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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.

(c) Changes to established installation land use that generate impacts on the environment.

(d) Alteration projects affecting historically significant structures, archaeological sites, or places listed or eligible for listing on the National Register of Historic Places.

(e) Actions that could cause significant increase in soil erosion, or affect prime or unique farmland (off Army property), wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, prime or unique wildlife habitat, or wild and scenic rivers.

(f) Actions proposed during the life cycle of a weapon system if the action produces a new hazardous or toxic material or results in a new hazardous or toxic waste, and the action is not adequately addressed by existing NEPA documentation. Examples of actions normally requiring an EA during the life cycle include, but are not limited to, testing, production, fielding, and training involving natural resources, and disposal/demilitarization. System design, development, and production actions may require an EA, if such decisions establish precedent (or make decisions, in principle) for future actions with potential environmental effects. Such actions should be carefully considered in cooperation with the development or production contractor or government agency, and NEPA analysis may be required.

(g) Development and approval of installation master plans.

(h) Development and implementation of Integrated Natural Resources Management Plans (INRMPs) (land, forest, fish, and wildlife) and Integrated Cultural Resources Management Plans (ICRMPs).

(i) Actions that take place in, or adversely affect, important wildlife habitats, including wildlife refuges.

(j) Field activities on land not controlled by the military, except those that do not alter land use to substantially change the environment (for example, patrolling activities in a forest). This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground level into the national airspace. It also includes joint air attack training that may require participating aircraft to exceed 250 knots at altitudes below 3000 feet above ground level, and helicopters, at any speed, below 500 feet above ground level.

(k) An action with substantial adverse local or regional effects on energy or water availability. Such impacts can only be adequately identified with input from local agencies and/or citizens.

(l) Production of hazardous or toxic materials.

(m) Changes to established airspace use that generate impacts on the environment or socioeconomic systems, or create a hazard to non-participants.

(n) An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program/plan.

(o) Acquisition, construction, or alteration of (or space for) a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.

(p) An activity that affects a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(q) Substantial proposed changes in Army-wide doctrine or policy that potentially have an adverse effect on the environment (40 CFR 1508.18 (b)(1)).

(r) An action that may threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment.

(s) The construction and operation of major new fixed facilities or the substantial commitment of installation natural resources supporting new materiel at the installation.

§ 651.34 EA components.

EAs should be 1 to 25 pages in length, and will include:

(a) Signature (Review and Approval) page.

(b) Purpose and need for the action.

(c) Description of the proposed action.

(d) *Alternatives considered.* The alternatives considered, including appropriate consideration of the ''No Action'' alternative, the ''Proposed Action,'' and all other appropriate and

reasonable alternatives that can be realistically accomplished. In the discussion of alternatives, any criteria for screening alternatives from full consideration should be presented, and the final disposition of any alternatives that were initially identified should be discussed.

(e) *Affected environment.* This section must address the general conditions and nature of the affected environment and establish the environmental setting against which environmental effects are evaluated. This should include any relevant general baseline conditions focusing on specific aspects of the environment that may be impacted by the alternatives. EBSs and similar real estate or construction environmental baseline documents, or their equivalent, may be incorporated and/or referenced.

(f) *Environmental consequences.* Environmental consequences of the proposed action and the alternatives. The document must state and assess the effects (direct, indirect, and cumulative) of the proposed action and its alternatives on the environment, and what practical mitigation is available to minimize these impacts. Discussion and comparison of impacts should provide sufficient analysis to reach a conclusion regarding the significance of the impacts, and is not merely a quantification of facts.

(g) *Conclusions regarding the impacts of the proposed action.* A clear statement will be provided regarding whether or not the described impacts are significant. If the EA identifies potential significant impacts associated with the proposed action, the conclusion should clearly state that an EIS will be prepared before the proposed action is implemented. If no significant impacts are associated with the project, the conclusion should state that a FNSI will be prepared. Any mitigations that reduce adverse impacts must be clearly presented. If the EA depends upon mitigations to support a resultant FNSI, these mitigations must be clearly identified as a subsection of the Conclusions.

(h) *Listing of preparers, and agencies and persons consulted.* Copies of correspondence to and from agencies and persons contacted during the preparation of the EA will be available in the administrative record and may be included in the EA as appendices. In addition, the list of analysts/preparers will be presented.

(i) *References.* These provide bibliographic information for cited sources. Draft documents should not be cited as references without the expressed permission of the proponent of the draft material.

§ 651.35 Decision process.

(a) An EA results in either a FNSI or an NOI to prepare an EIS. Initiation of an NOI to prepare an EIS should occur at any time in the decision process when it is determined that significant effects may occur as a result of the proposed action. The proponent should notify the decision maker of any such determination as soon as possible.

(b) The FNSI is a document (40 CFR 1508.13) that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, an EIS will not be prepared. It summarizes the EA, noting any NEPA documents that are related to, but are not part of, the scope of the EA under consideration. If the EA is attached, the FNSI may incorporate the EA's discussion by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action (see § 651.14(b)(2)(iii) for an exception). Following the comment period, the decision maker signs the FNSI, and the action can proceed. It is important that the final FNSI reflect the decision made, the response to public comments, and the basis for the final decision.

(c) The FNSI must contain the following:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The facts and conclusions that have led to the FNSI.

(5) A deadline and POC for further information or receipt of public comments (see § 651.47).

(d) The FNSI is normally no more than two typewritten pages in length.

(e) The draft FNSI will be made available to the public prior to initiation of the proposed action, unless it is a classified action (see § 651.13 for security exclusions). Draft FNSIs that have national interest should be submitted with the proposed press release, along with a Questions and Answers (Q&A) package, through command channels to ASA(I&E) for approval and subsequent publication in the FR. Draft FNSIs having national interest will be coordinated with OCPA. Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(f) For actions of only regional or local interest, the draft FNSI will be publicized in accordance with § 651.14(b)(2). Distribution of the draft FNSI should include any agencies, organizations, and individuals that have expressed interest in the project, those who may be affected, and others deemed appropriate.

(g) Some FNSIs will require the implementation of mitigation measures to reduce potential impacts below significance levels, thereby eliminating the requirement for an EIS. In such instances, the following steps must be taken:

(1) The EA must be made readily available to the public for review through traditional publication and distribution, and through the World Wide Web (WWW) or similar technology. This distribution must be planned to ensure that all appropriate entities and stakeholders have easy access to the material. Ensuring this availability may necessitate the distribution of printed information at locations that are readily accessible and frequented by those who are affected or interested.

(2) Any identified mitigations must be tracked to ensure implementation, similar to those specified in an EIS and ROD.

(3) The EA analysis procedures must be sufficiently rigorous to identify and analyze impacts that are individually or cumulatively significant.

(h) The proponent is responsible for funding the preparation, staffing, and distribution of the draft FNSI and EA package, and the incorporation of public/agency review and comment. The proponent shall also ensure appropriate public and agency meetings, which may be required to facilitate the NEPA process in completing the EA. The decision maker will approve and sign the EA and FNSI documents. Proponents will ensure that the EA and FNSI, to include drafts, are provided in electronic format to allow for maximum information flow throughout the process.

(i) The proponent should ensure that the decision maker is continuously informed of key findings during the EA process, particularly with respect to potential impacts and controversy related to the proposed action.

§ 651.36 Public involvement.

(a) The involvement of other agencies, organizations, and individuals in the development of EAs and EISs enhances collaborative issue identification and problem solving. Such involvement demonstrates that the Army is committed to open decisionmaking and builds the necessary community trust that sustains the Army in the long term. Public involvement is mandatory for EISs (see § 651.47 and Appendix D of this part for information on public involvement requirements).

(b) Environmental agencies and the public will be involved to the extent practicable in the preparation of an EA. If the proponent elects to involve the public in the development of an EA, § 651.47 and Appendix D of this part may be used as guidance. When considering the extent practicable of public interaction (40 CFR 1501.4(b)), factors to be weighed include:

(1) Magnitude of the proposed project/action.

(2) Extent of anticipated public interest, based on experience with similar proposals.

(3) Urgency of the proposal.

(4) National security classification.

(5) The presence of minority or economically-disadvantaged populations.

(c) Public involvement must begin early in the proposal development stage, and during preparation of an EA. The direct involvement of agencies with jurisdiction or special expertise is an integral part of impact analysis,

and provides information and conclusions for incorporation into EAs. Unclassified documents incorporated by reference into the EA or FNSI are public documents.

(d) Copies of public notices, ''scoping'' letters, EAs, draft FNSIs, FNSIs, and other documents routinely sent to the public will be sent directly to appropriate congressional, state, and district offices.

(e) To ensure early incorporation of the public into the process, a plan to include all interested or affected parties should be developed at the beginning of the analysis and documentation process. Open communication with the public is encouraged as a matter of Army policy, and the degree of public involvement varies. Appropriate public notice of the availability of the completed EA/draft FNSI shall be made (see § 651.35) (see also AR 360–5 (Public Information)). The plan will include the following:

(1) Dissemination of information to local and installation communities.

(2) Invitation and incorporation of public comments on Army actions.

(3) Consultation with appropriate persons and agencies.

(f) Further guidance on public participation requirements (to potentially be used for EAs and EISs, depending on circumstances) is presented in Appendix D of this part.

§ 651.37 Public availability.

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries and a list of POCs for supportive documents is encouraged. A depository should be chosen which is open beyond normal business hours. To the extent possible, the WWW should also be used to increase public availability of documents.

§ 651.38 Existing environmental assessments.

EAs are dynamic documents. To ensure that the described setting, actions, and effects remain substantially accurate, the proponent or installation Environmental Officer is encouraged to periodically review existing documentation that is still relevant or supporting current action. If an action is not yet completed, substantial changes in the proposed action may require supplementation, as specified in § 651.5 (g).

§ 651.39 Significance.

(a) If the proposed action may or will result in significant impacts to the environment, an EIS is prepared to provide more comprehensive analyses and conclusions about the impacts. Significant impacts of socioeconomic consequence alone do not merit an EIS.

(b) Significance of impacts is determined by examining both the context and intensity of the proposed action (40 CFR 1508.27). The analysis should establish, by resource category, the threshold at which significance is reached. For example, an action that would violate existing pollution standards; cause water, air, noise, soil, or underground pollution; impair visibility for substantial periods; or cause irreparable harm to animal or plant life could be determined significant. Significant beneficial effects also occur and must be addressed, if applicable.

(c) The proponent should use appropriate methods to identify and ascertain the ''significance'' of impacts. The use of simple analytical tools, which are subject to independent peer review, fully documented, and available to the public, is encouraged.[4] In particular, where impacts are unknown or are suspected to be of public interest, public involvement should be initiated early in the EA (scoping) process.

Subpart F—Environmental Impact Statement

§ 651.40 Introduction.

(a) An EIS is a public document designed to ensure that NEPA policies and goals are incorporated early into the programs and actions of federal agencies. An EIS is intended to provide a full, open, and balanced discussion of significant environmental impacts that

[4] EIFS is one such Army system for evaluating regional economic impacts under NEPA. This system is mandated, as Army policy, for use in NEPA analyses. Other similar tools may be mandated for use in the Army, and will be documented in guidance published pursuant to this part.