and the newly-added paragraph (c) of § 20.1406. The first issuance of guidance on a newly-changed or newly-added rule provision does not constitute backfitting or raise issue finality concerns, inasmuch as the guidance must be consistent with the regulatory requirements in the newly-changed or newly-added rule provisions and the backfitting and issue finality considerations applicable to the newly-changed or newly-added rule provisions must logically apply to this guidance. Therefore, issuance of guidance addressing the newly-changed and newly-added provisions of the amended rule does not constitute issuance of ''changed'' or ''new'' guidance within the meaning of the definition of ''backfitting'' in 10 CFR 50.109(a)(1). Similarly, the issuance of the guidance addressing the newly-changed or newly-added provisions of the amended rule, by itself, does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR part 52. Accordingly, no further consideration of backfitting or issue finality is needed as part of the issuance of this guidance addressing compliance with the newly-changed provisions of § 20.1501 and newly-added paragraph (c) of § 20.1406.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of this regulatory guide. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

Dated at Rockville, Maryland, this 2nd day of December 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–31905 Filed 12–12–11; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 900

RIN 1901–AB18

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA). The proposed rule would require permitting entities to inform DOE of requests for authorizations required under Federal law for Qualifying Projects as defined in the rule, as well as establish a process whereby applicants for Federal authorizations for interstate electric transmission facilities that are not Qualifying Projects can request DOE assistance in the Federal authorization process. Also, the proposed rule provides for the selection of a Federal Lead Agency responsible for compiling a single environmental review document, and a consolidated administrative record, for Qualifying Projects. In addition, the proposed rule provides for the establishment of intermediate and final deadlines for the review of Federal authorization decisions, as well as establishing a date certain after which all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within one year, or as soon thereafter as practicable in compliance with Federal law.

DATES: Public comment on this proposed rule will be accepted until January 27, 2012.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Proposed 216(h) Regulations,'' by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: Brian.Mills@hq.doe.gov. Include ''Proposed 216(h) Regulations'' in the subject line of the message.

Mail: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 586–8267, email *Brian.Mills@hq.doe.gov*, or Lot Cooke, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC–76, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 586–0503, email *Lot.Cooke@hq.doe.gov*.

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I. Background

A. Statutory Authority and Rulemaking History

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct05) added a new section 216 to the FPA (16 U.S.C. 791–828c) which deals with the siting of interstate electric transmission facilities. Section 216(h) of the FPA (16 U.S.C. 824p(h)), which is titled ''Coordination of Federal Authorizations for Transmission Facilities,'' provides for DOE to coordinate all applicable Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews.

Section 216(h) of the FPA provides for the coordination of Federal transmission siting determinations for entities seeking permits, special use authorizations, certifications, opinions, or other approvals required under Federal law to site electric transmission facilities. This coordination avoids duplicative review processes by various Federal agencies. In addition, section 216(h) also provides that Indian tribes, multi-State entities, and State agencies that have their own separate permitting and environmental reviews can

participate in the coordinated Federal review process if they so choose.

On October 23, 2009, nine Federal agencies with permitting or other Federal authorization responsibility for the siting of electric transmission facilities entered into a ''Memorandum of Understanding Regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land'' (2009 MOU).[1] The signatories to the 2009 MOU were DOE, the Departments of Defense, Agriculture (USDA), the Interior (DOI), and Commerce, the Federal Energy Regulatory Commission (FERC), the Environmental Protection Agency, the Council on Environmental Quality, and the Advisory Council on Historic Preservation. The purpose of the 2009 MOU is to establish a framework for early cooperation and participation among the signatories that will: (1) Expedite the siting and construction of qualified electric transmission infrastructure in the United States; (2) improve coordination among Federal authorization applicants, Federal agencies, and states and tribes involved in the siting and permitting process; and (3) improve uniformity, consistency, and transparency by setting forth the roles and responsibilities of Federal agencies in the siting and construction of qualifying projects.

On September 19, 2008, DOE published an interim final rule establishing procedures under which entities may request that DOE coordinate Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews pursuant to FPA section 216(h) (73 FR 54456). The interim final rule became effective on October 20, 2008, and the regulations can be found at 10 CFR 900.1–900.6. Also on September 19, 2008, DOE published a notice of proposed rulemaking (NOPR) which proposed amendments to the interim final rule (73 FR 54461). This proposed rule would amend the interim final rule and replaces the 2008 NOPR. These proposed regulations, subject to revisions based on comments received in response to this NOPR, and in conjunction with the 2009 MOU, would govern DOE's coordination of electric transmission facilities permitting requests under section 216(h) of the FPA.

Comments were filed in response to the 2008 interim final rule and 2008 NOPR.[2] In Section II of today's NOPR, DOE addresses the comments submitted in response to both the interim final rule and the 2008 NOPR. All references to comments in this NOPR are to comments filed in response to the 2008 interim final rule and 2008 NOPR.

B. Interpretation of Key Terms

Under FPA section 216(h)(2), DOE is required to ''act as the lead agency for purposes of *coordinating* all applicable Federal authorizations and related environmental reviews'' (emphasis added). DOE interprets the term ''lead agency'' as used in FPA section 216(h)(2) as requiring DOE to coordinate the necessary environmental reviews conducted by other Federal agencies and to ensure that one Federal agency is responsible for preparing a uniform environmental review document. Therefore, DOE would coordinate the selection of a Lead Agency. The selection would be based on land management interests or the recommendations of other participating agencies. The Lead Agency would prepare the environmental review under the National Environmental Policy Act (NEPA). Consistent with the 2009 MOU and in accordance with NEPA regulations issued by the Council on Environmental Quality at 40 CFR part 1500 *et seq.,* this proposal would ensure that the agency with the most relevant subject matter expertise conducts the required environmental reviews. In those circumstances where DOE has a permitting role (*e.g.,* international transmission lines, transmission lines built by the Power Marketing Administrations (PMAs)), DOE may be the Lead Agency for preparing the NEPA compliance document and other environmental, cultural, and historic preservation reviews. For all other types of transmission projects in which DOE has no permitting role, however, DOE will work with the permitting entities responsible for issuing Federal authorizations in coordinating the selection of the appropriate permitting entity to be the Lead Agency for preparing NEPA compliance documents in accordance with the 2009 MOU, 40 CFR part 1500 *et seq.,* and these proposed regulations.

DOE believes that its coordination responsibilities set forth in section 216(h) are intended to give an applicant seeking one or more Federal authorizations for the construction or modification of electric transmission facilities access to a process under which all Federal reviews are made in an efficient and coordinated manner. The NOPR also provides a discretionary process for applicants seeking only one authorization to ask for DOE assistance. In the 2008 interim final rule, DOE determined that its coordination of Federal authorizations would be most beneficial as a request driven process. In a request driven process, DOE would provide coordination only in circumstances where an applicant for Federal authorizations determined that it would be beneficial for DOE to perform that role.

The parties to the 2009 MOU determined, however, that there should be a mechanism for Federal coordination, and the selection of a Lead Agency for all Qualifying Projects, without the need for an applicant to request coordination. This would place the responsibility to undertake the coordination process on the Federal authorizing agencies and ensure that coordination takes place as intended by the statute. The 2009 MOU defines Qualifying Projects as ''high voltage transmission line projects (generally 230 kV or above), and their attendant facilities, or otherwise regionally or nationally significant transmission lines and their attendant facilities, in which all or part of a proposed transmission line crosses jurisdictions administered by more than one Participating Agency.'' This proposed rule would codify the 2009 MOU coordination process for Qualifying Projects, and, in addition, provide for the discretionary coordination of Federal authorizations for projects other than Qualifying Projects.

DOE, in coordination with other participating agencies, has established a transmission tracking system Web site: *http://www.doe-etrans.us.* The Web site includes Qualifying Projects, as well as projects that are not Qualifying Projects, under the MOU or these proposed regulations. For example, the Web site lists the application of Garkane Energy to the Forest Service for authorization to construct a 138 kV line. All other projects currently listed on the Web site are Qualifying Projects.

II. Discussion of Proposed Rule

A. Purpose

Section 900.1 states the purpose of the regulations, which is to provide a

[1] The MOU is available at *http://www.oe.energy.gov/668.htm.* The 2009 MOU superseded an August 8, 2006 MOU pertaining to FPA section 216(h) coordination and signed by the same Federal agencies.

[2] Comments on the interim final rule were filed by the Allegheny Energy Companies (Allegheny), the Public Utility Commission of the State of California, the American Transmission Company LLC, the utility companies of the American Electric Power System Southern California Edison Company, and the Western Business Roundtable. Edison Electric Institute filed consolidated comments on the interim final rule and the NOPR, and Allegheny filed separate comments on the NOPR.

process for the timely coordination of Federal authorizations for proposed transmission facilities pursuant to FPA section 216(h).

B. Applicability

Section 900.2 of the proposed rule explains when the provisions of Part 900 would apply to the coordination of Federal authorizations. The provisions of Part 900 would apply to Qualifying Projects, and would also apply to Other Projects at the discretion of the Director of Permitting and Siting within DOE's Office of Electricity Delivery and Energy Reliability. Both types of projects must be for transmission facilities that are used for the transmission of electric energy in interstate commerce, but Qualifying Projects are generally 230 kV or above and cross jurisdictions administered by more than one Participating Agency.

Further, there would be no coordination of Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas (ERCOT) interconnection because section 216(k) of the FPA states that section 216 of the FPA shall not apply within the ERCOT area (16 U.S.C. 824p(k)). Section 900.2 also provides that section 216(h) does not apply when an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or a pre-filing procedure has been initiated, under section 216(b) of the FPA (16 U.S.C. 824p(b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridor). In those circumstances, DOE has delegated its section 216(h) coordination authority to FERC [3] and, in Order No. 689, FERC adopted regulations setting forth the procedures it will follow in such circumstances. Furthermore, the MOU does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, or facilities constructed by PMAs.[4]

Comments

Edison Electric Institute (EEI) requested that ''DOE delete this limitation (to transmission in interstate commerce), or at a minimum * * * indicate that this will not be a substantial hurdle to DOE exercising lead-agency authority.'' The Public Utilities Commission of the State of California (CPUC) and the Western Business Roundtable (Roundtable) also expressed concerns with this limitation.

DOE Response

This limitation on the applicability of the regulations is consistent with the intent of section 216 of the FPA, which is titled ''Siting of Interstate Electric Transmission Facilities,'' and is consistent with the definition of transmission facilities used by FERC in Order No. 689 (regulations regarding application for permits to site electric transmission facilities issued under section 216 of the FPA).[5] This limitation, however, does not restrict the Federal authorization coordination process only to electric transmission facilities that cross state lines. The facility need only be for the transmission and sale at wholesale of electricity in interstate commerce. This distinction is consistent with the general division of Federal and State authority found in the FPA, with Federal authority over interstate transmission and wholesale sales and State authority over distribution.

Comments

EEI expressed concern with DOE's determination that the rule is not applicable if a pre-filing procedure pursuant to FERC Order No. 689 has been initiated. EEI pointed out that DOE's delegation of its FPA 216(h) coordination authority to FERC applies only after an application for siting an electric transmission facility has been filed with FERC, not when the FERC pre-filing process starts. Also, EEI stated that in a situation where the Federal authorization coordinating process has begun prior to an application for siting before FERC, DOE needs to ensure a smooth transition of lead agency authority to FERC. In comments on the interim final rule, the CPUC commented that it did not oppose this determination because FERC has set forth the procedure that it will follow in such circumstances.

DOE Response

Under FERC Order No. 689, a major portion of the environmental review will be started and undertaken during FERC's pre-filing process. In addition, FERC intends that permitting entities be included in this process. Therefore, it would be duplicative for DOE to simultaneously engage in an FPA 216(h) coordination process for the same electric transmission facilities.

C. Definitions

Section 900.3 would provide definitions applicable to these regulations.

D. Pre-Application Procedures

Section 900.4(a) would implement section 216(h)(4)(C) of the FPA. Section 900.4(b) would codify procedures provided for in the 2009 MOU. It would require permitting entities contacted by prospective applicants for Federal authorization to site electric transmission facilities to notify participating agencies of Qualifying Projects and facilitate a pre-application meeting for prospective applicants and relevant Federal and state agencies and Tribes to communicate key issues of concern, explain applicable processes, outline data requirements and applicant submissions necessary to complete the required Federal agency reviews in a timely manner, and to establish schedules. The section 900.4(a) pre-application mechanism is required by statute and involves a submission of a request by a prospective applicant, while section 900.4(b) codifies a responsibility undertaken by the Participating Agencies in the 2009 MOU.

Comments

Regarding the pre-application mechanism provided for in section 900.4 of the 2008 interim final rule, Allegheny Energy Companies (Allegheny) commented that:

First, the request for information must originate from an applicant or prospective applicant and be directed to a ''permitting entity; with notice to DOE of the request. Second, requests are required to ''specify in sufficient detail the information sought from the permitting entity and shall contain sufficient information for the permitting entity to provide the requested information.'' Third, the permitting agency has 60 days from receipt of the information request to provide, ''to the extent permissible under existing law,'' information concerning the request to the applicant or prospective applicant, and DOE. Notably, DOE's pre-application mechanism does not include any explicit mention of the two specific categories of information noted in FPA, section 216(h)—key issues of concern and the

[3] Department of Energy Delegation Order No. 00–004–00A, section 1.22, issued May 16. 2006.

[4] DOE does not consider applications to the PMAs for transmission interconnections to be Federal authorization request within the meaning of 216(h). In those circumstances the PMAs are not functioning as Federal agencies considering requests for permits, special use authorizations, certifications, opinions, or other approvals, but are acting in their capacity as transmitting utilities. Moreover, section 216(h) specifically provides that nothing in it affects any requirements of U.S. environmental laws, and this exemption does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

[5] Establishing Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69,440 (December 1, 2006), FERC Stats. & Regs. ¶ 31,234.

likelihood of approval for a potential facility. Rather, the proposed pre-application section merely makes a passing reference to requests for information pursuant to section 216(h)(4)(C). (Footnotes omitted.)

Allegheny contended that ''as drafted, proposed section 900.4 frustrates the clear purpose of FPA, section 216(h)(4),'' and provided suggested substitute language for that provision of the regulations. Allegheny also suggested adding language to the effect that ''agencies must ensure that they do not make any pre-decisional commitments regarding their future consideration of a permit application or authorization request.''

DOE Response

DOE does not believe that section 900.4, as drafted in the 2008 interim final rule, would frustrate the purpose of FPA section 216(h)(4). FPA section 216(h)(4) directs DOE to provide ''an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved * * *.'' Section 900.4(a) of this NOPR would provide such a mechanism. To address Allegheny's comment, however, the proposed rule includes the statutory specifications that a permitting or potential permitting entity should provide information concerning the likelihood of approval for a potential facility and key issues of concern to the agency and public, while stating that the provision of such information does not constitute a commitment by the permitting entity to approve or disapprove the Federal authorization request.

DOE retained the language requiring persons requesting information from a Federal agency pursuant to FPA section 216(h)(4)(C) to supply sufficient details to allow the agency to provide the information requested. A permitting entity cannot provide answers to the questions posed in FPA section 216(h)(4) without knowing the nature and the scope of the facilities to which the information request pertains. DOE will work with persons seeking information under section 900.4(a) and permitting entities to ensure the pre-application mechanism functions properly.

In addition, DOE retained the ''to the extent permissible under existing law'' language. We also included language in section 900.4(a)(4) specifying that information given to an applicant shall not constitute a commitment by the permitting entity to approve or disapprove any Federal authorization request.

E. Notification of Requests for Federal Authorizations and Requests for DOE Assistance in the Federal Authorization Process

Section 900.5 of the proposed rule would require a permitting entity contacted regarding, or in receipt of, an application for a Federal authorization for a Qualifying Project to inform the DOE's Director of Permitting and Siting in the Office of Electricity Delivery and Energy Reliability (Director) within ten working days of being contacted or of receipt of an application. In addition, persons seeking Federal authorizations for projects that are not Qualifying Projects can file written requests to DOE for assistance in the Federal authorization process.

Comments

Based on the 2008 NOPR, Allegheny recommended that the rule be changed to require permitting entities to notify DOE within one week of receiving the application for a Federal authorization if the project is: (1) Equal or greater than 230 kV; (2) reasonably likely to require an EIS; or (3) reasonably likely to require more than one Federal authorization. Allegheny's recommendation was based on language in the superseded 2006 MOU. EEI urged ''DOE to require notification from a federal authorizer any time an application for a permit is filed, not just for those projects that will require an EIS.''

DOE Response

In response to Allegheny's comment, the proposal that DOE be notified within 10 days of all proposals for qualifying projects is consistent with the 2009 MOU, and DOE does not believe that the additional few days would make a significant difference in the review process for an application. In response to EEI's comments, DOE notes that Federal authorizing agencies informed DOE that there are thousands of Federal authorization requests each year. For example, the Army Corps of Engineers authorizes over 60,000 projects under section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act annually. Thus, requiring by rule that Federal authorizing agencies inform DOE of every request for a Federal authorization would be overly burdensome. Moreover, persons proposing to construct an electric transmission facility that is not a Qualifying Project can utilize the procedure in section 900.5(b) of the NOPR to request DOE assistance in the Federal authorization process.

F. Selection of Lead Agency and Coordination of Permitting and Related Environmental Reviews

Section 900.6(a) provides, consistent with the process agreed to in the 2009 MOU, that DOE will coordinate the selection of a Lead Agency responsible for compiling a single environmental review document and consolidated administrative record for Qualifying Projects. For Qualifying Projects that cross DOI administered lands (including trust or restricted Indian lands) or USDA administered lands, the DOI and USDA would consult and jointly determine: (1) Whether a sufficient land management interest exists to support their assumption of the Lead Agency role and (2) if so, which of the two agencies should assume that role. The DOI and USDA would notify DOE of their determination in writing or electronically. Unless DOE in writing or electronically notifies DOI and USDA of its objection to such determination within two business days, such determination is deemed accepted. When the Lead Agency is not established as described above, the relevant participating agencies will consult and jointly determine a lead agency within 20 days after determining that a proposal is a Qualifying Project. The agencies will notify DOE of their determination in writing or electronically. Unless DOE in writing or electronically notifies those participating agencies of its objection within two business days, such determination is deemed accepted.

In addition, section 900.6(b) provides that for projects that are not Qualifying Projects (defined in section 900.3 as Other Projects), an applicant can request the Director to assist it in the Federal authorization process, and the Director may do so at the Director's discretion. If DOE decides to provide authorization assistance, DOE will work with the Federal authorizer(s) to determine a Lead Agency.

Finally, section 900.6(c) states that non-Federal entities that have their own separate non-Federal permitting and environmental reviews may elect to participate in the coordination process under this section, including becoming cooperating agencies.

Comments

In the preamble to the 2008 interim final rule, DOE stated that in its view section 216(h) is intended to give an applicant seeking more than one Federal authorization for the construction or modification of electric transmission facilities access to a process under which all Federal reviews are made in

an efficient and coordinated manner. This view is consistent with the definition of a Qualifying Project contained in this NOPR. EEI and Roundtable urged DOE to reconsider this language. Roundtable stated: ''Applicants should not be precluded from having DOE serve as lead agency merely because only one federal permitting entity is involved.''

DOE Response

FPA section 216(h)(2) states that DOE ''shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility.'' DOE believes that its coordination role is best served for projects where more than one permitting entity is involved. Hence, it defined Qualifying Project as a project where the transmission line crosses jurisdictions administered by more than one participating agency. However, the definition of Other Projects in this NOPR provides an opportunity for an applicant to request DOE coordination for a project that only involves a single permitting entity.

Comments

Several commenters questioned DOE's determination that the term ''lead agency,'' as used in FPA section 216(h) makes the Department responsible for being the lead coordinating agency for environmental reviews, not the lead agency for preparing the environmental review under NEPA. EEI contented that ''the Department's statement in the preamble to the interim rule that the term 'lead agency' in section 216(h) means it is 'lead coordinating agency for environmental reviews, not the lead agency for preparing the environmental review under the National Environmental Policy Act,' is an incorrect interpretation of what the statute requires,'' and that ''the designation of the Department as the 'lead agency' clearly indicates that the Department's role under section 216(h) encompasses preparation of an environmental review document for the purposes of NEPA compliance.'' SCE stated that ''DOE was expressly charged by Congress with acting as the lead agency under the National Environmental Protection (sic) Act (''NEPA'') for conducting all of the necessary reviews required for Federal authorizations associated with the construction of transmission project on Federal lands.'' AEP commented:

> DOE interprets the requirement to prepare a consolidated environmental review document as merely requiring it to assemble the work of individual agencies and maintain the information available to be used—a clearing house function. AEP urges the DOE to establish a single environmental review document for electric transmission siting. Establishment of such a document for electric transmission siting will simplify the application process and eliminate the need to submit duplicate information to multiple state and Federal agencies.

In addition, AEP stated:

> In order for the single environmental review document to be effective at accelerating the approval process and eliminating duplication, it would also be helpful for DOE to create a comprehensive schedule for participating agencies. To accomplish this, the DOE should clearly define the roles that various entities will play within the approval process. This approval process could identify opportunities to expedite the process, such as opportunities to conduct joint public comment periods and public hearings when multiple agencies must consider the same or similar issues.

On the other hand, CPUC supported the rule's provision that DOE and the permitting entities responsible for issuing Federal authorizations will jointly decide the appropriate lead agency for NEPA purposes, but asked clarification of when DOE itself would be the lead agency.

DOE Response

Section 216(h)(2) requires DOE to act as the lead agency for the purposes of coordinating all applicable Federal authorizations and related environmental reviews of a facility. The phrase ''for the purposes of coordination'' of environmental reviews limits DOE's responsibility to coordination and does not require DOE to compile the environmental review document. It would be inefficient for DOE, rather than the agency with the most significant land management interests related to a Qualifying Project and with the most relevant subject matter expertise, to compile the document, particularly in those cases where DOE has no permitting role.

Consistent with the 2009 MOU, the proposed rule modifies the 2008 interim final rule to clarify the process by which DOE will coordinate the selection of the lead agency for compiling a single environmental review document and a consolidated administrative record for qualifying projects.

With respect to CPUC's request for clarification, DOE anticipates it will be the Lead Agency when an application for a Federal authorization has been submitted to DOE. DOE is responsible for authorizing exports of electricity under FPA section 202(e) (16 U.S.C. 824a(e)), and issuing Presidential permits for the construction, operation, maintenance and connection of electric transmission facilities at the international border pursuant to Executive Order (EO) 10485, as amended by EO 12038. Generally, when DOE is considering such Presidential permit applications it is the NEPA lead agency and anticipates that it will continue to be the Lead Agency under those circumstances. Similarly, when applications are filed with one of the PMAs, the PMA is expected to be the NEPA lead agency.

When DOE is not a permitting entity, however, the 2009 MOU provides a mechanism for DOE to coordinate the selection of a Lead Agency for qualifying projects. The selection will reflect the agency with the most significant land management interests related to a Qualifying Project, or the agency recommended by other participating agencies impacted by the project. This agency would be the Lead Agency for preparing NEPA compliance documents and other analyses required to comply with all environmental and cultural statutes and regulations under Federal law. This approach is consistent with FPA section 216(h)(2), as explained above. Consistent with section 216(h)(5)(A), however, DOE clarifies that its role as coordinator for the Federal authorization process will be much broader and more involved than simply acting as a clearing house and repository for environmental compliance information. DOE will establish a central source of information about section 216(h) activities and provide for public access to the information available from participating and cooperating agencies, as well as a schedule for each qualifying project. The Web site will be accessible through *http://www.oe.energy.gov/Fed_transmission.htm.* DOE also intends to be actively engaged in the coordination of Federal authorizations, including the establishment of timeframes for the submission of information, the scheduling of environmental scoping meetings, and appropriate milestones and deadlines.

G. Lead Agency Responsibilities

Section 900.7 delineates the responsibilities of the lead agency under the rule. These tasks include: Establishing and implementing preapplication consultation procedures, consulting with cooperating agencies, establishing a schedule, preparing a unified environmental review document, maintaining a consolidated administrative record, and other responsibilities enumerated in the rule.

In addition, section 900.7(i) provides that, to the extent practicable and consistent with Federal law, the Lead Agency may establish a procedure to

consolidate costs recoverable from the applicant to reimburse Federal agencies for costs incurred, issue bills for collection, and disburse funds to the appropriate Federal agencies.

H. Cooperating Agencies Responsibilities

Section 900.8 delineates the responsibilities of cooperating agencies. DOE notes that section 900.8(g) provides that Cooperating Agencies may enter into an interagency agreement with the Lead Agency to allow for the recovery of appropriate costs, and that the Cooperating Agencies would be responsible for providing the Lead Agency an accounting of billable costs as a result of the application and permitting process. These last two sections were not included in the MOU but will facilitate the Federal authorization decisionmaking process.

I. DOE Responsibilities

Section 900.9 provides DOE responsibilities under this part, including coordinating the selection of a Lead Agency, providing assistance to the Lead Agency and developing the public Web site.

J. Prompt and Binding Intermediate and Ultimate Deadlines

Consistent with FPA section 216(h)(4)(A), section 900.10 provides for the lead agency, in consultation with DOE, the project applicant, other affected parties, and cooperating agencies to establish an efficient project schedule, including intermediate and ultimate deadlines for the review of Federal authorization applications and decisions relating to proposed electric transmission facilities.

K. Deadlines for Final Decisions on Federal Authorization Requests

Consistent with FPA section 216(h)(4)(B), section 900.11 requires that all Federal permit decisions be completed in accordance with the following time-lines (unless another provision of Federal law does not permit a final decision within those timelines): (1) When a categorical exclusion or an environmental assessment (EA) and Finding of No Significant Impact (FONSI) is determined to be the appropriate level of review under NEPA, within one year of the categorical exclusion determination or publication of a FONSI; or (2) when an environmental impact statement (EIS) is required, one year and 30 days after the close of the public comment period for a Draft EIS.

The 2009 MOU sets the deadline in those instances within one year of the acceptance of a completed application. While the 2009 MOU provision may seem to establish a shorter deadline then this NOPR, the deadline is imprecise because the MOU contains no definition of a ''completed application.'' The language starting the one year deadline on the date of the NEPA determination is used in this proposed rule to establish a deadline that is easily determinable. DOE remains committed to working with the applicant and the lead and cooperating agencies to expedite the decision process, including final deadlines.

Comments

EEI and Roundtable objected to the one-year deadline for the completion of all Federal authorizations contained in the 2008 NOPR, which was substantially the same as proposed in this rule. EEI stated that ''none of these proposed triggers for the one-year period to begin find any support in the text of the statute, and none is lawful.'' Roundtable stated:

> Under EPAct05, there is a one-year window for states to complete their decisions prior to an applicant approaching FERC for a construction permit and a one-year window for Federal agencies to complete their decisions once an application has been submitted with necessary data. These provisions parallel one another, supporting the view that Congress intended a concurrent approach to federal and state decision-making.

DOE Response

Section 216(h)(4)(B) of the FPA provides that the Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary of Energy considers necessary, all permit decisions and related environmental reviews under Federal laws will be completed within one year or as soon thereafter as possible in compliance with Federal law. Roundtable compared this one year deadline to the one-year window for states to complete their decisions prior to an applicant applying to FERC for a construction permit under FPA section 216(b). DOE disagrees with Roundtable's comparison because FPA section 216(h)(4)(B) requires submission of an application ''with such data as the Secretary considers necessary.'' A permitting entity needs to have a completed, or substantially completed, environmental review before it can make a Federal authorization determination. Therefore, DOE has determined generally that permitting entities will have such data as the Secretary considers necessary one year after: (1) A determination by the permitting entity has been made that the Federal authorization is subject to a categorical exclusion, or an EA has been published which resulted in a FONSI; or (2) 30 days after the close of the comment period on the permitting entity's draft EIS. In addition, this determination is consistent with FERC Order No. 689, which contemplates a pre-filing period of a year, during which FERC will start its scoping and environmental review, before an application is filed and the FPA section 216(h)(4)(B) one year deadline begins to run.[6] Moreover, these proposed section 900.11 deadlines trigger the FPA section 216(h)(6) Presidential appeal process, so it is important that the deadlines are clear and determinable by both applicants and permitting entities.

Comments

EEI asked that DOE ''clarify that the one-year deadline applies not only to the record of decision but also to the issuance of the construction permit that allows dirt to be turned.''

DOE Response

In response to the clarification requested by EEI, section 900.11 states that the one-year deadline applies to all Federal authorizations or permits needed.

Comment

EEI and Roundtable raised concerns about the ability of a permitting entity to extend the one-year deadline if a requirement in another provision of Federal law does not permit a final decision on the Federal authorization request within one year under section 900.9 of the 2008 NOPR. EEI stated that ''this would allow a permitting agency to override the statutory one-year deadline with a cryptic one-sentence reference to NEPA or some other statute, without offering any explanation as to why an extension of the deadline is legally necessary.'' Allegheny expressed similar concerns over parallel language in section 900.8 of the 2008 NOPR.

DOE Response

Pursuant to the proposed rule, a permitting entity requesting extension of the one year deadline must inform the lead agency, cooperating agencies, the applicant, DOE and any other interested parties of the provision of Federal law that prevents the final decision on the Federal authorization request from being issued within one year of the deadline, an explanation of how the provision is applicable to the

[6] Establishing Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69,440 (December 1, 2006), FERC Stats. & Regs. ¶ 31,234, at para. 47.

permitting entity's Federal authorization determination and why the provision prevents the decision from being made within that time frame, and the date when the final decision on the authorization request can be issued in compliance with Federal law.

III. Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these regulations fall into the class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an EA nor an EIS is required. Documentation of the use of this categorical exclusion has been completed and is available for review on DOE's Web site *http://www.oe.energy.gov/1260.htm.*

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule establishes procedures for DOE coordination of Federal authorizations for the siting of interstate electric transmission facilities. As a result, the rule directly impacts only Federal agencies and not any small entities. In those cases where an applicant requests DOE assistance for a project that is not a qualifying project, DOE expects that the provisions of this proposed rule, if adopted, would not affect the substantive interests of such applicants, including any applicants that are small entities. DOE expects that actions taken under these proposed provisions to coordinate and speed the issuance of decisions on requests for Federal authorizations would lessen the burden of applying for a Federal authorization on applicants, and that any applicant requesting DOE assistance has made the calculation that such a request was in the best interests of the applicant. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for requesting information during the pre-application process is estimated to average 30 minutes per response. Public reporting burden for requesting DOE assistance in the Federal authorization process is estimated to average one hour per response. Both of these burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Brian Mills at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by States, Tribal or local governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State, tribal or local governments on a proposed significant intergovernmental mandate, and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published today does not contain any Federal mandates affecting States, tribal, or local governments, or the private sector, so these requirements do not apply.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. No further action is required by the executive order.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the proposed rule published today does not have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule has also not been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs. Therefore, the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 900

Electric power, Electric utilities, Energy, Reporting and recordkeeping requirements.

Issued in Washington, DC on December 2, 2011.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

For the reasons set forth in the preamble, the Department of Energy is proposing to amend chapter II of title 10 of the Code of Federal Regulations by revising part 900 to read as set forth below:

PART 900—COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

Sec.
900.1 Purpose.
900.2 Applicability.
900.3 Definitions.
900.4 Pre-application procedures.
900.5 Notification of requests for Federal authorizations for Qualifying Project and requests for DOE assistance in the Federal authorization process.
900.6 Selection of lead agency and coordination of permitting and related environmental reviews.
900.7 Lead agency responsibilities.
900.8 Cooperating agencies' responsibilities.
900.9 DOE responsibilities.
900.10 Prompt and binding intermediate milestones and ultimate deadlines under the Federal Power Act.
900.11 Deadlines for all permit decisions and related environmental reviews pursuant to the Federal Power Act.

Authority: 16 U.S.C. 824p(h).

§ 900.1 Purpose.

This part provides a process for the timely coordination of Federal authorization requests for proposed transmission facilities pursuant to section 216(h) of the FPA (16 U.S.C. 824p(h)). These regulations provide a framework for cooperation and for the compilation of uniform environmental review document in order to coordinate all permitting and environmental reviews required under Federal law to site qualified electric transmission facilities. They also provide an opportunity for non-Federal entities to coordinate their own separate non-Federal permitting and environmental reviews with that of the Federal permitting entities.

§ 900.2 Applicability.

(a) The regulations under this part apply to Qualifying Projects for which Federal authorizations are required to site transmission line projects that are generally 230,000 volts (230 kV) and above and their attendant facilities, or regionally or nationally significant transmission line and their attendant facilities. Such transmission line projects must require more than one Federal authorization, and all or part of a proposed transmission line must cross jurisdictions administered by more than one participating agency. Such transmission line projects must also be used for the transmission of electric energy in interstate commerce for sale at wholesale. The provisions of Part 900 would also apply to Other Projects at the discretion of the Director. Other Projects must also be transmission facilities that are used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale, but do not need to meet the 230 kV or above qualification, be regionally of nationally significant, or cross jurisdictions administered by more than one Participating Agency.

(b) This part does not apply to Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas interconnection.

(c) This part does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, or the facilities constructed by Federal Power Marketing Administrations. However, section 216(h) does not affect any requirements of U.S. environmental laws, and this exemption does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

(d) This part does not apply to Federal authorizations in regard to transmission facilities where an application has been submitted to the Federal Energy Regulatory Commission (FERC) for issuance of a permit for construction or modification of transmission facilities under 18 CFR 50.6 or where pre-filing procedures have been initiated with FERC under 18 CFR 50.5.

(e) DOE, in exercising its responsibilities under this part, will consult regularly with FERC, electric reliability organizations, and transmission organizations approved by FERC.

§ 900.3 Definitions.

As used in this part:

Applicant means a person or entity who is seeking Federal authorization to construct electric transmission facilities.

Consolidated administrative record means the information assembled and maintained by the lead agency and utilized by the cooperating agencies/permitting entities as the basis for their Federal authorization decisions along with the final decision made by each permitting entity.

Cooperating agencies are those agencies that have jurisdiction by law regarding a proposed project, or that otherwise have special expertise with respect to environmental and other issues pertinent to Federal agency reviews. States, tribes and local governments with relevant expertise or authority, or that are potentially affected by or interested in a project, can also be cooperating agencies.

Director means the Director of Permitting and Siting within DOE's Office of Electricity Delivery and Energy Reliability.

DOE means the United States Department of Energy.

Federal authorization means any authorization required under Federal law to site a transmission facility, including permits, special use authorizations, certifications, opinions, or other approvals. This term includes authorizations issued by Federal and non-Federal entities that are responsible for issuing authorizations under Federal law for a transmission facility.

FPA means the Federal Power Act (16 U.S.C. 791–828c).

Indian tribe has the same meaning as provided in 25 U.S.C. 450b(e).

Lead Agency means the Federal agency, selected as provided for in these rules, to coordinate Federal authorizations and related Federal agency reviews pursuant to this part.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Non-Federal entities mean local government agencies with relevant expertise or authority that are potentially affected by or are responsible for conducting any separate permitting and environmental reviews of the proposed facilities.

Other projects mean transmission facilities that are not qualifying projects. Other projects must be used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale, but do not need to meet the 230 kV or above qualification, be regionally or nationally significant, or cross jurisdictions administered by more than one Participating Agency.

Participating agency means a signatory of the MOU executed on October 23, 2009. The participating agencies are DOE, the Departments of Defense, Agriculture (USDA), the Interior (DOI), and Commerce, FERC, the Environmental Protection Agency, the Council on Environmental Quality, and the Advisory Council on Historic Preservation.

Permitting entity means any Federal or non-Federal entity that is responsible for making a determination on issuing an authorization required to site an electric transmission line.

Qualifying Projects are high voltage transmission line projects (generally 230 kV or above) and their attendant facilities, or otherwise regionally or nationally significant transmission lines and their attendant facilities, in which all or part of a proposed transmission line crosses jurisdictions administered by more than one participating agency and is used for the transmission of electric energy in interstate commerce for sale at wholesale. This definition is consistent with FERC Order No. 689 (regulations regarding application for permits to site electric transmission facilities issued under section 216 of the FPA) and may include intrastate facilities.

Single environmental review document means the material that the cooperating agencies develop—with the lead agency being primarily responsible—to fulfill Federal obligations for preparing NEPA compliance documents and all other analyses required to comply with all environmental, tribal consultation, cultural and historic preservation statutes and regulations under Federal law. This information shall be available to the applicant, all cooperating agencies, DOE, and all Indian tribes, multistate entities, and State agencies that have their own separate non-Federal permitting and environmental reviews.

§ 900.4 Pre-application procedures.

(a) Pre-application mechanism:

(1) An applicant, or prospective applicant, for a Federal authorization may request information from a permitting or potential permitting entity concerning the likelihood of approval for a potential facility and key issues of concern to the agency and public. The applicant or prospective applicant requesting information from a permitting or potential permitting entity shall notify the Director of the request to the entity.

(2) Any request for information filed under this section shall specify the information sought from the permitting entity in sufficient detail for the permitting entity to provide the requested information.

(3) Within 60 days of receipt of such a request for information, a permitting entity shall provide, to the extent permissible under existing law, information addressing the request to the applicant, or prospective applicant, and the Director.

(4) The provision of such information does not constitute a commitment by the permitting entity to approve or disapprove any Federal authorization request.

(b) Additional pre-application procedures:

Permitting entities contacted by prospective applicants for Federal authorization to site electric transmission facilities will notify participating agencies of Qualifying Projects and facilitate a pre-application meeting for prospective applicants and relevant Federal and state agencies and Tribes to communicate key issues of concern, explain applicable processes, outline data requirements and applicant submissions necessary to complete the required Federal agency reviews in a timely manner, and to establish schedules.

§ 900.5 Notification of requests for Federal authorizations for Qualifying Project and requests for DOE assistance in the Federal authorization process.

(a) *Qualifying Projects.* When one or more permitting entities determine that a project may be a Qualifying Project, those entities will, within 10 days, notify DOE of that determination. The notification is to be made to the Director, Permitting and Siting, ATTN: Transmission Coordination, U.S. Department of Energy, OE–20, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue SW., Washington, DC 20585 or electronically to *transmissioncoordination@hq.doe.gov.*

(b) *Other Projects.* Persons seeking DOE assistance in the Federal authorization process for Other Projects shall file a request for coordination with the Director. The request shall contain:

(1) The legal name of the requester; its principal place of business; whether the requester is an individual, partnership, corporation, or other entity; the State laws under which the requester is

organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;

(2) A concise general description of the proposed transmission facility sufficient to explain its scope and purpose;

(3) A list of all permitting entities from which Federal authorizations pertaining to the proposed transmission facility are needed, including the docket numbers of pending applications with permitting entities;

(4) A list of non-Federal entities (*i.e.,* state government agencies) that have their own separate non-Federal permitting and environmental reviews pertaining to the proposed transmission facility, including the docket numbers of relevant applications.

(c) *Written request.* The written request for coordination may be filed by mail or hand delivery with the Director at 1000 Independence Avenue SW., Washington, DC 20585, or electronically in MS Word or PDF formats at *Brian.Mills@hq.doe.gov.* Electronic filing is DOE's preferred method. If filing by hand or mail, DOE requests that an electronic copy be filed as well.

§ 900.6 Selection of lead agency and coordination of permitting and related environmental reviews.

(a) *Qualifying Projects.* (1) As provided in paragraphs (a)(2) and (3) of this section, DOE will coordinate the selection of a Lead Agency responsible for compiling a unified environmental review document and consolidated administrative record for qualifying projects. The selection will recognize the agency with the most significant land management interests related to the qualifying project or the agency recommended by other cooperating agencies to be the lead agency. Determination of the lead agency for preparing NEPA documents shall be in compliance with regulations issued by the Council on Environmental Quality at 40 CFR part 1500 *et seq.*

(2) For Qualifying Projects that cross DOI-administered lands (including trust or restricted Indian lands) or USDA-administered lands, DOI and USDA will consult and jointly determine within 20 days after determining that a proposal is a Qualifying Project:

(i) Whether a sufficient land management interest exists to support their assumption of the lead agency role; and

(ii) If so, which of the two agencies should assume that role. DOI and USDA will notify DOE of their determination in writing or electronically within 10 days of making the determination. Unless DOE in writing or electronically notifies DOI and USDA of its objection to such determination within two business days of the DOI/USDA notification, such determination is deemed accepted and final.

(3) When the Lead Agency is not established pursuant to paragraph (a)(2) of this section, the cooperating agencies will consult and jointly determine a Lead Agency within 20 days after determining that a proposal is a Qualifying Project. No determination of an agency as a Lead Agency under this rule shall be made absent that agency's consent. The agencies will notify DOE of their determination in writing or electronically within 10 days of making the determination. Unless DOE in writing or electronically notifies those cooperating agencies of its objection within two business days of the cooperating agencies notification, such determination is deemed accepted and final.

(b) *Other Projects.* For Other Projects, pursuant to § 900.5(b), an applicant can file a request for coordination with the Director for assistance in the Federal authorization process, and the Director may provide assistance at the Director's discretion. If DOE decides to provide authorization assistance, DOE will work with the permitting entity to determine a Lead Agency.

(c) Non-Federal entities that have their own separate non-Federal permitting and environmental reviews may elect to participate in the coordination process under this section, including becoming cooperating agencies.

§ 900.7 Lead agency responsibilities.

(a) The Lead Agency will consult fully with the cooperating agencies throughout the Federal authorization review process to improve coordination, identify and obtain relevant data in a timely manner, set schedules, and identify and expeditiously resolve issues or concerns.

(b) The Lead Agency will consult with DOE, the qualifying project applicant, other affected parties, and cooperating agencies to establish an efficient project schedule, including intermediate milestones and ultimate deadlines for the review of Federal authorization applications and decisions relating to proposed electric transmission facilities.

(c) The Lead Agency will prepare a unified environmental review document for the Qualifying Project, incorporating, to the maximum extent practicable, a single environmental record on which all entities with authority to issue authorizations for a given project can base their decisions.

(d) The Lead Agency will maintain a consolidated administrative record of the information assembled and utilized by the cooperating agencies as the basis for their decisions.

(e) The Lead Agency will, to the extent practicable and consistent with Federal law, ensure that all project data are submitted and maintained in electronic geospatial formats or other generally-accessible electronic forms (*e.g.,* geographic information system data including metadata descriptions meeting Federal Geographic Data Committee standards); compile and make available the information assembled and utilized by the cooperating agencies; and, as appropriate, provide public access to the data by maintaining on the agency Web site information and links to the information available from all cooperating agencies.

(f) The Lead Agency will establish any procedures necessary for it to coordinate the requirements of this part with other Federal and non-Federal entities.

(g) The Lead Agency will produce regular input to and updates of a DOE-maintained electronic project tracking system. The information provided by the lead agency will, as appropriate, be made available to the public as provided in § 900.9(e).

(h) The Lead Agency will inform cooperating agencies regarding new information and necessary changes related to the project.

(i) To the extent practicable and consistent with Federal law, the Lead Agency may establish a procedure to consolidate costs recoverable from the applicant to reimburse Federal agencies for costs incurred, issue bills for collection, and disburse funds to the appropriate Federal agencies.

§ 900.8 Cooperating agencies' responsibilities.

(a) Cooperating agencies will submit reviews in accordance with the timeline established by the Lead Agency after consultation with cooperating agencies.

(b) Cooperating agencies will provide personnel and/or expertise to the Lead Agency as agreed to by the cooperating agencies.

(c) Cooperating agencies will be responsible for the provision of any information necessary to complete application reviews and decisions in accordance with deadlines established by the Lead Agency after consultation with cooperating agencies.

(d) Each cooperating agency will assign a lead point of contact for coordination and consultation with the

Lead Agency during the pendency of Federal authorization requests.

(e) Each cooperating agency will share information and data with each other and, to the maximum extent practicable, submit information in a common standard for electronic recordkeeping and analysis.

(f) Cooperating agencies will ensure that any issues or problems relating to a Federal authorization request or process are brought to the immediate attention of the lead agency and DOE, and will participate fully in seeking and implementing resolutions to the issues or problems.

(g) Cooperating Agencies may enter into an interagency agreement with the Lead Agency to allow for the recovery of appropriate costs. The Cooperating Agencies would be responsible for providing the Lead Agency an accounting of billable costs as a result of the application and permitting process.

§ 900.9 DOE responsibilities.

(a) DOE will lead the overall coordination of activities related to implementation of section 216(h) of the FPA and pursuant to this part.

(b) DOE will coordinate the selection of the Lead Agency as specified in this part.

(c) DOE will provide expertise to assist the Lead Agency as required and ensure adherence to applicable schedules.

(d) DOE will provide assistance to the Lead Agency in establishing the schedule and will approve any deviation in the established project schedule.

(e) DOE will develop a public Web site to serve as a central source of information about section 216(h) of the FPA in general and links to the information available from participating and cooperating agencies, as well as schedule information about the specific transmission projects. The Web site can be accessed via *www.oe.energy.gov/fed_transmission.htm*.

§ 900.10 Prompt and binding intermediate milestones and ultimate deadlines under the Federal Power Act.

Pursuant to section 216(h)(4)(A) of the Federal Power Act:

(a) Permitting entities will work diligently to comply with the agreed-upon timeline, to the extent consistent with applicable law. To ensure adherence to applicable schedules, DOE will provide assistance to the lead agency in establishing the schedule and will approve any deviation in the established project schedule.

(b) No later than 30 days prior to any intermediate or ultimate deadline established under this part, any permitting entity subject to a deadline shall inform the lead agency, DOE, and the applicant if the deadline will not, or is not likely to, be met.

(c) The Lead Agency, in consultation with DOE and the permitting entity, may, for good cause shown, extend an interim or ultimate deadline.

§ 900.11 Deadlines for all permit decisions and related environmental reviews pursuant to the Federal Power Act.

Pursuant to section 216(h)(4)(B) of the Federal Power Act:

(a) All permit decisions and related environmental reviews under all applicable Federal laws shall be completed in accordance with the following timelines, except as provided in § 900.11(b):

(1) When a categorical exclusion under NEPA is invoked, or an environmental assessment (EA) finding of no significant impact (FONSI) is determined to be the appropriate level of review under NEPA, within one year of the categorical exclusion determination or the publication of a FONSI ; or

(2) When an environmental impact statement (EIS) is required pursuant to NEPA, one year and 30 days after the close of the public comment period for a Draft EIS.

(b) If a requirement in another provision of Federal law does not permit a final decision on the Federal authorization request under the schedule established in paragraph (a) of this section, the permitting entity shall inform the lead agency, DOE, cooperating agencies, the applicant, and other interested parties, cite the provision of Federal law that prevents the final decision on the Federal authorization request from being issued under the schedule established in paragraph (a) of this section, and provide a date when the final decision on the authorization request can be issued in compliance with Federal law.

[FR Doc. 2011–31759 Filed 12–12–11; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064–AD89

Mutual Insurance Holding Company Treated as Insurance Company

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing a rule (''Proposed Rule''), with request for comments, that provides for the treatment of a mutual insurance holding company as an insurance company for the purpose of Section 203(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), 12 U.S.C. 5383(e). The Proposed Rule clarifies that the liquidation and rehabilitation of a covered financial company that is a mutual insurance holding company will be conducted in the same manner as an insurance company. The Proposed Rule is intended to harmonize the treatment of mutual insurance holding companies under Section 203(e) of the Dodd-Frank Act with the treatment of such companies under state insolvency regimes.

DATES: Written comments on the Rule must be received by the FDIC no later than February 13, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for Submitting comments on the Agency Web Site.
- *Email: Comments@FDIC.gov.* Include ''RIN 3064–AD89'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–I002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATON CONTACT: R. Penfield Starke, Acting Assistant General Counsel, Legal Division, (703) 562–2422; Mark A. Thompson, Counsel (703) 562–2529.

SUPPLEMENTARY INFORMATION: