

WORK FOR OTHERS

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE

April 1993

INTRODUCTION

The National Environmental Policy Act (NEPA) of 1969, applies to all Federal actions. NEPA requires that all agencies integrate the NEPA process with early planning to ensure that planning and decisions reflect environmental values. This includes DOE's approval of Work For Others (WFO) proposed work to be performed by Management and Operating (M&O) Contractors or other DOE facility operators for Federal agencies other than DOE or for non-Federal Sponsors. The WFO community consists of those personnel within DOE and Contractor organizations with responsibility for approving, conducting, or supporting WFO projects.

Within the WFO community there is a need for additional guidance, clarification, and educational initiatives to assure that 1) NEPA is considered early in WFO planning, 2) a NEPA review is accomplished according to DOE requirements in a timely manner, and 3) DOE approval/authorization of a WFO project includes appropriate NEPA review and determination.

PURPOSE

The purpose of this brochure is to provide the WFO community general information regarding applicability of NEPA to WFO projects. In doing so, the intent is to assist in addressing the above identified needs; however, information herein is not meant to replace or be used in lieu of more detailed NEPA requirements and procedures found in applicable rules, regulations, and DOE Orders. This brochure contains information covering:

- o The establishment and purpose of NEPA,
- o NEPA applicability to WFO projects,
- o The levels of NEPA review and documentation,

- o How the NEPA process is related to the WFO project approval process,
- o Responsibilities and authorities, and
- o Process flow diagrams.

DOE Program Secretarial Officers (PSOs) and other Secretarial Officers (e.g., Assistant Secretaries for Defense Programs (DP) and Nuclear Energy (NE), Directors for Energy Research (ER) and Intelligence (IN), and others including AD-1, PR-1, SA-1, etc.) are responsible for consideration of environmental factors in decision making and the timely preparation of NEPA documents for actions under their authority. To assist in this effort, NEPA Compliance Officers (NCOs), supported by environmental staff as appropriate, have been designated within each Program and Field Office (FO). Contractors have environmental staff with one or more points of contact for NEPA-related matters. The Assistant Secretary for Environment, Safety and Health (EH-1) is responsible for Departmental oversight and guidance on NEPA-related matters. The Office of NEPA Oversight (EH-25) provides general oversight of efforts directed toward fulfilling Departmental responsibilities under NEPA.

BACKGROUND - NEPA

NEPA was established as a broad national environmental policy to ensure consideration is given to environmental values and factors in Federal decision making. NEPA also established the Council on Environmental Quality (CEQ) in the Executive Office of the President. The CEQ first issued regulations in 1978 binding all Federal agencies for implementation of NEPA provisions. These regulations (40 CFR 1500-1508) were republished July 1, 1986.

The DOE Guidelines for compliance with NEPA were revoked and replaced by the NEPA FINAL RULE. The FINAL RULE was published in the Federal Register April 24, 1992, and became effective May 26, 1992. The Rule revises Guidelines based on DOE's experience in NEPA implementation and incorporates policy initiatives proposed by the Secretary of Energy. These initiatives facilitate participation of the public, affected states, and Indian tribes in the

NEPA process. Also, the Rule includes an expanded and revised list of typical classes of actions (categorical exclusions) that normally do not require preparation of an environmental assessment or environmental impact statement. DOE Order 5440.1E, NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM, dated November 10, 1992, establishes DOE responsibilities and procedures to implement NEPA.

WFO - NEPA APPLICABILITY

NEPA focuses on assuring appropriate environmental considerations in Federal decision making. Since DOE approval of a WFO project and the associated authorization to start work is a Federal decision resulting in the execution of actions as described in the applicable WFO project Statement of Work, DOE's NEPA regulations apply to each WFO project.

For WFO performed at a DOE site, DOE takes responsibility for NEPA compliance. If the sponsoring agency has prepared NEPA documents, DOE may use them in its NEPA process if they contain information relevant to impacts at the DOE site.

Regarding WFO performed at a non-DOE site, when a Federal or non-Federal entity requests that the DOE Contractor perform work and non-DOE funding is involved, NEPA applies to the DOE decision to approve and authorize the Contractor to perform the work. When actions involve another Federal agency, that agency must consider NEPA requirements, as appropriate. For example, when work is to be performed by a DOE Contractor for a non-DOE Federal agency on non-DOE Federal property, the other Federal agency is responsible for assuring NEPA compliance for work-related activities.

For work performed for a non-Federal entity on non-Federal property, since the non-Federal entity funding the work is not making a Federal decision, it does not have NEPA compliance responsibilities. Even though the non-Federal entity has responsibility for compliance with applicable Federal, State, and local environmental laws and regulations, DOE should assure that work performed on non-Federal property by DOE Contractors is accomplished in an

environmentally acceptable manner. Accordingly, specific guidance covering DOE environmental responsibilities should be requested from the appropriate DOE NCO or EH-25.

When DOE and one or more additional Federal agencies propose or are involved in the same action or group of actions directly related to each other because of their functional interdependence or geographical proximity, DOE may wish to enter into a cooperative arrangement with the other agency(ies) to fulfill NEPA requirements. Such an arrangement may result in DOE being designated as the Lead Agency or Cooperating Agency. Examples of factors which may influence the designation of a Lead Agency are the 1) magnitude of each agency's involvement, 2) expertise regarding the action's environmental effects, 3) duration of each agency's involvement, and 4) sequence of each agency's involvement.

WFO - NEPA REVIEW

For each WFO project, DOE determines the appropriate level of NEPA review, i.e., categorical exclusion (CX), environmental assessment (EA), or environmental impact statement (EIS). This determination may be based on information provided by a Contractor which may include a recommendation of the appropriate level of NEPA review. PSOs are responsible for making decisions concerning the appropriate level of NEPA review (CX, EA, or EIS) for activities under their purview; however, PSOs may delegate to FO Managers certain decision-making authorities.

The US DOE WFO NEPA DETERMINATION Flow Diagram (Attachment A) is intended to assist the WFO community in better understanding the process flow required to assure proposed WFO projects are subjected to appropriate NEPA review. DOE FOs may wish to modify the flow diagram to reflect their individual relationship with DOE Area Offices and Contractors. The US DOE NEPA PROCESS Flow Diagram (Attachment B) focuses on details of the EA and EIS processes.

PRIOR NEPA

If a proposed WFO project is covered adequately within the scope of existing NEPA documentation, a new NEPA review is not required. The previous documentation should be referenced and an explanation of how the work is covered under that documentation, including copies of appropriate pages or references to them, should be included in appropriate WFO project files.

CATEGORICAL EXCLUSION (CX)

CX-A. CXs applicable to general DOE actions are covered in Appendix A to Subpart D of DOE's NEPA Regulations (10 CFR Part 1021). CX-As are typical classes of actions that DOE has determined do not individually or cumulatively have a significant impact on the human environment, i.e., do not require preparation of an EA or EIS; or are actions with impacts so remote or conjectural as to preclude meaningful consideration. Examples of CX-A actions are 1) routine administrative, financial, and personnel actions, 2) award of contracts for technical support and personal services, 3) information gathering, data analysis, document preparation, and dissemination, and 4) technical advice and planning assistance to organizations. Contractors are not required to submit CX-A documentation to DOE.

CX-B. CXs applicable to specific DOE actions are covered in Appendix B to Subpart D of DOE's NEPA Regulations. CX-Bs are typical classes of actions that DOE has determined do not individually or cumulatively have a significant impact on the human environment. Examples of CX-B actions are 1) facility operations such as installation, operation, or removal of communications systems, or data processing equipment; removal of asbestos from buildings; relocation of buildings; detonation or burning of failed or damaged high explosives or propellants; and acquisition or minor relocation of access roads, 2) safety and health activities, such as installation of equipment and facility improvements, 3) site characterization, monitoring, and general research such as small-scale research and development projects at an existing facility preceding demonstration; outdoor tests and experiments on materials and equipment components

with no source, special nuclear, or by-product materials involved, 4) certain conservation, fossil, and renewable energy activities, and 5) certain environmental restoration and waste management activities.

For WFO projects for which a CX-B is recommended, a brief description of the project, including environmental considerations, must be submitted to the DOE through appropriate Contractor channels. The DOE FO Manager (where delegated by the PSO) would then make the CX-B determination and transmit a copy to EH-25 and other appropriate DOE HQ offices.

ENVIRONMENTAL ASSESSMENT (EA)

An EA is an analysis of the environmental impacts which serves as the basis for a DOE determination whether to issue a Finding of No Significant Impact (FONSI) or to prepare an EIS. When an EA is necessary, it must be scheduled as part of the WFO project and funded by the WFO Sponsor. An EA may be prepared by the applicable DOE Contractor and is subject to FO and DOE HQ reviews with revisions as necessary.

Classes of actions that normally require EAs are covered in Appendix C to Subpart D of DOE's NEPA Regulations. Examples of these classes of actions are 1) Major Projects, 2) siting, construction, and operation of energy system prototypes, 3) siting, construction, and operation of research and development incinerators, and 4) siting, construction, operation, and decommissioning of a particle acceleration facility. For proposed actions listed in Appendix C to Subpart D of 10 CFR Part 1021, the FO Manager makes the appropriate EA determination, if delegated that authority. For those proposed actions not listed in Appendix C to Subpart D of 10 CFR 1021, the FO Manager may make a non-Subpart D determination, if delegated that authority from the PSO.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

An EIS is a detailed analysis required for a proposed action with potentially significant

environmental impacts; it must be prepared by a disinterested party to ensure an impartial analysis. DOE usually hires an outside company for this purpose. EIS activities include a Notice of Intent, public scoping meeting, EIS implementation plan, draft EIS, public review and comment period, public hearing, Final EIS, and Record of Decision (ROD). When an EIS is necessary, it must be scheduled as part of the WFO Project and funded by the WFO Sponsor.

Classes of actions that normally require EISs are covered in Appendix D to Subpart D of DOE's NEPA Regulations. Examples of these classes of actions are 1) Major Systems Acquisitions, 2) siting, construction, operation, and decommissioning of reactors, 3) siting, construction, and operation of major high-level waste treatment, storage, or disposal facilities, 4) siting, construction, or expansion of a transuranic waste disposal facility, and 5) siting, construction, and operation of non-research and development incinerators.

For proposed actions listed in Appendix D to Subpart D of 10 CFR Part 1021, the FO Manager makes the appropriate EIS determination, if delegated that authority. For actions not covered by Appendix D (EISs) to Subpart D of DOE's NEPA Regulations, DOE HQ (EH-1) will make all determinations whether to prepare EISs, based upon recommendations of the PSOs.

RESPONSIBILITIES & AUTHORITIES

DOE Contractor

- o Initiates consideration of NEPA early in the planning for WFO projects.
- o May recommend to DOE appropriate level of NEPA review (CX, EA, or EIS).
- o Provides supporting environmental review.
- o Identifies coverage under prior NEPA review.
- o May prepare draft EA and FONSI on request, if DOE determines an EA is required.
- o Supports EIS activities, as requested.
- o Assures schedule and cost of NEPA are included in the proposal submitted to DOE.

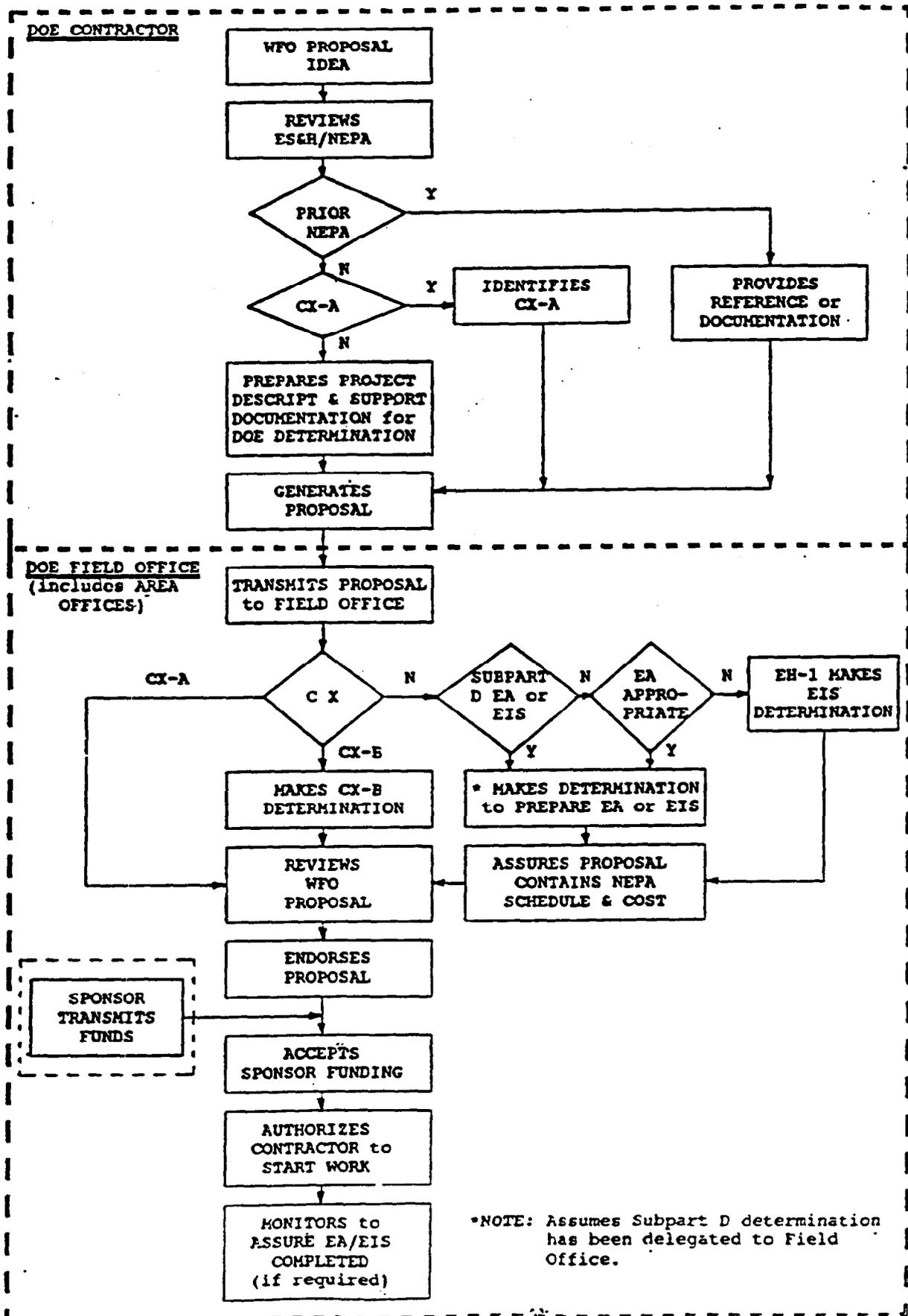
DOE Field Office

- o Makes CX, EA, EIS determinations for Subpart D actions, if authority has been delegated by PSOs.
- o Makes non-Subpart D EA determinations, if authority has been delegated.
- o Submits CX, EA, EIS recommendations to PSOs for Subpart D determinations, if authority has not been delegated.
- o Recommends non-Subpart D EA determinations to PSOs, if authority has not been delegated.
- o Reviews draft EAs, FONSI, and EIS; submits to PSOs with recommendation for approval.

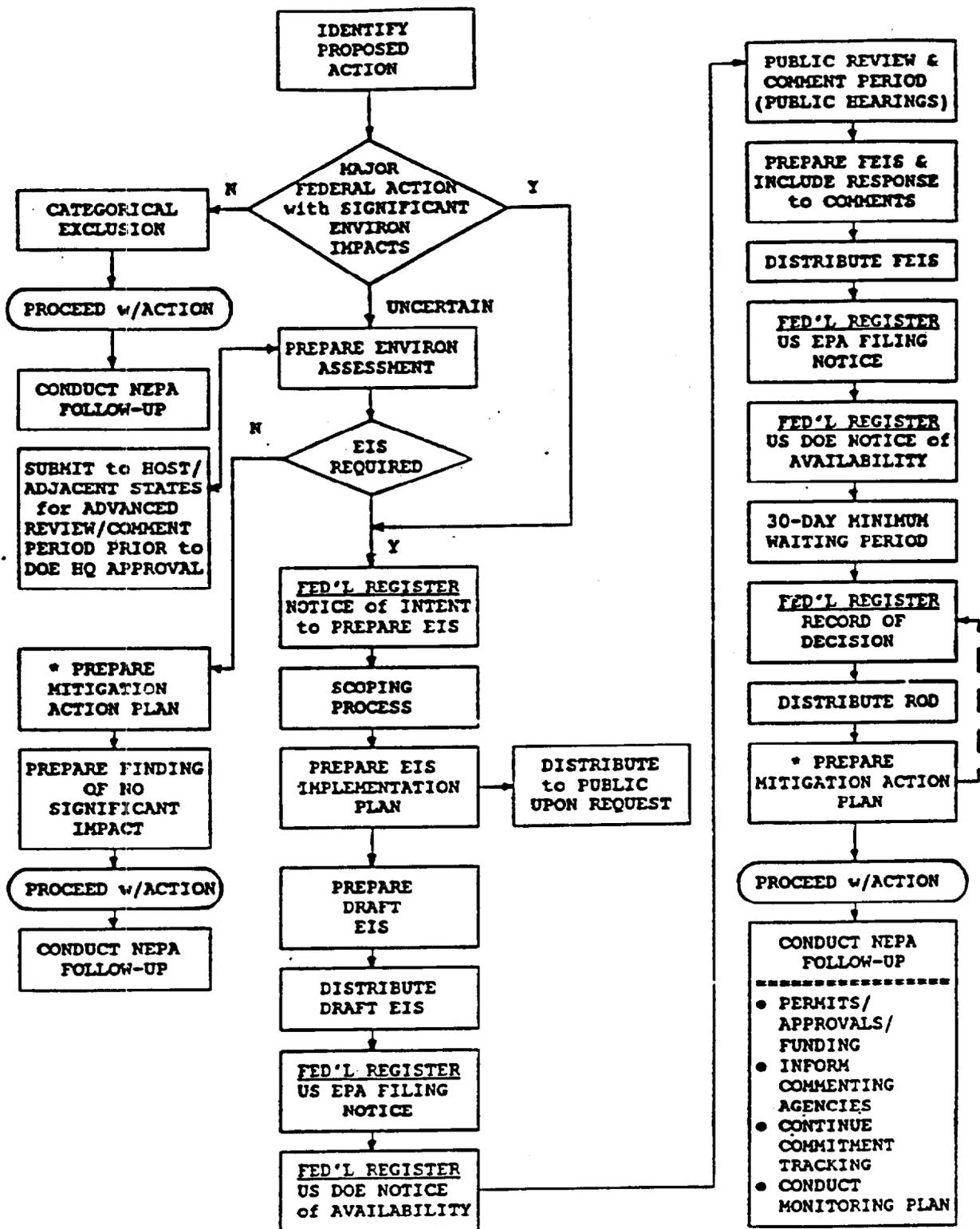
DOE Headquarters

- o PSOs make CX, EA, EIS determinations for Subpart D actions, if authority has not been delegated to the FO.
- o PSOs make determinations for non-Subpart D EAs, if authority has not been delegated to the FO.
- o PSOs make recommendations to EH-1 for non-Subpart D EIS determinations.
- o EH-1 make determinations for non-Subpart D actions requiring an EIS.
- o PSOs make recommendations to EH-1 for EAs, FONSI, and EIS.
- o EH-1 approves EAs, FONSI, EIS.
- o PSOs issue EAs, FONSI, EIS, and RODs.

ATTACHMENT A
US DEPARTMENT OF ENERGY WFO/NEPA DETERMINATION
 April 1993



ATTACHMENT B
US DEPARTMENT OF ENERGY NEPA PROCESS
 April 1993



* NOTE: Not required if FONSI/ROD is not based on mitigation measures.

LIST OF ACRONYMS

AD-1	Director, Administration & Human Resource Management
CEQ	Council on Environmental Quality
CX	Categorical Exclusion
CX-A	Categorical Exclusion - Appendix A
CX-B	Categorical Exclusion - Appendix B
DOE	Department of Energy
DP	Defense Programs
EA	Environmental Assessment
EH-1	Assistant Secretary for Environment, Safety & Health
EH-25	Office of NEPA Oversight
EIS	Environmental Impact Statement
ER	Energy Research
FO	Field Office
FONSI	Finding of No Significant Impact
HQ	Headquarters
IN	Intelligence
M&O	Management & Operating
NCO	NEPA Compliance Officer
NE	Nuclear Energy
NEPA	National Environmental Policy Act
PR-1	Director, Procurement, Assistance & Program Management
PSO	Program Secretarial Officer
ROD	Record of Decision
SA-1	Director, Security Affairs
WFO	Work For Others
US	United States