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U.S. Department of Energy
Washington, D.C.

ORDER

DOE 5440.1E

11-10-92

SUBJECT: NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM

1. PURPOSE. To establish Department of Energy (DOE) responsibilities and procedures to implement the National Environmental Policy Act of 1969 (NEPA).
 2. CANCELLATION. DOE 5440.1D, NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM, of 2-22-91.
 3. REFERENCES.
 - a. National Environmental Policy Act (42 U.S.C. 4321 et seq.), of 1-1-70, which establishes broad national environmental policy.
 - b. Executive Order 12114, of 1-4-79, which establishes procedural and other actions to be taken by Federal agencies to further the purpose of NEPA with respect to the environment outside the United States, its territories and possessions.
 - c. Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508, as amended 7-1-86), which establish requirements for implementing the procedural provisions of NEPA.
 - d. Department of Energy Organization Act (42 U.S.C. 7112), of 8-4-77, which has among its purposes ensuring incorporation of national environmental protection goals in the formulation and implementation of energy programs; and advancing the goals of restoring, protecting, and enhancing environmental quality and ensuring public health and safety.
 - e. Freedom of Information Act (FOIA) (5 U.S.C. 552), which provides that any person has a right of access to agency records unless the information contained in the records is protected from disclosure by one of the exemptions enumerated in the Act.
- DOE National Environmental Policy Act Implementing Procedures (DOE NEPA Regulations), 10 CFR Part 1021, which establish Departmental procedures for implementing the procedural provisions of NEPA pursuant to the CEQ Regulations. These regulations were published on 4-24-92 (57 Federal Register (FR) 15122) and became effective on May 26, 1992.
- g. DOE Regulations for Compliance with Floodplains/Wetlands Environmental Review Requirements, 10 CFR Part 1022, which implement the procedural provisions of Executive Order 11988, Floodplain Management, of 5-24-77, and Executive Order 11990, Protection of Wetlands, of 2-10-78.



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- h. SEN-15-90, NATIONAL ENVIRONMENTAL POLICY ACT, of 2-5-90, which expresses certain Secretarial policies and goals, and commits DOE to full compliance with NEPA.
- i. DOE 1700.1, FREEDOM OF INFORMATION PROGRAM, of 11-19-79, which establishes guidelines and procedures for DOE compliance with the Freedom of Information Act.
- j. DOE 4700.1, PROJECT MANAGEMENT SYSTEM, of 3-6-87, which establishes the DOE project management system and provides implementing instructions, formats, and procedures for DOE outlay program acquisitions.
- k. DOE 5100.3, FIELD BUDGET PROCESS, of 8-23-84, which establishes requirements and procedures for the preparation of field budget material, including data sheets, required for the DOE budget.
- l. DOE 5400.1, GENERAL ENVIRONMENTAL PROTECTION PROGRAM, of 11-9-88, which establishes the environmental protection program for DOE operations.
- m. DOE 5400.2A, ENVIRONMENTAL COMPLIANCE ISSUE COORDINATION, of 1-31-89, which establishes requirements for coordination of significant environmental compliance issues.
- n. DOE 5400.3, HAZARDOUS AND RADIOACTIVE MIXED WASTE PROGRAM, of 2-22-89, which establishes policies and requirements for hazardous and mixed waste and implementation of the Resource Conservation and Recovery Act.
- o. DOE 5400.4, COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT REQUIREMENTS, of 10-6-89, which establishes requirements for hazardous substance cleanup, for notification, and for implementation of the Comprehensive Environmental Response, Compensation, and Liability Act.
4. DEFINITIONS. This Order adopts the definitions in the CEQ Regulations (see 40 CFR Part 1508) and the DOE NEPA Regulations (see 10 CFR 1021.103). Some of those definitions are repeated here for the convenience of the reader. Additional terms are defined here for clarity.
- a. Action Description Memorandum (ADM). An internal DOE document (normally, not more than 5 pages) containing a concise description of a proposed action and discussion of relevant potential environmental issues to assist DOE in determining the appropriate level of a NEPA document for a proposed action.
- b. Environmental Impact Statement (EIS) Implementation Plan (IP). A brief document that explains and supports the scope, target schedule, and approach DOE will use to prepare an EIS.
- c. Field Officer (FO). For the purposes of this Order, a person responsible for managing a DOE Field Office or similar field organization, who reports directly to a Secretarial Officer. For the purposes of this

Order, Field Officers include but may not be limited to: the Managers of the Albuquerque, Chicago, Fernald, Idaho, Nevada, Oak Ridge, Richland, San Francisco, and Savannah River Field Offices; the Manager of the Rocky Flats Office; the Administrators of the Alaska, Southeastern, and Southwestern Power Administrations; and the Directors of the Morgantown and Pittsburgh Energy Technology Centers and the National Renewable Energy Laboratory Area Office.

- d. Host State. A state within whose boundaries DOE proposes an action at an existing facility or construction or operation of a new facility.
- e. Host Tribe. An American Indian tribe within whose tribal lands DOE proposes an action at an existing facility or construction or operation of a new facility. For purposes of this definition, "tribal lands" means the area of "Indian country," as defined in 18 U.S.C. 1151, that is under the tribe's jurisdiction.
- f. Interim Action. An action concerning a proposal that is the subject of an ongoing EIS and that DOE proposes to take before the record of decision (ROD) is issued, and that is permissible under 40 CFR 1506.1, "Limitations on Actions During the NEPA Process."
- g. Mitigation Action Plan. A document that describes the plan for implementing commitments made in a DOE EIS and its associated ROD or, when appropriate, an environmental assessment (EA) or finding of no significant impact (FONSI), to mitigate adverse environmental impacts associated with an action.
- h. Monthly NEPA Report. A document submitted monthly to the Secretary that identifies EAs and EISs that Secretarial Officers expect to forward to the Assistant Secretary for Environment, Safety and Health (EH) for approval during the subsequent 3 months.
- i. NEPA Compliance Guide. A collection of written guidance and reference material prepared by EH and updated periodically to assist DOE staff in both planning for and achieving compliance with NEPA and various related environmental statutes. The NEPA Compliance Guide provides guidance on the DOE NEPA process, the content of NEPA documents, the substantive and timing relationships between NEPA reviews and review requirements of other environmental statutes, and the timing of the start and end of the NEPA process relative to elements of the decisionmaking process for DOE proposed actions.
- j. NEPA Compliance Officer (NCO). A DOE employee designated by a Secretarial Officer or a Field Officer to coordinate, assist, and oversee generally the NEPA compliance activities in that office. Subsidiary Departmental Elements may designate a NEPA Contact to assist the Program or Field Office NCO.
- k. NEPA Document. A DOE notice of intent (NOI) to prepare an EIS, EIS, ROD, EA, FONSI, or any other document prepared pursuant to a requirement of NEPA or the CEQ Regulations.

- l. NEPA Status Report. A report on the status of existing or planned NEPA compliance activities, which is included in internal budget review documents (i.e., project data sheets or activity data sheets) prepared pursuant to DOE 5100.3.
- m. Program Office. A DOE organization headed by a Secretarial Officer and responsible for an action requiring a NEPA review.
- n. Programmatic NEPA Document. A broad-scope EIS or EA that identifies and assesses the environmental impacts of a DOE program; it may also refer to an associated NEPA document such as an NOI, record of decision, or FONSI.
- o. Secretarial Officers. For purposes of this Order, Secretarial Officers are Assistant Secretaries; the Directors of the Offices of Administration and Management, Civilian Radioactive Waste Management, Energy Research, Emergency Planning and Operations, New Production Reactors, Nuclear Safety, Intelligence; and the Administrators of the Western Area Power Administration and the Bonneville Power Administration.
- p. Site-wide NEPA Document. A broad-scope EIS or EA that is programmatic in nature and identifies and assesses the individual and cumulative impacts of ongoing and reasonably foreseeable future actions at a DOE site; it may also refer to an associated NEPA document such as an NOI, ROD or FONSI.
- q. State/tribal Coordination. The process by which a host state or host tribe and, as appropriate, states or tribes that may be affected by a proposed action are provided the opportunity to review and comment on an EA for the proposed action before DOE approval of the EA. Provisions for state/tribal coordination shall not apply to power marketing actions, such as rate-setting, in which a state or tribe is a customer, or to any other circumstances where DOE determines that such advance information could create a conflict of interest.
- r. State/tribal Notification. The process by which a host state or tribe and, as appropriate, states or tribes that may be affected by a proposed action are informed of an initial DOE determination to prepare an EA or EIS for the proposed action. Provisions for state/tribal notification shall not apply to power marketing actions, such as rate-setting, in which a state or tribe is a customer, or to any other circumstances where DOE determines that such advance information could create a conflict of interest.
- s. Supplement Analysis (SA). A DOE document used to determine whether a supplemental EIS should be prepared pursuant to 40 CFR 1502.9(c), or to support a decision to prepare a new EIS.
- t. Supplemental EIS. An EIS prepared to supplement a prior EIS, as provided at 40 CFR 1502.9(c).

5. POLICY. NEPA establishes a national policy to ensure that consideration is given to environmental values and factors in Federal planning and decisionmaking. The Department of Energy's policy is to comply fully with the letter and spirit of NEPA. To ensure that environmental factors are considered in the decisionmaking process and to promote environmentally responsible decisions, DOE will incorporate NEPA requirements early in the planning process for proposed actions. DOE also will coordinate its NEPA activities with the states and tribes that host DOE actions. The Department is committed to complete assessment and full disclosure of the environmental consequences of its proposed actions.
6. RESPONSIBILITIES AND AUTHORITIES.
 - a. Secretarial Officers are responsible for the consideration of environmental factors in decisionmaking and the timely preparation of documents required by this Order for actions under their authority. Specifically, each Secretarial Officer shall, for matters under his/her authority:
 - (1) Ensure that appropriate NEPA review is undertaken early in project and program planning, including planning for actions under new legislative authorities and for proposed legislation, regulations, and procurements, to provide adequate consideration of environmental factors along with other program considerations, and compliance with the CEQ Regulations and the DOE NEPA Regulations in the decisionmaking process.
 - (2) Approve procedures and recordkeeping requirements within his/her program, in consultation with the Assistant Secretary for Environment, Safety and Health (EH-1) to ensure consistency in the agencywide application of NEPA, and review those of field organizations. (See page 10, paragraph 6b(6) and page 11, paragraphs 6c(3) and 6d(4).)
 - (3) Ensure that the environmental information gathering, analysis, and evaluation requirements of the DOE NEPA Regulations (see 10 CFR 1021.216) are carried out when conducting a procurement, awarding financial assistance, or entering into a joint venture. Incorporate, where appropriate, environmental criteria and conditions into a solicitation, and into a resulting contract or financial assistance instrument issued under his/her authority.
 - (4) Ensure that applicants for financial assistance, permits, licenses, exemptions, allocations, or similar actions submit the information necessary for DOE NEPA compliance, and that they otherwise comply with the requirements of the DOE NEPA Regulations (see 10 CFR 1021.215).
 - (5) Ensure that NEPA milestones (categorical exclusion (CX); EA, FONSI; or NOI, draft EIS, final EIS, ROD) have been incorporated into project planning documents, including those prepared under the

project management system administered by the Office of Procurement, Assistance and Program Management (PR) through DOE 4700.1. Ensure that a NEPA Status Report on existing or planned NEPA compliance activities is included in internal budget review documents (i.e., project data sheets or activity data sheets) prepared pursuant to DOE 5100.3.

- (6) Designate a NEPA Compliance Officer for the Program Office and maintain this position to ensure that the requisite functions are carried out (see page 10, paragraph 6c); inform the Office of NEPA Oversight (EH-25) of the designation.
- (7) Ensure that the program office and each DOE Field Office under its authority augment, as appropriate, and maintain its environmental compliance staff so that a sufficient variety of environmental disciplines is represented to ensure that properly supervised and technically accurate and complete NEPA documents are prepared.
- (8) Establish procedures and act to ensure that NCOs and cognizant EH-25 staff (as assigned on page 14, paragraph 6e(3)) are fully informed in a timely manner of all program considerations, new information, and changes that would bear on the accuracy and objectivity of NEPA documents.
- (9) Determine which organizational entity under his/her authority should have responsibility for drafting NEPA documents, based on criteria established by EH-1. (See page 10, paragraph 6b(5) and page 12, paragraph 6d(12).)
- (10) Optionally, delegate to Field Officers the authority to make decisions regarding the appropriate level of NEPA review for those categories of actions specifically listed in subpart D of the DOE NEPA Regulations. This authority may not be redelegated. The Secretarial Officer shall notify EH-25 of the delegation of this authority.
- (11) If there has been no delegation under paragraph 6a(10), determine the appropriate level of NEPA review for those categories of actions specifically listed in subpart D of the DOE NEPA Regulations. Within 2 weeks of the determination, provide a copy of such determinations to EH-25, except for the CXs for which documentation is not required (see page 12, paragraph 6d(13)).
- (12) If there has been a delegation under paragraph 6a(10), monitor the exercise of the delegated authority by the Field Officers to determine whether it is being properly executed.
- (13) For actions not listed in subpart D of the DOE NEPA Regulations, or those listed in subpart D but for which the appropriate level of NEPA review is unclear, prepare an ADM sufficiently early to allow timely completion of the required NEPA document. Based on the ADM,

provide a recommendation to and request a determination by EH-1 of the level of NEPA review required.

- (14) For a proposed interim action that is not clearly allowable under applicable requirements in 40 CFR 1506.1 and 10 CFR 1021.211, prepare a description that provides sufficient information to determine whether the interim action may proceed; transmit the description to EH-1 and request a determination.
- (15) Conduct state/tribal notification, either directly or through the Secretarial Officer's NCO, except for those actions for which the NEPA determination authority has been delegated under paragraph 6a(10).
- (16) When it is unclear whether a supplemental EIS is required, prepare a supplement analysis that describes any changes in a proposed action that are relevant to environmental concerns, or any significant new circumstances and information relevant to environmental concerns and bearing on the proposed action or its impacts. Submit the supplement analysis to EH-1 with a recommendation for appropriate action. Upon approval by EH-1, notify the state(s), tribe(s), and the public of the availability of a supplement analysis and of the determination whether to prepare a supplemental EIS or other appropriate NEPA document. Public comments on the supplement analysis may be requested at the Secretarial Officer's discretion.
- (17) Ensure that necessary or appropriate public meetings, hearings, or other forms of public participation are conducted concerning NEPA-related aspects of a proposed action.
- (18) After ensuring its accuracy and adequacy, forward an EIS or an EA to EH-1 to initiate the approval process. A proposed draft FONSI may accompany a request for approval of an EA. A request for approval of an EA will be accompanied by a request for state/tribal coordination, a recommended length of review--considering any state and/or tribal request--and a proposed transmittal letter to the state(s) and tribe(s) drafted for the Secretarial Officer's signature, except for actions that are exempt from state/tribal coordination requirements (see page 4, paragraph 4q).
- (19) After receiving authorization from EH-25, conduct state/tribal coordination regarding pre-approval review of an EA; ensure that EH-25 receives any comments from the state(s) or tribe(s), along with the program office's proposed resolution. (Also see page 11, paragraph 6c(7).)
- (20) Ensure that NEPA documents are revised, as appropriate, in response to EH, state, tribe, and other review comments.

- (21) For an EIS, prepare an implementation plan (IP) and transmit it to EH-1 for approval; ensure that the IP is approved before issuance of the draft EIS; ensure that the approved IP is made publicly available for information purposes.
- (22) Mitigation Action Plan.
- (a) Upon notification by EH-1 that a FONSI would require a commitment to mitigation that is essential to render the impacts of a proposed action not significant, prepare a mitigation action plan for any such commitment; submit the mitigation action plan to EH-1 for review before issuance of the FONSI. (See 10 CFR 1021.322(b) and 1021.331(b).)
- (b) Prepare a mitigation action plan for implementation of any commitments made in an EIS/ROD for mitigation of environmental impacts associated with an action; if practicable, submit the mitigation action plan to EH-1 for review before issuance of the ROD and, in any case, before taking any action covered by the ROD that is the subject of a mitigation commitment.
- (23) Track and report annually (on the anniversary of the original plan) to EH-1 the progress made in implementing, and the effectiveness of any mitigation action plan described in paragraph 6a(22) until mitigation is completed. Alternatively, a single combined annual mitigation report may be submitted for all actions under the Secretarial Officer's authority. The annual report should modify the original plan to reflect new information or changed circumstances.
- (24) Ensure the prompt distribution (normally, within 2 weeks of approval) of an EA, FONSI, EIS, or ROD and prompt public availability of the approved NEPA document in accordance with the CEQ Regulations, the DOE NEPA Regulations, and procedures established under paragraph 6d(18), page 13; provide further distribution as may be appropriate based on guidance provided in the NEPA Compliance Guide, unless such document is, or contains information that is, classified, proprietary, or otherwise exempt from mandatory disclosure under the Freedom of Information Act (5 U.S.C. 552); provide the NEPA document to the appropriate Freedom of Information Officer(s) to make it available in the Headquarters Freedom of Information Reading Room and, if appropriate, Regional and Field Freedom of Information Reading Rooms as described in DOE 1700.1.
- (25) Submit to EH-1 written information on those EAs and EISs that Secretarial Officers expect to forward to EH-1 for approval during the subsequent 3 months, to enable EH-1 to prepare a Monthly NEPA Report to the Secretary (see page 11, paragraph 6d(5)).

(26) Lead or Cooperating Agency.

- (a) When DOE and one or more additional Federal agencies propose or are involved in the same action or are involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity, submit to EH-1 a recommendation whether DOE should be the lead agency in preparing an EIS and, if so, which agencies DOE should request to be cooperating agencies. (See 40 CFR 1501.5 and page 12, paragraph 6d(11).)
- (b) When another Federal agency has the lead and DOE may have jurisdiction by law or special expertise with respect to any environmental issue, submit to EH-1 a recommendation whether DOE should be a cooperating agency in preparing an EIS. (See sections 1501.5 and 1501.6 of the CEQ Regulations.) (See page 12, paragraph 6d(11).)

(27) Consult with EH-25 for guidance and assistance regarding NEPA compliance matters, as needed.

(28) Respond to requests by EH or other program offices for technical assistance in preparation or review of NEPA documents.

b. Field Officers. Each Field Officer (as defined for the purposes of this Order) shall, for matters under his/her authority:

- (1) Determine the appropriate level of NEPA review for those categories of actions specifically listed in subpart D of the DOE NEPA Regulations, if the authority to make such decisions has been delegated from the Secretarial Officer under paragraph 6a(10), page 6. This authority may not be redelegated. If more than one Program Office is responsible for an action, the Field Officer must have received a delegation from all responsible Secretarial Officers in order to make a determination for that action. Within 2 weeks, provide a copy of such a determination to EH-25 and the responsible Secretarial Officer, except for the CXs for which documentation is not required (see page 12, paragraph 6d(13)).
- (2) Designate a NEPA Compliance Officer (NCO) for the field organization and maintain this position to ensure that the requisite functions are carried out (see page 10, paragraph 6c); inform EH-25 of the designation.
- (3) Maintain an environmental compliance staff so that a sufficient variety of environmental disciplines is represented to ensure that properly supervised and technically accurate and complete NEPA documents are prepared.
- (4) Conduct state/tribal notification, either directly or through the Field Officer's NCO, for those actions for which the NEPA

determination authority has been delegated under paragraph 6a(10), page 6.

- (5) Prepare NEPA documents at the direction and under the supervision of the responsible Secretarial Officer(s), when so designated under paragraph 6a(9), page 6.
 - (6) Approve procedures and recordkeeping requirements, in consultation with all relevant Secretarial Officers (see page 5, paragraph 6a(2)), and in consultation with EH-1 to ensure consistency in the agencywide application of NEPA.
 - (7) Ensure that the environmental information gathering, analysis, and evaluation requirements of the DOE NEPA Regulations (see 10 CFR 1021.216) are carried out when conducting a procurement, awarding financial assistance, or entering into a joint venture. Incorporate, where appropriate, environmental criteria and conditions into a solicitation, and into a resulting contract or financial assistance instrument issued under his/her authority.
 - (8) Ensure that applicants for financial assistance, permits, licenses, exemptions, allocations, or similar actions submit the information necessary for DOE NEPA compliance, and that they otherwise comply with the requirements of the DOE NEPA Regulations (see 10 CFR 1021.215).
 - (9) Incorporate NEPA milestones (CX; EA, FONSI; or NOI, draft EIS, final EIS, ROD) into project planning documents within the project management system administered by the Office of Procurement, Assistance and Program Management (PR) through DOE 4700.1. Incorporate a NEPA Status Report on existing or planned NEPA compliance activities into internal budget review documents (i.e., project data sheets or activity data sheets) prepared pursuant to DOE 5100.3.
 - (10) Establish procedures and act to ensure that NCOs and cognizant EH-25 staff (as assigned under paragraph 6e(3), page 14) are fully informed in a timely manner of all program considerations, new information, and changes that would bear on the accuracy and objectivity of NEPA documents.
- c. The NEPA Compliance Officer (NCO) shall, for matters under the authority of his/her program office or field organization (the Office):
- (1) Provide advice regarding NEPA-related matters, including the provisions of the CEQ Regulations, the DOE NEPA Regulations, the DOE NEPA Compliance Guide, this Order, and any other related guidance and requirements; provide assistance regarding procedures and document preparation; provide NEPA training and disseminate NEPA guidance materials and related information.

- (2) Participate in periodic NEPA training, meetings, and workshops conducted by the Office of NEPA Oversight (EH-25).
 - (3) Recommend, for his/her Secretarial Officer or Field Officer approval (see page 5, paragraph 6a(2) and page 10, paragraph 6b(6)), office NEPA procedures and recordkeeping requirements, and document the office's compliance with those procedures and requirements.
 - (4) Recommend to his/her Secretarial Officer or Field Officer for each proposed action the appropriate level of NEPA review, and recommend schedules designed to ensure the early preparation of NEPA documents.
 - (5) Review NEPA documents and other related documents for compliance with the CEQ Regulations, the DOE NEPA Regulations, and other DOE NEPA-related procedures and guidance.
 - (6) Conduct state/tribal notification, if directed to do so by his/her Secretarial Officer or Field Officer (see page 7, paragraph 6a(15), and page 9, paragraph 6b(4)).
 - (7) Serve as a liaison in the conduct of state/tribal coordination, and provide EH-25 with comments from the state(s) or tribe(s) and the Program Office's proposed resolutions, unless the Secretarial Officer directs another official to carry out this function.
- d. Assistant Secretary for Environment, Safety and Health (EH-1) shall:
- (1) Provide Departmental oversight and guidance on NEPA-related matters to ensure consistency in the agencywide application of NEPA.
 - (2) Review appropriate management reports, new legislative authorities, proposed regulations, and emerging and ongoing policies, plans, programs, procurement activities, and other proposals to identify Departmental actions that may require environmental review under NEPA.
 - (3) Provide NEPA technical assistance and policy guidance to other Departmental Elements in their preparation of NEPA documents.
 - (4) Review and advise on NEPA-related procedures and recordkeeping requirements to be approved by Secretarial Officers under paragraph 6a(2), page 5 and by Field Officers under paragraph 6b(6), page 10, to ensure consistency in the agencywide application of NEPA.
 - (5) Report monthly to the Secretary regarding EAs and EISs that Secretarial Officers expect to forward to EH-1 for approval during the subsequent 3 months, based on information received from Secretarial Officers (see page 8, paragraph 6a(25)); identify EAs or EISs that warrant Secretarial approval.

- (6) Monitor project planning documents, within the project management system administered by PR through DOE 4700.1, to ensure that project schedules include NEPA milestones.
- (7) Review NEPA Status Reports included in DOE internal budget review documents to ensure that projects include appropriate NEPA compliance planning.
- (8) Determine, after consulting with the Office of General Counsel (GC-11), the level of NEPA review required for proposed DOE actions not listed in subpart D of the DOE NEPA Regulations or those listed in subpart D but for which the appropriate level of NEPA review is unclear (except as provided in paragraph 6d(9)), based on review of an ADM and the recommendation of the responsible Secretarial Officer.
- (9) Forward significant or controversial proposals to the Secretary for a determination whether to proceed initially with an EA or an EIS.
- (10) Determine, upon request by a Secretarial Officer and after consulting with GC-11, whether a proposed interim action may proceed.
- (11) Determine whether DOE should be a lead or cooperating agency in preparing an EIS, taking account of any recommendation of a Secretarial Officer (see page 9, paragraph 6a(26)).
- (12) Establish criteria by which a Secretarial Officer may determine which organizational entity shall prepare NEPA documents; where no program office has clear lead responsibility for the implementation of the proposed action, after consultation with the affected offices, determine the responsible office(s) to prepare the required NEPA documents.
- (13) Determine which CXs do not require documentation and notify the Secretarial Officers and Field Officers of the determination.
- (14) Within 2 weeks of receiving notice of a determination under paragraph 6a(11), page 6 or paragraph 6b(1), page 9, notify, in writing, the appropriate Field Officer and/or Secretarial Officer of any objection, as identified by EH-25 (see page 15, paragraph 6e(8)) to the application of a category listed in subpart D of the DOE NEPA Regulations.
- (15) Following review of an EA and the recommendation, if any, of the Secretarial Officer, determine, after consulting with GC-11, whether a proposed action requires an EIS; if an EIS is not required, issue a FONSI; if a mitigation action plan is necessary to issue a FONSI, notify the cognizant Secretarial Officer accordingly (see page 8, paragraph 6a(22)).

- (16) Approve, after consulting with GC-11, an EIS implementation plan for the preparation of a DOE EIS.
- (17) Following review of a supplement analysis and after consulting with GC-11, determine whether DOE shall prepare a supplemental EIS or a new EIS for a proposed action, or whether no further documentation is required (see page 7, paragraph 6a(16)).
- (18) Establish procedures for the review, approval, publication, and dissemination of NEPA documents.
- (19) Evaluate proposed and alternative actions, including alternative mitigating measures, described in a Departmental EIS, supplement, or EA, and make any appropriate environmental recommendations to the responsible Secretarial Officer.
- (20) Advise the responsible Secretarial Officer and, if appropriate, the Secretary, of a proposed action believed not to conform with Departmental policies or, after consulting with GC-11, applicable environmental laws and regulations.
- (21) Review, exercise quality control over, evaluate, and, after consulting with GC-11, approve or disapprove NEPA documents, except as otherwise provided in this Order, based on their content and conformity to the CEQ Regulations, the DOE NEPA Regulations, Executive Order 12114, and this Order.
- (22) Notify, in writing, the responsible Secretarial Officer and the Secretary if deficiencies prevent approval of a NEPA document that the Secretarial Officer has forwarded for approval.
- (23) Review and, after consulting with GC-11, approve (for environmental content only) a ROD that complies with NEPA, the CEQ Regulations, and the DOE NEPA Regulations.
- (24) Review a mitigation action plan for implementation of mitigation commitments made in an EIS/ROD or, when appropriate, EA/FONSI; review related annual progress reports to track the implementation of actions identified in the plan.
- (25) Advise the Secretarial Officers whether public participation is appropriate for NEPA-related issues not otherwise requiring public meetings, hearings, or comment periods.
- (26) Coordinate DOE assistance to other Federal agencies throughout their NEPA processes, including the review of documents and submission of DOE comments.
- (27) Conduct periodic NEPA compliance audits of DOE facilities and programs.

(28) Perform all the functions under paragraph 6e through the Office of NEPA Oversight.

e. Director of NEPA Oversight (EH-25) shall:

- (1) Be responsible for quality control and general oversight of efforts directed toward fulfilling Departmental responsibilities under NEPA.
- (2) Provide to Secretarial Officers and Field Officers, assistance upon request and guidance when appropriate regarding NEPA compliance issues, including:
 - (a) Reviews and comments on preliminary, draft, and final NEPA documents;
 - (b) Coordination of the EH review process for NEPA documents;
 - (c) Assistance in preparing outlines and target schedules for EIS preparation;
 - (d) Assistance in public meetings and hearings regarding NEPA matters;
 - (e) Assistance in responding to external comments on draft EISs and other NEPA documents;
 - (f) Assistance in preparing procurement solicitations with respect to NEPA requirements;
 - (g) Assistance in developing environmental criteria and evaluating proposals against such criteria, for procurements with potential environmental significance.
- (3) Assign staff to work closely with the designated NCO throughout all phases of EA or EIS preparation.
- (4) Review, exercise quality control over, evaluate and, after consulting with GC-11, recommend to EH-1 approval or disapproval of, or concurrence in NEPA documents.
- (5) Recommend to EH-1, after consulting with GC-11, whether:
 - (a) A proposed Departmental action requires an EA or EIS;
 - (b) An EA or EIS is adequate and should be approved. For an EA, approval should occur after state/tribal coordination authorized by EH-25 is completed. (See page 15, paragraph 6e(15).)

- (c) A supplement analysis is adequate and whether a supplemental EIS, a new EIS, or no further documentation is required.
- (d) A proposed interim action may proceed.
- (6) Evaluate proposed and alternative Departmental actions as analyzed in an EIS or an EA and make any appropriate environmental recommendations to EH-1.
- (7) Advise EH-1 of any Departmental action believed not to conform with Departmental policies, or after consulting with GC-11, applicable environmental laws and regulations.
- (8) Within 2 weeks of receiving notice of a determination under paragraph 6a(11), page 6 or 6b(1), page 9, advise EH-1 of any objection to the application of a category listed in subpart D of the DOE NEPA Regulations.
- (9) Review an EIS implementation plan for the preparation of a DOE EIS and, after consulting with GC-11, recommend approval or disapproval of the IP to EH-1.
- (10) Track environmental impacts and issues relating to actions subject to NEPA review, and ensure that NEPA documents describe reasonable mitigating measures.
- (11) Recommend to EH-1 whether public participation is appropriate for NEPA-related issues not otherwise requiring public meetings, hearings, or comment.
- (12) Coordinate DOE assistance to other Federal agencies throughout their NEPA processes.
- (13) Coordinate all consultation with the CEQ and the U.S. Environmental Protection Agency (EPA) on matters relating to NEPA.
- (14) File approved draft, final, and supplemental EISs with EPA, in accordance with 40 CFR 1506.9 and EPA's procedural requirements.
- (15) Authorize a Secretarial Officer to transmit an EA for state/tribal coordination, and determine the minimum length of the review period (14 to 30 days).
- (16) Review, revise, and augment as needed subpart D of the DOE NEPA Regulations.
- (17) Review, revise, and augment as needed the NEPA Compliance Guide.
- (18) Prepare the Monthly NEPA Report for EH-1 to forward to the Secretary regarding EAs and EISs that Secretarial Officers expect to forward to EH-1 for approval during the subsequent 3 months.

- (19) Develop and implement training programs and related materials to provide DOE personnel with information on NEPA, the CEQ Regulations, the DOE NEPA Regulations, and their responsibilities in the NEPA process.

f. General Counsel (GC-1, GC-11, or Other Appropriate Official) shall:

- (1) Provide EH with legal advice regarding the level of NEPA review required for a proposed action, the permissibility of a proposed interim action, the need for a mitigation action plan for a proposed action, and the conformance of a proposed action with applicable environmental laws and regulations.
- (2) Advise the Secretary, EH, and Departmental organizations regarding the legal adequacy of NEPA documents.
- (3) Provide legal assistance to all Departmental organizations in the preparation of NEPA documents and the conduct of NEPA-related hearings.
- (4) Provide legal assistance to EH and all Departmental organizations in preparing NEPA-related guidance.
- (5) In those cases where GC may propose an action subject to NEPA, exercise the responsibilities and authorities in paragraph 6a.

g. Director of Procurement, Assistance and Program Management (PR-1) shall:

- (1) Ensure integration of NEPA milestones in the project management system administered under DOE 4700.1, and provide Project Plans to EH-1 for review; ensure inclusion of a NEPA Status Report in internal budget review documents (i.e., project or activity data sheets) prepared under DOE 5100.3, and provide these documents to EH-1 for review.
- (2) Ensure inclusion of NEPA compliance requirements in project management training.

h. Director of Naval Nuclear Propulsion Program (NE-60). Executive Order 12344, statutorily affirmed by Public Law No. 98-525 (42 U.S.C. 7158 note), establishes the responsibilities and authority of the Director, Naval Nuclear Propulsion Program (who is also the Deputy Assistant Secretary for Naval Reactors within the Department), over all facilities and activities which comprise the Program, a joint Navy-DOE effort. The objective of this executive and legislative action is cited in part in the Executive Order as ". . . preserving the basic structure, policies, and practices developed for this program in the past . . ." Essential to this objective is preserving the Director's authority to establish and maintain common practices and standards across the Navy and DOE activities of this uniquely integrated Program. Accordingly, the Director is responsible for carrying out the provisions of this Order

including, but not limited to, making determinations on the level of NEPA review required for Program actions, and approving and issuing NEPA documents for Program actions.

i. The Secretary (S-1) shall:

- (1) Upon referral from EH-1, determine whether an EA or an EIS should be prepared for significant or controversial proposals.
- (2) Approve all programmatic and site-wide EISs and any other EAs or EISs identified by EH-1 in the Monthly NEPA Report as warranting Secretarial approval.
- (3) Resolve disputes that arise regarding issues related to the NEPA process that cannot be resolved at lower levels of management.
- (4) Approve any variances from the DOE NEPA Regulations.

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI
Director of Administration
and Management

PART A (To be completed by the DIRECTIVES MANAGEMENT GROUP, AD-440):

TO: DIRECTOR, DIVISION OF PRIMARY INTEREST: P. J. Gross, Director, Environmental Protection Division, SE-31

NUMBER, TITLE, AND DATE OF DIRECTIVE: DOE 5440.1E, NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM, of 11-10-92

The attached directive, which is within your area of functional responsibility, is forwarded for review and necessary action. Complete Part B and forward this form to AD-440 by 2-2-93.

PART B (To be completed by the DIVISION OF PRIMARY INTEREST (DPI)):

1. **APPLICABILITY:** Is directive applicable to contractor(s)? Check appropriate boxes below:

- No (all contractors)
- Yes If yes, whom? MMES MK-Ferguson ORAU SURA
- Other contractors (list by type)
All contractors involved in actions in which NEPA is applicable.

2. **IMPLEMENTATION:** Does the Order contain special implementation requirements and/or dates?

No Yes If yes, describe: *Nothing other than NEPA is to be considered for DOE actions.*

3. **SUMMARY OF SIGNIFICANT PROVISIONS OR CHANGES AND IMPACT:**

Order was updated to conform to new regulations (DOE). No impact predicted.

4. **OAK RIDGE IMPLEMENTATION GUIDANCE:** Is new ORIG or revision required? Yes No

If yes, target date for submission of draft ORIG to AD-440 is 6/1/93

5. **IDENTIFY CONTACT POINT:** J. L. Elmore 6-0938
Name Telephone

6. **APPROVED BY DIRECTOR:** P. J. Gross 5/5/93 576-0845
Signature Date Telephone

PART C (To be completed by the DIRECTIVES MANAGEMENT GROUP, AD-440):

APPROVED FOR DISTRIBUTION IN ACCORDANCE WITH OFFICIAL DIRECTIVE DISTRIBUTION LIST:

Jennifer H. Cusick, AD-440 5/9/93
Name Date

DIRECTIVES CONTROL FORM - DOE FINAL ORDER

PART A (To be completed by the DIRECTIVES MANAGEMENT GROUP, AD-440):

TO: DIRECTOR, DIVISION OF PRIMARY INTEREST: J. D. Rothrock, Director, Safety and Health Division, SE-33

NUMBER, TITLE, AND DATE OF DIRECTIVE: DOE N 5480.7, EXTENSION OF DOE N 5480.5, of 1-7-93

The attached directive, which is within your area of functional responsibility, is forwarded for review and necessary action. Complete Part B and forward this form to AD-440 by 2-5-93.

PART B (To be completed by the DIVISION OF PRIMARY INTEREST (DPI)):

1. APPLICABILITY: Is directive applicable to contractor(s)? Check appropriate boxes below:

No (all contractors)

Yes If yes, whom?

MMES

NO
No, not applicable
MK-Ferguson

MK-Ferguson

ORAU

SURA

Other contractors (list by type)

2. IMPLEMENTATION: Does the Order contain special implementation requirements and/or dates?

No Yes

If yes, describe: Implementation of the Notice itself has no special requirements/dates. Imposition of proposed nuclear safety requirements (i.e. backfits) under the Notice will have special requirements/dates to be addressed on a case-by-case basis as facility backfits are identified & proposed.

3. SUMMARY OF SIGNIFICANT PROVISIONS OR CHANGES AND IMPACT:

Notice addresses procedures to be followed to identify impacts arising from proposals to backfit nuclear facilities.

4. OAK RIDGE IMPLEMENTATION GUIDANCE: Is new ORIG or revision required? Yes No

If yes, target date for submission of draft ORIG to AD-440 is _____

5. IDENTIFY CONTACT POINT: Michael A Boyd 6-0821
Name Telephone

6. APPROVED BY DIRECTOR: J.D. Rothrock 3-4-93 576-0830
Signature Date Telephone

PART C (To be completed by the DIRECTIVES MANAGEMENT GROUP, AD-440):

APPROVED FOR DISTRIBUTION IN ACCORDANCE WITH OFFICIAL DIRECTIVE DISTRIBUTION LIST:

Jennifer H. Cusick, AD-440 3/8/93
Name Date

INSTRUCTIONS TO ADDRESSEES: THIS FORM IS TO BE FILED WITH THE DIRECTIVE AND RETAINED.