

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 775

RIN 0703-AA51

Policies and Responsibilities for Implementation of the National Environmental Policy Act Within the Department of the Navy

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is revising its regulations which establish the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). This revision clarifies when certain Department of the Navy actions must be studied to determine their effect on the human environment and what types of activities are excluded from the NEPA documentation requirements.

DATES: Comments must be received by April 26, 1999.

ADDRESSES: Interested parties should submit written comments to: Mr. Lew Shotten, Office of the Assistant Secretary of the Navy (Installations and Environment), 2000 Navy Pentagon, Washington, DC 20350.

FOR FURTHER INFORMATION CONTACT: Mr. Lew Shotten, Office of the Assistant Secretary of the Navy (Installations and Environment), (703) 588-6671.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) establishes national policy and goals for protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports

significantly affecting the quality of the human environment.

Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR parts 1500-1508) on November 29, 1978, which are binding on all federal agencies as of July 30, 1979. These regulations require each federal agency, as necessary, to adopt implementing procedures to supplement the CEQ regulations. Section 1507.3(b) of the CEQ regulations identifies those sections of the regulations which must be addressed in agency procedures. These regulations revise the Department's implementing regulations that were originally issued on August 20, 1990.

Significant changes that this new rule brings about include: revision of and additions to the DON list of approved categories of actions excluded (CATEXed) from further documentation under NEPA; revised criteria for disallowing the application of listed CATEXs; and, assignment of responsibilities to the Assistant Secretary of the Navy (Research, Development and Acquisition), the General Counsel of the Navy, and the Judge Advocate General of the Navy.

The Department of the Navy has determined that this regulation is not a significant rule as defined by Executive Order 12866 and is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)).

List of Subjects in 32 CFR Part 775

Environmental impact statements. Accordingly, part 775 of chapter VI of title 32 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 775—POLICIES AND RESPONSIBILITIES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT WITHIN THE DEPARTMENT OF THE NAVY

- Sec.
775.1 Purpose.
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Authority: 49 U.S.C. 44502(d).

§ 775.1 Purpose.

To implement the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, 40 CFR 1500-1508, and other regulations, laws, Executive Orders and treaties and agreements that direct environmental planning procedures, and to assign responsibilities within the Department of the Navy (DON) for preparation, review, and approval of environmental documents prepared under NEPA.

§ 775.2 Scope.

The policies and responsibilities set out in this part apply to the DON, including the Office of the Secretary of the Navy, and Navy and Marine Corps commands, operating forces, shore establishments, and reserve components.

§ 775.3 Definitions.

(a) *Action.* A new or continuing activity, program, project, or exercise which is under the control and direction of the DON and that may change the physical environment or impact natural resources. An action is considered a proposed action and the requirements of this instruction become applicable when the action proponent has identified a program, project, exercise, or other activity and is actively preparing to make a decision among one or more alternative means of executing the program, project, exercise or other activity.

(b) *Action Proponent.* The commander, commanding officer, or civilian director of a unit, activity, or organization who initiates a proposal for action, as defined in 40 CFR 1508.23, and who has command and control authority over the action once it is authorized. For some actions, the action proponent will also serve as the decisionmaking authority for that action. In specific circumstances, the action proponent and decisionmaker may be identified in Navy Regulations, other SECNAV Instructions, operational instructions and orders, acquisition instructions, and other sources which set out authority and responsibility within the DON.

(c) *Environmental Impact Statement (EIS).* An environmental document prepared according to the requirements

of Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) for a major action which will have a significant effect on the quality of the human environment.

(d) *Environmental Assessment (EA)*. A concise document prepared according to the requirements of 40 CFR parts 1500–1508 which briefly provides sufficient evidence and analysis for determining whether to prepare an EIS. An EA aids compliance with NEPA when no EIS is necessary and facilitates preparation of an EIS when one is necessary.

(e) *Categorical Exclusion (CATEX)*. A published category of actions which, under normal conditions, are excluded from further documentation requirements under NEPA.

(f) *Record of Decision (ROD)*. An environmental document signed by an appropriate official of the DON. A ROD sets out a concise summary of the final decision and selected measures for mitigation (if any) of adverse environmental impacts of the alternative chosen from those considered in an EIS.

(g) *Finding of No Significant Impact (FONSI)*. A document which sets out the reasons why an action not otherwise categorically excluded will not have a significant impact on the human environment.

§ 775.4 Policy.

(a) It is the DON policy regarding NEPA, consistent with its mission and the environmental laws and regulations of the United States and applicable international treaties and agreements, to:

(1) Initiate the NEPA processes as soon as possible in the course of identifying a proposed action.

(2) Develop and carefully consider a reasonable range of alternatives for achieving the purpose(s) of proposed actions.

(3) Assign responsibility for preparation of action specific environmental analysis under NEPA or Executive Order 12114 to the action proponent. The action proponent should understand the plans, analyses, and environmental documents related to that action.

(b) NEPA is intended to ensure that environmental issues are fully considered and incorporated into the federal decision making process. Consequently, actions for which the DON has no decision making authority, such as those carried out under a non discretionary mandate from Congress (e.g., congressional direction to transfer federal property to a particular entity for a particular purpose) or as an operation of law (e.g., reversionary interests in land recorded at the time the property

was obtained), are not major federal actions in the context of NEPA and require no analysis or documentation under NEPA or CEQ regulations.

§ 775.5 NEPA documentation.

(a) An EIS must be prepared for proposed major federal actions that clearly will have significant impacts on the human environment. The agency decision in the case of an EIS is reflected in a ROD.

(b) Where a proposed major federal action has the potential for significantly affecting the human environment, but it is not clear whether the impacts of that particular action will in fact be significant, or where the nature of an action precludes use of a categorical exclusion, an EA may be used to assist the agency in determining whether to prepare an EIS. If the agency determination in the case of an EA is that there is no significant impact on the environment, the findings will be reflected in a FONSI. If the EA determines that the proposed action to is likely to significantly affect the environment (even after mitigation), than an EIS will be prepared.

(c) Where a federal agency has determined through experience, studies, or prior NEPA analysis that impacts normally resulting from a particular category of actions are not significant, a categorical exclusion (CATEX) may be used to exclude the proposed action from further analysis.

(d) Even though a proposed action generally is covered by a listed categorical exclusion, a categorical exclusion will not be used if the proposed action:

(1) Would adversely affect public health or safety;

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

(3) Establishes precedents or makes decisions in principle for future actions, which have the potential for significant impacts;

(4) Threatens a violation of federal, state, or local environmental laws applicable to the Department of the Navy; or

(5) Involves an action that, as determined in coordination with the appropriate resource agency, may:

(i) Have an adverse effect on federally-listed endangered/threatened species or marine mammals;

(ii) Have an adverse effect on coral reefs or on federally designated wilderness areas, wildlife refuges, marine sanctuaries, or park lands;

(iii) Adversely affect the size, function or biological value of wetlands and is

not covered by a nation-wide or regional permit;

(iv) Have an adverse effect on archaeological resources or resources (including but not limited to ships, aircraft, vessels and equipment) listed or determined eligible for listing on the National Register of Historic Places; and

(v) Result in an uncontrolled or unpermitted releases of hazardous substances or require a conformity determination under standards of the Clean Air Act General Conformity Rule.

§ 775.6 Categorical exclusions.

The following are actions which, under normal conditions, are categorically excluded from further documentation requirements under NEPA. These exclusions are separated into two groupings. Group I consists of actions which clearly do not have the potential for causing significant impacts on the human environment and consequently do not meet the basic definition of major federal action in the context of NEPA. Group II consists of actions which have the potential for causing significant impacts on the human environment but which, through experience, studies, or prior NEPA analysis, have been shown not to have significant environmental impacts. A decision to forego preparation of an EA or EIS on the basis of one or more categorical exclusions in Group II shall be documented by identifying the applicable CATEX and describing the proposed action to the extent required to support selection and use of a CATEX. Application of a categorical exclusion does not affect the applicability of other laws/regulations (e.g., Endangered Species Act, Clean Water Act, and National Historic Preservation Act) to the proposed action.

(a) Group I Categorical Exclusions.

(1) Routine fiscal, administrative, and recreation/welfare activities, including administration of contracts;

(2) Routine law and order activities performed by military personnel, military police, or other security personnel, including physical plant protection and security;

(3) Routine use and operation of existing facilities, laboratories, and equipment;

(4) Administrative studies, surveys, and data collection;

(5) Issuance or modification of administrative procedures, regulations, directives, manuals, or policy;

(6) Military ceremonies;

(7) Routine procurement of goods and services;

(8) Routine repair and maintenance of buildings, facilities, vessels, aircraft and

equipment associated with existing operations and activities (e.g., localized pest management activities, minor erosion control measures, painting, refitting);

(9) Training of an administrative or classroom nature; and

(10) Routine personnel actions;

(11) Routine movement of mobile assets (such as ships and aircraft) for homeport reassignments, for repair/overhaul, or to train/perform as operational groups where no new support facilities are required;

(12) Routine procurement, management, storage, handling, installation, and disposal of commercial items, where the items are used and handled in accordance with applicable regulations (e.g., consumables, electronic components, computer equipment, pumps).

(b) Group II Categorical Exclusions.

(1) Actions to conform or provide conforming use specifically required by new or existing applicable legislation or regulations, (e.g., hush houses for aircraft engines, scrubbers for air emissions, improvements to stormwater, and sanitary and industrial wastewater collection and treatment systems, and installation of fire fighting equipment);

(2) The modification of existing systems or equipment when the environmental effects will remain substantially the same, and the use is consistent with applicable regulations;

(3) Movement, handling and distribution of materials, including hazardous materials/wastes that when moved, handled, or distributed are in accordance with applicable regulations;

(4) New activities conducted at established laboratories and plants, (including contractor-operated laboratories and plants) where all airborne emissions, waterborne effluent, external ionizing and non-ionizing radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable federal, state, and local laws and regulations;

(5) Studies, data, and information gathering that involve no permanent physical change to the environment, (e.g., topographic surveys, wetlands mapping, surveys for evaluating environmental damage, and engineering efforts to support environmental analyses);

(6) Temporary placement and use of simulated target fields (e.g., inert mines, simulated mines, or passive hydrophones) in fresh, estuarine, and marine waters for the purpose of military training exercises or research, development, test and evaluation;

(7) Installation and operation of passive scientific measurement devices (e.g., antenna, tide gauges, weighted hydrophones, salinity measurement devices, and water quality measurement devices) where use will not result in changes in operations tempo and is consistent with applicable regulations;

(8) Short term increases in air operations up to 50 percent of the typical operation rate, or increases of 50 operations per day, whichever is less;

(9) Decommissioning, disposal, or transfer of Navy vessels, aircraft, vehicles, and equipment when conducted in accordance with applicable regulations, including those regulations applying to removal of hazardous materials;

(10) Non-routine repair, renovation, and donation or other transfer of structures, vessels, aircraft, vehicles, landscapes or other contributing elements of facilities listed or eligible for listing on the National Register of Historic Places which will result in no adverse effect;

(11) Hosting or participating in public events (e.g., air shows, open houses, Earth Day events, and athletic events) where no permanent changes to existing infrastructure (e.g., road systems, parking and sanitation systems) are required to accommodate all aspects of the event;

(12) Military training conducted on or over nonmilitary land or water areas, where such training is consistent with the type and tempo of existing non-military airspace, land, and water use (e.g., night compass training, forced marches along trails, roads and highways, use of permanently established ranges, use of public waterways, or use of civilian airfields);

(13) Transfer of real property from DON to another military department or to another federal agency;

(14) Receipt of property from another federal agency when there is no substantial change in land use;

(15) Minor land acquisitions or disposals where anticipated or proposed land use is consistent with existing land use and zoning, both in type and intensity;

(16) Disposal of excess easement interests to the underlying fee owner;

(17) 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;

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

(19) Renewals and/or initial real estate ingrats and outgrants involving

existing facilities and land wherein use does not change significantly (e.g., leasing of federally-owned or privately-owned housing or office space, and agricultural outleases);

(20) 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 communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses;

(21) New construction that is consistent with existing land use and, when completed, the use or operation of which complies with existing regulatory requirements (e.g., a building within a cantonment area with associated discharges/runoff within existing handling capacities);

(22) 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;

(23) Acquisition, installation, and operation of utility (e.g., water, sewer, electrical) and communication systems, (e.g., data processing cable and similar electronic equipment) which use existing rights of way, easements, distribution systems, and/or facilities;

(24) Decisions to close facilities, decommission equipment, and/or temporarily discontinue use of facilities or equipment, where the facility or equipment is not used to prevent/control environmental impacts);

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

(26) Relocation of personnel into existing federally owned or commercially-leased space that does not involve a substantial change affecting the supporting infrastructure (e.g., no increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase);

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

(28) Natural resources management actions where underlying natural resources management decisions have been analyzed in an EA or EIS;

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

(31) Temporary closure of public access to DON property in order to protect human or animal life;

(32) Actions similar in type, intensity and setting (including physical location and, where pertinent, time of year) to other actions for which it has been determined, in a DON EA or EIS, that there were no significant environmental impacts;

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

§ 775.7 Responsibilities.

(a) The Assistant Secretary of the Navy (Installations and Environment) (ASN(I&E)) shall:

(1) Act as principal liaison with the Office of the Secretary of Defense, the Council on Environmental Quality, the Environmental Protection Agency, other federal agencies, Congress, state governments, and the public with respect to significant environmental planning matters.

(2) Direct the preparation of appropriate environmental documents and, with respect to those matters governed by SECNAV Instruction 5000.2B of December 16, 1996, advise the Assistant Secretary of the Navy (Research Development and Acquisition (ASN(RD&A))) concerning environmental issues and concerning the appropriate level of environmental planning document needed in any particular circumstance.

(3) Except for proposed acquisition-related actions addressed in paragraph (b)(2) of this section, review, sign, and approve for publication, as appropriate, documents prepared under NEPA.

(4) Establish and publish a list of categorical exclusions for the DON.

(b) The Assistant Secretary of the Navy (Research, Development and Acquisition (ASN(RD&A))) shall, in accordance with SECNAV Instruction 5000.2B of December 16, 1996:

(1) Ensure that DON acquisition programs and procurements comply with environmental laws, Executive Orders, regulations, and applicable

Department of Defense (DOD) and DON environmental planning policies.

(2) Review, sign, and approve for publication, as appropriate, environmental documents prepared under NEPA for proposed acquisition-related actions.

(c) The General Counsel of the Navy and the Judge Advocate General of the Navy shall:

(1) Ensure that legal advice for compliance with environmental planning requirements is available to all decision-makers.

(2) Advise the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps as to the legal requirements that must be met, and the conduct and disposition of all legal matters arising in the context of environmental planning.

(d) The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) shall:

(1) Implement effective environmental planning throughout their respective Services.

(2) Prepare and issue instructions or orders to implement environmental planning policies of the DON. Forward proposed CNO/CMC environmental planning instructions or orders to ASN(I&E) and, when appropriate, ASN(RD&A), for review and comment prior to issuance.

(3) Ensure that subordinate commands establish procedures for implementing mitigation measures described in environmental planning documents.

(4) Provide coordination as required for the preparation of environmental documents for actions initiated by non-DON/DOD entities, state or local agencies and/or private individuals for which Service involvement may be reasonably foreseen.

(5) Bring environmental planning matters that involve controversial issues or which may affect environmental planning policies or their implementation to the attention of ASN(I&E), and where appropriate ASN(RD&A), for coordination and determination.

§ 775.8 Delegations of authority.

(a) The ASN(I&E) may delegate his/her responsibilities under this instruction for review, approval and/or signature of EISs and RODs to appropriate Executive Schedule/Senior Executive Service civilians or flag/general officers. ASN(I&E), CNO and CMC may delegate all other responsibilities assigned in this instruction as deemed appropriate.

(b) The ASN(RD&A) delegation of authority for approval and signature of

documents under NEPA is contained in reference (g).

(c) Previously authorized delegations of authority are continued until revised or withdrawn.

§ 775.9 Completed documents.

This part does not invalidate, alter, or amend any NEPA documents already completed. Where only draft NEPA documents have been completed under previous guidance, final documents shall be completed in accordance with this part.

Dated: February 17, 1999.

Ralph W. Corey,

Commander, U.S. Navy, Judge Advocate General's Corps, Alternate Federal Register Liaison Officer.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC017-2013b; FRL-6234-5]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology for Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to conditionally approve a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision requires major sources of nitrogen oxides (NO_x) in the District to implement reasonably available control technology (RACT).

In the "Rules and Regulations" section of this **Federal Register**, EPA is conditionally approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.