

Corps of Engineers, Dept. of the Army, DoD

§ 230.5

230.25 Environmental review and consultation requirements.

230.26 General considerations in preparing Corps EISs.

APPENDIX A TO PART 230—PROCESSING CORPS NEPA DOCUMENTS

APPENDIX B TO PART 230 [RESERVED]

APPENDIX C TO PART 230—NOTICE OF INTENT TO PREPARE A DRAFT EIS

AUTHORITY: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*); E.O. 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

SOURCE: 53 FR 3127, Feb. 3, 1988, unless otherwise noted.

§ 230.1 Purpose.

This regulation provides guidance for implementation of the procedural provisions of the National Environmental Policy Act (NEPA) for the Civil Works Program of the U.S. Army Corps of Engineers. It supplements Council on Environmental Quality (CEQ) regulations 40 CFR parts 1500 through 1508, November 29, 1978, in accordance with 40 CFR 1507.3, and is intended to be used only in conjunction with the CEQ regulations. Whenever the guidance in this regulation is unclear or not specific the reader is referred to the CEQ regulations. Appendix A provides guidance on processing NEPA documents except for those concerning regulatory actions. Appendix C (formally ER 200-2-1) has been added to provide guidance on preparing and processing a notice of intent to prepare an EIS for publication in the FEDERAL REGISTER for all types of Corps actions. 33 CFR part 325, Appendix B provides procedural guidance for preparing and processing NEPA documents for regulatory actions.

§ 230.2 Applicability.

This regulation is applicable to all HQUSACE elements and all Field Operating Activities (FOAs) having responsibility for preparing and processing environmental documents in support of Civil Works functions.

§ 230.3 References.

(a) Executive Order 12291, Federal Regulation, February 17, 1981 (46 FR 13193, February 19, 1981).

(b) Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979 (44 FR 1957, January 9, 1979).

(c) Clean Water Act (formerly known as the Federal Water Pollution Control Act) 33 U.S.C. 1344 (hereinafter referred to as section 404).

(d) Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(e) Environmental Effects Abroad of Major Department of Defense Actions; Policies and Procedures 32 CFR part 197 (44 FR 21786-92, April 12, 1979).

(f) Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*

(g) National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*

(h) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

(i) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969," (40 CFR parts 1500 through 1508, November 29, 1978), Council on Environmental Quality.

(j) Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies (48 CFR parts 10249 through 10258, March 10, 1983).

(k) Regulatory Programs of the Corps of Engineers 33 CFR parts 320 through 330, and 334.

(l) CEQ Information Memorandum to Agencies Containing Answers to 40 Most Asked Questions on NEPA Regulations (46 FR 34263-68, July 28, 1983).

(m) ER 310-1-5. Federal Register Act Requisitioning.

(n) ER 1105-2-10 thru 60. Planning Regulations.

§ 230.4 Definitions.

Refer to 40 CFR part 1508; other definitions may be found in the references given above.

§ 230.5 Responsible officials.

The district commander is the Corps NEPA official responsible for compliance with NEPA for actions within district boundaries. The district commander also provides agency views on other agencies' environmental impact statements (EIS). The Office of Environmental Policy HQUSACE (CECW-

§ 230.6

RE) WASH DC 20314-1000 (phone number 202-272-0166) is the point of contact for information on Corps NEPA documents, NEPA oversight activities, review of other agencies' EISs and NEPA documents about legislation, regulations, national program proposals or other major policy issues. The Assistant Chief Counsel for Environmental Law and Regulatory Programs, HQUSACE (CECC-E) WASH DC 20314-1000, is the point of contact for legal questions involving environmental matters. Requests for information on regulatory permit actions should be directed to HQUSACE (CECW-OR) WASH DC 20314-1000.

§ 230.6 Actions normally requiring an EIS.

Actions normally requiring an EIS are:

- (a) Feasibility reports for authorization and construction of major projects;
- (b) Proposed changes in projects which increase size substantially or add additional purposes; and
- (c) Proposed major changes in the operation and/or maintenance of completed projects.

District commanders may consider the use of an environmental assessment (EA) on these types of actions if early studies and coordination show that a particular action is not likely to have a significant impact on the quality of the human environment.

§ 230.7 Actions normally requiring an Environmental Assessment (EA) but not necessarily an EIS.

Actions normally requiring an EA, but not an EIS, are listed below:

- (a) *Regulatory Actions*. Most permits will normally require only an EA.
- (b) *Authorized Projects and Projects Under Construction*. Changes which may be approved under the discretionary authority of the Secretary of the Army.
- (c) *Continuing Authorities Program*. Projects recommended for approval of the Chief of Engineers under the following authorities:

- (1) Section 205, Small Flood Control Authority;
- (2) Section 208, Snagging and Clearing for Flood Control Authority;

33 CFR Ch. II (7-1-06 Edition)

(3) Section 107, Small Navigation Project Authority;

(4) Section 103, Small Beach Erosion Control Project Authority; and

(5) Section 111, Mitigation of Shore Damages Attributable to Navigation Projects.

(d) *Construction and Operations and Maintenance*. Changes in environmental impacts which were not considered in the project EIS or EA. Examples are changes in pool level operations, use of new disposal areas, location of bank protection works, etc.

(e) *Real Estate Management and Disposal Actions*. (1) Disposal of a Civil Works project or portions of project properties not reported as excess to the General Services Administration.

(2) Disposal of real property for public port and industrial purposes.

(3) Grants of leases or easements for other than minor oil and gas transmission lines, electric power transmission lines, road and highway rights-of-way, and sewage or water treatment facilities and land fills.

§ 230.8 Emergency actions.

In responding to emergency situations to prevent or reduce imminent risk of life, health, property, or severe economic losses, district commanders may proceed without the specific documentation and procedural requirements of other sections of this regulation. District commanders shall consider the probable environmental consequences in determining appropriate emergency actions and when requesting approval to proceed on emergency actions, will describe proposed NEPA documentation or reasons for exclusion from documentation. NEPA documentation should be accomplished prior to initiation of emergency work if time constraints render this practicable. Such documentation may also be accomplished after the completion of emergency work, if appropriate. Emergency actions include Flood Control and Coastal Emergencies Activities pursuant to Pub. L. 84-99, as amended, and projects constructed under sections 3 of the River and Harbor Act of 1945 or 14 of the Flood Control Act of 1946 of the Continuing Authorities Program. When possible, emergency actions considered major in