

§ 775.6

published unclassified EA/EIS. Even though the classified EA/EIS does not undergo general public review and comment, it must still be part of the information package to be considered by the decisionmaker for the proposed action. The content of a classified EA/EIS (or the classified portion of a public EA/EIS) will therefore meet the same content requirements applicable to a published unclassified EA/EIS.

§ 775.6 Planning considerations.

(a) When integrating the NEPA process into early stages of proposed actions, action proponents will determine as early as possible the appropriate level of documentation required under NEPA, i.e., is the action a major federal action significantly affecting the human environment requiring an environmental impact statement (EIS), is the action one for which the impacts are not known or which may not be significant and, therefore, an environmental assessment (EA), is appropriate, or is the action one that has no potential for significant impacts and can be categorically excluded from further NEPA documentation. In addition, CEQ regulations (40 CFR 1501.5 and 1501.6) require early identification of lead and cooperative agencies for preparation of an EIS for which more than one agency is involved or has special expertise in environmental issues to be addressed in the EIS.

(b) The command responsible for preparation of the appropriate documentation may prepare an EA on any action at any time in order to assist in planning and decisionmaking, including the decision whether or not to prepare an EIS. If a determination is made based on information presented in an environmental assessment that an EIS is not required, a Finding of No Significant Impact (FONSI) will be prepared and made available to the public in accordance with CEQ regulations (40 CFR 1506.6).

(c) CEQ regulations (40 CFR 1508.18(a)) define major federal actions subject to evaluation under NEPA to include, among other things, "new and continuing activities". The term *new activities* is intended to encompass future actions, i.e., those which are not ongoing at the time of the proposal.

32 CFR Ch. VI (7-1-03 Edition)

The term *continuing activities* which may necessitate the preparation of a NEPA document will be applied by the Department of Navy to include activities which are presently being carried out in fulfillment of the Navy mission and function, including existing training functions, where:

(1) The currently occurring environmental effects of which have not been previously evaluated in a NEPA document, and there is a discovery that substantial environmental degradation is occurring, or is likely to occur, as a result of ongoing operations (*e.g.*, a discovery that significant beach erosion is occurring as a result of continuing amphibious exercises, new designation of wetland habitat, or discovery of an endangered species residing in the area of the activity), or

(2) There is a discovery that the environmental effects of an ongoing activity are significantly and qualitatively different or more severe than predicted in a NEPA document prepared in connection with the commencement of the activity.

A substantial change in a continuing activity (such as a substantial change in operational tempo, area of use, or in methodology/equipment) which has the potential for significant environmental impacts should be considered a proposal for a new action and be documented accordingly. Preparation of a NEPA document is not a necessary prerequisite, nor a substitute, for compliance with other environmental laws.

(d) Where emergency circumstances require immediate action, for the protection of lives and for public health and safety, which could result in significant harm to the environment, the activity Commanding Officer or his designee shall report the emergency action to CNO (OP-44E)/CMC (LFL) who will facilitate the appropriate consultation with CEQ as soon as practicable.

(e) CEQ regulations provide for the establishment of categorical exclusions (40 CFR 1508.4) for those actions which, after consideration by the Department of the Navy, have been found not to have a significant effect on the human environment, individually or cumulatively, under normal circumstances, and for which, therefore, neither an EA

nor an EIS is required. Categorical exclusions are applicable to those kinds of Navy actions which do not significantly affect the quality of the human environment, which do not result in any significant change from existing conditions at the site of the proposed action, and whose effect is primarily economic or social. "Normal circumstances" means that the proposal, when analyzed with respect to context and intensity, can reasonably be expected to not cause significant impacts. Even though a proposal generally fits the description set out below for categorical exclusions, the categorical exclusion should not be used if the proposed action:

(1) Would affect public health or safety;

(2) Involves a site that includes wetlands, endangered or threatened species, historical or archaeological resources, or hazardous wastes;

(3) Involves effects on the human environment that are highly uncertain, involve unique or unknown risks, or which are scientifically controversial;

(4) Establishes precedents or makes decisions in principle for future actions with significant effects, or;

(5) Threatens a violation of federal, state or local law or requirements imposed for protection of the environment.

(f) A decision to forego preparation of an EA or EIS on the basis of one or more categorical exclusions shall be documented, including the exclusions found applicable, the facts supporting their use and specific consideration of whether the exceptions to the use of categorical exclusions, set out above, were applicable. The following are actions which, under normal conditions, are categorically excluded from further documentation requirements under NEPA:

(1) Routine personnel, fiscal, and administrative activities involving military and civilian personnel, e.g., recruiting, processing, paying, and records keeping.

(2) Reductions in force wherein impacts are limited to socioeconomic factors.

(3) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments (when no new

support facilities are required) to perform as operational groups, and/or repair and overhaul.

(4) Relocation of personnel into existing federally-owned or commercially-leased space which does not involve a substantial change in the supporting infrastructure (e.g., an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase).

(5) Studies, data and information-gathering that involve no physical change to the environment, e.g., topographic surveys, bird counts, wetland mapping, forest inventories, and timber cruising.

(6) Routine repair and maintenance of facilities and equipment in order to maintain existing operations and activities, including maintenance of improved and semi-improved grounds such as landscaping, lawn care, and minor erosion control measures.

(7) Alteration of and additions to existing structures to conform or provide conforming use specifically required by new or existing applicable legislation or regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(8) Routine actions normally conducted to operate, protect, and maintain Navy-owned and/or controlled properties, e.g., maintaining law and order, physical plant protection by military police and security personnel, and localized pest management activities on improved and semi-improved lands conducted in accordance with applicable federal and state directives.

(9) New construction that is consistent with existing land use and, when completed, the use or operation of which complies with existing regulatory requirements and constraints, e.g., a building on a parking lot with associated discharges/runoff within existing handling capacities, a bus stop along a roadway, and a foundation pad for portable buildings within a building complex.

(10) Procurement activities that provide goods and support for routine operations.

(11) Day-to-day manpower resource management and research activities that are in accordance with approved plans and inter-agency agreements and

which are designed to improve and/or upgrade Navy ability to manage those resources.

(12) Decisions to close facilities, de-commission equipment, and/or temporarily discontinue use of facilities or equipment (where such equipment is not used to prevent/control environmental impacts). This paragraph (f)(12) does not apply to permanent closure of public roads.

(13) Contracts for activities conducted at established laboratories and plants, to include contractor-operated laboratories and plants, within facilities where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state, and local laws and regulations.

(14) Routine movement, handling and distribution of materials, including hazardous materials/wastes that when moved, handled, or distributed are in accordance with applicable regulations.

(15) Demolition, disposal, or improvements involving buildings or structures not on or eligible for listing on the National Register of Historic Places and when in accordance with applicable regulations, including those regulations applying to removal of asbestos, PCBs, and other hazardous materials.

(16) Acquisition, installation, and operation of utility and communication systems, data processing cable, and similar electronic equipment which use existing rights of way, easements, distribution systems, and/or facilities.

(17) Renewals and/or initial real estate ingrats and outgrants involving existing facilities and land wherein use does not change significantly. This includes, but is not limited to, existing federally-owned or privately-owned housing, office, storage, warehouse, laboratory, and other special purpose space.

(18) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and commu-

nication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses.

(19) Transfer of real property from the Navy to another military department or to another federal agency, and the granting of leases (including leases granted pursuant to the agricultural outleasing program where soil conservation plans are incorporated), permits and easements where there is no substantial change in land use or where subsequent land use would otherwise be categorically excluded.

(20) Disposal of excess easement interests to the underlying fee owner.

(21) Renewals and minor amendments of existing real estate grants for use of government-owned real property where no significant change in land use is anticipated.

(22) Pre-lease exploration activities for oil, gas or geothermal reserves, e.g., geophysical surveys.

(23) Return of public domain lands to the Department of the Interior.

(24) Land withdrawal continuances or extensions which merely establish time periods and where there is no significant change in land use.

(25) Temporary closure of public access to Navy property in order to protect human or animal life.

(26) Engineering effort undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed.

(27) Actions which require the concurrence or approval of another federal agency where the action is a categorical exclusion of the other federal agency.

(28) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(29) Installation of devices to protect human or animal life, e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas.

(30) Natural resources management actions undertaken or permitted pursuant to agreement with or subject to

regulation by federal, state, or local organizations having management responsibility and authority over the natural resources in question, including hunting or fishing during hunting or fishing seasons established by state authorities pursuant to their state fish and game management laws. With regard to natural resources regulated by another federal agency, the responsible command may cooperate in any environmental analysis that may be required by the other agency's regulations.

(31) Approval of recreational activities which do not involve significant physical alteration of the environment or increase human disturbance in sensitive natural habitats and which do not occur in or adjacent to areas inhabited by endangered or threatened species.

(32) Routine maintenance of timber stands, including issuance of down-wood firewood permits, hazardous tree removal, and sanitation salvage.

(33) Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat when no substantial site preparation is involved.

[55 FR 33899, Aug. 20, 1990, as amended at 55 FR 39960, Oct. 1, 1990]

§ 775.7 Time limits for environmental documents.

(a) The timing of the preparation, circulation, submission and public availability of environmental documents is important in achieving the purposes of NEPA. Therefore, the NEPA process shall begin as early as possible in the decisionmaking process.

(b) The EPA publishes a weekly notice in the FEDERAL REGISTER of environmental impact statements filed during the preceding week. The minimum time periods set forth below shall be calculated from the date of publication of notices in the FEDERAL REGISTER. No decision on the proposed action may take place until the later of the following dates:

(1) Ninety days after publication of the notice of availability for a draft environmental impact statement (DEIS). Draft statements shall be available to the public for 15 days prior to any pub-

lic hearing on the DEIS (40 CFR 1506.6(c)(2)).

(2) Thirty days after publication of the notice of availability for a final environmental impact statement (FEIS). If the FEIS is available to the public within ninety days from the availability of the DEIS, the minimum thirty day period and the minimum ninety day period may run concurrently. However, not less than 45 days from publication of notice of filing shall be allowed for public comment on draft statements prior to filing of the FEIS (40 CFR 1506.10(c)).

§ 775.8 Scoping.

As soon as practicable after the decision to prepare an EIS is made, an early and open process called "scoping" shall be used to determine the scope of issues to be addressed and to identify the significant issues to be analyzed in depth related to the proposed action (40 CFR 1501.7). This process also serves to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)). Scoping results in the identification by the proponent of the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For any action, this scope may depend on the relationship of the proposed action to other existing environmental documentation.

§ 775.9 Documentation and analysis.

(a) Environmental documentation and analyses required by this rule should be integrated as much as practicable with any environmental studies, surveys and impact analyses required by other environmental review laws and executive orders (40 CFR 1502.25). When a cost-benefit analysis has been prepared in conjunction with an action which also requires a NEPA analysis, the cost-benefit analysis shall be integrated into the environmental documentation.

(b) CEQ regulations encourage the use of tiering whenever appropriate to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for discussion at each level of environmental review (40 CFR 1502.20). Tiering is accomplished