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GPO

D12 INCINERATORS

Siting, construction, and operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

[57 FR 15144, Apr. 24, 1992, as amended at 85 FR 78205, Dec. 4, 2020]

PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

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AUTHORITY: 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121; E.O. 12372, 47 FR 30959, 3 CFR, 1982 Comp., p. 197.

SOURCE: 68 FR 51432, Aug. 27, 2003, unless otherwise noted.

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 decision-making 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 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 decision-making; 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. When another requirement directing evaluation of a less frequent flood event also is applicable to the proposed action, a flood less frequent than the 500-year flood may be appropriate for determining the floodplain for purposes of this part.

Effects of national concern means those effects that because of the high quality or function of the affected resource or because of the wide geographic range of effects could create concern beyond the locale or region of the proposed action.

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 (EIS) 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, Department of Homeland Security.

Finding of no significant impact means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322.

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.

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 §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, living values (*e.g.*, conservation of existing flora and fauna including their long-term productivity, preservation of diversity and stability of species and habitats), cultural resource values (*e.g.*, archeological and historic sites), cultivated resource values (*e.g.*, agriculture, aquaculture, forestry), aesthetic values (*e.g.*, natural beauty), and other values related to uses in the public interest (*e.g.*, open space, scientific study, outdoor education, recreation).

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 §1022.14 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 §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. Maintenance is routine when it is needed to maintain and preserve the facility or structure for its designated purpose (*e.g.*, activities such as reroofing, plumbing repair, door and window replacement);

(2) Site characterization, environmental monitoring, or environmental research activities (*e.g.*, sampling and surveying water and air quality, flora and fauna abundance, and soil properties) 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 (*e.g.*, upgrading lighting, heating, ventilation, and air conditioning systems; installing or improving alarm and surveillance systems; and adding environmental monitoring or control systems) 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 involve 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, 202–586–4600, 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) or from other government agencies with floodplain-determination expertise (*e.g.*, U.S. Army Corps of Engineers, Natural Resources Conservation Service);

(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 (*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 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 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 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 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.

PART 1039—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 1039.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48017, Dec. 17, 1987; 54 FR 8912, 8913, Mar. 2, 1989]

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

Subpart A—General Provisions

Sec.

1040.1 Purpose.
1040.2 Application.