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	Research and Development PROCEDURES FOR IMPLEMENTING NEPA	
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DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, D.C. 20314-1000

CECW-RE

Regulation
No. 200-2-2

4 March 1988

Environmental Quality
PROCEDURES FOR IMPLEMENTING NEPA

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This revised regulation supersedes ER 200-2-2, 25 Aug 80 and ER 200-2-1, 12 Feb 79.

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

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

3. References.

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

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

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

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

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

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

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

h. National Historic Preservation Act of 1966, As amended, 16 U.S.C. 470 et seq.

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

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

k. Regulatory Programs of the Corps of Engineers 33 CFR 320-330, 334.

l. CEQ Information Memorandum to Agencies Containing Answers to 40 Most Asked Questions on NEPA Regulations (46 FR 18026-38, March 23, 1981)

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

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

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

5. Responsible Officials. The district commander is the Corps NEPA official responsible for compliance with NEPA for actions within district boundaries. The district commander also provides agency views on other agencies' environmental impact statements (EIS). The Office of Environmental Policy HQUSACE (CECW-RE) WASH DC 20314-1000 (phone number 202-272-0166) is the point of contact for information on Corps NEPA documents, NEPA oversight activities, review of other agencies' EISs and NEPA documents about legislation, regulations, national program proposals or other major policy issues. The Assistant Chief Counsel for Environmental Law and Regulatory Programs, HQUSACE (CECC-E) WASH DC 20314-1000, is the point of contact for legal questions involving environmental matters. Requests for information on regulatory permit actions should be directed to HQUSACE (CECW-OR) WASH DC 20314-1000.

6. Actions Normally Requiring an EIS. Actions normally requiring an EIS are:

a. Feasibility reports for authorization and construction of major projects;

b. Proposed changes in projects which increase size substantially or add additional purposes; and

c. Proposed major changes in the operation and/or maintenance of completed projects.

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

7. Actions Normally Requiring an Environmental Assessment (EA) But Not Necessarily an EIS. Actions normally requiring an EA, but not an EIS, are listed below:

a. Regulatory Actions. Most permits will normally require only an EA.

b. Authorized Projects and Projects Under Construction. Changes which may be approved under the discretionary authority of the Secretary of the Army.

c. Continuing Authorities Program. Projects recommended for approval of the Chief of Engineers under the following authorities:

(1) Section 205, Small Flood Control Authority;

(2) Section 208, Snagging and Clearing for Flood Control Authority;

(3) Section 107, Small Navigation Project Authority;

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

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

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

e. Real Estate Management and Disposal Actions.

(1) Disposal of a Civil Works project or portions of project properties not reported as excess to the General Services Administration.

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

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

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

9. Categorical Exclusions. Actions listed below when considered individually and cumulatively do not have significant effects on the quality of the human environment and are categorically excluded from NEPA documentation. However, district commanders should be alert for extraordinary circumstances which may dictate the need to prepare an EA or an EIS. Even though an EA or EIS is not indicated for a Federal action because of a "categorical exclusion", that fact does not exempt the action from compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring

an EA or EIS. For a period of one year from the effective date of these regulations, district commanders should maintain an information list on the type and number of categorical exclusion actions which due to extraordinary circumstances triggered the need for an EA and finding of no significant impact (FONSI) or an EIS. If a district commander determines that a categorical exclusion should be modified, the information will be furnished to the division commander, who will review and analyze the actions and circumstances to determine if there is a basis for recommending a modification to the list of categorical exclusions. HQUSACE (CECW-RE) will review recommended changes for Corps-wide consistency and revise the list accordingly. See 33 CFR Part 325, Appendix B for categorical exclusions for regulatory actions.

a. Activities at completed Corps projects which carry out the authorized project purposes. Examples include routine operation and maintenance actions, general administration, equipment purchases, custodial actions, erosion control, painting, repair, rehabilitation, replacement of existing structures and facilities such as buildings, roads, levees, groins and utilities, and installation of new buildings utilities, or roadways in developed areas.

b. Minor maintenance dredging using existing disposal sites.

c. Planning and technical studies which do not contain recommendations for authorization or funding for construction, but may recommend further study. This does not exclude consideration of environmental matters in the studies.

d. All Operations and Maintenance grants, general plans, agreements, etc. necessary to carry out land use, development and other measures proposed in project authorization documents, project design memoranda, master plans, or reflected in the project NEPA documents.

e. Real estate grants for use of excess or surplus real property.

f. Real estate grants for Government-owned housing.

g. Exchanges of excess real property and interests therein for property required for project purposes.

h. Real estate grants for rights-of-way which involve only minor disturbances to earth, air, or water:

(1) Minor access roads, streets and boat ramps.

(2) Minor utility distribution and collection lines, including irrigation.

(3) Removal of sand, gravel, rock, and other material from existing borrow areas.

(4) Oil and gas seismic and gravity meter survey for exploration purposes.

i. Real estate grants of consent to use Government-owned easement areas.

j. Real estate grants for archeological and historical investigations compatible with the Corps Historic Preservation Act responsibilities.

k. Renewal and minor amendments of existing real estate grants evidencing authority to use Government-owned real property.

l. Reporting excess real property to the General Services Administration for disposal.

m. Boundary line agreements and disposal of lands or release of deed restrictions to cure encroachments.

n. Disposal of excess easement interest to the underlying fee owner.

o. Disposal of existing buildings and improvements for off-site removal.

p. Sale of existing cottage site areas.

q. Return of public domain lands to the Department of the Interior.

r. Transfer and grants of lands to other Federal agencies.

10. Environmental Assessments (EA).

a. Purpose. An EA is a brief document which provides sufficient information to the district commander on potential environmental effects of the proposed action and, if appropriate, its alternatives, for determining whether to prepare an EIS or a FONSI (40 CFR 1508.9). The district commander is responsible for making this determination and for keeping the public informed of the availability of the EA and FONSI.

b. Format. While no special format is required, the EA should include a brief discussion of the need for the proposed action, or appropriate alternatives if there are unresolved conflicts concerning alternative uses of available resources, of the environmental impacts of the proposed action and alternatives and a list of the agencies, interested groups and the public consulted. The document is to be concise for meaningful review and decision.

c. Integration with Corps Reports. In the case of planning and/or engineering reports not requiring an EIS, the EA may be combined with or integrated into the report. The same guidance on combining or integrating an EIS within the report shall apply equally to an EA. Where the EA is combined with a Corps report or prepared as a separate document in the case of construction, operating projects and real estate actions requiring an EA, the EA normally should not exceed 15 pages.

11. Finding of No Significant Impact (FONSI). A FONSI shall be prepared for a proposed action, not categorically excluded, for which an EIS will not be prepared. The FONSI will be a brief summary document as noted in 40 CFR 1508.13. 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

(40 CFR 1501.4(e)(2)). In the case of operation and maintenance activities involving the discharge of dredged or fill material requiring a public notice, the notice will indicate the availability of the EA/FONSI. For all other Corps project actions a notice of availability of the FONSI will be sent to concerned agencies, organizations and the interested public (40 CFR 1501.4(e)(1)).

12. Notice of Intent and Scoping. As soon as practicable after a decision is made to prepare an EIS or supplement, the scoping process for the draft EIS or supplement will be announced in a notice of intent. Guidance on preparing a notice of intent to prepare an EIS for publication in the Federal Register is discussed in Appendix C. Also, a public notice will be widely distributed inviting public participation in the scoping process. As described in 40 CFR 1501.7 and reference 3(m), this process is the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth. Public concerns on issues, studies needed, alternatives to be examined, procedures and other related matters will be addressed during scoping.

13. Environmental Impact Statement (EIS). An EIS for feasibility or continuing authority reports and certain planning/engineering reports may be combined with or integrated into the report in accordance with 40 CFR 1500.4(o) and 1506.4. An EIS combined with the report shall follow the format in 40 CFR 1502.10; follow the main report, use colored paper and not be an attachment or appendix. An EIS integrated within the report may follow the instructions in the last paragraph of 40 CFR 1502.10. Additional guidance on combining and integrating EISs is located in ER 1105-2-60. Where the EIS is not combined with or integrated into the project document, the EIS shall be a separate document and follow the format in 40 CFR 1502.10. CEQ regulations suggest maximum lengths for the text of an EIS at 40 CFR 1502.07. An effort should be exerted to cover the substantive topics simply and concisely to the extent practicable, and consistent with producing a legally and technically adequate EIS. Normally, the CEQ page limits should be met.

a. Draft and Final EISs. Guidance on EISs prepared for planning and certain planning/engineering studies is contained in ER 1105-2-10 thru 60. 33 CFR Part 325, Appendix B contains guidance for regulatory actions. For final EISs which are not combined with or integrated into the report, the final EIS may take the form of an "abbreviated" document described in 40 CFR 1503.4(c). An abbreviated final EIS should consist of a new title page, summary, errata or correction sheet(s) and comments and responses. In filing the abbreviated final EIS with EPA (Washington Office), five copies of the draft EIS shall be included in the transmittal. District commanders shall be responsible for determining the type of final EIS to prepare.

b. Supplements. A supplement to the draft or final EIS should be prepared whenever required as discussed in 40 CFR 1502.9(c). A supplement to a draft EIS should be prepared and filed in the same manner as a draft EIS and should be titled "Supplement I", "Supplement II", etc. The final EIS should address the changes noted in the supplement and substantive comments received as a result of circulation of the document. A supplement to a final EIS should be prepared and filed first as a draft supplement and then as a final supplement. Supplements will be filed and circulated in the same manner as a draft and final EIS (including the abbreviated procedure discussed in 13a. above). Supplements to a draft or final EIS filed before 30 July 1979 may follow the format of the previously filed EIS.

Supplements to a draft EIS filed after this date will follow the format outlined in 40 CFR 1502.10. References to the draft or final EIS being supplemented should be used to eliminate repetitive discussions in order to focus on the important issues and impacts. The transmittal letter to EPA as well as the cover sheet should clearly identify the title and purpose of the document as well as the title and filing date of the previous EIS being supplemented and how copies can be obtained. The decision may be made on the proposed action by the appropriate Corps official no sooner than 30 days after the final supplement has been on file. A record of decision will be signed when the decision is made.

c. Tiering. Tiering is discussed in 40 CFR 1502.20 and 1508.28 and should be used in appropriate cases. The initial broad or programmatic EIS must present sufficient information regarding overall impacts of the proposed action so that the decision-makers can make a reasoned judgment on the merits of the action at the present stage of planning or development and exclude from consideration issues already decided or not ready for decision. The initial broad EIS should also identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EISs or EAs as appropriate.

d. Other Reports. District commanders may also publish periodic fact sheets and/or other supplemental information documents on long-term or complex EISs to keep the public informed on the status of the proposed action. These documents will not be filed officially with EPA.

14. Record of Decision and Implementation. A record of decision shall be prepared by the district commander, in accordance with 40 CFR 1505.2, for the signature of the final decisionmaker as prescribed by applicable Corps regulations. Procedures implementing the decision are discussed in 40 CFR 1505.3. Incoming letters of comment on the final EIS will be furnished for review by the decisionmaker who signs the record of decision. For example, the record of decision for feasibility reports will be signed by the ASA(CW) at the time the report is transmitted to Congress for authorization.

15. Mitigation and Monitoring. See 40 CFR 1505.2(c) and 1505.3. District commanders shall, upon request from interested agencies or the public, provide reports on the progress and status of required mitigation and other provisions of their decisions on Corps projects. The term monitoring will be interpreted as that oversight activity necessary to ensure that the decision, including required mitigation measures, is implemented.

16. Lead and Cooperating Agencies. Lead agency, joint lead agency, and cooperating agency designation and responsibilities are covered in 40 CFR 1501.5 and 1501.6. The district commander is authorized to enter into agreements with regional offices of other agencies as required by 40 CFR 1501.5(c). District or division commanders will consult with HQUSACE (CECW-RE), WASH DC 20314-1000 prior to requesting resolution by CEQ as outlined by 40 CFR 1501.5(e) and (f).

a. Lead Agency. The Corps will normally be lead agency for Corps civil works projects and will normally avoid joint lead agency arrangements. Lead agency status for regulatory actions will be determined on the basis of 40 CFR 1501.5(c).

b. Corps as a Cooperating Agency. For cooperating agency designation the Corps area of expertise or jurisdiction by law is generally flood control, navigation, hydropower and Corps regulatory responsibilities. See Appendix II of CEQ regulations (49 FR 49750, December 21, 1984).

17. Filing Requirements. Five copies of draft, final and supplement EISs should be sent to: Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. District commanders should file draft EISs and draft supplements directly with EPA. Final EISs and final supplements should be filed by appropriate elements within HQUSACE for feasibility and reevaluation reports requiring Congressional authorization. Division commanders should file final EISs and final supplements for all other Corps actions except for final EISs or final supplements for permit actions which should be filed by the district commander after appropriate reviews by division and the incorporation of division's comments in the EIS. HQUSACE and/or division will notify field office counterparts when to circulate the final EIS or final supplement and will file the final document with EPA after notified that distribution of the document has been accomplished.

a. Timing Requirements. Specific timing requirements regarding the filing of EISs with EPA are discussed in 40 CFR 1506.10. District commanders will forward any expedited filing requests with appropriate supporting information through channels to CECW-RE. Once a decision is reached to prepare an EIS or supplement, district commanders will establish a time schedule for each step of the process based upon considerations listed in 40 CFR 1501.8 and upon other management considerations. The time required from the decision to prepare an EIS to filing the final EIS normally should not exceed one year (46 FR 18037, March 23, 1981). For feasibility, continuing authority, or reevaluation studies, where the project's study time is expected to exceed 12 months, the timing of the EIS should be commensurate with the study time. In appropriate circumstances where the costs of completing studies or acquiring information for an EIS (i.e., cost in terms of money, time, or other resources) would be exorbitant, the district commander should consider using the mechanism described in 40 CFR 1502.22, as amended. In all cases, however, it is the district commander's responsibility to assure that the time-limit established for the preparation of an EIS or supplement is consistent with the purposes of NEPA.

b. Timing Requirements on Supplements. Minimum review periods will be observed for draft and final supplements covering actions not having a bearing on the overall project for which a final EIS has been filed. Such supplements should not curtail other ongoing or scheduled actions on the overall project which have already complied with the procedural requirements of NEPA.

18. Availability. Draft and final EISs and supplements will be available to the public as provided in 40 CFR 1502.19 and 1506.6. A summary may be circulated in lieu of the EIS, as provided in 40 CFR 1502.19, if the statement is unusually long. These documents will normally be made available without charge except that, in unusual circumstances, reproduction costs may be recovered in accordance with 40 CFR 1506.6(f) from recipients other than those required by CEQ to receive the complete EIS.

19. Comments. District commanders shall request comments as set forth in 40 CFR 1503 and 1506.6. A lack of response may be presumed to indicate that the party has no comment to make.

a. Time Extensions. District commanders will consider and act on requests for time extensions to review and comment on an EIS based on timeliness of distribution of the document, prior agency involvement in the proposed action, and the action's scope and complexity.

b. Public Meetings and Hearings. See 40 CFR 1506.6(c). Refer to paragraph 12, 33 CFR Part 325, Appendix B for regulatory actions.

c. Comments Received on the Draft EIS. See 40 CFR 1503.4. District commanders will pay particular attention to the display in the final EIS of comments received on the draft EIS. In the case of abbreviated final EISs, follow 40 CFR 1503.4(c). For all other final EISs, comments and agency responses thereto will be placed in an appendix in a format most efficient for users of the final EIS to understand the nature of public input and the district commander's consideration thereof. District commanders will avoid lengthy or repetitive verbatim reporting of comments and will keep responses clear and concise.

d. Comments Received on the Final EIS. Responses to comments received on the final EIS are required only when substantive issues are raised which have not been adddressed in the EIS. In the case of feasibility reports where the final report and EIS, Board of Engineers for Rivers and Harbors (CEBRH) or Mississippi River Commission (CEMRC) report, and the proposed Chief's report are circulated for review, incoming comment letters will normally be answered, if appropriate, by CECW-P. After the review period is over, CECW-P will provide copies of all incoming comments received in HQUSACE to the district commander for use in preparing the draft record of decision. For all other Corps actions except regulatory actions (See 33 CFR Part 325, Appendix B), two copies of all incoming comment letters (even if the letters do not require an agency response) together with the district commander's responses (if appropriate) and the draft record of decision will be submitted through channels to the appropriate decision authority. In the case of a letter recommending a referral under 40 CFR 1504, reporting officers will notify CECW-RE and request further guidance. The record of decision will not be signed nor any action taken on the proposal until the referral case is resolved.

e. Commenting on Other Agencies' EISs. See 40 CFR 1503.2 and .3. District commanders will provide comments directly to the requesting agency. CECW-RE will provide comments about legislation, national program proposals, regulations or other major policy issues to the requesting agency. See Appendix III of CEQ regulations. When the Corps is a cooperating agency, the Corps will provide comments on another Federal agency's draft EIS even if the response is no comment. Comments should be specific and restricted to areas of Corps jurisdiction by law and special expertise as defined in 40 CFR 1508.15 and .26, generally including flood control, navigation, hydropower, and regulatory responsibilities. See Appendix II of CEQ regulations.

20. Integration with State and Local Procedures. See 40 CFR 1506.2.

21. Adoption. See 40 CFR 1506.3. A district commander will normally adopt another Federal agency's EIS and consider it to be adequate unless the district commander finds substantial doubt as to technical or procedural adequacy or omission of factors important to the Corps decision. In such cases, the district commander will prepare a draft and final supplementnoting in the draft supplement why the EIS was considered inadequate. In all cases, except where the document is not recirculated as provided in 40 CFR 1506.3(b) or (c), the adopted EIS with the supplement, if any, will be processed in accordance with this regulation. A district commander may also adopt another agency's EA/FONSI.

22. Limitations on Actions During the NEPA Process. See 40 CFR 1506.1.

23. Predecision Referrals. See 40 CFR 1504. If the district commander determines that a predecision referral is appropriate, the case will be sent through division to reach CECW-RE not later than 15 days after the final EIS was filed with EPA. Corps actions referred to CEQ by another Federal agency shall be transmitted to CECW-RE for further guidance. See paragraph 19, 33 CFR Part 325, Appendix B, for guidance on predecision referrals afffecting regulatory permit actions.

24. Agency Decision Points. The timing and processing of NEPA documents in relation to major decision points are addressed in paragraphs 11 and 14 and Appendix A for studies and projects and 33 CFR 320-330 for regulatory actions.

25. Environmental Review and Consultation Requirements. See 40 CFR 1502.25.

a. For Federal projects, NEPA documents shall be prepared concurrently with and utilize data from analyses required by other environmental laws and executive orders. A listing of environmental laws and orders is contained in table 3.4.3 of Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies. Reviews and consultation requirements, analyses, and status of coordination associated with applicable laws, executive orders and memoranda will be summarized in the draft document. The results of the coordination completed or underway pursuant to these authorities will be summarized in the final document. Where the results of the ongoing studies are not expected to materially affect the decision on the proposed action, the filing of the final EIS need not be delayed.

b. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 4 January 1979. For general policy guidance, see Federal Register of 12 April 1979, 32 CFR 197. Procedural requirements for Civil Works studies and projects are discussed below.

(1) The district commander through the division commander will notify CECW-PE, PN, PS or PW as appropriate, of an impending action which may impact on another country and for which environmental studies may be necessary to determine the extent and significance of the impact. The district commander will inform CECW-P whether entry into the country is necessary to study the base condition.

(2) CECW-P will notify the State Department, Office of Environment and Health (OES/ENH) of the district commander's concern, and whether a need exists at this point to notify officially the foreign nation of

our intent to study potential impacts. Depending on expected extent and severity of impacts, or if entry is deemed necessary, the matter will be referred to the appropriate foreign desk for action.

(3) As soon as it becomes evident that the impacts of the proposed actions are considered significant, CECW-P will notify the State Department. The State Department will determine whether the foreign embassy needs to be notified, and will do so if deemed appropriate, requesting formal discussions on the matter. When the International Joint Commission (IJC) or the International Boundary and Water Commission, United States and Mexico (IBWC) is involved in a study, the State Department should be consulted to determine the foreign policy implications of any action and the proper course of action for formal consultations.

(4) Prior to public dissemination, press releases or reports dealing with impact assessments in foreign nations should be made available to the appropriate foreign desk at the State Department for clearance and coordination with the foreign embassy.

26. General Considerations in Preparing Corps EISs.

a. Interdisciplinary Preparation. See (40 CFR 1502.6).

b. Incorporation by Reference. To the maximum extent practicable, the EIS should incorporate material by reference in accordance with 40 CFR 1502.21. Footnotes should be used only where their use greatly aids the reader's understanding of the point discussed. Citation in the EIS of material incorporated by reference should be made by indicating an author's last name and date of the reference in parentheses at the appropriate location in the EIS. The list of references will be placed at the end of the EIS. Only information sources actually cited in the text should appear in the reference list. The reference list should include the author's name, the date and title of the publication, personal communications and type of communication (e.g., letter, telephone, interview, etc.).

FOR THE COMMANDER:

PAT M. STEVENS, IV
Colonel, Corps of Engineers
Chief of Staff

2 Appendixes

APP A - Processing Corps NEPA Documents

APP B - Reserved

APP C - Notice of Intent to Prepare a Draft EIS

APPENDIX A

Processing Corps NEPA Documents

1. Feasibility Studies.

a. Preparation and Draft Review. During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the feasibility report. This environmental evaluation should be continued in the feasibility phase, and if the need for an EIS develops the district commander will issue a notice of intent as early in the feasibility phase as possible. Following the guidance in ER 1105-2-10 through 60, the district commander will prepare a draft feasibility report combining or integrating the draft EIS or EA and draft FONSI (as appropriate), or a separate NEPA document and circulate it to agencies, organizations and members of the public known to have an interest in the study. Five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 for filing after distribution has been accompalished. After receipt and evaluation of comments received, the district commander will prepare the final report and EIS or EA and FONSI and submit it to the division commander for review.

b. Division Review. After review, the division commander will issue a public notice of report issuance and transmit the report to the CEBRH. On Mississippi River and Tributaries projects, the district commander will issue a public notice and submit the report to the CEMRC. For the purpose of this regulation, only the acronym CEBRH will be used since the review functions of CEMRC and CEBRH are similar. The notice will provide a 30-day period for comments to be submitted to CEBRH on the report and EIS. Although the EIS in the report is identified as "final" at this stage of processing, it should be made clear to all those requesting a copy that it is an "Interim Document under Agency Review - Subject to Revision" and will become the agency's final EIS when it is filed after CEBRH review.

c. CEBRH Review. CEBRH will review the EIS at the same time it reviews the final feasibility report. The report and EIS should be compatible. If the CEBRH review requires minor revisions (with insignificant impacts) to the plan as recommended by the division and district commanders, these changes and impacts shall be noted in the CEBRH report. If the CEBRH action results in major revisions to the recommended plan and revisions are variants of the plan or are within the range of alternatives considered and discussed in the draft EIS, as addendum to the final EIS will be prepared by CEBRH (with assistance from the district commander, as required). This addendum "package" will be identified as an "Addendum to the Final EIS - Environmental Consequences of the Modifications Recommended by the Board of Engineers for Rivers and Harbors - project name." The format shall include an abstract on the cover page; recommended changes to the division/district commander's proposed plan; rationale for the

recommended changes; environmental consequences of the recommended changes; and the name, expertise/discipline, experience, and role of the principal preparer(s) of the addendum. Letters received during CEBRH review which provide new pertinent information having a bearing on the modifications recommended by CEBRH will be attached to the addendum. If CEBRH proposes to recommend a major revision or a new alternative to the plan recommended by the division and district commanders with significant impacts which were not discussed in the draft EIS, a supplement to the draft EIS will be required. After consultation with CEBRH and the division commander, the district commander will prepare and circulate the supplementto the draft EIS in accordance with paragraph 13(b). The supplement together with incoming letters of comment and Corps responses to substantive issues shall be incorporated into the existing final report and EIS with a minimum of page changes or revisions to reflect the modified or new proposed plan. CEBRH will review its proposed action in light of the comments received prior to taking final action on the report and EIS.

d. Departmental Review. The report and final EIS, together with the proposed report of the Chief of Engineers and the CEBRH report, will be filed with EPA at about the same time as it is circulated for the 90-day departmental review by Federal agencies at the Washington level and the concerned state(s). District commanders will circulate the proposed Chief's report, CEBRH report, and the report and final EIS to parties on the project mailing list not contacted by HQUSACE (groups and individuals known to have an interest in the study or who provided comments on the draft EIS) allowing the normal 30-day period of review. HQUSACE will provide a standard letter for the district to use to transmit these documents which explains the current status of the report and EIS and directs all comments to be sent to HQUSACE (CECW-P). Copies of the report appendices circulated with the draft need not be circulated with the report and final EIS. All letters of comment received on the report and final EIS together with HQUSACE responses and the draft record of decision (to be provided by the district commander) will be included with other papers furnished at the time the final Chief's report is transmitted to ASA(CW) for further review and processing.

e. Executive Reviews. After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to ASA(CW). After review ASA(CW) will transmit the report to OMB requesting its views in relation to the programs of the President. After OMB provides its views, ASA(CW) will sign the record of decision (ROD) and transmit the report to Congress. In situations where Congress has acted to authorize construction of a project prior to receiving ASA(CW) recommendations, the Director of Civil Works is the designated official to sign the ROD. In this case the ROD should only address the project as authorized by the Congress and not attempt to provide any additional justification of the Congressional action.

2. Continuing Authorities Program Studies.

a. Preparation and Draft Review. During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the detailed project report (DPR). If the

results of the reconnaissance phase warrant preparation of an EIS, the district commander will issue a notice of intent early in the ensuing feasibility study. Following the guidance in ER 1105-2-10 through 60 the district commander will prepare the draft DPR incorporating the EA and draft FONSI or draft EIS (as appropriate), and circulate it to agencies, organizations and members of the public known to have an interest in the study. If an EIS is prepared, five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street, SW, Washington DC 20460 for filing after distribution has been accomplished.

b. Agency Review. After receipt and evaluation of comments the district commander will prepare the final DPR and EA/FONSI or final EIS and submit eight (8) copies to the division commander for review and approval. After review, the division commander will file five (5) copies of the final DPR and EIS with the Washington office of EPA. The division commander will not file the final EIS until notified by the district commander that distribution has been accomplished.

c. Final Review. Letters of comment on the final DPR including the final EIS will be answered by the district commander on an individual basis if appropriate. Two (2) copies of all incoming letters and the district commander's reply together with five copies of the final DPR and EIS and a draft of the record of decision will be submitted through division to the appropriate element within CECW-P. After review of the DPR and NEPA documents, the Director of Civil Works or Chief, Planning Division will approve the project and sign the record of decision if an EIS was prepared for the DPR.

3. Projects in Preconstruction Engineering and Design, Construction, and Completed Projects in an Operations and Maintenance Category.

a. General. District commanders will review the existing NEPA document(s) to determine if there are new circumstances or significant impacts which 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.

b. Preparation and Draft Review. As soon as practicable after the district commander makes a determination to prepare an EIS or supplement for the proposed project, a notice of intent will be issued. The district commander will, in accordance with 40 CFR 1506.6, prepare and circulate the draft EIS or supplement for review and comment to agencies, groups and individuals known who may be interested or affected. Five (5) copies will be sent to Director, Office of Federal activities (A-104), Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 for filing after distribution has been accomplished.

c. Agency Review. The district commander will prepare the final EIS or supplement after receipt and evaluation of comments. Eight (8) copies will be transmitted to the division commander for review. After review the division commander will file five (5) copies with the Washington office of EPA. A copy of the final EIS or supplement and transmittal letter to EPA will be provided to the appropriate counterpart office within HQUSACE. The division commander will file the final EIS when the district commander has made distribution.

d. Final Review. Letters of comment on the final EIS or supplement will be answered by the district commander on an individual basis as appropriate. Two (2) copies of the incoming letters and the district commander's reply together with two copies of the final EIS or supplement and a draft of the record of decision will be submitted to the appropriate Corps official having approval authority. After review of the NEPA documents and letters, the appropriate approving official will sign the record of decision.

4. Other Corps Projects. Draft and final EISs for other Civil Works projects or activities having significant environmental impacts which may be authorized by Congress without an EIS having been previously filed and for certain real estate management and disposal actions which may require an EIS should be processed in a manner similar to that discussed in paragraph 3 of this appendix except that CERE-MC will be the coordinating office within HQUSACE for real estate actions.

APPENDIX C

Notice of Intent to Prepare a Draft EIS

1. Purpose. This appendix provides guidance on the preparation and processing of a notice of intent to prepare a draft EIS for publication in the Federal Register. A notice of intent to prepare a draft EIS or a draft supplement is discussed in 40 CFR 1508.22.

2. Procedure. District commanders shall publish a notice of intent in the Federal Register as soon as practicable after a decision is made to prepare a draft EIS or draft supplement. See 40 CFR 1507.3(e) for timing of notice of intent for Corps feasibility studies. Guidance on the format and content of the notice in the form of a sample notice of intent is contained in paragraph 4 of this appendix. District commanders shall also follow this guidance when publishing a notice of intent to withdraw a notice of intent when a decision has been made to terminate the EIS process.

3. Publishing Documents in the Federal Register. The following information is furnished for preparation and publication of notices of intent in the Federal Register:

a. A brief transmittal letter inclosing three (3) signed copies of the notice of intent should be processed through local Chief, Information Management channels to: HQDA, SFIS-APP, ATTN: Mr. John O. Roach, Agency Liaison Officer with the Office of the Federal Register, Alexandria, VA 22331-0302. This office will review and correct (if needed) all documents prior to publication in the Federal Register.

b. The notice must be signed by the official issuing the document along with the signer's typed name, rank and position title for military officials or name and position title for civilian officials. A signer cannot sign "as acting" or "for" if another name is shown in the signature block. All three copies sent forward must be signed in ink. A xerox copy of the signature is not allowed.

c. A six-digit billing code number must be typed or handwritten in ink at the top of the first page on all three copies of a notice. This building code number can be found on GPO bills, GPO Form 400, in the upper left corner opposite the address. The billing code number will be indicated as 3710-XX. FOAs must submit an open-end printing and binding requisition, Standard Form 1, each fiscal year to cover Federal Register printing costs (references 3(n)). Completed requisitions (SF-1) must be forwarded to reach HQUSACE (CEIM-SP) WASH DC 20314-1000 by 1 June of each year. Consult the local chief, Information Management for Assistance.

4. Sample Notice of Intent. The following is a sample notice of intent to be used by district commanders:

DEPARTMENT OF DEFENSE
CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY, 3710-XX
(Use Local Billing
Code Number)

Intent To Prepare A Draft Environment Impact Statement (DEIS) For a Proposed (Name and location of project, permit or activity)

AGENCY: U.S. Army Corps of Engineers, DoD

ACTION: Notice of Intent

SUMMARY: The summary should briefly state in simple language what action is being taken, why the action is necessary, and the intended effect of the action. Extensive discussion belongs under the Supplementary Information caption.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: (Provide name, telephone number, and address of the person in the district or division who can answer questions about the proposed action and the DEIS).

SUPPLEMENTARY INFORMATION: The Supplementary Information should contain the remainder of the necessary information of the document. It should contain any authority citation, Federal Register citation to a previously published document, or CFR citation when appropriate and include a discussion of the following topics:

1. Briefly describe the proposed action.

2. Briefly describe reasonable alternatives.

3. Briefly describe the Corps' scoping process which is reasonably foreseeable for the DEIS under consideration. The description:

   a. Shall discuss the proposed public involvement program and invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

   b. Shall identify significant issues to be analyzed in depth in the DEIS.

   c. May discuss possible assignments for input into the EIS under consideration among the lead and cooperating agencies.

   d. Shall identify other environmental review and consultation requirements.

4. Indicate whether or not a scoping meeting will be held. Indicate time, date and location if a meeting is scheduled.

5. Provide an estimated date when the DEIS will be made available to the public.

(Provide date)

(Signature)
see par. 3.b. for instructions on signature

Note:
- Text to be double-spaced. Use block format.
- Place local billing code number at the top of the first page on all three copies.
- Margins - one inch on top, bottom and right side; and one and one-half inches on the left side.
- Pages must be numbered consecutively.
- Text should be typed on one side only.
- Use 8 1/2 by 11 inch bond paper or photocopy paper.