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Part 0—PURPOSE AND POLICY

Part 0.1 Purpose and policy.

Part 0.2 Applicability.

Part 0.1 Purpose and policy.

(a) The purpose of these procedures is to integrate the National Environmental Policy Act (NEPA) into the decision-making process for the Department of Defense (DoD), which includes the DoD Components, and the Army Civil Works program executed by the U.S. Army Corps of Engineers, all collectively referred to as DoD (hereinafter). Specifically, the procedures: describe the process by which DoD determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review; ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making; enable DoD to conduct coordinated, consistent, predictable and timely environmental reviews; reduce unnecessary burdens and delays; and implement NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and sponsor preparation of environmental documents.

(b) *Procedural and Interpretive Guidance.* This document sets forth DoD's procedures and practices for implementing NEPA. It further explains DoD's interpretation of certain key terms in NEPA. It does not, nor does it intend to, govern the rights and obligations of any party outside the Federal government. It does, however, establish the procedures under which DoD will typically fulfill its requirements under NEPA.

(c) *Consultation with the Council on Environmental Quality (CEQ).* In addition to the process for establishing or revising categorical exclusions (CATEXs) set forth in Part 1.4(b) and (d) of these procedures, DoD will consult with CEQ while developing or revising their proposed NEPA implementing procedures, in accord with NEPA § 102(2)(B), 42 U.S.C. § 4332(B).

Part 0.2 Applicability.

(a) *Applicability.* This part is applicable to all entities of the Department of Defense and its executing agents for actions where DoD is serving as the action proponent.

(b) *Authority.* NEPA imposes certain procedural requirements on the exercise of DoD's existing legal authority in relevant circumstances. Nothing contained in these procedures is intended or should be construed to limit DoD's other authorities or legal responsibilities.

Part 1.1—NEPA AND AGENCY PLANNING

Part 1.1 Determining when NEPA review is required.

Part 1.2 Determining the appropriate level of NEPA review.

Part 1.3 NEPA and agency decision making.

Part 1.4 Categorical exclusions.

Part 1.5 Environmental assessments.

Part 1.6 Findings of no significant impact.

Part 1.7 Lead and cooperating agencies.

Part 1.8 Notices of intent and scoping.

Part 1.1 Determining when NEPA review is required.

(a) DoD will determine that NEPA review is not required for a proposed agency action when:

(1) The activities or decision do not result in final agency action under the Administrative Procedure Act, *see* 5 U.S.C. § 704, or other relevant statute that also includes a finality requirement;

(2) The proposed activity or decision is exempted from NEPA by law;

(3) NEPA review would clearly and fundamentally conflict with the requirements of another provision of law;

(4) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that DoD retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of DoD is nondiscretionary within the meaning of NEPA § 106(a)(4) and/or § 111(10)(B)(vii) (42 U.S.C. § 4336(a)(4) and § 4336e(10)(B)(vii), respectively), and NEPA review is not required for the action in question;

(5) The proposed action is an action for which another statute's requirements serve the function of agency compliance with NEPA;

(6) The proposed action is not a "major Federal action." The terms "major" and "Federal action" each have independent force. NEPA review is required only when both of these two elements are present. Such a determination is dependent upon the facts and circumstances of each situation, and is thus reserved to the judgment of DoD;

(7) NEPA review is not required for actions with no or minimal Federal funding, or with no or minimal Federal involvement where a federal agency cannot control the outcome of the project. NEPA § 111(10)(B)(i), 42 U.S.C. § 4336e(10)(B)(i). A but-for causal relationship is insufficient to make an agency responsible for a particular action under NEPA. By the same token, minimal Federal funding or involvement, which may in a causal sense be a but-for

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cause of an action, does not by itself convert that action into a Federal action within the meaning of the language of the statute; or

(8) The issuance of DoD's NEPA procedures is not subject to NEPA review.

(b) In determining whether NEPA applies to a proposed agency action, DoD will consider only the action or project at hand.

Part 1.2 Determine the appropriate level of NEPA review.

(a) If DoD determines under Part 1.1 of these procedures that NEPA applies to a proposed activity or decision, DoD will then determine the appropriate level of NEPA review in the following sequence and manner. At all steps in the following process, DoD will consider the proposed action or project at hand and *its* effects.

(1) If DoD has established, or adopted pursuant to NEPA § 109, 42 U.S.C. § 4336c, a categorical exclusion (CATEX) or CATEXs that covers the proposed action, DoD will analyze whether to apply the CATEX(s) to the proposed action and apply the CATEX(s), if appropriate, pursuant to Part 1.4(e) of these procedures.

(2) If another agency has already established a CATEX that covers the proposed action, DoD will consider whether to adopt that exclusion pursuant to Part 1.4(c) of these procedures so that it can be applied to the proposed action at issue, and to future activities or decisions of that type.

(3) If the proposed action warrants the establishment of a new CATEX, or the revision of an existing CATEX, pursuant to Part 1.4(b) of these procedures, DoD will consider whether to so establish or revise, and then apply the CATEX to the proposed action pursuant to Part 1.4(e) of these procedures.

(4) If DoD cannot apply a CATEX to the proposed action consistent with paragraphs (a) (1) - (a)(3) of this Part, DoD will consider the proposed action's reasonably foreseeable effects consistent with paragraph (b) of this Part, and then:

(i) if the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, will develop an environmental assessment (EA), as described in Part 1.5 of these procedures; or

(ii) if the proposed action is likely to have reasonably foreseeable significant effects, will develop an environmental impact statement (EIS), as described in Part 2 of these procedures.

(b) When considering whether the reasonably foreseeable effects of the proposed action are significant, DoD will consider the potentially affected environment and degree of the effects of the action. DoD may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.

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- (1) In considering the potentially affected environment, DoD may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.
- (2) In considering the degree of the effects, DoD may consider the following, as appropriate to the specific action:
 - (i) Both short- and long-term effects;
 - (ii) Both beneficial and adverse effects;
 - (iii) Effects on public health and safety;
 - (iv) Economic effects; and
 - (v) Effects on the quality of life of the American people.

Part 1.3 NEPA and agency decision making.

(a) DoD will maximize the use of proven strategies to complete the environmental review process efficiently, including the use of electronic collaboration tools and programmatic approaches. Efficiency will be promoted through the following:

- (1) Use of programmatic analyses, when practical, to eliminate redundancies in future project/program analyses and reduce mission delays.
- (2) Adopting another organization's or agency's CATEXs; incorporating portions of existing environmental documents (EA and EIS) and reviews into EAs and EISs; incorporation of environmental documents by reference; using CATEXs to the greatest extent possible consistent with the law; and not preparing an EIS when an EA with a finding of no significant impact (FONSI) is appropriate.

(b) *Limitations on actions during the NEPA process.* Except as provided in paragraph (c) of this section, until DoD issues a record of decision or finding of no significant impact, or makes a categorical exclusion determination, as applicable DoD will take no action concerning a proposal that would:

- (1) Have an adverse environmental effect; or
- (2) Limit the choice of reasonable alternatives.

(c) If DoD is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within DoD's jurisdiction that would meet either of the criteria in (b), DoD will promptly notify the applicant that DoD will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. When considering a proposed action for Federal funding, DoD may authorize such activities, purchase of long lead-time equipment, and purchase options made by applicants.

(d) *Actions developed by non-Federal entities.* For proposed actions that are initially developed by applicants or other non-Federal entities, DoD will:

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- (1) Coordinate with the non-Federal entity at the earliest reasonable time in the planning process to inform the entity what information DoD might need to comply with NEPA and establish a schedule for completing steps in the NEPA review process, consistent with NEPA's statutory deadlines and any internal agency NEPA schedule requirements; and
 - (2) Supervise an applicant's or, when hired by the applicant, a contractor's preparation of an EA or EIS. DoD's procedures for applicant-prepared EAs and EISs are included in Part 5 of these procedures.
- (e) Notify the applicant that DoD will take appropriate action to ensure compliance with NEPA, as required.
- (f) *Rulemaking.* For informal rulemaking conducted pursuant to the Administrative Procedure Act, 5 U.S.C. § 553, the environmental document will normally accompany the proposed rule.
- (g) *Classified actions.* Environmental documents for a classified proposed action shall be prepared, safeguarded, and disseminated in accordance with the requirements applicable to classified information. To the extent practicable, these documents shall be organized in such a manner that classified portions are included as appendices, so that unclassified portions can be made available to the public. Review of classified NEPA documentation will be coordinated with the Environmental Protection Agency (EPA) as necessary to fulfill requirements of section 309 of the Clean Air Act (42 U.S.C. 7609 et seq.).
- (1) A classified EA/EIS serves the same "informed decision making" purpose as does a published unclassified EA/EIS. Even though the classified EA/EIS does not undergo public review and comment, it must still be part of the information package considered by the decision maker 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.

Part 1.4 Categorical exclusions.

- (a) *Generally.* This section describes the process DoD uses for establishing and revising CATEXs, for adopting other agencies' CATEXs, and for applying CATEXs to a proposed agency action. DoD's current CATEXs, including CATEXs established and substantiated by DoD consistent with its NEPA procedures, legislative CATEXs, and CATEXs adopted from other agencies in accordance with section 109 of NEPA, are listed in Appendix A. DoD including all DoD components is considered a single "Federal Agency" for the purposes of NEPA's CATEX provisions, regardless of the DoD component that originally established or adopted a given CATEX.
- (b) *Establishing or revising CATEXs.* To establish a new CATEX, DoD will first need to determine that the category of actions normally does not significantly affect the quality of the human environment. In establishing or revising a CATEX, DoD will:

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- (1) Develop a written record containing information to substantiate the CATEX; determination;
- (2) Consult with CEQ on its proposed new or revised CATEX including the written record, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (3);
- (3) At DoD's discretion, provide public notice (e.g., in the Federal Register (FR)) of DoD's establishment or revision of the CATEX and the location (e.g., website) of availability of the written record, for public review; and
- (4) Make the CATEX readily available (e.g. on a publicly accessible website).

(c) *Adopting categorical exclusions from other Federal agencies.* Consistent with NEPA § 109, 42 U.S.C. § 4336c, DoD may adopt a CATEX listed in another agency's NEPA procedures. When adopting a CATEX, DoD will:

- (1) Identify the CATEX listed in another agency's NEPA procedures that covers its category of proposed or related actions;
- (2) Consult with the agency that established the CATEX to ensure that the proposed adoption of the CATEX is appropriate;
- (3) Provide public notice that DoD is adopting the CATEX, including a brief description of the proposed action or category of proposed actions to which DoD intends to apply the adopted CATEX.
- (4) Document the adoption of the CATEX in DoD's administrative record.

(d) *Applying categorical exclusions.* If DoD determines that a CATEX could apply to a proposed agency action, DoD will evaluate the action for extraordinary circumstances that indicate a normally excluded agency action may have a reasonably foreseeable significant adverse effect.

- (1) Extraordinary circumstances that may preclude the use of a CATEX include the following:
 - (i) Potential for substantial adverse effect on public health, safety or the environment;
 - (ii) Potential to violate applicable Federal, State, Tribal, or local environmental laws;
 - (iii) Greater scope or size of project than usual for the category of action proposed;
 - (iv) Project poses uncertain, unknown, or unique risks to public health, safety, or the environment that are unlike those posed by typical actions in the excluded category;
 - (v) Project will result in an uncontrolled or unpermitted release of hazardous substances or require a conformity determination under standards in [40 CFR part 93, subpart B](#) (the Clean Air Act General Conformity Rule);

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(vi) Potential for substantial adverse effect on the following sensitive resources, unless the potential impact has been resolved through another environmental process (e.g., CZMA, NHPA, CWA, etc.):

- (A) endangered or threatened species listed under the Endangered Species Act, or designated critical habitat for these species; and/or
- (B) areas of particular environmental concern or sensitivity such as coral reefs, federally designated wilderness areas, wildlife refuges, marine sanctuaries and monuments, wetlands, sole source aquifers, or parklands; and/or
- (C) Have an adverse effect on archaeological resources or historic properties listed or determined to be eligible for listing in the National Register of Historic Places.

(2) DoD may apply multiple CATEXs to the constituent parts of a single action but must consider whether the aggregate impacts of the constituent parts could give rise to an extraordinary circumstance or result in reasonably foreseeable significant effects.

(3) If an extraordinary circumstance is present, DoD will determine whether the proposed agency action can be modified to avoid those effects, and if so, apply the CATEX. If the action cannot be modified, DoD will consider whether the application of the CE is still appropriate notwithstanding the presence of extraordinary circumstances, because even with the extraordinary circumstance, the proposed action does not have the potential to result in significant impacts. The mere presence of an extraordinary circumstance does not necessarily prevent the application of the categorical exclusion.

(4) If DoD determines that it cannot apply a CATEX to the proposed action, DoD will prepare an EA or EIS, as appropriate.

(e) *Documentation of CATEX determinations.* DoD will document the application of a CATEX in its administrative record in each of the following cases:

- (1) For any application of a CATEX designated by DoD as requiring documentation (e.g., Record of Environmental Consideration, Air Force Form 813, Defense Logistics Agency Form 1664), as indicated in paragraph (g) of this section; or
- (2) For any case in which DoD determines that applying a CATEX is appropriate consistent with paragraph (d).

(f) *Reliance on CATEX determinations of other agencies.* DoD may also rely on another agency's determination that a CATEX applies to a particular proposed DoD action if the agency action covered by that determination and the DoD's proposed action are substantially the same, or if DoD's proposed action is a subset of the type of agency action covered by that determination. DoD will document its reliance on another agency's CATEX determination in the Administrative Record.

(g) *Applying legislative categorical exclusions.* If DoD determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed DoD to establish, covers a proposed agency action, DoD will conclude review consistent with applicable law. If appropriate, DoD may examine extraordinary circumstances, modify the proposed agency action, or document the determination that the legislative categorical exclusion applies, consistent with paragraph (e) of this section and the legal authority for the establishment of the legislative categorical exclusion.

(h) *List of categorical exclusions.* See Appendix A.

Part 1.5 Environmental assessments.

(a) *Generally.* If an action is subject to NEPA, as determined following the procedures in Part 1.1 of these procedures, and unless DoD finds that the proposed action is covered by a CATEX as determined following the procedures in Part 1.4 of these procedures, or by another provision of law, DoD will prepare an EA with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. DoD is mindful of Congress' direction that EAs are to be "concise." NEPA § 106(b)(2); 42 U.S.C. § 4336(b)(2).

(b) *Elements.* To assist DoD in determining whether to prepare a FONSI or an EIS, the EA will briefly discuss the:

(1) Purpose and need for the proposed agency action based on the DoD's statutory authority. When the proposed agency action concerns DoD's duty to act on an application for authorization, the purpose and need for the proposed agency action will also be informed by the goals of the applicant;

(2) Proposed action and alternatives to the extent required by NEPA § 102(2)(H), 42 U.S.C. § 4332(2)(H); and

(3) The reasonably foreseeable effects of the proposed agency action and the alternatives considered.

(c) *Scope of analysis.*

(1) In preparing the environmental assessment, DoD will focus its analysis on whether the environmental effects of the action or project *at hand* are significant.

(2) Similarly, DoD will document in the environmental assessment where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

(3) To the extent it assists in reasoned decision-making, DoD may, but is not required to by NEPA, analyze environmental effects from other projects separate in time, or separate in place, or that fall outside of DoD's regulatory authority, or that would have to be initiated by a third party. If DoD determines that such analysis would assist it in reasoned decision-

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making, it will document this determination in the environmental assessment and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects.

(d) *Page limits.*

(1) The text of a stand-alone EA is strictly prohibited from exceeding 75 pages, not including citations or appendices.

(2) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(3) EAs will be formatted for an 8.5x11" paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5x11", each such item will count as one page.

(4) *Certification Related to Page Limits.* The breadth and depth of analysis in an EA will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the EA, a responsible official will certify (and the certification will be incorporated into the EA) that DoD has considered the factors mandated by NEPA; that the EA represents DoD's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects DoD's expert judgment; and that any considerations addressed briefly or left unaddressed were, in DoD's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed..

(e) *Deadlines.* Congress providing deadlines for EAs and EISs in § 107(g) of NEPA, 42 U.S.C. § 4336a(g). These deadlines indicate Congress's determination that an agency, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. Thus:

(1) DoD will complete the EA not later than the date that is 1 year after beginning the EA, in accordance with 42 U.S.C. § 4336a(g)(1)(B). Typically, the EA start date will be the date of notification to government entities or the public that the DoD entity will be preparing an EA. The EA completion date will be the date that DoD entity publishes the FONSI.

(2) *Deadline extensions.* If DoD determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(B), 42 U.S.C. § 4336a(g)(1)(B), it must consult with the applicant, if any, pursuant to NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. Cause for establishing a new deadline is only established if the EA is so incomplete, at the time at which DoD determines it is not

able to meet the statutory deadline, that issuance would, in DoD's view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such EA. The announcement of the new deadline will specify the reason why the EA was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(f) *Certification Related to Deadline.* When the EA is published, a responsible official will certify (and the certification will be incorporated into the EA) that the resulting EA represents DoD's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in DoD's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in DoD's judgment, the analysis contained therein is adequate to inform and reasonably explain DoD's final decision regarding the proposed federal action. Army Civil Works water resources feasibility reports with an integrated EA are subject to the time limit for these reports specified in 33 U.S.C. § 2282c(a)(1). DoD will publish notices of EA and FONSI completion on a publicly accessible website.

Part 1.6 Findings of no significant impact.

(a) DoD will prepare a finding of no significant impact (FONSI) if DoD determines, based on the EA, that the proposed action or project at hand will not have significant effects. The FONSI will:

- (1) Include the EA or incorporate it by reference.
- (2) Document the reasons why DoD has determined that the selected alternative will not have a significant effect on the quality of the human environment.
- (3) State the authority for any mitigation that DoD has adopted and any applicable monitoring or enforcement provisions. If DoD finds no significant effects based on mitigation, the mitigated FONSI will state any mitigation requirements enforceable by the DoD or voluntary mitigation commitments that will be undertaken to avoid significant effects.
- (4) Identify any other documents related to the FONSI.
- (5) State that an EIS will not be prepared, concluding the NEPA process for that action.
- (6) If significant effects are known, those significant effects may be reduced or mitigated to a level where a mitigated FONSI can be used.

(b) DoD will publish the FONSI on a publicly accessible website.

Part 1.7 Lead and cooperating agencies.

In many instances, a proposed activity or decision is undertaken in the context which entails activities or decisions undertaken by other federal agencies (e.g., where multiple federal authorizations or analyses are required with respect to a project sponsor's overall purpose and goal). These activities and decisions are "related actions," in that they are each the responsibility of a particular agency, but they are all related in a matter relevant to NEPA (e.g., by their

relationship with one overarching project). In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A). When serving as the lead agency, DoD is ultimately responsible for completing the NEPA process; when serving as the lead agency, DoD will also determine and document the scope of the project at hand. When a joint lead relationship is established pursuant to NEPA § 107(a)(1)(B), 42 U.S.C. § 4336a(a)(1)(B), DoD and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

a. Disputes about Lead Agency Designation. If agencies disagree on which should be the lead agency, they should first attempt to resolve the dispute internally by escalating it within their respective agencies. If internal resolution fails, the agencies can refer the dispute to the Council on Environmental Quality (CEQ) for resolution. CEQ may issue a determination on which agency should be the lead. If no lead agency is determined, each agency may proceed with its own NEPA compliance for the project.

b. Cooperating Agency Designation. upon request of the lead agency, any Federal agency with jurisdiction by law shall be a cooperating agency. In addition, upon request of the lead agency, any other Federal agency with special expertise with respect to any environmental issue may be a cooperating agency. A State, Tribal, or local agency of similar qualifications may become a cooperating or participating agency by agreement with the lead agency.

Part 1.8 Notices of intent, scoping, planning, and tiering.

(a) As a preliminary step to determining whether, in connection with a proposal that is not excluded pursuant to a categorical exclusion, DoD will prepare an environmental assessment or an environmental impact, DoD will determine and document the scope of the project at hand.

(b) *Notice of intent.* As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an EIS, DoD will publish the notice of intent (NOI) to prepare an EIS on a publicly accessible website.

(1) The NOI for an EIS will include a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposed agency action (NEPA § 107(c); 42 U.S.C. § 4336a(c)).

(2) In addition to a request for comment required for NOIs for EIS, a NOI for any environmental document may include:

- (i) The purpose and need for the proposed action;
- (ii) A preliminary description of the proposed action and alternatives the EIS will consider;
- (iii) A brief summary of expected effects;
- (iv) Anticipated permits and other authorizations (*i.e.*, anticipated related actions);
- (v) A schedule for the decision-making process;

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- (vi) A description of the public scoping process, including any scoping meeting(s);
- (vii) Contact information for a person within DoD who can answer questions about the proposed action and the EIS; and
- (viii) Identification of any cooperating and participating agencies (*i.e.*, agencies responsible for related actions), and any information that such agencies require in the notice to facilitate their decisions or authorizations.

(c) *Scoping*. DoD may use an early and open process to determine the scope of issues for analysis in an environmental document, including identifying substantive issues that meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, eliminating from further study non-substantive issues. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the NOI.

(d) *Integration of other documents*. Environmental documentation and analyses required by these procedures should be integrated as much as practicable with any environmental studies, surveys, and impact analyses required by other environmental review laws and executive orders (EOs). For Army Civil Works projects, planning and/or engineering reports may be combined with or integrated into the EA or EIS. For Civil Works projects, NEPA documents shall be prepared concurrently with and utilize data from such analyses. 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.

(e) *Tiering*. The use of tiering is encouraged. Tiering refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

- (1) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
- (2) From an environmental impact statement on a specific action at an early stage to a supplemental or subsequent statement or analysis at a later stage. Tiering in such cases is appropriate when it focuses analysis on the issues which are ripe for decision and excludes from consideration issues already decided or not yet ripe.

(e) *Public Involvement in Army Civil Works Project Planning*. Draft feasibility reports with an integrated or attached EA and FONSI (as appropriate) or EIS can be circulated to agencies, organizations, and members of the public known to have an interest in the study for comment. For Army Civil Works, in the case of feasibility, continuing authority, or special planning reports and certain planning/engineering reports, the draft FONSI and EA should be included within the draft report and circulated for a minimum 30-day review to concerned agencies, organizations and the interested public. In the case of operation and maintenance activities

involving the discharge of dredged or fill material requiring a public notice, the notice should indicate the availability of the EA/FONSI. For all other Army Civil Works project actions, a notice of availability of the FONSI will be sent to concerned agencies, organizations and the interested public.

Part 2—ENVIRONMENTAL IMPACT STATEMENTS

Part 2.1 Preparation of environmental impact statements.

Part 2.2 Purpose and need.

Part 2.3 Analysis within the environmental impact statement.

Part 2.4 Page limits.

Part 2.5 Deadlines.

Part 2.6 Publication of the environmental documents.

Part 2.1 Preparation of environmental impact statements.

(a) DoD will prepare an EIS only with respect to proposed agency actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant effect on the quality of the human environment. NEPA § 106(b)(1); 42 U.S.C. § 4336(b)(1). A determination that the agency will proceed with an EIS may only be made by the appropriate official. For the:

(1) Military Departments and Offices of the Secretary of Defense, the determination is made by an Assistant Secretary-level or Principal Deputy Assistant Secretary-level official

(2) Defense Agencies and Defense Field Activities, the determination is made by the Director or a Senior Executive Service-level Deputy Director.

(3) Army Civil Works, the determination is made by the appropriate U.S. Army Corps of Engineers district commander.

(b) During the process of preparing an EIS, DoD:

(1) Will obtain the comments of:

(i) Any Federal (or cooperating non-Federal) agency that has jurisdiction by law or special expertise with respect to any environmental impact of the action or project at hand or is authorized to develop and enforce environmental standards that govern the action or project at hand;

(ii) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards;

(iii) State, Tribal, or local governments that may be affected by the proposed action;

(iv) Any agency that has requested it receive statements on actions of the kind proposed;

(v) The applicant, if any; and

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- (vi) The public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.
- (c) The process of obtaining and requesting comments pursuant to (b) above may be undertaken at any time that is reasonable in the process of preparing the EIS. DoD will ensure that the process of obtaining and requesting comments pursuant to (b) above, and DoD's analysis of and response to those comments, does not cause DoD to violate the congressionally mandated deadline for completion of an EIS.
- (d) *Addressing comments contained in EIS.* DoD will address any significant comments received consistent with paragraph (b) of this section in the EIS.
- (e) The EIS will include a summary of any substantive comments received consistent with paragraph (b) of this section. Specific actions that DoD may take in response to substantive issues raised and/or recommendations made in the comments received in the EIS may include:
 - (1) Modifying alternatives, including the proposed action.
 - (2) Developing and evaluating alternatives not previously given serious consideration.
 - (3) Supplementing, improving, or modifying analyses, to include consideration of science or literature not previously considered.
 - (4) Making factual corrections.
 - (5) No action needed. DoD may provide a brief rationale for taking no action, such as:
 - (i) The comment is outside the scope of what is being proposed;
 - (ii) There is no cause-effect relationship between the actions the agency is proposing and the issue raised and/or recommendation made;
 - (iii) The commenter misinterpreted the information provided; or
 - (iv) The recommendation made does not comply with applicable laws or regulations and/or are not feasible to implement (technically or economically), etc.

Part 2.2 Purpose and need.

The EIS will address the purpose and need for the proposed agency action based on the DoD's statutory authority. When the proposed agency action concerns DoD's duty to act on an application for authorization, the purpose and need for the proposed agency action will also be informed by the goals of the applicant.

Part 2.3 Analysis within the environmental impact statement.

- (a) The EIS will include a detailed statement on:
 - (1) Reasonably foreseeable environmental effects of the proposed agency action;

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- (2) Any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
- (3) A reasonable range of alternatives to the proposed agency action, including an analysis of any adverse environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are, in DoD's expert judgement, technically and economically feasible, and meet the purpose and need of the proposal;
- (4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented; and
- (6) Any means identified to mitigate adverse environmental effects of the proposed action. DoD is mindful in this respect that NEPA itself does not require or authorize DoD to impose any mitigation measures.

(b) *Scope of analysis.*

- (1) In preparing the environmental impact statement, DoD will focus its analysis on whether the environmental effects of the action or project at hand are significant.
- (2) Similarly, DoD will document in the environmental impact statement where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.
- (3) To the extent it assists in reasoned decision-making, DoD may, but is not required to by NEPA, analyze environmental effects from other projects separate in time, or separate in place, or that fall outside of DoD's regulatory authority, or that would have to be initiated by a third party. If DoD determines that such analysis would assist it in reasoned decision making, it will document this determination in the environmental impact statement and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects.

(c) *Proportionate analysis.* EISs will discuss effects in proportion to their significance. With respect to issues that are not of a substantive nature and do not meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, the EIS will include the briefest possible discussion to explain why those issues are not substantive and therefore not subject to any further analysis. EISs will be analytic, concise, and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

Part 2.4 Page limits.

- (a) Except as provided in paragraph (b) of this Part, the text of an EIS will not exceed 150 pages, not including citations or appendices.

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(b) A stand-alone EIS for a proposed agency action of extraordinary complexity is strictly prohibited from exceeding 300 pages, not including any citations or appendices. DoD will determine at the earliest possible stage of preparation of an EIS whether the conditions for exceeding the page limit in paragraph (a) are present.

(c) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(d) An EIS will be prepared on 8.5x11" paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5x11", each such item will count as one page.

(e) *Certification Related to Page Limits.* The breadth and depth of analysis in an EIS will be tailored to ensure that the EIS does not exceed these page limits. In this regard, as part of the finalization of the EIS, a responsible official will certify that DoD has considered the factors mandated by NEPA; that the EIS represents DoD's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects DoD's expert judgment; and that any considerations addressed briefly or left unaddressed were, in DoD's judgment, comparatively unimportant or frivolous.

Part 2.5 Deadlines.

(a) Congress provided deadlines for EAs and EISs in NEPA § 107(g), 42 U.S.C. § 4336a(g). Thus, DoD will complete the EIS not later than the date that is 2 years after the date that the NOI was published on a public website or in the FR, if applicable. The NOI formally begins the scoping process for an EIS. The EIS completion date will be the date that the Record of Decision is published.

(b) The EIS will be published (unless the deadline is extended pursuant to the provision below) on or before the deadline.

(c) If the proposal involves an applicant and DoD determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(A), 42 U.S.C. § 4336a(g)(1)(A), DoD must consult with the applicant pursuant NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline by the senior agency official approving of an extended timeline, they must document and report to CEQ and Congress, as appropriate. Cause for establishing a new deadline is only established if the EIS is so incomplete, at the time at which DoD determines it is not able to meet the statutory deadline, that issuance would, in DoD's view, result in an inadequate analysis. Such new deadline must provide only

so much additional time as is necessary to complete such EIS. The announcement of the new deadline will specify the reason why the EIS was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(d) *Certification Related to Deadlines.* When the EIS is published, a responsible official will certify (and the certification will be incorporated into the EIS) that the resulting EIS represents DoD's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in the DoD's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the DoD's judgment, the analysis contained therein is adequate to inform and reasonably explain DoD's final decision regarding the proposed federal action. Army Civil Works water resources feasibility reports with an integrated EIS or EA are subject to the time limit for these reports specified in 33 U.S.C. § 2282c(a)(1).

Part 2.6 Publication of the environmental impact statement.

- a) DoD will make the entire EIS available on a publicly accessible website, following any applicable law, regulation, and policy for information dissemination
- b) During the process of preparing the EIS, DoD may publish such draft, pre-decisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA.

Part 3—EFFICIENT ENVIRONMENTAL REVIEWS

- Part 3.1 Programmatic environmental documents.
- Part 3.2 Adoption.
- Part 3.3 Publishing predecisional environmental documents.
- Part 3.4 Combining documents.
- Part 3.5 Incorporation by reference.
- Part 3.6 Supplemental environmental documents.
- Part 3.7 Integrity and completeness of information.
- Part 3.8 Integrating NEPA with other environmental requirements.
- Part 3.9 Elimination of duplication with State, Tribal, and local procedures.
- Part 3.10 Proposals for regulations.
- Part 3.11 Unique identification numbers.
- Part 3.12 Emergencies.

Part 3.1 Programmatic environmental documents.

(a) DoD may prepare environmental documents for programmatic actions, such as the adoption of new programs. DoD may evaluate the proposal(s) in one of the following ways:

- (1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area;
- (2) Generically, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, media, or subject matter; or
- (3) By stage of technological development.

(b) Consistent with NEPA § 108, 42 U.S.C. § 4336b, and Part 3.2 of these procedures, after completing a programmatic EA or EIS, DoD may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After 5 years, as long as DoD reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid, briefly documents its reevaluation, and explains why the analysis remains valid considering any new and substantial information or circumstances, DoD may continue to rely on the document.

Part 3.2 Reliance on existing environmental documents.

(a) *Generally.* DoD may rely upon from another agency an EIS, EA, or portion thereof, or a determination that a specific agency action is covered by a CATEX, provided that the EIS, EA,

portion thereof, or determination meets the standards for an adequate environmental document of the same type under these procedures.

(b) Substantial Similarity

(1) If the actions covered by the original EIS or EA and the proposed action are substantially the same, the DoD will republish the relied upon EIS or EA.

(2) If the actions are not substantially the same, DoD may modify the EIS or EA as necessary to render the document fit for fulfilling NEPA's analytic requirements for the action at hand, and publish the relied upon EIS or EA, as modified, for comment to the extent that solicitation of comment will assist DoD in expeditiously adapting the relied upon EIS or EA so that it is fit for DoD's purposes.

Part 3.3 Publishing predecisional environmental documents.

During the process of preparing any environmental document provided for by these procedures, DoD may publish such draft, predecisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA and this guidance.

Part 3.4 Combining documents.

DoD will combine, to the fullest extent practicable, any environmental document with any other agency document to reduce duplication and paperwork.

Part 3.5 Incorporation.

(a) *Incorporation.* DoD may incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding DoD and public review of the action. When incorporating material by reference, DoD will cite, briefly describe the content and relevance to the environmental document and make the materials reasonably available for review by potentially interested parties. DoD will not use incorporation as a means to evade the statutory page limits.

(b) Although NEPA itself does not require cost-benefit analysis, DoD may conduct cost-benefit analysis in some cases. To the extent that this cost-benefit analysis is relevant to any alternatives analysis DoD is conducting pursuant to NEPA, DoD will incorporate the cost-benefit analysis by reference or append it to the EIS to avoid duplication in evaluating the environmental effects. In such cases, the environmental document will discuss the relationship between that analysis and any analyses of unquantified environmental effects, values, and amenities.

Part 3.6 Supplemental environmental documents.

DoD will prepare supplements to environmental documents only if a major Federal action remains to occur, and:

(a) DoD makes substantial changes to the proposed action that are relevant to environmental concerns; or

- (b) DoD decides, in its discretion, that there are substantial new circumstances or information about the significance of the adverse effects that bear on the proposed action or its effects.

Part 3.7 Integrity and completeness of information.

- (a) DoD will not undertake new scientific and technical research to inform its analyses unless that is essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable. Rather, DoD will make use of reliable existing data and resources.
- (b) When DoD is evaluating an action's reasonably foreseeable effects on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, DoD will make clear in the relevant environmental document that such information is lacking.
- (c) For Army Civil Works projects in preconstruction engineering and design, construction, and for completed Army Civil Works projects in an operations and maintenance category, District commanders will review the existing NEPA document(s) to determine whether there are new circumstances or significant impacts that warrant the preparation of a draft and final supplement to the EIS. If the proposed changes and new impacts are not significant, an EA and FONSI may be used.

Part 3.8 Integrating NEPA with other environmental requirements.

- (a) To the fullest extent possible, DoD will prepare environmental documents concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes.
- (b) DoD will combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, DoD may combine an environmental document with related plans, rules, or amendments as a single consolidated document.
- (c) If comments on a NOI or other aspects of a scoping process identify consultations, permits, or licenses necessary under other environmental laws, the environmental document may contain a section briefly listing the applicable requirements and how DoD has or will meet them (*e.g.*, permits applied for or received, consultations initiated or concluded).

Part 3.9 Elimination of duplication with State, Tribal, and local procedures.

- (a) DoD may cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents.
- (b) To the fullest extent practicable unless specifically prohibited by law, DoD will cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analyses, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:
 - (1) Joint planning processes;

- (2) Joint environmental research and studies;
- (3) Joint public meetings (except where otherwise provided by statute); or
- (4) Joint environmental documents.

Part 3.10 Proposals for regulations.

Where the proposed action is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or EO requirements may satisfy one or more requirements of this Part. When a procedure or document satisfies one or more requirements of this Part, DoD may substitute it for the corresponding requirements in this Part and need not carry out duplicative procedures or documentation. Agencies will identify which corresponding requirements in this Part are satisfied and consult with CEQ to confirm such determinations.

Part 3.11 Unique identification numbers.

For all environmental documents, DoD will provide a unique identification number for tracking purposes, which DoD will reference on all associated environmental review documents prepared for the proposed agency action and in any database or tracking system for such documents. DoD will coordinate with CEQ and other federal agencies to ensure uniformity of such identification numbers across federal agencies.

Part 3.12 Emergencies.

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures, DoD will consult with CEQ about alternative arrangements for compliance with NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

- (a) Emergency circumstances may require immediate actions that prevent following standard NEPA procedures. For example, immediate threats to life, property, or important natural, cultural, or historical resources may make it necessary to take an action with significant environmental impact without following standard NEPA procedures. Army Civil Works 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.

Part 4—AGENCY DECISION MAKING

Part 4.1 Decision documents.

Part 4.2 Filing requirements.

Part 4.1 Decision documents.

At the time of its decision on a proposed action, DoD may prepare and publish a concise decision document notifying the public that the decisionmaker has certified that DoD has considered all relevant information raised in the NEPA process and that the NEPA process has closed.

(a) Decision making under NEPA is an inherently governmental function. DoD may use contractors to assist in the preparation of environmental documents but only a government official may make the final determination for decision documents.

(b) CATEXs. DoD will document decisions to apply a CATEX in the administrative record.

(c) FONSI. DoD will document a FONSI to explain the reasons why an action not otherwise categorically excluded will not have a significant impact on the human environment, and for which an EIS will not therefore be prepared. A FONSI will include the EA or a summary and note any other environmental documents related to it. A FONSI may be one result of review of an EA. The FONSI can only be signed by the appropriate civilian or military personnel (e.g., GS-15 or military officer O-6 level). A FONSI will be published on a publicly accessible website. For Army Civil Works, the U.S. Army Corps of Engineers district commander is responsible for determining that a FONSI is appropriate.

(d) Record of Decision (ROD). 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. The ROD must be signed by the appropriate Assistant Secretary level or Principal Deputy Assistant Secretary level official of the Military Department. For Defense Agencies or Defense Field Activities, the ROD must be signed by the Director or a Senior Executive Service-level Deputy Director. For Army Civil Works, the ROD must be signed by the Assistant Secretary of the Army for Civil Works or their designee. At a minimum, a ROD notice will be published on a publicly accessible website and in the FR.

Part 4.2 Filing requirements.

DoD will file EISs together with comments and any responses with the EPA, Office of Federal Activities for publication in the FR.

Part 5—PROCEDURES FOR APPLICANT-PREPARED NEPA DOCUMENTS

Part 5.1 Procedures for applicant-prepared environmental documents.

In accordance with NEPA § 107(f), 42 U.S.C. § 4336a(f), DoD has established procedures allowing applicants, or contractors hired by applicants, to prepare NEPA documents under DoD's supervision.

- (a) The Sponsor will independently evaluate the environmental document and will take responsibility for its contents.
 - (b) The Sponsor will assist applicants, if applicable, and applicant-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. The Sponsor may provide appropriate guidance and assist in environmental document preparation, to the extent that DoD's resources and policy priorities permit. The Sponsor will work with the applicant to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need.
 - (c) The Sponsor will develop and modify, as appropriate, a schedule for preparation of the environmental document. Major changes to the schedule or related matters will be documented through written correspondence.
 - (d) The Sponsor may request from an applicant environmental information for use by DoD in preparing or evaluating an environmental document. This may include a decision file consisting of any factual, scientific, or technical information used, developed, or considered by the applicant or applicant-hired contractor in the course of preparing the environmental document, including any correspondence with DoD or with third parties.
- (1) The Sponsor or action proponent must furnish guidance, participate in the preparation of, and independently evaluate NEPA documents, taking responsibility for their accuracy, scope, and contents.

Part 6—DEFINITIONS

Part 6.1 Definitions.

As used in these implementing procedures, terms have the meanings provided in NEPA § 111, 42 U.S.C. § 4336e. In addition:

(a) *Action proponent* means the office, Military Department, Defense Agency, Defense Field Activity, DoD component, or commander or director of a unit, activity, or organization who initiates a proposal for action, 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 decision-making authority for that action. In specific circumstances, the action proponent and decision maker may be identified in DoD Regulations, other DoD Instructions, operational instructions and orders, acquisition instructions, and other sources which set out authority and responsibility within the DoD.

(b) *Applicant* means entity applying to DoD for a permit, license, exemption or allocation, or other similar actions, unless the action is categorically excluded from preparation of an EA or EIS

(c) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.

(d) *Connected action* means a separate Federal action within the authority of DoD that is closely related to the proposed agency action and should be addressed in a single environmental document because the proposed agency action:

- (1) Automatically triggers the separate Federal action, which independently would require the preparation of additional environmental documents;
- (2) Cannot proceed unless the separate Federal action is taken previously or simultaneously; or
- (3) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for their justification.

(e) *DoD components* refer collectively to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD, including the Army Civil Works program.

(f) *Effects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

- (1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic

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(such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

(2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party.

(g) *Human environment* means comprehensively the natural and physical environment and the relationship of Americans with that environment. (See also the definition of “effects” in paragraph (d) of this section.)

(h) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.

(i) *Lead Agency*, with respect to the proposed action, means:

(1) The agency that proposed such action; or

(2) If there are 2 or more Federal agencies undertaking related actions related to one project, with respect to such action, the agency designated under section 107(a) (1) NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A).

(j) *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. § 4321, *et seq.*).

(k) *NEPA process* means all measures necessary for compliance with the requirements of section 2 and title I of NEPA § 102(2), 42 U.S.C. § 4332(2).

(l) *Notice of intent* means a public notice that an agency will prepare and consider an environmental document.

(m) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

(n) *Publish* and *publication* mean methods used by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.

(o) *Related action* means an action undertaken by an agency, *e.g.*, a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, *e.g.*, that a set of related actions are all related to one overarching project.

(p) *Reasonable alternatives* mean a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

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- (q) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.
- (r) *Scope* consists of the range of actions, alternatives, and effects to be considered in an environmental document. The scope of an individual document may depend on its relationships to other documents.
- (s) *Sponsor* is the lead DoD Component responsible for overseeing the project applicant and will serve as the action proponent. Sponsor only applies to DoD actions involving non-governmental entities.

Part 7—Severability and Non-reviewability.

Part 7.1 Severability.

The sections of this [sub]chapter are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is DoD's intention that the validity of the remainder of those parts will not be affected, with the remaining section, and all applications thereof, to continue in effect.

Part 7.2 Non-reviewability.

The issuance or update of DoD or DoD component procedures is not subject to NEPA review under this subchapter.