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POSTAL SERVICE

39 CFR Parts 775, 777, and 778

National Environmental Policy Act Implementing Procedures

AGENCY: Postal Service (USPS).

ACTION: Final rule.

SUMMARY: This rule changes the procedures and categorical exclusions governing the Postal Service's compliance with the National Environmental Policy Act (NEPA). These amendments are based upon experience with existing regulations and new policies and infrastructure that have been implemented since the restructuring of the Postal Service in 1992. The changes are intended to comply with the requirements of NEPA while improving quality and reducing administrative processes and preparation.

EFFECTIVE DATE: This regulation was effective on October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Charles A. Vidich, Environmental Coordinator, U.S. Postal Service, 8 Griffin Rd. N., Windsor, CT 06006-7030, phone (860) 285-7254, or Gary W. Bigelow, Chief Counsel, Environmental Law, 4200 Wake Forest Rd., Raleigh, NC 27668-1121, phone (919) 501-9439.

SUPPLEMENTARY INFORMATION: Historically, the U.S. Postal Service has implemented the provisions of the National Environmental Policy Act (NEPA) through policies and procedures established by the Postal Service's Facilities organization. Certainly, most of the "major federal actions" undertaken by the Postal Service have been associated with the construction or disposal of postal facilities. However, in recent years it has become increasingly evident that other postal organizations also have a role in implementing the provisions of NEPA. The Postal Service has revised its regulations to clarify the scope of the applicability of NEPA.

On August 11, 1997, the Postal Service published in the **Federal Register** a notice of proposed changes in the procedures and categorical exclusions of its NEPA regulations (62 FR 42958). Specifically, the Postal Service proposed revised procedures for implementing the requirements of NEPA in order to improve efficiency, promote compliance and reflect organizational changes within the Postal

Service. Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b),(c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service requested that comments on the proposal be submitted by September 10, 1997. No comments were received on the proposed regulation.

Technical amendments to § 775.6(a) to clarify language, improve readability, conform to changes in language regarding wetlands permit terminology, and correct a typographical error, have been incorporated into the final rule. Also typographical errors in § 775.6(e)(8) and § 775.7 have been corrected. In light of the foregoing, the Postal Service has decided to adopt the proposed revisions to its NEPA regulations.

List of Subjects

39 CFR Part 775

Environmental impact statements.

39 CFR Part 777

Real property acquisition, Relocation assistance.

39 CFR Part 778

Intergovernmental relations.

Accordingly, title 39 CFR parts 775, 777 and 778 are amended as follows:

Subchapter K—Environmental Regulations

PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

1. The authority citation for 39 CFR part 775 is revised to read as follows:

Authority: 39 U.S.C. 401; 42 U.S.C. 4321 et seq.; 40 CFR 1500.4.

2. The heading for subchapter K is revised to read as set forth above.

3. The heading of part 775 is revised to read as set forth above.

4. Section 775.1 is revised to read as follows:

§ 775.1 Purpose.

These procedures implement the National Environmental Policy Act (NEPA) regulations (40 CFR part 1500) issued by the Council on Environmental Quality (CEQ).

5. Section 775.3 is revised to read as follows:

§ 775.3 Responsibilities.

(a) The Chief Environmental Officer is responsible for overall development of policy regarding NEPA and other environmental policies. The officer in charge of the facilities or real estate organization is responsible for the development of NEPA policy as it

affects real estate or acquisition, construction and disposal of postal facilities consistent with overall NEPA policy. Each officer with responsibility over the proposed program, project, action, or facility is responsible for compliance with NEPA as the responsible official.

(b) Postal managers will designate environmental coordinators to assist with compliance with NEPA procedures.

§§ 775.5 through 775.11 [Redesignated as §§ 775.8 through 775.14]; § 775.4(a) [Redesignated as § 775.5] and § 775.4(b) [Redesignated as § 775.6].

Sections 775.5 through 775.11 are redesignated as §§ 775.8 through 775.14.

7. Section 775.4(a) is redesignated as § 775.5 and § 775.4(b) is redesignated as § 775.6.

8. Section 775.4 is removed, and a new § 775.4 is added to read as follows:

§ 775.4 Definitions.

(a) The definitions set forth in 40 CFR part 1508 apply to this part 775.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

Approving official means the person or group of persons, who authorizes funding as established through the delegations of approval authority issued by the finance organization. That person or group of persons may not have proposed the action for which financial approval is sought.

Environmental checklist means a Postal Service form that identifies potential environmental impacts for proposed actions initiated by postal managers.

Mitigated FONSI means a FONSI which requires the implementation of specified mitigation measures in order to ensure that there are no significant impacts to the environment.

Record of environmental consideration means the Postal Service form that identifies the Postal Service's review of proposed activities under NEPA.

Responsible official means the person, or designated representative, who proposes an action and is responsible for compliance with NEPA. For larger projects, that person may not have the financial authority to approve such action. The responsible official signs the NEPA documents (FONSI, ROD) and the REC.

9. Newly redesignated § 775.5 is revised to read as follows:

§ 775.5 Classes of actions.

(a) *Actions which normally require an environment impact statement.* None,

however the Postal Service will prepare an EIS when necessary based on the factors identified in 40 CFR 1508.27.

(b) *Actions requiring an environmental assessment.* Classes of actions that will require an environmental assessment unless categorically excluded include:

(1) Any project that includes the conversion, purchase, or any other alteration of the fuel source for 25 percent or more of USPS vehicles operating with fuel other than diesel or gasoline in any carbon monoxide or ozone non-attainment area;

(2) Any action that would adversely affect a federally listed threatened or endangered species or its habitat;

(3) Any action that would directly affect public health;

(4) Any action that would require development within park lands, or be located in close proximity to a wild or scenic river or other ecologically critical area;

(5) Any action affecting the quality of the physical environment that would be scientifically highly controversial;

(6) Any action that may have highly uncertain or unknown risks on the human environment;

(7) Any action that threatens a violation of applicable federal, state, or local law or requirements imposed for the protection of the environment;

(8) New construction of a facility with vehicle maintenance or fuel dispensing capabilities, whether owned or leased;

(9) Acquisition or lease of an existing building involving new uses or a change in use to a greater environmental intensity;

(10) Real property disposal involving a known change in use to a greater environmental intensity;

(11) Postal facility function changes involving new uses of greater environmental intensity;

(12) Reduction in force involving more than 1000 positions;

(13) Relocation of 300 or more employees more than 50 miles;

(14) Initiation of legislation.

10. Newly redesignated § 775.6 is revised to read as follows:

§ 775.6 Categorical exclusions.

(a) The classes of actions in this section are those that the Postal Service has determined do not individually or cumulatively have a significant impact on the human environment. To be categorically excluded, it must be determined that a proposed action fits within a class listed and there are no extraordinary circumstances that may affect the significance of the proposal. The action must not be connected to other actions with potentially

significant impacts or is not related to other proposed actions with potentially significant impacts. Extraordinary circumstances are those unique situations presented by specific proposals, such as scientific controversy about the environmental impacts of the proposal, uncertain effects or effects involving unique or unknown risks.

(b) Categorical exclusions relating to general agency actions:

(1) Policy development, planning and implementation that relate to routine activities such as personnel, organizational changes or similar administrative functions.

(2) Routine actions, including the management of programs or activities necessary to support the normal conduct of agency business, such as administrative, financial, operational and personnel action that involve no commitment of resources other than manpower and funding allocations.

(3) Award of contracts for technical support services, management and operation of a government owned facility, and personal services.

(4) Research activities and studies and routine data collection when such actions are clearly limited in context and intensity.

(5) Educational and informational programs and activities.

(6) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes that do not affect more than 1,000 positions.

(7) Postal rate or mail classification actions, address information system changes, post office name and zip code changes.

(8) Property protection, law enforcement and other legal activities undertaken by the Postal Inspection Service, the Law Department, the Judicial Officer, and the Inspector General.

(9) Activities related to trade representation and market development activities abroad.

(10) Emergency preparedness planning activities, including designation of on-site evacuation routes.

(11) Minor reassignment of motor vehicles and purchase or deployment of motor vehicles to new locations that do not adversely impact traffic safety, congestion or air quality.

(12) Procurement or disposal of mail handling or transport equipment.

(13) Acquisition, installation, operation, removal or disposal of communication systems, computers and data processing equipment.

(14) Postal facility function changes not involving construction, where there are no substantial relocation of

employees, or no substantial increase in the number of motor vehicles at a facility.

(15) Closure or consolidation of post offices under 39 U.S.C. 404(b).

(16) Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include but are not limited to, adding filtration and recycling systems to allow reuse of vehicle or machine oil, setting up sorting areas to improve process efficiency, and segregating waste streams previously mingled and assigning new identification codes to the two resulting streams.

(17) Actions which have an insignificant effect upon the environment as established in a previously written Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS). Such repetitive actions shall be considered "reference actions" and a record of all decisions concerning these "reference actions" shall be maintained by the Chief Environmental Officer or designee. The proposed action must be essentially the same in context and the same or less in intensity or create fewer impacts than the "reference action" previously studied under an EA or EIS in order to qualify for this exclusion.

(18) Rulemakings that are strictly procedural, and interpretations and rulings with existing regulations, or modifications or rescissions of such interpretations and rulings.

(c) Categorical exclusions relating to emergency or restoration actions:

(1) Any cleanup, remediation or removal action conducted under the provisions of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA), any asbestos abatement actions regulated under the provisions of the Occupational Safety and Health Act (OSHA), or the Clean Air Act or any PCB transformer replacement or any lead based paint abatement actions regulated under the provisions of the Toxic Substances Control Act (TSCA), OSHA or RCRA.

(2) Testing associated with environmental cleanups or site investigations.

(d) Categorical exclusions relating to maintenance or repair actions at existing facilities:

(1) Siting, construction or operation of temporary support buildings or support structures.

(2) Routine maintenance and minor activities, such as fencing, that occur in floodplains or state and local wetlands

or pursuant to the nationwide, regional or general permitting process of the US Army Corps of Engineers.

(3) Routine actions normally conducted to protect and maintain properties and which do not alter the configuration of the building.

(4) Changes in configuration of buildings required to promote handicapped accessibility pursuant to the Architectural Barriers Act.

(5) Repair to, or replacement in kind or equivalent of building equipment or components (e.g., electrical distribution, HVAC systems, doors, windows, roofs, etc.).

(6) Internal modifications or improvements to structure, or buildings to accommodate mail processing, computer, communication or other similar types of equipment or other actions which do not involve modification to the external walls of the facility.

(7) Joint development and/or joint use projects that only involve internal modifications to an existing facility.

(8) Noise abatement measures, such as construction of noise barriers and installation of noise control materials.

(9) Actions which require concurrence or approval of another federal agency where the action is a categorical exclusion under the NEPA regulations of that federal agency.

(e) Categorical exclusions relating to real estate actions.

(1) Obtaining, granting, disposing, or changing of easements, licenses and permits, rights-of-way and similar interests.

(2) Extension, renewal, renegotiation, or termination of existing lease agreements.

(3) Purchase of Postal Service occupied leased property where the planned postal uses do not differ significantly from the past uses of the site.

(4) Acquisition or disposal of existing facilities and real property where the planned uses do not differ significantly from past uses of the site.

(5) Acquisition of real property not connected to specific facility plans or when necessary to protect the interests of the Postal Service in advance of final project approval. This categorical exclusion only applies to the acquisition. Any subsequent use of the site for a facility project must be considered under this part.

(6) Disposal through sale or outlease of unimproved real property.

(7) Disposal through sale, outlease, transfer or exchange of real property to other federal or state agencies.

(8) Acquisition and disposal through sale, lease, transfer or exchange of real

property that does not involve an increase in volumes, concentrations, or discharge rates of wastes, air emissions, or water effluents, and that under reasonably foreseeable uses, have generally similar environmental impacts as compared to those before the acquisition or disposal. A determination that the proposed action is categorically excluded can be based upon previous "reference actions" documented under § 775.6(b)(17).

(9) Acquisition and disposal through sale, lease, transfer, reservation or exchange of real property for nature and habitat preservation, conservation, a park or wildlife management.

(10) New construction, Postal Service owned or leased, or joint development and joint use projects, of any facility unless the proposed action is listed as requiring an EA in § 775.5.

(11) Expansion or improvement of an existing facility where the expansion is within the boundaries of the site or occurs in a previously developed area unless the proposed action is listed as requiring an EA in § 775.5.

(12) Construction and disturbance pursuant to a nationwide, regional or general permit issued by the US Army Corps of Engineers.

(13) Any activity in floodplains being regulated pursuant to § 775.6 and is not listed as requiring an EA in § 775.5.

11. A new § 775.7 is added.

§ 775.7 Planning and early coordination.

Early planning and coordination among postal functional groups is required to properly consider environmental issues that may be attributable to the proposed action. Operational and facility personnel must cooperate in the early concept stages of a program or project. If it is determined that more than one postal organization will be involved in any action, a lead organization will be selected to complete the NEPA process before any NEPA documents are prepared. If it is determined that a project has both real estate and non-real estate actions, the facilities functional organization will take the lead.

12. In newly redesignated § 775.9, paragraphs (a)(1) through (4), the first sentence in (b)(1), and paragraphs (b)(2), (b)(3) introductory text, and (b)(3)(i) are revised and a new sentence is added after the first sentence in paragraph (b)(1) to read as follows:

§ 775.9 Environmental evaluation process.

(a) All Actions—(1) Assessment of actions. An environmental checklist may be used to support a record of environmental consideration as the written determination that the proposed

action does not require an environmental assessment. An environmental assessment must be prepared for each proposed action, except that an assessment need not be made if a written determination is made that:

(i) The action is one of a class listed in § 775.6, Categorical Exclusions, and

(ii) The action is not affected by extraordinary circumstances which may cause it to have a significant environmental effect, or

(iii) The action is a type that is not a major federal action with a significant impact upon the environment.

(2) *Findings of no significant impact.*

If an environmental assessment indicates that there is no significant impact of a proposed action on the environment, an environmental impact statement is not required. A "finding of no significant impact" (FONSI) is prepared and published in accordance with § 775.13. When the proposed action is approved, it may be accomplished without further environmental consideration. A FONSI document briefly presents the reasons why an action will not have a significant effect on the human environment and states that an environmental impact statement will not be prepared. It must refer to the environmental assessment and any other environmentally pertinent documents related to it. The assessment may be included in the finding if it is short, in which case the discussion in the assessment need not be repeated in the finding. The FONSI may be a mitigated FONSI in which case the required mitigation factors should be listed in the FONSI. The use of a mitigated FONSI is conditioned upon the implementation of the identified mitigation measures in the EA that support the FONSI. Unless the mitigation measures are implemented by the responsible official, the use of an EA in lieu of an EIS is not acceptable.

(3) Impact statement preparation decision and notices. If an environmental assessment indicates that a proposed major action would have a significant impact on the environment, a notice of intent to prepare an impact statement is published (see § 775.13) and an environmental impact statement is prepared.

(4) Role of impact statement in decision making. An environmental impact statement is used, with other analyses and materials, to decide which alternative should be pursued, or whether a proposed action should be abandoned or other courses of action

pursued. See § 775.12 for restrictions on the timing of this decision.

* * * * *

(b) * * *

(1) The environmental assessment of any action which involves the construction or acquisition of a new mail processing facility must include reasonable alternatives to the proposed action and not just consideration of contending sites for a facility. This process must be started early in the planning of the action. * * *

(2) When an environmental assessment indicates that an environmental impact statement may be needed for a proposed facility action, the responsible officer will make the decision whether to prepare an environmental impact statement for presentation to the Capital Investment Committee, and to the Board of Governors if the Board considers the proposal.

(3) If an environmental impact statement is presented to the Committee or the Board, and an analysis indicates that it would be more cost-effective to proceed immediately with continued control of sites, (including advance acquisition, if necessary, and where authorized by postal procedures), environmental impact statement preparation, and project designs, a budgetary request will include authorization of funds to permit:

(i) The preparation of an impact statement encompassing all reasonable alternatives and site alternatives, * * * * *

13. In newly redesignated § 775.10, paragraph (a)(4) is added to read as follows:

§ 775.10 Environmental assessments.

(a) * * *

(4) A list of applicable environmental permits necessary to complete the proposed action.

14. Newly redesignated § 775.11 is amended by revising the last sentence of paragraph (a)(1) and by revising paragraphs (b)(2)(ii), (c)(2), (c)(4), (c)(5) introductory text, (c)(5)(iv), and (d)(1) to read as follows:

§ 775.11 Environmental impact statements.

(a) * * *

(1) * * * Notice is given in accordance with § 775.13. * * * * *

(b) * * *

(2) * * *

(ii) Contain discussions of impacts in proportion to their significance. Insignificant impacts eliminated during the process under § 775.11(a) to determine the scope of issues must be

discussed only to the extent necessary to state why they will not be significant. * * * * *

* * * * *

(c) * * *

(2) Summary. The section should compare and summarize the findings of the analyses of the affected environment, the environmental impacts, the environmental consequences, the alternatives, and the mitigation measures. The summary should sharply define the issues and provide a clear basis for choosing alternatives. * * * * *

* * * * *

(4) Proposed action. This section should clearly outline the need for the EIS and the purpose and description of the proposed action. The entire action should be discussed, including connected and similar actions. A clear discussion of the action will assist in consideration of the alternatives.

(5) Alternatives and mitigation. This portion of the environmental impact statement is vitally important. Based on the analysis in the Affected Environment and Environmental Consequences section (see § 775.11(c)(6)), the environmental impacts and the alternatives are presented in comparative form, thus sharply defining the issues and providing a clear basis for choosing alternatives. Those preparing the statement must:

* * * * *

(iv) Describe appropriate mitigation measures not considered to be an integral part of the proposed action or alternatives. See § 775.9(a)(7). * * * * *

* * * * *

(d) * * *

(1) Any completed draft environmental impact statement which is made the subject of a public hearing, must be made available to the public as provided in § 775.12, of this chapter at least 15 days in advance of the hearing. * * * * *

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15. In newly redesignated § 775.13, paragraph (a)(4) is revised to read as follows:

§ 775.13 Public notice and information.

(a) * * *

(4) A copy of every notice of intent to prepare an environmental impact statement must be furnished to the Chief Counsel, Legislative, Law Department, who will have it published in the Federal Register. * * * * *

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16. In newly redesignated § 775.14, paragraph (b) is revised to read as follows:

§ 775.14 Hearings.

* * * * *

(b) The distribution and notice requirements of §§ 775.11(d)(1) and 775.13 must be complied with whenever a hearing is to be held.

17. A heading for Subchapter L is added to read as follows:

Subchapter L—Special Regulations

PARTS 777 AND 778— [REDESIGNATED TO SUBCHAPTER L]

18. Parts 777 and 778 are redesignated from Subchapter K to Subchapter L.

Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[ND-001-0002a & ND-001-0004a; FRL-6150-6]

Clean Air Act Approval and Promulgation of State Implementation Plan for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority.

SUMMARY: EPA approves certain State implementation plan (SIP) revisions submitted by the North Dakota Governor with letters dated January 9, 1996 and September 10, 1997. The January 9, 1996 revisions are specific to a rule regarding emissions of sulfur compounds (the remainder of the State's January 9, 1996 submittal was handled separately). The September 10, 1997 revisions are specific to air pollution control rules regarding general provisions and emissions of particulate matter and organic compounds. Revisions to the minor source construction permit program will be handled separately. In addition, the September 10, 1997 submittal included direct delegation requests for emission standards for hazardous air pollutants (NESHAP) and emission standards for hazardous air pollutants for source categories, as well as the State's plan for existing municipal solid waste landfills, which were all handled separately.

Finally, EPA is providing notice that it granted delegation of authority to North Dakota on May 28, 1998, to implement and enforce the New Source