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EG&G ROCKY FLATS

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ALY, T.J.	
RSH, J.M.	X X
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JESTIC, J.R.	
LLEN, J.B.	
RGAN, R.V.	X
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HARDELLA, R.E.	
RNER, H.I.	
LASQUEZ, R.N.	
SON, J.M.	
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90-RF-6003

Robert M. Nelson, Jr.
 Manager
 DOE, RFO

Attn: R. J. Schassburger

EFFECT OF DOE DIRECTIVES ON PROJECTS IMPACTING WETLANDS AND FLOODPLAINS AT THE ROCKY FLATS PLANT

Through this letter, EG&G Rocky Flats, Inc. requests a U.S. Department of Energy (DOE) determination of a de minimis impacted acreage for Rocky Flats Plant (RFP) projects affecting wetlands and/or floodplains. It is the intention of EG&G to comply fully with the guidance (discussed below) provided by DOE. However, EG&G's ability to proceed expeditiously with small projects that will have minimal to negligible impact on wetlands and/or floodplains may be limited to an extent not intended by DOE.

The fundamental problem is that the references do not establish a de minimis impacted acreage for wetlands and/or floodplains below which the requirements no longer apply. While EG&G recognizes the need to fully evaluate projects that will impact several acres of wetlands and/or floodplains, accompanied by appropriate announcements and documentation, we do not see the need to produce the same announcements and level of documentation for projects that will impact only a fraction of an acre of wetland and/or will be located in a 100-year floodplain for which no significant modification of the floodplain occurs.

Four sources of information provide DOE guidance on managing projects that may impact wetlands and/or floodplains. Two of the sources are memorandums issued by DOE in the last year. The first memorandum, dated June 12, 1989, is the Secretary of Energy's Policy Statement that DOE will support the goal of "no net loss of wetlands." The second memorandum, issued by Director Carol M. Borgstrom on November 3, 1989, recommends using the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands* (hereinafter referred to as the "Manual") to identify jurisdictional wetlands. Further, the second memorandum suggests the possibility of DOE changing 10 CFR 1022, Compliance with Floodplains/Wetlands Environmental Review Requirements, to incorporate the Manual as a reference.

The third source is 10 CFR 1022 - Compliance with Floodplains/Wetlands Environmental Review Requirements, which addresses the requirements for compliance with the following Executive Orders (EOs): EO 11988 - Floodplain Management (May 24, 1977) and EO 11990 - Protection of Wetlands (May 24, 1977). Lastly, verbal guidance was provided by Messrs. John Pulliam and Robert Strickler, of EH-25, (discussed in EG&G's letter to DOE, RFO, #90-RF-0643), who concluded that nonjurisdictional wetlands are exempt from 10 CFR 1022. EG&G has accepted his conclusion and will continue to operate pursuant to this understanding. Copies of the references are attached.

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NCLASSIFIED	X	X
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THORIZED CLASSIFIER

SIGNATURE
C. J. O'Connell
 9/20/90

DATE
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Following are three examples of projects that could be impacted by these requirements even though the projects will have minimal impacts on wetlands and/or floodplains:

- 1) Sewage Treatment Plant (STP) Upgrade. Approximately 200 square feet of an isolated wetland, dominated by cattails, is located adjacent to a hillside north of the STP. This hillside, including the wetland, will be removed to provide space for storage tanks.
- 2) Sediment traps in Woman and Walnut Creeks. Small cylindrical containers will be placed in the creeks with the intention of collecting sediments contained within stream flows. The traps would impact both floodplains and wetlands, but the effect would only total a few square feet.
- 3) Diversion (recycling) water from Pond C-2 to plant usage. A PVC pipe will be used to divert water from Pond C-2 to a tie-in, located downstream of the water treatment plant, with the process water system. The pipe will be placed just inside the south interceptor trench (which would collect any water leaking from the pipe), but would require no modification to the trench other than placement of supports to keep the pipe in place. The trench was intended to contain runoff from a three-day, 100-year storm. However, with the vegetative growth in the trench, the capacity has possibly been reduced.

It should be noted that many future small projects impacting RFP wetlands, including items 1 and 2 above, would be approved by the U.S. Army Corps of Engineers under a 404 Nationwide Permit, because the total wetlands impacted would be far less than one acre.

We look forward to any guidance you can provide regarding a de minimis impacted acreage for wetlands and/or floodplains. Please contact Scott McGlochlin of my staff at 273-6190 if you have any questions. Thank you.



J. M. Kersh
Associate General Manager
Environmental Restoration and Waste Management

SCM:img

Orig. and 1cc - R. M. Nelson, Jr.

Attachments:
As Stated

NOTICE:

**PORTIONS OF THE FOLLOWING
DOCUMENT ARE ILLEGIBLE**

The Administrative Record Staff

Department of Energy

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§ 1020.10

(d) Magnitude of radiation level. In general, those structures with the highest radiation levels will be given primary consideration.

(e) Geographical location of structures. A group of structures located in the same immediate geographical vicinity may be given priority consideration particularly where they involve similar remedial efforts.

(f) Availability of structures. An attempt will be made to schedule remedial action during those periods when minimum interference.

(g) Climatic conditions. Climatic conditions or other seasonal considerations may affect the scheduling of certain remedial measures.

44 FR 56777, Dec. 30, 1979. Redesignated and amended at 48 FR 2072, Jan. 13, 1983.

§ 1020.10 Selection of appropriate remedial action.

(a) Things will be removed from those structures where the appropriately averaged external gamma radiation level is equal to or greater than 0.05 mR/hr. above background in the case of dwellings and schools and 0.15 mR/hr. above background in the case of other structures.

(b) Where the criterion in paragraph (a) of this section is not met, other remedial action techniques, including but not limited to sealants, ventilation, and shielding may be considered in addition to that of radon removal. DOE shall select the remedial action technique or combination of techniques, which it determines to be the most appropriate under the circumstances.

PART 1021—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

1021.1 Background

1021.2 Adoption of CEQ Regulations

1021.3 Revocation of previous NEPA regulations.

1021.4 Applicability.

1021.5 Effective date.

Authority: National Environmental Policy Act, 42 U.S.C. 4321 et seq.

Source: 44 FR 45918, Aug. 6, 1979, unless otherwise noted.

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

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1022.1 Background.

1022.2 Purpose and scope.

1022.3 Policy.

1022.4 Definitions.

1022.5 Applicability.

Subpart B—Procedures for floodplain/wetlands Review

1022.11 Floodplain/wetlands determination.

1022.12 Floodplain/wetlands assessment.

1022.13 Applicant responsibilities.

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1022.15 Notification of decision.

1022.16 Requests for authorizations or appropriations.

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1022.18 Timing of floodplain/wetlands actions.

1022.19 Selection of a lead agency and consultation among participating agencies.

1022.20 Public inquiries.

1022.21 Updating regulations.

Authority: E.O. 11988 (May 24, 1977); and E.O. 11990 (May 24, 1977).

Source: 44 FR 12599, Mar. 7, 1979, unless otherwise noted.

Subpart A—General

§ 1022.1 Background.

Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977), requires 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 Order is provided in the Floodplain Management Guidelines of the U.S. Water Resources Council (40 FR 8039, Feb. 10, 1978). Executive Order 11990—Protection of Wetlands (May 24, 1977), requires all Federal agencies to ensure consideration of wetlands to ensure protection in decisionmaking. It is the

protection in decisionmaking. It is the

intent of both Executive orders that Federal agencies implement the floodplain/wetlands requirements through existing procedures such as those established to implement the National Environmental Policy Act (NEPA) of 1969. In those instances where the impacts of actions in floodplains and/or wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

§ 1022.2 Purpose and scope.

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

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

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

(b) To the extent possible, DOE will accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures.

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) 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 floodplain and wetlands development wherever there is a practicable alternative.

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

(1) Reduce the hazard and 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 the standards and criteria set forth in, and consistent with the intent of, the 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.;
- (5) Minimize the destruction, loss, or degradation of wetlands;
- (6) Preserve and enhance the natural and beneficial values of wetlands;
- (7) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property which has suffered flood damage or is in an identified flood hazard area and which is used by the general public; and
- (8) Prior to the completion of any financial transaction related to an area located in a floodplain, which is guaranteed, approved, regulated or insured by DOE, inform any private participating parties of the flood-related hazards involved.
- (c) Undertake a careful evaluation of the potential effects of any DOE action taken in a floodplain and any new construction undertaken by DOE; in wetlands not located in a floodplain.
- (d) Identify, evaluate, and, as appropriate, implement alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts; and
- (e) Provide opportunity for early public review of any plans or proposals for actions in floodplains and new construction in wetlands.
- § 1022.4 Definitions.
- For purposes of this part:
- (a) "Action" means any DOE activity, including, but not limited to:
- (1) Acquiring, managing, and disposing of Federal lands and facilities;
 - (2) DOE-undertaken, financed, or assisted construction and improvements; and
 - (3) The conduct of DOE activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities.
- (b) "Base Flood" means that flood which has a 1 percent chance of occurrence in any given year (also known as a 100-year flood).
- (c) "Critical Action" means any activity for which even a slight chance of flooding would be too great. Such actions may include the storage of highly volatile, toxic, or water reactive materials.
- (d) "Environmental Assessment" (EA) means a document for which DOE is responsible that serves to: (1) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, (2) aid DOE compliance with NEPA when no EIS is necessary, and (3) facilitate preparation of an EIS when one is necessary. The EA shall include brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.
- (e) "Environmental Impact Statement" means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA.
- (f) "Facility" means any man-placed item other than a structure.
- (g) "Funding of No Significant Impact" (FONSI) means a document prepared by DOE which briefly presents the reasons why an action will not significantly effect on the human environment and for which an EIS therefore will not be prepared.
- (h) "Flood or Flooding" means a temporary condition of partial or complete inundation of normally dry land/areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.
- (i) "Floodplain" means the lowlands adjoining inland and coastal waters and relatively flat areas and flood-prone areas of offshore islands including, at a minimum, that area inundated by a 1 percent or greater chance flood in any given year. The base floodplain is defined as the 100-year (1.0 percent) floodplain. The critical action floodplain is defined as the 500-year (0.2 percent) floodplain.

- (j) "Floodplain Action" means any DOE action which takes place in a floodplain.
- (k) "Floodplain/Wetlands Assessment" means an evaluation consisting of a description of a proposed action, a discussion of its effects on the floodplain/wetlands, and consideration of alternatives.
- (l) "Floodproofing" means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce the effects of water entry.
- (m) "High Hazard Areas" means those portions of riverine and coastal floodplains nearest the source of flooding which are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.
- (n) "Minimize" means to reduce to the smallest degree practicable.
- (o) "New Construction" for the purpose of compliance with E.O. 11990 includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after October 1, 1977.
- (p) "Practicable" means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, and implementation time.
- (q) "Public Notice" means a brief notice published in the Federal Register, and circulated to affected and interested persons and agencies, which describes a proposed floodplain/wetlands action and affords the opportunity for public review.
- (r) "Preserve" means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.
- (s) "Restore" means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.
- (t) "Statement of Findings" means a statement issued pursuant to E.O. 11988 which explains why a DOE action is proposed in a floodplain, lists

- alternatives considered, indicates whether the action conforms to State and local floodplain standards, and describes steps to be taken to minimize harm to or within the floodplain.
- (u) "Structure" means a walled or roofed building, including mobile homes and gas or liquid storage tanks.
- (v) "Wetlands" means those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflow, mudflats, and natural ponds.
- (w) "Wetlands Action" means an action undertaken by DOE in a wetland not located in a floodplain, subject to the exclusions specified at § 1022.5(c).

§ 1022.5 Applicability.

- (a) This part shall apply to all organizational units of DOE, except that it shall not apply to the Federal Energy Regulatory Commission.
- (b) This part shall apply to all proposed floodplain/wetlands actions, including those sponsored jointly with other agencies, where practicable alternatives to the proposed action are still available. With respect to programs and projects for which the appropriate environmental review has been completed or a final EIS filed prior to the effective date of these regulations, DOE shall, in lieu of the procedures set forth in this part, review the alternatives identified in the environmental review or in the final EIS to determine whether an alternative action may avoid or minimize impacts on the floodplain/wetlands. If project or program implementation has progressed to the point where review of alternatives is no longer practicable, or if DOE determines after a review of alternatives to take action in a floodplain, DOE shall design or modify the selected alternative in order to minimize potential harm to or within the floodplain and to restore and preserve

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floodplain values. DOE shall publish in the FEDERAL REGISTER a brief description of measures to be employed and shall endeavor to notify appropriate Federal, State, and local agencies and persons or groups known to be interested in the action.

(c) This part shall not apply to wetland projects under construction prior to October 1, 1977; wetlands projects for which all of the funds have been appropriated through fiscal year 1977; or wetlands projects and programs for which a draft or final EIS was filed prior to October 1, 1977.

(d) This part shall not apply to activities in wetlands (not located in a floodplain) which shall not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving wetlands property. This part applies to activities for which DOE, responsibilities for acquiring, managing, and disposing of Federal lands and facilities. When proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, DOE shall: (1) identify those uses that are restricted under Federal, State, or local floodplain or wetlands regulations; (2) identify other appropriate restrictions to the uses of the property; or (3) withhold the property from conveyance.

(e) This part applies to activities in furtherance of DOE responsibilities for providing federally undertaken and financed, or assisted construction and improvements. Applicants for an activity shall provide DOE with an analysis of the impacts which would result from any proposed wetland or floodplain activity.

(f) This part applies to activities in furtherance of DOE responsibilities for conducting Federal activities and programs affecting land use, including but not limited to, water and related resource planning, regulating and financing activity.

(g) This part ordinarily shall not apply to routine maintenance of existing facilities and structures on DOE property within a floodplain/wetlands since such actions normally have minimal or no adverse impact on a flood-

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§ 1022.12 Floodplain/wetlands assessment.

(a) If DOE determines, pursuant to § 1022.5 and 1022.11, that this part is applicable to the proposed action, DOE shall prepare a floodplain/wetlands assessment, which shall contain the following information: This section (1) Project Description. This section shall describe the nature and purpose of the proposed action, and shall include a map showing its location with respect to the floodplain and/or wetlands. For actions located in a floodplain, the high hazard areas shall be delineated and the nature and extent of the potential hazard shall be discussed.

(2) Floodplain/Wetlands Effects. This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of a proposed action on the floodplain and/or wetlands. The effects of a proposed floodplain action on lives and property, and on natural and beneficial floodplain values shall be evaluated. For actions taken in wetlands, the effects on the survival, quality, of natural and beneficial values of wetlands shall be evaluated.

(3) Alternatives. Alternatives to the proposed action which may avoid adverse effects and incompatible development in the floodplain/wetlands shall be considered, including alternative sites, actions, and no action. Measures that mitigate the adverse effects of actions in a floodplain or wetlands, including but not limited to minimum grading requirements, runoff controls, design and protection of ecology sensitive areas shall be addressed.

(b) For proposed floodplain or wetlands actions for which an EA or EIS is prepared, a separate document shall be assessed and included in the appropriate NEPA document.

(c) For floodplain/wetlands actions for which neither an EA or EIS is prepared, a separate document shall be issued as the floodplain/wetlands assessment.

§ 1022.13 Applicant responsibilities for a DOE permit, license, certificate, financial

cial assistance, contract, or other entitlement to submit a report on a proposed floodplain/wetlands action. The report shall contain the information specified at § 1022.12 and shall be prepared in accordance with the guidance contained in this part.

§ 1022.14 Public review.
(a) For proposed floodplain/wetlands actions for which an EIS is required, the opportunity for early public review will be provided through applicable NEPA procedures. A Notice of Intent to prepare an EIS may be used to satisfy this requirement.

(b) For proposed floodplain/wetlands actions for which no EIS is required, DOE shall provide the opportunity for early public review through publication of a Public Notice, which shall be published in the FEDERAL REGISTER, as soon as practicable after a determination that a floodplain/wetlands may be affected and at least 15 days prior to the issuance of a permit. DOE shall take appropriate steps to inform Federal, State, and local agencies and persons or groups known to be interested in or affected by the proposed floodplain/wetlands action. The Public Notice shall include a description of the proposed action and its location and may be incorporated with other notices issued with respect to the proposed action.

(c) Following publication of the Public Notice, DOE shall allow 15 days for public comment prior to making its decision on the proposed action, except as specified in § 1022.18(c). At the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed floodplain/wetlands action and the mitigating measures, taking into account all substantive comments received.

§ 1022.15 Nullification of decision.
(a) If DOE finds that no practicable alternative to locating in the floodplain/wetlands is available, consistent with the policy set forth in E.O. 11988, DOE shall, prior to taking action,

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design or modify its action in order to minimize potential harm to or within the floodplain/wetlands. (b) For actions which will be located in a floodplain, DOE shall publish a brief (not to exceed three pages) statement of findings which shall contain: (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 State or local floodplain protection standards; and (5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

For floodplain actions which require preparation of an EA or EIS, the statement of findings may be incorporated into the FONSI or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, DOE shall publish the statement of findings in the Federal Register and distribute copies to Federal, State, and local agencies and others who submitted comments as a result of the Public Notice. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, DOE shall send the statement of findings to the State and arawide A-95 Clearing-houses for the geographic area affected.

§ 1022.16 Requests for authorizations or appropriations.

DOE shall indicate in any requests for new authorizations or appropriations transmitted to OMB, if a proposed action will be located in a floodplain or wetlands, whether the proposed action is in accord with the requirements of E.O. 11990 E.O. 11988, and these regulations.

§ 1022.17 Follow-up.

For those DOE actions taken in floodplain/wetlands, 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/wetlands assessment and statement of findings.

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§ 1022.18 Timing of floodplain/wetlands actions.

(a) Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

(b) With respect to wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the Public Notice in the Federal Register.

(c) Where emergency circumstances, statutory deadlines, of overriding considerations of program or project expense or effectiveness exist, the minimum time periods may be waived.

§ 1022.19 Selection of a lead agency and consultation among participating agencies.

When DOE and one or more other Federal agencies are directly involved in a floodplain/wetlands action, DOE shall consult with such other agencies to determine if a floodplain/wetlands assessment is required, to identify the appropriate lead or joint agency responsibilities, to identify the applicable regulations, and to establish procedures for interagency coordination during the environmental review process.

§ 1022.20 Public inquiries.

Inquiries regarding DOE's floodplain/wetlands activities may be directed to the Assistant Secretary for Environment, Department of Energy, Washington, D.C. 20545.

§ 1022.21 Updating regulations.

DOE shall periodically review these regulations, evaluate their effectiveness, and make appropriate revisions.

PART 1023—CONTRACT APPEALS

Subpart A—Rules of the Board of Contract Appeals

Preface

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1023.1 Scope and purpose.

1023.2 Effective date.

1023.3 Jurisdiction for considering appeals.

Department of Energy

Sec. 1023.4 Organization and location of the Board.

1023.5 Ex-parte conduct.

1023.6 General guidelines.

1023.70 Rules of practice.

Subpart B—Rules of the Contract Adjustment Board

1023.200 Delegation.

1023.201 Applicable rules.

1023.202 Matters pending as contract appeals.

1023.203 Decisions.

Subpart A—Rules of the Board of Contract Appeals

Authority: Pub. L. 95-91, sec. 301, 91 Stat. 677; Pub. L. 95-563; EO 10789.

Source: 44 FR 64270, Nov. 6, 1979, unless otherwise noted.

Preface

§ 1023.1 Scope and purpose.

These rules are intended to govern all appeals procedures before the Department of Energy Board of Contract Appeals (Board) which are within the coverage of the Contract Disputes Act of 1978 (Pub. L. 95-563, Nov. 1, 1978).

§ 1023.2 Effective date.

These rules shall apply to all appeals relating to contracts which are subject to the Contract Disputes Act of 1978 and entered into on or after March 1, 1979. At the contractor's election, they shall also apply to appeals relating to earlier contracts, if such contracts are subject to the Contract Disputes Act of 1978, and the appeal relates to claims pending before the contracting officer on March 1, 1979.

§ 1023.3 Jurisdiction for considering appeals.

(a) The Department of Energy Board of Contract Appeals (referred to herein as the "Board" or "EBCA") shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Pub. L. 95-563, 41 U.S.C. 601-613, also hereinafter referred to as the "Act") relating to contracts made by (1) the Department of Energy or (2) any other executive agency when such agency or the Administrator for Fed-

eral Procurement Policy has designated the Board to decide the appeal. In addition, the Board shall consider and determine appeals from decisions of contracting officers arising from other contracts which include an appropriate disputes clause.

(b) The Board may consider and determine other matters, not inconsistent with its statutory duties, as assigned by the Secretary.

(c) In each proceeding the Board shall make a final decision which is impartial, fair and just to the parties based on the record of the case.

§ 1023.4 Organization and location of the Board.

(a) The Board is located in the Washington, D.C. metropolitan area and its address is: Webb Building, Room 1000, 4040 N. Fairfax Drive, Arlington, Virginia 22203.

(b) The Board consists of a Chair, a Vice Chair, and other members, all of whom are attorneys-at-law duly licensed by any state, commonwealth, territory, or the District of Columbia. Members of the Board are selected and appointed to serve in the same manner as hearing examiners pursuant to Section 3105 of title 5, United States Code with an additional requirement that each member shall have had not fewer than five years experience in public contract law. Members are designated Administrative Judges and the Chair, Chief Administrative Judge.

(c) The Administrative Judge assigned to hear and develop the record on an appeal has authority to act for the Board in all matters with respect to such appeal that are not dispositive of the appeal.

(d) Except for appeals considered under the expedited small claims or accelerated procedures, appeals are assigned to a panel of three Administrative Judges of the Board who decide the case by a majority vote.

§ 1023.5 Ex-parte conduct.

Written or oral communications with the Board by or for one party without participation or notice to the other, is not permitted. No member of the Board or of the Board's staff shall

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