

Rules and Regulations

Federal Register

Vol. 74, No. 195

Friday, October 9, 2009

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DEPARTMENT OF ENERGY

10 CFR Part 1021

Online Posting of Certain DOE Categorical Exclusion Determinations; Policy Statement

AGENCY: Department of Energy.

ACTION: Policy statement.

SUMMARY: To further transparency and openness in its implementation of the National Environmental Policy Act (NEPA), the Department of Energy (DOE) has established a new policy with regard to the online posting of certain categorical exclusion determinations. Under the new policy, each Program and Field Office (including the National Nuclear Security Administration and the Power Marketing Administrations) will document and post online all categorical exclusion determinations involving classes of actions listed in Appendix B to Subpart D of the Department's NEPA regulations, 10 CFR Part 1021. Posted categorical exclusion determinations shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (5 U.S.C. Part 552). Generally, each Program and Field Office will post categorical exclusion determinations on its Web site; where this is not feasible, the Office of NEPA Policy and Compliance will post categorical exclusions on the DOE NEPA Web site (<http://www.gc.energy.gov/nepa>).

DATES: The effective date of the policy is November 2, 2009.

FOR FURTHER INFORMATION CONTACT: For general information on the policy, contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC-20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mail: askNEPA@hq.doe.gov; telephone: 202-

586-4600; leave a message at 800-472-2756; or fax: 202-586-7031.

SUPPLEMENTARY INFORMATION:

Categorical exclusions are classes of Departmental actions that DOE has, by regulation, determined do not individually or cumulatively have a significant effect on the environment and for which, therefore, neither an environmental impact statement nor an environmental assessment is normally required. Under DOE's NEPA regulations (10 CFR Part 1021), absent any extraordinary circumstances related to the proposal that may affect the significance of its environmental effects, a proposed activity can be categorically excluded from further NEPA review if it falls within any of the "general" agency classes of action (such as routine administrative, financial, and personnel actions) listed in Appendix A of Subpart D or "specific" agency actions (involving, for example, construction of bench-scale research projects or actions to promote energy efficiency) listed in Appendix B.

NEPA Compliance Officers designated for DOE's Program and Field Offices determine whether particular proposed actions fit within the defined categorical exclusions. Under the new policy announced in "NEPA Process Transparency and Openness" (October 2, 2009, memorandum from Deputy Secretary Daniel B. Poneman to Heads of Departmental Elements), each Program and Field Office (including the National Nuclear Security Administration and the Power Marketing Administrations) will document and post online all categorical exclusion determinations involving classes of actions listed in Appendix B. (This policy does not require posting of categorical exclusion determinations involving classes of actions listed in Appendix A.) Posted categorical exclusion determinations shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (5 U.S.C. 552). Generally, each Program and Field Office will post categorical exclusion determinations on its Web site; where this is not feasible, the Office of NEPA Policy and Compliance will post categorical exclusion determinations on the DOE NEPA Web site (<http://www.gc.energy.gov/nepa>). Regardless of

where the categorical exclusion determination is initially posted, DOE's NEPA Web site will include links to published categorical exclusion determinations.

Neither the Council on Environmental Quality's NEPA regulations (40 CFR Parts 1500-1508) nor DOE's NEPA regulations require that categorical exclusion determinations be in writing or that the public be informed of categorical exclusion determinations. Nevertheless, DOE finds it appropriate to do so. Posting categorical exclusion determinations online is consistent with the spirit of President Obama's memorandum on "Transparency and Open Government," issued in the very first hours of his presidency on January 21, 2009, which announced his commitment to creating an unprecedented level of openness in Government. The President called on Federal agency heads to make information about agency operations and decisions available to the public online, in a form that is easy to find and use, so as to encourage transparency, participation, and collaboration.

Similarly, Secretary of Energy Steven Chu, in his memorandum on the Freedom of Information Act (June 5, 2009), stated that DOE should use modern technology to inform the public about DOE operations and take affirmative steps to post information online in a systematic way. Such openness is especially important when the information relates to the Department's compliance with NEPA, as one of the primary purposes of that statute is to inform the public concerning the environmental implications of government decisions.

Issued in Washington, DC, on October 2, 2009.

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[FR Doc. E9-24220 Filed 10-8-09; 8:45 am]

BILLING CODE 6450-01-P