## **Opportunity for Public Comment**

## A. Written Comment Procedures

Interested persons, organizations and State governments are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the matters set forth in this notice to the address indicated at the beginning of this notice.

Comments (6 copies) should be identified on the envelope and on the documents themselves with the designation: "WAP Rulemaking, EE-RM-95-401, and must be received by the date specified at the beginning of this notice. Six copies should be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using Wordperfect 5.1. All comments received by the dates specified at the beginning of this notice and other information will be considered by DOE in the final rule. In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance with the Hearings and Dockets Office.

All comments received will be available for public inspection in the DOE Freedom of Information Office Reading Room at the address indicated at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make its own determination with regard to the confidential status of the information or data and treat it accordingly to its determination.

## B. Public Hearing Procedures

DOE will hold two public hearings on this proposed rule. The hearing will be held on the date and at the locations indicated at the beginning of this notice. Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may request an opportunity to make an oral presentation. A request to speak at a hearing should be addressed to the address or phone number indicated at the beginning of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of a group. The person should also provide a phone number where he or she may be reached during the day. Persons selected to be heard at a public hearing will be notified as to the approximate time they will be speaking. They should bring seven copies of their statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance by so indicating in the letter or phone call requesting an opportunity to make an oral presentation.

DOE reserves the right to select persons to be heard at the hearings, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to twenty minutes, or based on the number of persons requesting to speak.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing but will be conducted in accordance with 5 U.S.C. 553 and § 336 of the DOE Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, if time permits, each person may be given the opportunity to make a rebuttal or clarifying statement. These statements will be given in the order in which the initial statements were made and will be limited to five minutes each.

Any participant who wishes to ask a question of a speaker at the hearing may submit the question in writing to the registration desk. The presiding officer will determine whether the question is relevant and material and whether time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office Reading Room at the address indicated at the beginning of this notice. Any person may purchase a copy of the transcript from the hearing reporter.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

#### IV. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866. Accordingly, today's action was not subject to review under the Executive Order by the Office of Management and Budget.

# V. Review Under Executive Order 12778

Section 2 of E.O. 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in Sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulation to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, any effect on existing Federal law or regulation, and any retroactive effect; describes any administrative proceedings to be available to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposed regulation meets the requirements of §§ 2 (a) and (b) of E.O.

# VI. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or on the distribution of power among various levels of Government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation.

Today's regulatory action will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

# VII. Review Under the Regulatory Flexibility Act

The proposed regulations were reviewed under the Regulatory Flexibility Act, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any proposed regulation that will have a significant economic impact on a substantial