

## Department of Energy

## § 1022.3

### 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: 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