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30 days prior to the initiation of an action, except in special circumstances when the public comment period is reduced to 15 days, as discussed in §651.14(b)(2)(iii). Following the comment period and review of public comments, the proponent forwards a decision package that includes a comparison of environmental impacts associated with reasonable alternatives, summary of public concerns, revised FNSI (if necessary), and recommendations for the decision maker. The decision maker reviews the package, makes a decision, and signs the FNSI or the NOI (if the FNSI no longer applies). If a FNSI is signed by the decision maker, the action can proceed immediately.

§651.22 Notice of intent.

A Notice of Intent (NOI) is a public notice that an EIS will be prepared. The NOI will briefly:

(a) Describe the proposed and alternative actions.

(b) Describe the proposed scoping process, including when and where any public meetings will be held.

(c) State the name and address of the POC who can answer questions on the proposed action and the EIS (see §651.45(a) and §651.49 for application).

§651.23 Environmental impact statement.

An Environmental Impact statement (EIS) is a detailed written statement required by NEPA for major federal actions significantly affecting the quality of the human environment (42 U.S.C. 4321). A more complete discussion of EIS requirements is presented in subpart F of this part.

§651.24 Supplemental EAs and supplemental EISs.

As detailed in §651.5(g) and in 40 CFR 1502.9(c), proposed actions may require review of existing NEPA documentation. If conditions warrant a supplemental document, these documents are processed in the same way as an original EA or EIS. No new scoping is required for a supplemental EIS filed within one year of the filing of the original ROD. If the review indicates no need for a supplement, that determination will be documented in a REC.

§651.25 Notice of availability.

The Notice of Availability (NOA) is published by the Army to inform the public and others that a NEPA document is available for review. A NOA will be published in the FR, coordinating with EPA for draft and final EISs (including supplements), for RODs, and for EAs and FNSIs which are of national concern, are unprecedented, or normally require an EIS. EAs and FNSIs of local concern will be made available in accordance with §651.36. This agency NOA should not be confused with the EPA's notice of availability of weekly receipts (NWR)[3] of EISs.

§651.26 Record of decision.

The Record of Decision (ROD) is a concise public document summarizing the findings in the EIS and the basis for the decision. A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS (see §651.45 (j) for application). The ROD must identify mitigations which were important in supporting decisions, such as those mitigations which reduce otherwise significant impacts, and ensure that appropriate monitoring procedures are implemented (see §651.15 for application).

§651.27 Programmatic NEPA analyses.

These analyses, in the form of an EA or EIS, are useful to examine impacts of actions that are similar in nature or broad in scope. These documents allow the ''tiering'' of future NEPA documentation in cases where future decisions or unknown future conditions preclude complete NEPA analyses in one step. These documents are discussed further in §651.14(c).

Subpart D—Categorical Exclusions

§651.28 Introduction.

Categorical Exclusions (CXs) are categories of actions with no individual or

[3] This notice is published by the EPA and officially begins the public review period. The NWR is published each Friday, and lists the EISs that were filed the previous week.

cumulative effect on the human or natural environment, and for which neither an EA nor an EIS is required. The use of a CX is intended to reduce paperwork and eliminate delays in the initiation and completion of proposed actions that have no significant impact.

§ 651.29 Determining when to use a CX (screening criteria).

(a) To use a CX, the proponent must satisfy the following three screening conditions:

(1) The action has not been segmented. Determine that the action has not been segmented to meet the definition of a CX. Segmentation can occur when an action is broken down into small parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected, cumulative, and similar actions (see § 651.51(a)).

(2) No exceptional circumstances exist. Determine if the action involves extraordinary circumstances that would preclude the use of a CX (see paragraphs (b) (1) through (14) of this section).

(3) One (or more) CX encompasses the proposed action. Identify a CX (or multiple CXs) that potentially encompasses the proposed action (Appendix B of this part). If no CX is appropriate, and the project is not exempted by statute or emergency provisions, an EA or an EIS must be prepared, before a proposed action may proceed.

(b) Extraordinary circumstances that preclude the use of a CX are:

(1) Reasonable likelihood of significant effects on public health, safety, or the environment.

(2) Reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).

(3) Imposition of uncertain or unique environmental risks.

(4) Greater scope or size than is normal for this category of action.

(5) Reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(6) Releases of petroleum, oils, and lubricants (POL) except from a properly functioning engine or vehicle, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(7) When a review of an action that might otherwise qualify for a Record of Non-applicability (RONA) reveals that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required.

(8) Reasonable likelihood of violating any federal, state, or local law or requirements imposed for the protection of the environment.

(9) Unresolved effect on environmentally sensitive resources, as defined in paragraph (c) of this section.

(10) Involving effects on the quality of the environment that are likely to be highly controversial.

(11) Involving effects on the environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial.

(12) Establishes a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(13) Potential for degradation of already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(14) Introduction/employment of unproven technology.

(c) If a proposed action would adversely affect ''environmentally sensitive'' resources, unless the impact has been resolved through another environmental process (e.g., CZMA, NHPA, CWA, etc.) a CX cannot be used (see paragraph (e) of this section). Environmentally sensitive resources include:

(1) Proposed federally listed, threatened, or endangered species or their designated critical habitats.

(2) Properties listed or eligible for listing on the National Register of Historic Places (AR 200–4).

(3) Areas having special designation or recognition such as prime or unique

agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); 100-year floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

(4) Cultural Resources as defined in AR 200–4.

(d) The use of a CX does not relieve the proponent from compliance with other statutes, such as RCRA, or consultations under the Endangered Species Act or the NHPA. Such consultations may be required to determine the applicability of the CX screening criteria.

(e) For those CXs that require a REC, a brief (one to two sentence) presentation of conclusions reached during screening is required in the REC. This determination can be made using current information and expertise, if available and adequate, or can be derived through conversation, as long as the basis for the determination is included in the REC. Copies of appropriate interagency correspondence can be attached to the REC. Example conclusions regarding screening criteria are as follows:

(1) ''USFWS concurred in informal coordination that E/T species will not be affected''.

(2) ''Corps of Engineers determined action is covered by nationwide general permit''.

(3) ''SHPO concurred with action''.

(4) ''State Department of Natural Resources concurred that no effect to state sensitive species is expected''.

§ 651.30 CX actions.

Types of actions that normally qualify for CX are listed in Appendix B of this part.

§ 651.31 Modification of the CX list.

The Army list of CXs is subject to continual review and modification, in consultation with CEQ. Additional modifications can be implemented through submission, through channels, to ASA (I&E) for consideration and consultation. Subordinate Army headquarters may not modify the CX list through supplements to this part. Upon approval, proposed modifications to the list of CXs will be published in the FEDERAL REGISTER, providing an opportunity for public review and comment.

Subpart E—Environmental Assessment

§ 651.32 Introduction.

(a) An EA is intended to facilitate agency planning and informed decision-making, helping proponents and other decision makers understand the potential extent of environmental impacts of a proposed action and its alternatives, and whether those impacts (or cumulative impacts) are significant. The EA can aid in Army compliance with NEPA when no EIS is necessary. An EA will be prepared if a proposed action:

(1) Is not an emergency (§ 651.11(b)).

(2) Is not exempt from (or an exception to) NEPA (§ 651.11(a)).

(3) Does not qualify as a CX (§ 651.11(c)).

(4) Is not adequately covered by existing NEPA analysis and documentation (§ 651.19).

(5) Does not normally require an EIS (§ 651.42).

(b) An EA can be 1 to 25 pages in length and be adequate to meet the requirements of this part, depending upon site-specific circumstances and conditions. Any analysis that exceeds 25 pages in length should be evaluated to consider whether the action and its effects are significant and thus warrant an EIS.

§ 651.33 Actions normally requiring an EA.

The following Army actions normally require an EA, unless they qualify for the use of a CX:

(a) Special field training exercises or test activities in excess of five acres on Army land of a nature or magnitude not within the annual installation training cycle or installation master plan.

(b) Military construction that exceeds five contiguous acres, including contracts for off-post construction.