive Orders is to include an opportunity for public review, and the Executive Orders are to be implemented through existing procedures, including those used to comply with NEPA, to the extent possible. The Executive Orders contain other informational requirements, including that Federal agencies notify the White House Office of Management and Budget (OMB) when new budget requests involve actions proposed to be in a floodplain or wetland and that Federal agencies provide certain information during transfers of property to non-Federal parties.

While this basic framework is the same in both Executive Orders, they differ in three important ways. First, Executive Order 11988 requires an assessment for any action proposed in a floodplain, whereas Executive Order 11990 only requires an assessment for new construction in a wetland. Second, Executive Order 11988 directs that if an agency finds that there is no practicable alternative to undertaking the action in a floodplain, then the agency will circulate a brief notice explaining the basis for its finding. Executive Order 11990 contains no similar provision for actions in wetlands. Finally, Executive Order 11988 requires the use of certain building standards and related measures for development in a floodplain. There is nothing comparable in Executive

Order 11990 related to construction in a wetland.

#### B. 10 CFR Part 1022

Central to our implementation of Executive Orders 11988 and 11990 are the floodplain and wetland assessment processes contained in subpart B of 10 CFR part 1022. The assessments ensure that we fulfill the substantive provisions of the Executive Orders to examine alternatives to undertaking actions in a floodplain or wetland, potential impacts on the beneficial values of floodplains and wetlands, and possible mitigation measures. As required by the Executive Orders, we look for practicable alternatives to locating a proposed action in a floodplain or wetland and only conduct a floodplain or wetland assessment when no alternative location is practicable. Our processes also ensure that we fulfill the procedural provisions of the Executive Orders to allow early public review of our proposals for certain activities in a floodplain or wetland, provide notice of a finding that there are no practicable alternatives to undertaking an action in a floodplain, and make use of existing processes, including those used to implement NEPA.

Our floodplain and wetland assessment process has five steps. First, we determine early in the planning process for all proposals if a floodplain or wetland assessment is required, based on the location of the proposed action and the applicability provisions in our regulation, which are taken from the Executive Orders. As noted above, Executive Order 11988 requires an assessment for a broader set of actions proposed in a floodplain than Executive Order 11990 requires for actions proposed in a wetland. Our requirements in part 1022 reflect this difference. When an action is proposed in a wetland that is located in a floodplain, we apply the more encompassing requirements for an action proposed in a floodplain.

Second, if a floodplain or wetland assessment is required, we provide public notice and allow at least 15 days for public review of our proposal. If we are preparing an EIS for the proposal, then we may incorporate this announcement into the EIS notice of intent required under applicable NEPA regulations. Otherwise, we announce the opportunity for early public review through a public notice that describes the proposed action and its location and is published in the **Federal Register** as soon as practicable after we determine that an assessment is required. The public review process itself is integrated

with the NEPA process to the extent possible or else conducted separately.

Third, we prepare the floodplain or wetland assessment. If we are also preparing an EIS or environmental assessment (EA), then we usually incorporate the floodplain or wetland assessment into the NEPA documentation. Otherwise, we separately document the floodplain or wetland assessment. In either case, we describe the proposed action and include a map showing the location of the proposed action with respect to the floodplain or wetland. We discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain or wetland. For actions proposed in a floodplain, the assessment evaluates effects of the proposed action on lives and property and evaluates natural and beneficial floodplain values. For actions proposed in a wetland, the assessment evaluates effects on the survival, quality, and natural and beneficial values of the wetland. The floodplain or wetland assessment also considers alternatives that may avoid adverse effects and incompatible development in floodplains or wetlands and addresses mitigation measures.

Fourth, we determine whether there are any practicable alternatives to locating the proposed action in a floodplain or wetland. If we find that there are not, then before taking action in a floodplain we publish a brief statement of findings describing the proposed action, explaining why the action is proposed in a floodplain, listing alternatives considered, stating whether the action conforms to state or local floodplain protection standards, and describing steps to be taken to minimize potential harm to or within the floodplain. The statement of findings may be incorporated into the finding of no significant impact (FONSI) or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, we publish the statement of findings in the **Federal Register** and distribute copies to appropriate government agencies and to those who commented during the public review of our proposal. We endeavor to allow at least 15 days of public review of the statement of findings before implementing a proposed action in a floodplain. There is no similar format or procedure for findings regarding whether there are any practicable alternatives to locating a proposed action in a wetland.

Fifth, we follow up decisions to locate actions in a floodplain or wetland

through methods appropriate for the circumstances of each action.

The current rule contains one exemption from the requirement to prepare a floodplain or wetland assessment, which is for routine maintenance of existing facilities and structures on DOE property within a floodplain or wetland. By routine maintenance, we mean those activities needed as a normal part of operations to maintain and preserve facilities and structures in a condition suitable for continued use for their designated purpose. Routine maintenance does not include upgrades, improvements, or replacements that significantly extend the originally intended useful life of a facility or structure or that change its purpose. Where unusual circumstances indicate the possibility of adverse impacts on a floodplain or wetland, though, we will consider the need for a floodplain or wetland assessment even for routine maintenance activities.

Other requirements in 10 CFR part 1022 that implement aspects of Executive Orders 11988 and 11990 address building standards, providing floodplain and wetland information to external parties, property management, and budget requests. Although these requirements are designed to promote awareness of the values of floodplains and wetlands and the risks of flood loss, they are not part of the floodplain and wetland assessment process.

## II. Purpose of the Revisions to 10 CFR Parts 1021 and 1022

The Secretary of Energy has approved issuance and publication of this notice of proposed rulemaking.

We propose to revise 10 CFR part 1022 to add flexibility to our implementation of the Executive Orders, remove unnecessary procedural burdens, and make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer needed. These changes stem from our experience implementing the existing requirements over the past 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 propose to revise 10 CFR part 1021 to allow floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we propose would: (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 proposed revisions would 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 proposed revisions would streamline existing procedures and add no new requirements.

Rather than require publication in the **Federal Register** of every public notice announcing a proposed action in a floodplain or wetland or describing the findings of our floodplain assessment, we propose to allow case-by-case decisions on how to issue notices to best meet local needs (in proposed sections 1022.12 and 1022.14). We would continue to integrate our floodplain and wetland notices with other public notices related to the proposed action, such as a notice of intent to prepare an EIS on the proposal. We also would continue to distribute notices directly to interested parties, such as government and non-government agencies, as appropriate. We would, however, only require publication of a notice and a floodplain statement of findings in the **Federal Register** if our proposal may result in effects of national concern on a floodplain or wetland. A hypothetical example of an action that could have effects of national concern because of its national prominence and ecological function and the potential environmental effects of such a proposal would be a proposal for a project in the Everglades.

As noted above, part 1022 currently does not ordinarily require a floodplain or wetland assessment for routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland. We propose to exempt four additional classes of floodplain and wetland actions from subpart B, Procedures for Floodplain and Wetland Reviews. At proposed section 1022.5(d)(2), we would add exemptions for three similar classes of activities (site characterization, environmental monitoring, and environmental research activities) on

DOE or non-DOE property in a floodplain or wetland, unless the activities would involve building a structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem. At proposed section 1022.5(d)(3), we would add an exemption for minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions, unless the modification would result in a significant change in the expected useful life of the facility or structure or would involve building a structure or draining, dredging, channelizing, filling, diking, impounding, or related activities. Our experience with these classes of actions is that they are of short duration with very small intrusion in a floodplain or wetland and have very small or no adverse impact on a floodplain or wetland. Additionally, these classes of actions typically lead to improved environmental protection or public and worker safety. For each of these exemptions, if unusual circumstances arise, we would consider the need for a floodplain or wetland assessment in order to consider any unusual circumstances associated with a particular proposal that indicate the possibility of adverse impact on a floodplain or wetland (proposed section 1022.5(e)).

We propose to clarify our provision for immediate action in the event of an emergency (proposed section 1022.16(a)). The existing rule allows minimum time periods prior to implementation of a proposal to be waived in response to emergency circumstances. We propose that action may be taken during an emergency without complying with provisions of these regulations. We also propose, however, that after taking action, we would assess the environmental impacts of our emergency actions and consider potential mitigation in conjunction with our NEPA regulations for emergency actions (10 CFR 1021.343(a)) or our CERCLA procedures.

The existing rule establishes a 15-day waiting period between issuance of the notice of proposed floodplain action and issuance of the floodplain statement of findings, and another 15-day waiting period after issuance of the floodplain statement of findings before implementing the proposed floodplain action. For a proposed wetland action, the existing rule requires a 15-day waiting period after issuance of the notice of proposed action before implementing the action. In the event of statutory deadlines or overriding

considerations of program or project expense or effectiveness, the existing rule provides for waiving any of the waiting periods except the 15-day period between issuing a notice of proposed floodplain action and the floodplain statement of findings. We propose to add a provision allowing the waiver of all minimum waiting periods under the same exigent circumstances (*i.e.*, in the event of statutory deadlines or overriding considerations of program or project expense or effectiveness) (proposed section 1022.16(b)). This change would allow us additional flexibility when a floodplain assessment is not being prepared as part of a NEPA or CERCLA review. The waiver of a waiting period under this rule would not affect timing requirements of our NEPA regulations or of CERCLA procedures.

We propose to expand the existing list of sources that may be used in determining the location of floodplains and wetlands (proposed sections 1022.11(b) and (c)). For floodplain determinations we have relied upon Flood Insurance Rate Maps, Flood Hazard Boundary Maps, and information from the relevant land administering agency or from agencies with floodplain determination expertise. We propose to also use information in safety basis documents as defined at 10 CFR part 830 and in DOE environmental documents, *e.g.*, NEPA and CERCLA documents. For wetland determinations, we have relied upon the U.S. Fish and Wildlife Service National Wetlands Inventory, other government-sponsored wetland or land-use inventories, U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps, and U.S. Geological Survey Topographic Maps. We propose to also use the U.S. Army Corps of Engineers "Wetlands Delineation Manual" (Wetlands Research Program Technical Report Y-87-1, January 1987) or successor document and DOE environmental documents, *e.g.*, NEPA and CERCLA documents. These changes would allow us to take advantage of information sources that were not available when this regulation was first promulgated and to use better the considerable research and documentation completed for safety, planning, and other purposes at DOE sites. When there are differences among these information sources, we will use the most authoritative information available relative to site conditions.

We propose adding provisions acknowledging that floodplain and wetland assessments for actions proposed to be taken under CERCLA would be coordinated with the CERCLA

environmental review process, not the NEPA process (proposed sections 1022.2(b), 1022.11(a), and 1022.13(c)). As we first promulgated our 10 CFR Part 1022 requirements approximately two years before CERCLA became law, this change would update the rule to be consistent with our current policy and practice regarding environmental reviews under CERCLA.

To make the rule simpler and easier to use, we propose to reorder sections, add clarifications, delete text, and make numerous stylistic changes. These proposed changes would not alter applicable requirements. The existing rule has two subparts, A and B. We propose reordering sections in Subpart B to only address provisions associated with floodplain and wetland assessment processes. All other requirements currently in Subpart B would be moved to a proposed new subpart (Subpart C, Other Requirements).

We propose to clarify how this regulation applies differently to actions proposed in a floodplain, and actions proposed in a wetland but not in a floodplain, consistent with provisions in Executive Orders 11988 and 11990 and our existing regulation. We would not change any requirements in this regard; rather we propose to revise definitions of floodplain, floodplain action, and wetland action (proposed section 1022.4) to better describe our intent and the way we implement this regulation. These changes, and related changes to maintain consistency throughout the regulation, clarify that we treat a proposal that would be located in both a wetland and a floodplain as we would any other action proposed to be located in a floodplain.

We propose to delete text that is repeated between sections in the existing rule, and in one case, we would delete an entire section (existing section 1022.21) that specifies we will periodically review these regulations and make revisions. Existing section 1022.21 is not required for us to propose additional changes to this rule at a future date, and therefore, we propose deleting it as unnecessary. We also propose to delete language that was needed to transition the rule into effect but that is no longer needed (proposed section 1022.5).

The details of these and other proposed changes are described below in section III, Description of Proposed Revisions to the Existing Rule. Because we often reference our existing rule to describe our proposed changes, you may want to refer to it. Our existing 10 CFR Part 1022 regulations are available on the Internet at [http://tis.eh.doe.gov/ nepa/tools/tools.htm](http://tis.eh.doe.gov/nepa/tools/tools.htm) under the heading

“NEPA Regulations” or you may request a copy from Carolyn Osborne at either of the telephone numbers listed above under **FOR FURTHER INFORMATION CONTACT**.

### III. Description of Proposed Revisions to the Existing Rules

#### A. Proposed Changes to 10 CFR Part 1021

We propose to revise section 1021.313 to make it consistent with our proposed new section 1022.14(c), as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, and below. Currently, section 1021.313(c) requires a DOE final EIS to include any floodplain statement of findings required by Part 1022. This requirement is overly prescriptive and is inconsistent with the flexibility afforded under existing section 1022.15 and proposed section 1022.14(c) to include a floodplain statement of findings in a final EIS or to issue the statement of findings separately. Under our proposal, section 1021.313(c) would track the language at the new section 1022.14(c).

#### B. Proposed changes to 10 CFR 1022 Subpart A—General

##### Section 1022.1 Background

To provide guidance on implementing Executive Order 11988, Floodplain Management, we propose adding a reference to the Federal Interagency Floodplain Management Taskforce document, “A Unified National Program for Floodplain Management” (FEMA 248, June 1994). We also propose adding words from Executive Orders 11988 and 11990 emphasizing two purposes of the regulation: That Federal agencies are to avoid development in a floodplain or new construction in a wetland wherever there is a practicable alternative and to ensure the evaluation of potential impacts associated with proposed new construction in wetlands. These changes would add no new requirements.

##### Section 1022.2 Purpose and Scope

As described above in section II, we propose identifying the CERCLA review process as an alternative mechanism for implementing the regulation. Sections 1022.11(a) and 1022.13(c) (detailed below) would be revised to reflect this additional flexibility.

##### Section 1022.3 Policy

To better group floodplain and wetland policy statements, we propose reordering paragraphs within this section. We also propose updating the reference to construction requirements in proposed paragraph (a)(4) from “regulations promulgated by the Federal

Insurance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*” to “the Federal Emergency Management Agency’s (FEMA) National Flood Insurance Program building standards.” Also, we propose moving a requirement concerning transactions to a new section 1022.21(b) in a new Subpart C, Other Requirements, discussed below, so that proposed paragraph (a)(6) would only state policy: “Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain.”

##### Section 1022.4 Definitions

We propose to change our definition of “action” to clarify that it includes any activity necessary to carry out DOE’s responsibilities for the tasks listed in Executive Orders 11988 and 11990, rather than that it includes any activity “including, but not limited to,” those tasks listed in the Executive Orders. This proposed language more closely parallels the Executive Orders.

We propose deleting the definition of “base flood” and incorporating it into the definition of “base floodplain.”

We propose to revise the definitions of “environmental assessment,” “environmental impact statement,” and “finding of no significant impact” to reference the Council on Environmental Quality’s (CEQ’s) and DOE’s NEPA regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021, respectively. Our NEPA regulations were not in place when 10 CFR part 1022 was promulgated.

We propose to simplify the definition of “floodplain” by creating separate definitions for “base floodplain” and “critical action floodplain.” We also propose to define the critical action floodplain as, at a minimum, the 500-year floodplain. While for most proposed actions, we prepare a floodplain assessment if the action would be located in the 100-year floodplain, for a proposed critical action (*i.e.*, an action for which even a slight chance of flooding poses an unacceptable risk) we prepare a floodplain assessment if it would be located in the critical action floodplain. We normally define the critical action floodplain in terms of the estimated 500-year flood for an area. We would add the option to define the critical action floodplain in terms of a less frequent (and therefore more severe) flood when another requirement applicable to the proposal requires consideration of the less frequent flood event. For example, if the hazard

assessment for a proposal considers the consequences of a less frequent flood (e.g., the 10,000-year flood), then we would use that less frequent flood to define the critical action floodplain for the proposal.

We propose to clarify the definition of “floodplain action” by adding “including any DOE action in a wetland that is also within the floodplain.”

We propose to add a definition for “floodplain and wetland values” to describe the range of issues to be addressed in a floodplain or wetland assessment under the existing section 1022.12(a)(2) and proposed section 1022.13(a)(2). We adapted the proposed definition from that used by FEMA (44 CFR 9.4) and terms used in Executive Orders 11988 and 11990.

We propose to delete the definition of “floodproofing,” because the term is not used in the rule.

We propose simplifying our definition of “new construction” by deleting the reference to October 1, 1977, as the starting point for applicability of the definition. That clause appropriately exempted certain actions underway before Executive Order 11990 became effective, but it is no longer necessary.

We propose to change the name and definition of “public notice.” We would call the notice a “notice of proposed floodplain action” or a “notice of proposed wetland action” to better reflect its purpose to announce that a proposed action would be in a floodplain or wetland, respectively, the location of the floodplain or wetland, and the opportunity for public review. We also propose to delete any requirements on how to issue the notice from the definition and instead to include such requirements in proposed section 1022.12, Notice of proposed action.

We propose to change the name “statement of findings” to “floodplain statement of findings” and to delete any requirements from the definition and instead to include such requirements in proposed section 1022.14, Findings.

We propose changing our definition of “wetland” to make it consistent with the Clean Water Act implementing regulations of both the U.S. Army Corps of Engineers (33 CFR 328.3(b)) and the U.S. Environmental Protection Agency (40 CFR 230.41(a)(1)), as the definition in the existing rule was taken from Executive Order 11990. This proposed revision would involve deleting the examples of “similar areas such as sloughs, potholes, wet meadows, river outflow, mudflats and natural ponds.” An important note about the proposed definition is that it is more broadly defined than the wetlands over which

the U.S. Army Corps of Engineers has regulatory jurisdiction (33 CFR 328.3(a) and 328.4). The broader definition we use for this rule is consistent with Executive Order 11990 in order to ensure that we apply appropriate protections to valuable wetlands that might not qualify as wetlands subject to the Corps’ jurisdiction (e.g., some wet meadows, forested wetlands, playas, Carolina bays).

We propose to modify the definition of “wetland action” to specify that it applies to any DOE action “related to new construction” that takes place in a wetland not located in a floodplain. This change would make the definition consistent with Executive Order 11990, which requires a wetland assessment only for activities related to new construction in a wetland.

#### *Section 1022.5 Applicability*

We propose deleting a significant portion of text from the existing section 1022.5 because it is outdated or redundant of other sections of the rule. The result would be a more concise section, reduced from eight to four paragraphs, which is easier to read. We propose deleting text from existing paragraphs (b) and (c) that exempts actions that were underway when the rule was issued. Any such actions have since been completed, and the text is no longer necessary. We would delete text from existing paragraphs (d), (e), and (f) that repeats parts of the definition of “action” (proposed section 1022.4); this results in deletion of the entirety of paragraph (f). We would also delete existing paragraph (h) since it is repetitive of the definition of floodplain action (proposed section 1022.4).

We propose relocating requirements regarding license, easement, lease, transfer, or disposal of property to non-Federal public or private parties from existing section 1022.5(d) to proposed section 1022.21(a), Property management, in a new Subpart C, Other Requirements. From existing section 1022.5(e), we propose moving the requirements for applicants for assistance into proposed section 1022.23, Applicant responsibilities (proposed redesignation from existing section 1022.13), described below.

We propose adding four exemptions from the requirements for preparing a floodplain or wetland assessment to paragraph (d). These proposed exemptions are described above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

#### *Section 1022.6 Public Inquiries*

We propose moving this section from Subpart B (where it had been designated

section 1022.20) to Subpart A because it is more appropriately a part of general statements related to this rule. We also propose updating the contact to which inquiries may be directed from the Assistant Secretary for Environment to the Office of NEPA Policy and Compliance.

#### *C. Proposed Changes to 10 CFR 1022 Subpart B—Procedures for Floodplain and Wetland Reviews*

We propose reordering the sections in this subpart to better reflect the sequence of events in our process for preparing a floodplain or wetland assessment and to relocate to subparts A and C those requirements not directly related to the preparation of a floodplain or wetland assessment. The particular changes are described below for each section in proposed subpart B.

#### *Section 1022.11 Floodplain or Wetland Determination*

We propose to change section 1022.11(a) by adding a reference to environmental review requirements under the CERCLA process to conform to the proposed change in section 1022.2(b), discussed above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

As also discussed above in section II, we propose to expand the list of information sources that may be used to determine if a proposed action would be located in a floodplain or wetland (proposed sections 1022.11(b) and (c)). We also propose to update references to two information sources. FEMA, rather than the Federal Insurance Administration of the Department of Housing and Urban Development, would be cited because FEMA currently maintains primary responsibility for interagency planning to address Federal floodplain management requirements (proposed section 1022.11(b)). We also propose to change the existing reference to the Soil Conservation Service to the Natural Resources Conservation Service to reflect the agency’s current name (proposed sections 1022.11(b) and (c)).

We propose to add a new section (proposed 1022.11(d)) that would specify whether a floodplain or wetland assessment is required based on the location of the proposed action. This paragraph would clarify existing requirements by associating the determination made pursuant to sections 1022.11(b) and (c) with the definitions of critical action, floodplain action, and wetland action.

*Section 1022.12 Notice of Proposed Action (Proposed Redesignation From Section 1022.14 Public Review)*

We propose to change, in proposed section 1022.12 and throughout the rule, all references to “public notice” to “notice of proposed floodplain action” or “notice of proposed wetland action” to better reflect the purpose of the notice.

We propose to change existing sections 1022.14(b) and (c) by deleting the requirement that DOE always publish a notice in the **Federal Register** for floodplain or wetland actions for which no EIS is required. This proposal is explained above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022. We also propose to move the requirement regarding timing for issuance of a notice of proposed action from existing section 1022.14(b) to proposed section 1022.15, Timing. This would consolidate requirements related to timing of steps in the floodplain and wetland assessment processes, as discussed below.

*Section 1022.13 Floodplain or Wetland Assessment (Proposed Redesignation From Existing Section 1022.12)*

We propose emphasizing in proposed paragraph (a)(2) that the assessment shall incorporate floodplain and wetland values that are appropriate to the location under evaluation. This would underscore the need to focus only on those values most appropriate to local conditions and also to clarify that when evaluating a proposal for an action within a wetland located in a floodplain, we consider both floodplain and wetland values, as appropriate. This proposed revision would reference a new definition of floodplain and wetland values (described above for proposed section 1022.4) that lists several topics that might be included in the assessment. Although these changes do not add any new requirement, they do add further guidance about how the assessment should be performed.

We propose adding to proposed paragraph (c) that when an EA or EIS is not being prepared for the proposed floodplain or wetland action, the assessment “shall be prepared separately or incorporated when appropriate into another environmental review process (e.g., CERCLA).” This revision highlights our flexibility to incorporate compliance with these regulations within processes other than NEPA, as appropriate and as discussed in other sections above.

*Section 1022.14 Findings (Proposed Redesignation From Section 1022.15 Notification of Decision)*

We propose a new section (1022.14(c)) to describe how to issue a statement of findings for floodplain actions for which no EA or EIS is being prepared. For these floodplain actions, we would distribute copies of the floodplain statement of findings to government agencies and to others who submitted comments on the proposed action. We propose to publish the floodplain statement of findings in the **Federal Register** only when the proposed floodplain action may result in effects of national concern to a floodplain or wetland or both. The proposed change would parallel the process described in the CEQ regulations on Public Involvement (40 CFR 1506.6(b)(2)) and is reflected in the proposed changes to section 1022.4. We also propose that when a floodplain statement of findings is published in the **Federal Register** the statement does not need to contain a map (as otherwise required) but that the statement should indicate where a location map is available. A wetland finding may be prepared and distributed at DOE’s discretion.

We also propose a new section (1022.14(d)) regarding the distribution of floodplain statements of findings to state governments. We propose to update the existing reference to Office of Management and Budget Circular A–95 (from the existing section 1022.15) and refer instead to Executive Order 12372, Intergovernmental Review of Federal Programs, and DOE’s implementing regulations at 10 CFR part 1005, Intergovernmental Review of Department of Energy Programs. Executive Order 12372 directs Federal agencies to rely on state and local processes for state and local government coordination and for review of proposed Federal financial assistance and direct Federal development.

*Section 1022.15 Timing (Proposed Redesignation From Section 1022.18 Timing of Floodplain/Wetlands Actions)*

We propose to relocate the requirements regarding timing in sections 1022.14(c) and 1022.18 of the existing rule to proposed section 1022.15. This would consolidate references to the time periods for DOE to consider public comments after issuing a notice of proposed floodplain action or a notice of proposed wetland action or a floodplain statement of findings.

*Section 1022.16 Variances*

We propose to add a section providing a variance for emergency actions (proposed section 1022.16(a)) that would, as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, reflect provisions in our NEPA procedures (10 CFR 1021.343(a)). We also propose to incorporate into this section as paragraph (b) the existing variance (1022.18(c) in the existing rule) that allows abbreviated schedules in some circumstances and to broaden the applicability of this variance as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022. We also propose to add a section 1022.16(c) requiring consultation with the Office of NEPA Policy and Compliance whenever this section is being implemented.

*Subpart C—Other Requirements*

We propose adding a new subpart to consolidate requirements that are not general policy (subpart A) nor a part of the floodplain and wetland assessment processes (subpart B).

*Section 1022.21 Property Management*

We propose a new section that would consolidate existing requirements from sections 1022.5(d) and 1022.3(b)(8) of the existing rule. These sections address property in a floodplain or wetland that is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties and any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain. There are no substantive changes in this new consolidated section.

*Section 1022.22 Requests for Authorizations or Appropriations (Proposed Redesignation From Section 1022.16)*

We propose to move this section into Subpart C, Other Requirements, for the reasons stated above.

*Section 1022.23 Applicant Responsibilities (Proposed Redesignated From Section 1022.13)*

We propose revising this section to allow flexibility in what information we request of applicants for any use of real property (e.g., license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland. The section currently states that DOE may require the applicant to prepare a report that satisfies the floodplain or

wetland assessment provisions of this regulation. We propose revising this section to state that we may require applicants to provide information necessary for DOE to comply with the requirements of this regulation. This change emphasizes that we will ask for that information necessary and appropriate for us to comply with the requirements of this regulation relative to each particular application.

*Section 1022.24 Interagency Cooperation (Proposed Redesignation From*

*Section 1022.19 Selection of a Lead Agency and Consultation Among Participating Agencies)*

No substantive changes to this section are proposed.

#### **IV. Procedural Review Requirements**

##### *A. Review Under Executive Order 12866*

Today's proposed regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, today's proposed regulatory action would not be subject to review under that Executive Order 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 Executive Order 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 Executive Order 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. The Assistant Secretary for

Environment, Safety and Health has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 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 Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

##### *D. Review Under Executive Order 13175*

Under Executive Order 13175 (65 FR 67249, November 6, 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's Assistant Secretary for Environment, Safety and Health has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

##### *E. Reviews Under the Regulatory Flexibility Act*

The proposed revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). 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 proposed revisions to 10 CFR Parts 1021 and 1022 would amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed actions would neither increase the incidence of floodplain and wetland assessments nor increase burdens associated with carrying out such an assessment. Therefore, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

##### *F. Review Under the Paperwork Reduction Act*

No additional information or recordkeeping requirements are imposed by this proposed rulemaking. The proposed changes would actually reduce paperwork requirements by eliminating a requirement that public notices always be published in the **Federal Register** and by adding to the number of exemptions from requirements for preparing a floodplain or wetland assessment. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### *G. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of these proposed revisions to existing regulations falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the proposed revisions to 10 CFR parts 1021 and 1022 would amend DOE's policies to streamline and simplify existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed regulations are covered under the categorical exclusion in paragraph A6, "Rulemakings, Procedural" (rulemakings that are strictly procedural) to Appendix A to Subpart D, 10 CFR part 1021. Accordingly, neither an EA nor an EIS is required.

##### *H. Review Under the Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE

has determined that the proposed revisions to 10 CFR parts 1021 and 1022 published today do not contain any Federal mandates affecting small governments, so these requirements do not apply.

#### *I. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs in the Office of Management and Budget a Statement of Energy Effects for any significant energy action. Today's proposed rule is not a significant energy action, as that term is defined in the Executive Order. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *J. Review Under the Treasury and General Government Appropriations Act*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a "Family Policymaking Assessment" for any proposed rule that may affect family well-being. The proposed rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE's Assistant Secretary for Environment, Safety and Health has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### **V. Public Comment Procedures**

You should submit comments by January 17, 2003, but we will consider comments received after that date to the extent practicable. We continue to experience occasional mail delays due to extra processing required for the delivery of mail to Federal agencies, and we will take this into consideration. However, you are encouraged to submit comments electronically or via a service offering a guaranteed delivery date. Comments should be submitted to the street address, e-mail address, or fax number indicated in the **ADDRESSES** section of this notice. Written comments should be identified on the documents themselves and on the outside of the envelope, on the fax cover page, or in the e-mail message with the designation "Compliance with Floodplain and Wetland Environmental Review Requirements." We are not scheduling any public meetings on the proposed revisions, but we will arrange a public meeting if the public expresses sufficient interest. Comments will not

be accepted on provisions of 10 CFR part 1021 that are not subject to change by this revision.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Office Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. The Department is responsible for the final determination with regard to disclosure or non-disclosure of the information and for treating it accordingly under the Freedom of Information Act section on "Handling Information of a Private Business, Foreign Government, or an International Organization" (10 CFR 1004.11).

#### **List of Subjects in 10 CFR Part 1022**

Flood plains, Wetlands.

Issued in Washington, DC, on November 12, 2002.

**Beverly A. Cook,**

*Assistant Secretary, Environment, Safety and Health.*

For the reasons set forth in the preamble, parts 1021 and 1022 of chapter III of title 10, Code of Federal Regulations are proposed to be amended as follows:

#### **PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES**

1. The authority citation for part 1021 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

##### **§ 1021.313 [Amended]**

2. In § 1021.313, paragraph (c), the last sentence is amended as follows:

a. Remove the word "shall" and insert in its place the word "may".

b. Remove the period and add the words ", or may be issued separately." at the end of the sentence.

#### **PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS**

3. Part 1022 is revised to read as follows:

#### **PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS**

##### **Subpart A—General**

Sec.

- 1022.1 Background.
- 1022.2 Purpose and scope.
- 1022.3 Policy.
- 1022.4 Definitions.
- 1022.5 Applicability.
- 1022.6 Public inquiries.

##### **Subpart B—Procedures for Floodplain and Wetland Reviews**

- 1022.11 Floodplain or wetland determination.
- 1022.12 Notice of proposed action.
- 1022.13 Floodplain or wetland assessment.
- 1022.14 Findings.
- 1022.15 Timing.
- 1022.16 Variances.
- 1022.17 Follow-up.

##### **Subpart C—Other Requirements**

- 1022.21 Property management.
- 1022.22 Requests for authorizations or appropriations.
- 1022.23 Applicant responsibilities.
- 1022.24 Interagency cooperation.

**Authority:** E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

##### **Subpart A—General**

##### **§ 1022.1 Background.**

(a) Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977) directs each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the E.O. is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 FR 6030, February 10, 1978) and in "A Unified National Program for Floodplain Management" prepared by the Federal Interagency Floodplain Management Taskforce (Federal Emergency Management Agency, FEMA 248, June 1994). E.O. 11990—Protection of Wetlands (May 24, 1977) directs all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking and to ensure the evaluation of the potential impacts of any new construction proposed in a wetland.

(b) It is the intent of the E.O.s that Federal agencies implement both the floodplain and the wetland provisions through existing procedures such as those established to implement the National Environmental Policy Act

(NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In those instances where the impacts of the proposed action are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain or wetland evaluation procedures are to be established. As stated in the E.O.s, Federal agencies are to avoid direct or indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

#### § 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities under E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain and wetland factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in a floodplain or wetland, providing opportunity for early public review of such proposed actions, preparing floodplain or wetland assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE shall accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures or, when appropriate, the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

#### § 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

- (1) Reduce the risk of flood loss;
- (2) Minimize the impact of floods on human safety, health, and welfare;
- (3) Restore and preserve natural and beneficial values served by floodplains;
- (4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with FEMA National Flood Insurance Program building standards;
- (5) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property that has suffered flood damage or is in an identified floodplain and that is used by the general public;
- (6) Inform parties during transactions guaranteed, approved, regulated, or

insured by DOE of the hazards associated with locating facilities and structures in a floodplain;

(7) Minimize the destruction, loss, or degradation of wetlands; and

(8) Preserve and enhance the natural and beneficial values of wetlands.

(b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.

(c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

(d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.

(e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

#### § 1022.4 Definitions.

The following definitions apply to this part:

*Action* means any DOE activity necessary to carry out its responsibilities for:

- (1) Acquiring, managing, and disposing of Federal lands and facilities;
- (2) Providing DOE-undertaken, -financed, or -assisted construction and improvements; and
- (3) Conducting activities and programs affecting land use, including but not limited to water- and related land-resources planning, regulating, and licensing activities.

*Base floodplain* means the 100-year floodplain that is a floodplain with a 1.0 percent chance of flooding in any given year.

*Critical action* means any DOE action for which even a slight chance of flooding would be too great. Such actions may include, but are not limited to, the storage of highly volatile, toxic, or water reactive materials.

*Critical action floodplain* means, at a minimum, the 500-year floodplain that is a floodplain with a 0.2 percent chance of flooding in any given year.

*Environmental assessment* (EA) means a document prepared in accordance with the requirements of 40 CFR 1501.4(b), 40 CFR 1508.9, 10 CFR 1021.320, and 10 CFR 1021.321.

*Environmental impact statement* means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA and its implementing regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021.

*Facility* means any human-made or -placed item other than a structure.

*FEMA* means the Federal Emergency Management Agency.

*Finding of no significant impact* means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322 that briefly presents the reasons why an action will not have a significant effect on the human environment and for which an EIS therefore will not be prepared.

*Flood or flooding* means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

*Floodplain* means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands including, at a minimum, that area inundated by a 1.0 percent or greater chance flood in any given year.

*Floodplain action* means any DOE action that takes place in a floodplain, including any DOE action in a wetland that is also within the floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

*Floodplain and wetland values* means the qualities of or functions served by floodplains and wetlands that can include, but are not limited to, water resource values (e.g., natural moderation of floods, water quality maintenance, groundwater recharge), living resource values (e.g., conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability), cultural resource values (e.g., open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation), and cultivated resource values (e.g., agriculture, aquaculture, forestry).

*Floodplain or wetland assessment* means an evaluation consisting of a description of a proposed action, a discussion of its potential effects on the floodplain or wetland, and consideration of alternatives.

*Floodplain statement of findings* means a brief document issued pursuant to section 1022.14(b) and (c) of this part that describes the results of a floodplain assessment.

*High-hazard areas* means those portions of riverine and coastal floodplains nearest the source of flooding that are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

*Minimize* means to reduce to the smallest degree practicable.

*New construction*, for the purpose of compliance with E.O. 11990 and this part, means the building of any structures or facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

*Notice of proposed floodplain action and notice of proposed wetland action* mean a brief notice that describes a proposed floodplain or wetland action, respectively, and its location and that affords the opportunity for public review.

*Practicable* means capable of being accomplished within existing constraints, depending on the situation and including consideration of many factors, such as the existing environment, cost, technology, and implementation time.

*Preserve* means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state.

*Restore* means to reestablish a setting or environment in which the natural functions of the floodplain or wetland can again operate.

*Structure* means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

*Wetland* means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

*Wetland action* means any DOE action related to new construction that takes place in a wetland not located in a floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

#### **§ 1022.5 Applicability.**

(a) This part applies to all organizational units of DOE, including the National Nuclear Security Administration, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part applies to all proposed floodplain or wetland actions, including those sponsored jointly with other agencies.

(c) This part does not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving a wetland that are located on non-Federal property.

(d) Subject to paragraph (e) of this section, subpart B of this part does not apply to:

(1) Routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland;

(2) Site characterization, environmental monitoring, or environmental research activities in a floodplain or wetland, unless these activities would involve building any structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem; and

(3) Minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would result in a significant change in the expected useful life of the facility or structure or involve building any structure or draining, dredging, channelizing, filling, diking, impounding, or related activities.

(e) Although the actions listed in paragraphs (d)(1), (d)(2), and (d)(3) of this section normally have very small or no adverse impact on a floodplain or wetland, where unusual circumstances indicate the possibility of adverse impact on a floodplain or wetland, DOE shall determine the need for a floodplain or wetland assessment.

#### **§ 1022.6 Public inquiries.**

Inquiries regarding DOE's floodplain and wetland environmental review requirements may be directed to the Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119, or a message may be left at 1-800-472-2756, toll free.

#### **Subpart B—Procedures for Floodplain and Wetland Reviews**

##### **§ 1022.11 Floodplain or wetland determination.**

(a) Concurrent with its review of a proposed action to determine appropriate NEPA or CERCLA process requirements, DOE shall determine the applicability of the floodplain management and wetland protection requirements of this part.

(b) DOE shall determine whether a proposed action would be located within a base or critical action floodplain consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by FEMA;

(2) Information from a land-administering agency (e.g., Bureau of

Land Management, Natural Resources Conservation Service) or from other government agencies with floodplain-determination expertise (e.g., U.S. Army Corps of Engineers);

(3) Information contained in safety basis documents as defined at 10 CFR part 830; and

(4) DOE environmental documents, e.g., NEPA and CERCLA documents.

(c) DOE shall determine whether a proposed action would be located within a wetland consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) U.S. Army Corps of Engineers "Wetlands Delineation Manual," Wetlands Research Program Technical Report Y-87-1, January 1987, or successor document;

(2) U.S. Fish and Wildlife Service National Wetlands Inventory or other government-sponsored wetland or land-use inventories;

(3) U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps;

(4) U.S. Geological Survey Topographic Maps; and

(5) DOE environmental documents, e.g., NEPA and CERCLA documents.

(d) Pursuant to § 1022.5 of this part and paragraphs (b) and (c) of this section, DOE shall prepare:

(1) A floodplain assessment for any proposed floodplain action in the base floodplain or for any proposed floodplain action that is a critical action located in the critical action floodplain; or

(2) A wetland assessment for any proposed wetland action.

##### **§ 1022.12 Notice of proposed action.**

(a) For a proposed floodplain or wetland action for which an EIS is required, DOE shall use applicable NEPA procedures to provide the opportunity for early public review of the proposed 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 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 incorporated 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 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 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, 47 FR 30959), DOE 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. DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received, after the close of the public comment period and before issuing a floodplain statement of findings. 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 **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.

(b) Before completing any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain, DOE shall inform any private party participating in the transaction of the hazards associated with locating facilities or structures in the floodplain.

#### § 1022.22 Requests for authorizations or appropriations.

It is DOE policy to indicate in any requests for new authorizations or appropriations transmitted to the White House Office of Management and Budget, if a proposed action is located in a floodplain or wetland and whether the proposed action is in accord with the requirements of E.O. 11988 and E.O. 11990 and this part.

#### § 1022.23 Applicant responsibilities.

DOE may require applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland of the requirements of this part to provide information necessary for DOE to comply with this part.

#### § 1022.24 Interagency cooperation.

If DOE and one or more agencies are directly involved in a proposed floodplain or wetland action, in accordance with DOE's NEPA or CERCLA procedures, DOE shall consult with such other agencies to determine if a floodplain or wetland assessment is required by Subpart B of this part, identify the appropriate lead or joint agency responsibilities, identify the applicable regulations, and establish procedures for interagency coordination during the environmental review process.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-200-AD]

RIN 2120-AA64

#### Airworthiness Directives; Saab Model SAAB 340B Series Airplanes Equipped With Hamilton Sundstrand Propellers

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers. This proposal would require a one-time inspection of two remote controlled circuit breakers (RCCB), located in specific electrical compartments, to identify the part number, and replacement of the RCCBs with new RCCBs having a different part number if necessary. This action is necessary to ensure removal of 35-ampere (amp) RCCBs on a 50-amp electrical circuit. Incorrect RCCBs on an electrical circuit could result in erroneous tripping of the RCCBs (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by December 18, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-200-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-200-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from

Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### FOR FURTHER INFORMATION CONTACT:

Rosanne Ryburn, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2139; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-200-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,