

Facility Seismic Safety. The Board followed up its Recommendation with a letter to the Deputy Secretary of Energy on March 15, 2010, that sought to determine whether DOE's current interpretation of 10 CFR Part 830 and DOE Standard 3009–94 still supports the principles of providing adequate protection of the public, workers, and the environment from the hazards of operating DOE's defense nuclear facilities. The Board's letter particularly expressed concern regarding the appearance that DOE's present interpretation is that nuclear safety Evaluation Guidelines established in DOE Standard 3009–94 do not have to be met.

DOE's June 10, 2010, response to the Board's letter states that DOE's utilization and implementation of DOE Standard 3009–94 has not changed since issuance of 10 CFR Part 830. DOE's response observes that DOE Standard 3009–94 "was not written as a prescriptive item-by-item requirements document; rather it provides an overall approach and guidance for preparing a DSA." DOE's response states that the Standard describes steps that the contractor may take if the postulated accident consequences cannot be mitigated below the Evaluation Guideline. DOE's response also cites guidance for DOE approval authorities contained in DOE Standard 1104–2009, Review and Approval of Nuclear Facility Safety Basis and Safety Design Basis Documents, and notes that the Safety Basis Approval Authority may prescribe interim controls and planned improvements if the Evaluation Guideline is exceeded. DOE's response closes by stating that its managers "are expected to carefully evaluate situations that fall short of expectations and only provide their approval of documented safety analyses when they are satisfied that operations can be conducted safely..., that options to meet DOE expectations have been evaluated, and that adequate commitments to achieve an appropriate safety posture in a timely manner have been made."

The lack of definitive statements in DOE's June 10, 2010, response illustrates the difficulties inherent in applying a guidance document as a safe harbor for implementing the requirements of a regulation. Furthermore, NNSA's approval of the DSA for the Los Alamos National Laboratory's Plutonium Facility in December 2008 demonstrates that, despite DOE's stated expectations, it is not always true that DOE's managers will ensure safety by imposing conditions of approval that address inadequacies in the safety basis. This is illustrated to a lesser extent at the other NNSA facilities—described in follow-up correspondence NNSA issued to the Board on June 30, 2010—which have not implemented controls or compensatory measures sufficient to reduce accident consequences below the Evaluation Guideline. DOE Standard 1104–2009 serves as a source of guidance for DOE Safety Basis Approval Authorities, but it, too, is a guidance document, unequivocally stating, "This Standard does not add any new requirements for DOE or its contractors."

DOE's standards-based regulatory system needs a clear and unambiguous set of nuclear safety requirements to ensure that adequate

protection of the public, workers, and the environment is provided. Further, it is imperative that DOE provide clear direction to its Safety Basis Approval Authorities to ensure that, if nuclear safety requirements cannot be met prior to approval of a DSA, DOE imposes clear conditions of approval for compensatory measures for the short term and facility modifications for the longer term to achieve the required safety posture. This acceptance of risk and commitment to future upgrades must be approved at a level of authority within DOE that is high enough to control both the resources needed to accomplish the upgrades as well as the programmatic decision-making involved in determining that the risk of continuing operations is offset by sufficiently compelling programmatic needs.

Item 4 of the Recommendation below deserves a further word of explanation. The Board does not recommend lightly a change to DOE's nuclear safety regulations. But as explained above, DOE has chosen over the past several years to drift away from the principles that underlay the rule as originally intended. The Board has chosen to recommend a rule change because this action would tend, in the long run, to prevent future shifts in DOE safety policy that would once again have to be challenged and argued against. For these reasons, the Board recommends that the nuclear safety rule, 10 CFR Part 830, be amended as stated below.

#### Recommendation

Therefore, the Board recommends that DOE:

1. Immediately affirm the previously understood requirement that unmitigated, bounding-type accident scenarios will be used at DOE's defense nuclear facilities to estimate dose consequences at the site boundary, and that a sufficient combination of structures, systems, or components must be designated safety class to prevent exposures at the site boundary from approaching or exceeding 25 rem TEDE.

2. For those defense nuclear facilities that have not implemented compensatory measures sufficient to reduce exposures at the site boundary below 25 rem TEDE, direct the responsible program secretarial officer to develop a plan to meet this requirement within a reasonable timeframe.

3. Revise DOE Standard 3009–94 to identify clearly and unambiguously the requirements that must be met to demonstrate that an adequate level of protection for the public and workers is provided through a DSA. This should be accomplished, at a minimum, by:

- a. Clearly defining methodologies and providing acceptability criteria for controls, parameters, processes, analytical tools, and other data that should be used in preparation of a DSA.

- b. Delineating the criteria to be met for identification and analyses of an adequate set of Design Basis Accidents (for new facilities), or Evaluation Basis Accidents (for existing facilities).

- c. Providing criteria that must be met by the safety-class structures, systems, and components to (i) mitigate the consequences to a fraction of the Evaluation Guideline, or

- (ii) prevent the events by demonstrating an acceptable reliability for the preventive features.

- d. Establishing a process and path forward to meeting (a) through (c) above through compensatory measures and planned improvements if the DSA cannot demonstrate compliance.

4. Amend 10 CFR Part 830 by incorporating the revised version of DOE Standard 3009–94 into the text as a requirement, instead of as a safe harbor cited in Table 2.

5. Formally establish the minimum criteria and requirements that govern federal approval of a DSA, by revision to DOE Standard 1104–2009 and other appropriate documents. The criteria and requirements should include:

- a. The authorities that can be delegated, the required training and qualification of the approval authority, and the boundaries and limitations of the approval authority's responsibilities,

- b. Actions to be taken if conditions are beyond the specified boundaries and limitations of the approval authority,

- c. The organization or the individual who can approve a DSA that is beyond the delegated approval authority's boundaries and limitations,

- d. The regulatory process that must be followed if condition are beyond the specified boundaries and limitations of the approval authority, and any compensatory actions to be taken, and

- e. The criteria the approval authority must use to quantify the acceptance of risk for continued operations when offsite dose consequences have not been reduced to a small fraction of the Evaluation Guideline.

6. Formally designate the responsible organization and identify the processes for performing oversight to ensure that the responsibilities identified in Item 5 above are fully implemented.

**Peter S. Winokur,**  
*Chairman.*

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**BILLING CODE 3670–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### **Notice of Availability for the Draft Programmatic Environmental Assessment for the Development and Operation of Small-Scale Wind Energy Projects at United States Marine Corps Facilities Throughout the United States**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section (102)(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (42 United States Code 4321), as implemented by the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 Code of Federal

Regulations [CFR] parts 1500–1508), and Marine Corps NEPA directives (Marine Corps Order P5090.2A), the Department of the Navy announces the availability of, and invites public comments on the Draft Programmatic Environmental Assessment (Draft PEA) for the development and operation of small-scale wind energy projects at United States Marine Corps (USMC) facilities throughout the Continental United States (CONUS). A PEA evaluates a major action on a broad, programmatic basis. Thus, site-specific NEPA analysis may be tiered off this document as appropriate.

**Dates and Addresses:** The public comment period begins upon publication of a Notice of Availability (NOA) for the Draft PEA in the **Federal Register**. The 30-day public comment period will end on December 4, 2010.

The Draft PEA is available for electronic viewing at <http://marines.mil/unit/marforres/MFRHQ/FACILITIES/FACILITIES.aspx>, or by sending a request to Alain Flexer, USMC Marine Forces Reserves (MARFORRES), by telephone 504–678–8489, by fax 504–678–6823, by e-mail to [alain.flexer@usmc.mil](mailto:alain.flexer@usmc.mil) or by writing to: MARFORRES, Attn: Alain Flexer, 4400 Dauphine Street, New Orleans, Louisiana 70146–5400.

**Comments:** All comments, written or submitted via the internet, are treated equally, become part of the public record on the Draft PEA, and will be considered in the Final PEA. During the 30-day comment period, all written comments should be mailed to MARFORRES, Attn: Alain Flexer, 4400 Dauphine Street, New Orleans, LA 70146–5400. Please submit all comments by December 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** MARFORRES, Attn: Alain Flexer, telephone 504–678–8489 or by e-mail [alain.flexer@usmc.mil](mailto:alain.flexer@usmc.mil).

**SUPPLEMENTARY INFORMATION:** MARFORRES (Energy Office) has completed a Draft PEA for the development and operation of small-scale wind energy projects at USMC CONUS facilities. The USMC considered ten priority sites at which wind is the most readily available and economically feasible renewable energy source, therefore, this Draft PEA does not consider other forms of renewable energy.

The purpose of the proposed action is to reduce dependency on fossil fuels and increase energy security and efficiency through development of small-scale wind energy projects at USMC CONUS facilities. The proposed action would enable MARFORRES to

achieve specific goals regarding energy production and usage set by Executive Orders, legislative acts, and Federal agencies.

The Draft PEA evaluates the potential environmental impacts of three action alternatives and the No Action Alternative. Alternative 1 involves site, design, construct, and operate one to four small wind turbines at USMC facilities. Alternative 2 involves site, design, construct, and operate one to four medium wind turbines at USMC facilities. Alternative 3 involves site, design, construct, and operate one or two large wind turbines at USMC facilities. Under the No Action Alternative, the USMC would not pursue the development and operation of small-scale wind energy projects at USMC CONUS facilities.

Environmental resources addressed in the Draft PEA include land use; noise; geological resources; water resources; biological resources; cultural resources; visual resources; socioeconomic; air quality; utilities; airspace; health and safety; hazardous materials; and transportation. The Draft PEA also analyzes cumulative impacts from other past, present, and reasonably foreseeable future actions.

**Schedule:** NOA of the Draft PEA will be published in the **Federal Register**. This notice initiates the 30-day public comment period for the Draft PEA. If the Draft PEA determines a more thorough analysis is necessary, then the USMC will prepare an Environmental Impact Statement (EIS). If additional analysis is not necessary, the USMC will issue a Finding of No Significant Impact (FONSI). The USMC intends to issue the Final PEA no later than December 2010, at which time a NOA of the FONSI or Notice of Intent (NOI) to prepare an EIS will be published.

Dated: November 5, 2010.

**D. J. Werner,**

*Lieutenant Commander, Judge Advocate  
Generals Corps, U.S. Navy, Federal Register  
Liaison Officer.*

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## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA–2010–0026]

#### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to Delete a System of Records.

**SUMMARY:** The Department of the Army is deleting a systems of record notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on December 15, 2010 unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

\* **Federal Rulemaking Portal:** <http://www.regulations.gov> Follow the instructions for submitting comments.

\* **Mail:** Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

#### FOR FURTHER INFORMATION CONTACT:

Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, Mr. Leroy Jones at (703) 428–6185.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 9, 2010.

**Morgan F. Park,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

Deletion: